



Queensland Advocacy Incorporated

Submission to Australian Human Rights Commission

Willing to Work Inquiry

December 2015

Work feeds us – physically, socially and emotionally – and being without work is a disaster for many who cannot find it

Barbara Pocock

Deprived of meaningful work, men and women lose their reason for existence...

Fyodor Dostoyevsky

Disabilities are not liabilities but true test of abilities.

Emmanuel Ayeni

FORM 3: Organisation or Government Agency Submission

(a) About you

What is your role within your organisation?

- Owner
- Manager
- Human Resources Manager

X Other

If other, please tell us your role within your organisation

I am the Director of Queensland Advocacy Incorporated (QAI) and lead the Systems Advocacy team at QAI.

Systems advocates listen to the stories of people with disability, looking for patterns and signs that the same, or similar, thing is happening to lots of people with disability. We talk to parents and supporters, and to disability advocates who work every day on behalf of people with disabilities as they negotiate the courts, Commonwealth departments, Disability Services Queensland, the Public Trustee, the Office of the Public Guardian, Housing Queensland, service providers, private companies and a host of other public and private institutions that interact with people with disabilities. When we see patterns emerging – we hear that people are facing the same social barrier again and again or when an individual is confronted by systemic issues that have widespread implications – we work to remove that barrier for everyone.

QAI is an independent, community-based systems and individual advocacy organisation and a community legal service for people with disability.

Our mission is to promote, protect and defend, through systems and individual advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

QAI does this by engaging in systems advocacy work through campaigns directed to attitudinal, law and policy change, and by supporting the development of a range of advocacy initiatives in this state.

What is your experience of providing work/services/advocacy for Australians with disability?

Through my work as an advocate for Australians with disability, I am confronted on a continual basis with the multiple disadvantages most people with disability face. People with disability are a highly vulnerable and marginalised group within Australian society. QAI notes the serious adverse effects of

multiple disadvantage and the impact this can have upon the ability to participate socially and economically in the community.

QAI comes from a Social Role Valorisation (SRV) perspective, whereby the creation and support of “socially valued roles” for people within society is considered to result in the opportunity to obtain the goods society has to offer.¹ Giving all people a valued social role within the community can help to diversify and strengthen communities and to build resilience and supportive relationships within the community. One of the most highly valued social role is that of worker – this has obvious pragmatic benefits in terms of the generation of income and the protective effects this has against homelessness, ill-health and involvement within the criminal justice system.

People with disability have complex needs that generally require additional (and often significantly higher) finances to manage, as compared with people who would otherwise be categorised within the same group but who do not have the disability. Work is therefore critical from a financial perspective.

Being a worker also has significant, multi-dimensional benefits for the emotional health of people. As the Welfare System Taskforce of the Department of Social Services noted: “Employment is associated with a range of positive outcomes for people and communities. Engaging in work generates financial, health and psychological benefits for the people working and for their families.” There are many positive benefits associated with working, with work noted as a source of satisfaction, identity and pride and as an important and socially valued way of contributing to society and personal growth.² Many people are highly motivated to engage in meaningful work.³ This includes many people with disability. Professor Alan Morris’ research exploring the attitudes and experiences of people with disability regarding employment documents that most Disability Support Pension recipients under the age of 35 have a strong desire to work, with the inability to work a source of anguish for many.⁴ The noted barriers, aside from the severity of the person’s disability and the failure by many workplaces to make appropriate physical modifications to the environment to enable proper access by people with disability, were workplace cultural issues such as discrimination and inflexible working hours.⁵

People with disability may require additional support to develop and maintain a meaningful connection with the labour market. Providing support to people with an incapacity which recognises the possibility of future participation can potentially foster greater confidence and skills acquisition and contribute to the deconstruction of stereotypes of what people with disabilities can achieve.

¹ Joe Osburn, ‘Overview of Social Role Valorisation Theory’ (1998) 3(1) *The International Social Role Valorization Journal/La revue internationale de la Valorisation des roles sociaux* 7.

² Ian Wolcott and Australian Institute of Family Studies, *Work and Family: Employers’ Views* (Commonwealth of Australia, 1991), 9; Susan Faludi, *Backlash: The undeclared war against American women* (Crown, 1991); Richenda Gambles, Suzan Lewis and Rhona Rapoport, *The Myth of Work-Life Balance: The Challenge of our time for Men, Women and Societies* (John Wiley & Sons, 2006), 37.

³ Alain De Botton, *The Pleasures and Sorrows of Work* (Penguin Books, 2009), 78-80; Barbara Pocock, *The Labour Market Ate my Babies: Work, Children and a Sustainable Future* (The Federation Press, 2006), 1.

⁴ Alan Morris, “Pain and Mythology: Disability Support Pension Recipients and Work” (2006) 7(1) *Australian Review of Public Affairs* 41, 47.

⁵ Alan Morris, “Pain and Mythology: Disability Support Pension Recipients and Work” (2006) 7(1) *Australian Review of Public Affairs* 41, 47.

Do you have any case studies of the experience of Australians with disability working or looking for work?

Joe is a young man with Asperger's syndrome, attention deficit disorder and mild intellectual impairment. He attended mainstream schooling and was included in mainstream classes with external support from a special education unit, mainly for social education. Joe has very good skills in manual arts and received many commendations for his woodwork, metal work and work with acrylics. However, when he finished school the only opportunity available to him was a placement in a sheltered workshop. His mother advised the workers that he would mainly want to complete the woodworking module first and that if there was any other non-practical study required that he should be asked to complete them before allowing him to begin his practical components. However, this was ignored and Joe became upset after he finished his practical woodworking modules and was then required to spend time undertaking his occupational health and safety obligations. Joe was ejected from this sheltered workshop on the grounds that his behaviour was unacceptable.

Joe and his mother eventually sought and received assistance from a Disability Employment Service, and his case manager was familiar with an employer who recognised and appreciated the value and contribution that people with disability can bring to a workplace. Joe was employed working in a metal fabrication industry where he was respected, supported and where the employer provided leadership among the staff – he clearly indicated that he would not tolerate any disrespectful or discriminatory treatment of Joe. This young man stayed in this position for nearly ten years and during that time successfully attained his certification as a welder and has broadened his skills and employment opportunities.

Janene is a young woman with a mild intellectual impairment who sought support from a Disability Employment Service (DES). She was included in mainstream education with support from a special education unit and has reasonable literacy and numeracy skills. Her case manager did not take the time to get to know her well but knew of a job vacancy with a local supermarket. Janene was told that she would be 'stacking shelves'. However the employer was advised that they would be able to pay Janene under the BSWAT and for minimal wages, because she has an intellectual impairment and did not score well on mathematics. Janene and her parents were outraged at this treatment and refused the position. Janene, with the support of her family, sought full-time open employment for real wages independently of the DES.

Mary is a woman with a significant intellectual impairment who had been supported by her day service to undertake voluntary work placements in a range of businesses over the course of a few years. She had been supported by a wide range of different support workers who did not always understand her support needs and without that continuity of understanding Mary would be made vulnerable to situations that did not work well for her. She had worked in a veterinarian hospital, a second-hand furniture store, a charity shop, a plant nursery and the office of the service that supported her. For 6 years, twice a week, she performed office duties for the support service that included an employment service, a day service, a training program and an accommodation service. She was able to perform these tasks independently with supervision, from her designated support worker. The service was asked to consider supporting Mary incidentally for one of those days, as she

moved from office to office, rather than her using her support funds to work for the service that supported her. The service refused, and so Mary's mother asked if they would consider paying her for her time, and this was also refused. Mary left the service and now self-directs her own supports, and volunteers for her local council.

What are the impacts of employment discrimination on Australians with disability working or looking for work?

Issues pertaining to the security of employment for Australians is an issue of particular importance for vulnerable and disempowered groups, including people with disability. It is also an issue of national importance at present, given that the economic advantages of increasing the proportion of the population actively involved in the labour market widely recognized amongst OECD countries. People with disability represent a significant group with largely untapped potential to increase the workforce in Australia.

There are a number of adverse impacts for people with disability that flow from the employment discrimination they face both at the point of entry to and within the labour market in Australia. These negative effects, which will be discussed further below, include:

1. exclusion of people with disability from the workforce, with the resulting negative financial and non-financial impacts that this entails;
2. denial of choice to people with disability with respect to where, with whom and for whom they work;
3. concentration of people with disability in under-paid, demeaning, unstimulating work;
4. vulnerability, marginalisation and abuse within the workforce for people with disability;
5. the economic effects that flow from loss to the workforce of a significant subset of valuable workers and the payment to these people of unemployment benefits;
6. decreased workplace diversity and skills;
7. challenge to core elements of the Australian identity, such as tolerance and fairness.

One important, broader impact of the present employment discrimination that Australians with disability face is that Australia is breaching the human rights and dignities of people with disability by failing to afford them equity and fair working arrangements. This is contrary to the requirements imposed by the *Convention on the Rights of Persons with Disabilities* and the International Bill of Rights, which demand protection of the right of all persons to work in a role freely chosen by the person, in fair working conditions, with appropriate remuneration.

(b) Barriers

Do you think Australians with disability face barriers when they work or are in a job?

Yes

No

Not sure

Please tell us more

At present, people with disability face significant barriers when working. Some of the most significant barriers are that people with disability:

1. face attitudinal barriers, including stigma about the nature and effects of their disability, and low expectations of and for them. This is particularly the case for those with intellectual impairment, and this often begins in school, resulting in a high level of illiteracy among students with disabilities. This is then exacerbated by the very support services charged with assisting them into the workplace. People with intellectual/cognitive impairment, especially those people who have communication issues, are underestimated in their capacity to learn the skills and perform the work even if they may require more time to undertake the training;
2. can be paid at very low rates that would not be sanctioned if paid to a person without disability;
3. can be segregated into 'sheltered workshops', rather than employed within the open labour market;
4. face barriers to access, including workplaces physically designed for people without disability, lack of understanding of their support needs and inflexible workplaces unwilling to make appropriate modifications;
5. are subjected to bureaucratic requirements not imposed on people without disability;
6. can face disadvantage from the beginning of their lives and throughout their education, which can disempower and marginalise them.

Is employment discrimination a barrier (please tick all that are relevant):

While working in a job

While looking for work

While dealing with recruitment companies

Please tell us more

Employment discrimination for people with disability is a significant issue in Australia at present and is reflected in the low rates of workforce participation of people with disability. Australia's employment of people with disability is lower than the OECD average. Indeed, Australia has one of the lowest employment participation rates for people with a disability, ranking 21st out of 29 OECD countries,

with an employment rate of 39.8% for people with a disability compared to 79.4% for people without a disability.⁶ QAI considers this highly unsatisfactory and supports the development and enhancement, as an urgent priority, of appropriate working opportunities for people with disability.

What impact does employment discrimination have on Australians with disability gaining and keeping employment?

Employment discrimination makes it significantly harder for Australians with disability to gain employment, particularly meaningful employment that is commensurate with their skills, abilities and interests and is part of a career trajectory chosen by them.

Employment discrimination makes it significantly harder for Australians with disability to keep employment, as they are often subjected to stigma, ill treatment, lack of support and disproportionate bureaucratic requirements.

Are there any practices, attitudes or laws which discourage or prevent equal participation in employment of Australians with disability?

Yes

No

Not sure

Please tell us more

The anti-discrimination laws in Australia are presently reactive, rather than proactive, and place an unjust onus on the person subjected to discriminatory treatment to bring a legal action against their employer or potential employer. This is clearly inappropriate, having regard to the power imbalance that exists between any individual and organisation, which is inflated when the individual is a person with disability who has likely experienced multiple disadvantages throughout their life.

The sanctions ultimately imposed on those found to have engaged in discriminatory conduct are also so insignificant that they fail to act as a deterrent to future conduct, or provide a warning to others not to similarly act. The anti-discriminatory laws require significant improvement.

There are also welfare laws and policies that subject people with disability to additional bureaucratic requirements when leaving school and seeking employment.

We consider that, with appropriate support and opportunity, many people with disability have significant, untapped potential to contribute to the labour market. What is required is a shift in mindset that embraces the opportunities for flexible working arrangements that accommodate the varying needs of people with disability.

At present, negative employer attitudes to people with disability is a significant obstacle to greater labour market participation by people with disability. The existence of this attitudinal barrier is

⁶ PriceWaterHouse Coopers, *Disability Expectations: Investing in a Better Life, a Stronger Australia*, 2011.

particularly concerning given that people with disability are often proven to be highly productive, loyal and flexible workers if given the opportunity. We consider that dismantling negative mindsets towards people with disability in the employment context is particularly paramount given the considerable obstacles faced by people with disability that commence well before labour market participation becomes possible. In particular, we note the significant impediments people with disability encounter in the educational system⁷ and by virtue of the imposition of onerous assessment and appraisal requirements not applicable to people without disability.⁸

In Australia, there are also presently inequities in the welfare laws that penalise people with disability for working, particularly where their employment may fluctuate (which can be consequential of their disability or an episodic mental illness).

What are the incentives and disincentives in employing Australians with disability?

Incentives

People with disability are proven to be loyal and hardworking employees who generally demonstrate greater reliability, have higher attendance records with fewer sick days, have better retention rates, exhibit greater than average flexibility and productivity and do not incur greater workplace risk or compensation claims when compared with employees without a disability. Workplaces that offer a supportive environment for people with disability often report better working relationships and higher staff morale and customer loyalty. Yet despite these documented benefits of employing people with disability, there remain significant barriers to employment for people with disability.

Disincentives

People with disability can require modifications to the workplace and additional and ongoing support to work.

(c) Good practice

Are there examples of good practice in employing and retaining Australians with disability in work?

Yes

No

Not sure

Please let us know about practices you are aware of.

⁷ For example, many students leave school with literacy and numeracy inadequacies that have not been fully addressed by specialist educational assistance.

⁸ For example, Job Capacity Assessments (JCAs), Job Seeker Classification Instruments (JSCIs) and wage assessment tools.

Some companies are leading the way in modelling an alternative work paradigm that does not merely tolerate but embraces the significant groups of workers that may require some support or workplace modifications yet have a significant amount to contribute to the workplace.

Westpac and IBM are both companies that have developed collaborative links with the Australian Network on Disability – these companies prototype a successful, contemporary approach to fostering a diverse, inclusive and productive workforce whilst maintaining commercial success in a competitive market. These models not only highlight the possibilities but also provide industrial leadership in exemplifying the viability of such changes for other workplace organisations.

However, sadly these examples are representative of only a small minority of the private sector. Furthermore, other companies recognised as leaders in the employment of people with disability, such as Australia Post, tend to employ people whose disability either does not require significant modification or ongoing level of support or does not differentiate them from other workers in terms of their productivity – for example, a high volume of workers with hearing impairment.

(d) Solutions

What action should be taken to address employment discrimination against Australians with disability?

A priority should be reform of Australia's anti-discrimination legislative framework. The proposal to consolidate and update the anti-discrimination legislative framework initiated in 2012 and halted in 2013 should be re-opened. Any reform agenda must pay significant attention to the unique needs and vulnerabilities of marginalised groups including people with disability.

A strong campaign, led by the government, should be commenced to raise employer and public awareness of the benefits of employing people with disability.

As discussed in further detail below, all medium and large companies and government should be required to implement and comply with affirmative action policies and quotas.

Australian Disability Enterprises should cease to operate and all people with disability should be employed in the open market. The practice of paying wage subsidies should be ceased. (These proposals are also discussed in further detail, below).

What should be done to enhance workforce participation of Australians with disability?

Volunteer work can potentially be an effective means by which people with disability can make a valuable contribution to the workplace, demonstrate their capabilities and simultaneously develop skills that are valuable to the workplace. To foster and support the involvement of people with disability in the labour market in a voluntary capacity, funding incentives should be developed for people with disability who contribute to society through unpaid work. However, it is vitally important that safeguards are implemented to ensure that people with disability are not exploited, by remaining engaged in a voluntary capacity where their role could, but ultimately does not, lead to paid employment.

The importance of adequate and appropriate support for people with disability must be recognised. Furthermore, the timing of support is critical – supporting people sooner rather than later can help people become more independent over time. The Australian welfare system needs to develop as its foundation a strong supportive framework whereby the right support is made available to people with disability including people with complex needs, such as mental health conditions. This might include supporting people with mental health conditions to take part in the community and to find work. All measures designed to help people with disability to find work must be genuine and that concerted effort must be directed to challenging mindsets and preconceptions that can act as barriers to the employment of people with disability.

What outcomes or recommendations would you like to see from this National Inquiry?

QAI would like to see the following recommendations:

A: Development and implementation of a national action plan to increase the employment of people with disability, by:

1. Launching of a positive awareness-raising campaign on the benefits of employing people with disability

QAI submits that government should take proactive steps to increase employer awareness of the benefits of employing people with disability. In the face of negative employer attitudes to employing people with disability, founded upon incorrect assumptions and stereotypes, positive action is required. We propose that DEEWR and the Australian Taxation office provide information to employers at BAS and Tax time on the benefits of employing persons with disability.

People with disability, and particularly people with mental illness, can be adversely affected by stereotypes. To combat this, we need to develop inclusive strategies designed to raise awareness about the benefits of workplace diversity and to encourage outreach activities within corporate culture.

2. Implementation of robust government and medium and large company quotas for the employment of people with disability.

The state and federal governments need to take leadership in this regard and model by example, significantly increasing their rates of employment of people with disability. Indeed, the workforce of the Department of Social Services, which is tasked with looking after the employment of people with disability, only employs a very small percentage of people with disability as part of its workforce. This is unacceptable and sends a negative message about people with disability in the workforce. All government bodies should be required to implement and comply with affirmative action quotas and policies.

All medium and large companies should also be required to implement and comply with affirmative action quotas and policies. The government should set appropriate targets for

companies to meet and publicly reward and promote success in meeting these targets and impose sanctions for the failure to do so.

While it is not feasible to impose affirmative action policies or quotas on small businesses, mandatory requirements to review recruitment practices and assess whether there is potential to employ workers with disability should be implemented. Many people with disability work extremely well within niche roles created within a small business, and often work compatibly for more than one company at a time. This often proves to be beneficial for the worker and for the business.

3. *Ensuring access to appropriate, affordable technology for all people with disability*

Technology is a powerful tool assisting people with disability to interact with others on a level playing field. Information technology has become of heightened relevance in the context of an increasingly globalised labour market, where technology facilitates the transcendence of temporal, physical and geographical boundaries. Access to, and proficiency with, information technology is fundamental at the point of entry to the labour market. Measures that increase the technological skills of people with disability, coupled with initiatives that ensure that appropriate technological equipment is affordable and available to all people with disability, are therefore vital. We consider that appropriate measures in this regard could include subsidies for people with disability to purchase and install appropriate information technology and investment in information technology training for people with disability.

4. *Requiring employment agencies to work with employers to create niche roles for employees with disability*

Government contracts and funding arrangements with employment agencies should specifically require that employment agencies work with employers to help to develop more roles for employees with disability.

B. Improvement of the minimum working standards and conditions for people with disability, by:

1. *Prohibiting 'sheltered workshops' and wage subsidies*

Australian Disability Enterprises (ADEs) have not been beneficial for people with disability – they have sanctioned their oppression, exploited their vulnerability and eroded their dignity. They have helped to create a perspective that people with disability should not be employed in open employment but rather require special, separate employment for which they are need only be paid a small fraction of the minimum wage. The only parties that truly benefit from ADEs are the owners who profit from the slave labour performed by the workers at ADEs.

The use of wage subsidies within open employment also adversely impacts on the value and status of people with disability in the workforce, creating the perspective that a worker with a disability is of lesser value than an equivalent worker without the disability.

All workers, including workers with disability, should be paid at a rate equal or greater to the minimum award wage for the particular industry in which the worker is engaged. The supported wage system functions as a significant disincentive to employment for people with disability and can have the effect of demeaning and undervaluing the contribution made by people with disability to the labour market, in terms of the grossly insufficient remuneration provided and the concentration and confinement of workers to a small and undervalued sector of the labour market.

While some employers have demonstrated that they are more likely respond to incentives to employ a person with a disability and will not independently do this, reduced wages are not the answer. The imposition of mandatory quotas is far more appropriate.

In 2012, the Full Federal Court of Australia held that using the BSWAT assessment tool to determine reduced rates of pay for persons with an intellectual or cognitive disability constituted unlawful discrimination in breach of the federal laws.⁹ Yet the Commonwealth Government sought and was granted an exemption to the operation of the anti-discrimination laws, purportedly as a transitional arrangement pending the implementation of a new wage setting approach yet this 'transitional arrangement' has recently been extended by the Federal Court.

QAI acknowledges that some people whose support needs are very high and complex have utilised sheltered workshops as 'pseudo day services' in lieu of appropriate support packages to explore other activities in life. However, the practice of labelling such services as 'supported employment' is a falsehood and if necessary to the wellbeing of the service users, should be funded as a day service only. The people who have been engaged in these services for extended periods should have individualised funding that is targeting their goals articulated in their NDIS plans, be recognised for their long service to the workplace and receive entitlements that reflect their contribution.

2. *Hearing and appropriately responding to the voices of people with disability*

QAI submits that all government initiatives must pay close attention to the specific needs of people with disability. To this end, consultation with specific disability groups is required to ensure that any measures not only purport to address the needs of these groups, but actively listen and respond to their needs.

Conclusion

Matters pertaining to the employment of people with disability and the people who care for them and support them, are core human rights concerns. Having a secure job, and an adequate and dependable source of income, is a fundamental prerequisite to the enjoyment of basic rights by all adults.

Being a valued part of the workforce also offers protection against other vulnerabilities – it helps to protect people from homelessness and enables them to access adequate health care. We also know that it is a buffer against becoming involved in the criminal justice system.

⁹ *Nojin v Commonwealth of Australia* [2012] FCAFC 192.

As people with disability often have complex needs that may result in the heightened financial expense, the ability to earn a decent wage and to have their basic industrial rights protected is particularly important. Financial certainty for the future, including in retirement (whether from age or ill health) is something that all people should be entitled to.