



Australian Government
Australian Public Service Commission

Australian Public Service Commissioner


The Hon. Susan Ryan AO
Age and Disability Discrimination Commissioner
Australian Human Rights Commission
Level 3
175 Pitt Street
SYDNEY NSW 2000

Dear Ms Ryan

I am attaching a submission to *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*. I have no objection to it being publically released.

The contact officer for this submission is Ms Karin Fisher, Group Manager Employment Policy. Ms Fisher may be contacted by telephone on (02) 6202 3846, or by email at Karin.Fisher@apsc.gov.au.

Yours sincerely


John Lloyd PSM
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Willing to Work: National Inquiry into Employment
Discrimination against Older Australians and Australians with
Disability

Australian Human Rights Commission

Submission by the Australian Public Service Commissioner

The Hon. John Lloyd PSM

Introduction

1. The Australian Public Service (APS) is a large and geographically dispersed workforce. At 30 June 2015 there were 152,430 employees in the APS across Australia.
2. It is important for the APS workforce to reflect the diversity of the community it serves.
3. The APS operates in a devolved management environment in which agency heads have all the rights, duties, and powers of the employer in respect of their employees.
4. Agency heads and employees are bound by the Public Service Act 1999 (PS Act). The PS Act includes provisions that support a diverse APS.
5. The APS Employment Principles, at section 10A, provide among other things that the APS is a career-based public service that:
 - a. makes decisions relating to engagement and promotion that are based on merit;
 - b. provides workplaces that are free from discrimination, patronage and favouritism; and
 - c. recognises the diversity of the Australian community and fosters diversity in the workplace.
6. The Australian Public Service Commissioner can make Directions to determine the scope or application of the Employment Principles. Directions have been made to provide exceptions to the merit principle as a means of facilitating the employment of Indigenous people and people with disability.
7. The *Australian Public Service Commissioner's Directions 2013* provide the following affirmative measures for people with disability:
 - a. clause 2.16 allows vacancies to be restricted to people with intellectual disability
 - b. clause 2.17 provides for engaging people with disability who would otherwise be unable to compete on merit
 - c. clause 2.17A establishes the RecruitAbility scheme. RecruitAbility facilitates the progression of applicants with disability to further assessment, such as interview, when they opt into the scheme and meet the minimum requirements for the job.
8. Section 18 of the PS Act requires each agency head to establish a workplace diversity program to assist in giving effect to the APS Employment Principles.
9. The APS Values, at section 10 of the Act, include the Value '*Respectful—The APS respects all people, including their rights and their heritage*'.
10. The Commissioner's Directions explain the scope and application of this Value at [clause 1.4](#).
11. The APS Code of Conduct, at s. 13 of the PS Act, requires employees, when acting in connection with APS employment, to treat everyone with respect and courtesy and without harassment.

Role of the Australian Public Service Commissioner

12. The Australian Public Service Commissioner has statutory functions, set out in s. 41 of the PS Act, and policy responsibilities.
13. The Commissioner's functions include fostering an APS workforce that reflects the diversity of the Australian population (s. 41(2)(d)).
14. The Commissioner reports annually to Parliament on the state of the service, including changes in the environment and infrastructure of the APS and emerging issues. State of the Service reports routinely include data on diversity trends across the APS.

Disability and age in the APS

15. At 30 June 2015, 3.3% of APS employees identified as people with disability. This is a small increase from last year. The table below shows the representation of people with disability in the APS over the last decade.

Disability Status at June 30, 2005-2015-% of APS workforce

	2005	2005	2007	2008	2009	2010	2011	2012	2013	2014	2015
Ongoing	4.1	3.8	3.6	3.5	3.4	3.4	3.3	3.2	3.2	3.4	3.5
Non-ongoing	2.0	2.0	2.0	1.8	1.9	1.7	1.7	1.7	1.7	1.6	1.5
Total	4.0	3.7	3.5	3.4	3.3	3.3	3.2	3.1	3.0	3.2	3.3

16. A qualification on our data is that some APS employees with disability choose not to self-identify in data gathering. The analysis of surveys that are emphatically anonymous suggest that the employment of people with disability may in fact be 3-4% higher.
17. Over a quarter of APS employees with disability are employed at the APS 4 classification and more than a fifth at APS 6. The proportion of employees with disability declines steadily at the Executive Level and Senior Executive Service classifications.
18. Employees with disability have an older age profile when compared to the rest of the APS. They represent over 20% of employees in the 50-54 age group.
19. Further analysis can be found on the APSC's State of the Service website:
<http://stateoftheservice.apsc.gov.au/2015/09/aps-representation-of-people-with-disability/>
20. The overall APS workforce is older than the Australian labour force. In 2015, 45.5% of the APS workforce was aged 45 and over compared to 38.3% of the Australian labour force. The recent trend is for a growing proportion of older employees.
21. At June 2015 the largest age group in the APS was 50-54 years, representing 14.7% of all employees. This is the same proportion as at June 2014. There was an increase in the representation of 55-59-year-olds, from 9.9% at June 2014 to 10.1% at June 2015. There was also an increase in the 60 years and over age group, from 6.8% to 6.9%.
22. Consistent with the ageing population, 55% of the SES are aged 50 and over. Employees aged 50 and over are also well represented in the lower classifications, ranging from 29% of APS 5 employees to 61% of APS 4 employees.

23. The structure of the APS is changing. Over the past fifteen years the proportion of employees at lower classifications has decreased and the proportion of employees at higher classifications has increased. Typically, the average length of service of APS employees increases with classification, as does age. This means that as the classification profile of APS employees has shifted upwards, so too has the age profile.
24. Further analysis can be found on the APSC's State of the Service website:
<http://stateoftheservice.apsc.gov.au/2015/10/older-workers-in-the-aps/>
25. This submission responds to the discussion questions in the Australian Human Rights Commission's Issues Papers on age and disability discrimination in the context of employment in the APS.

Discussion questions

Question 1. What policies, workplace practices, programs or incentives assist with increasing participation of people with disability/older workers? How adequate are these policies, practices or incentives? What is the role of Government, peak business and employee groups, and individual employers?

People with Disability

26. The representation of people with disability in the APS has been declining over the last 15 years, though there has been a slight increase this year and last year.
27. As a consequence, a number of interventions have been introduced to improve representation. This is consistent with the aims of the *National Disability Strategy 2010-20*, administered by the Department of Social Services. The Strategy includes as an action item the improvement of employment, recruitment and retention of people with disability in all levels of public sector employment.
28. To this end, the APSC developed *As One: APS Disability Employment Strategy* in 2012. The Strategy sought to foster inclusive cultures in the APS; increase agency demand for candidates with disability; improve recruitment processes to enable more candidates with disability to enter the APS; and improving leadership across the APS.
29. A revamp of the 2012 strategy is well advanced and will be released early in 2016.
30. Affirmative measures for people with intellectual disability have been in place in the APS for some time. The measure for people with disability who are unable to participate in competitive selection processes was introduced in 2010. The *RecruitAbility* scheme arose from the *As One* Strategy and was included in the Commissioner's Directions in 2013.
31. The APS has introduced a number of particular interventions worthy of mention.
- 32. *RecruitAbility*** is the most widely used of the affirmative measures. In its first 12 months of operation, over 40 agencies have used *RecruitAbility*, and nearly 70 people with disability have been recruited, promoted or transferred under the scheme. At November 1 2015, over 1900 job vacancies have been advertised under *RecruitAbility*.
- 33. *Disability Champions Network***. A network of APS Disability Champions has been established to provide leadership across the APS in the employment of people with disability. The Network drives disability-related employment initiatives and organisational change to create workplaces that value

and support people with disability. The Network comprises representatives of over 40 agencies at senior levels.

34. The Champions have been key in establishing '**10 plus 10** meetings, in which ten employees with disability share with ten Disability Champions their experiences of working in the APS. These meetings have been a useful learning tool for all participants. They have highlighted areas where the APS can improve the employment experience of employees with disability, and have been useful in galvanising action.
35. Champions have implemented '**reasonable adjustment passports**' in their agencies. These allow an employee to document on a single occasion the workplace adjustments they need. The passport travels with the employee between roles and is intended to reduce delays in accessing reasonable adjustments when starting in a new position.
36. Champions have implemented a **timeframe for implementation of reasonable adjustments** in agencies and an escalation process to ensure that adjustments are implemented in a timely way.
- 37. Changing Mindsets Initiative.** The APSC is piloting an initiative to reduce stigma towards employing people with disability. Changing Mindsets provides opportunities for executives to have a positive direct experience with a person with disability. Executives select from a suite of options that include job shadowing, reverse mentoring, and spending time with specialist organisation such as Mental Health Education ACT or Koomarri.
- 38. Disability Awareness Training.** The APSC is working to improve the level of disability awareness training available across the APS. A disability confidence e-learning course has been developed collaboratively by the APSC and DHS. It is now available to APS agencies from the shared services learning hub. Diversity training is also in development and will be available APS wide from the end of 2015. It will cover unconscious bias and disability awareness as part of the Core and Management Skills program.
- 39. Disability Awareness Videos.** The APSC has developed a series of videos featuring APS leaders and Disability Champions talking about the benefits of employing people with disability. The video series is called 'Leading the Way'. It is available on the APSC website and is also hosted by agencies on their learning systems.
40. APS agencies are also able to tap into broader programs that support employment of people with disability. For example, they may access the **Employment Assistance Fund** administered by the Department of Social Services. The Fund gives financial help to employers for work-related equipment, modifications and services to adjust the workplace to suit employees with disability.
41. In addition, there is an **exemption from the Commonwealth Procurement Rules** for government procurement from business that exist to employ people with disability (Exemption 16). However, the exemption is not widely used. The APSC is working with Disability Champions and the Department of Finance to better publicise the exemption and to learn from approaches to Commonwealth Indigenous procurement. Increasing government procurement from business that employ people with disability will increase the employment of people with disability.
42. Ninety-two APS enterprise agreements include provision for employers to engage employees with disability under the **Supported Wage Scheme**. The scheme allows employers to pay productivity based wages to people whose work productivity is significantly reduced as a result of disability.
43. Government as an employer can play a significant role through leading by example. The initiatives outlined above are examples of innovative practices to enhance the employment prospects of

people with disability. At the same time, public sector employment standards should not be excessively in advance of private sector or community standards.

Older Workers

44. The APS has an older age profile than the Australian labour force.
45. No overarching strategy for the employment of older workers exists in the APS. A number of measures operate across the Service that support older workers' participation.
 - a. Compulsory age retirement for APS employees was abolished in 1999.
 - b. Flexible working arrangements are provided for in agency-level enterprise agreements. These include part-time and flexible working hours, job sharing, health and wellbeing programs, and purchased leave provisions. These arrangements are not limited to any particular sub-group of employees, but benefit older workers transitioning to retirement.
 - c. APS superannuation arrangements provide a degree of flexibility in the transition to retirement depending on the scheme.

Question 2. Are there distinct challenges faced by different sized businesses and organisations, sectors and industries in employing people with disability/older workers?

46. The APS Employment Principles provide that engagement and promotion decisions must be based on merit. The necessary components of a merit-based decision are at subsection 10A(2) of the PS Act. These include the requirement that all eligible members of the community are given reasonable opportunity to apply for a role.
47. Nevertheless, anecdotal evidence indicates that entry into the APS viewed by those outside the Service as an onerous and often overwhelming process. The requirement to address selection criteria in particular is seen as arduous. This effect may be compounded for people with disability or older people, especially if their work experience has not prepared them for the intricacies of the recruitment process.
48. The APSC is taking steps to simplify the hiring process. This may have beneficial impact on people with disability and older people who might not otherwise feel confident to apply for an APS position.
 - a. The interim recruitment arrangements, designed to reduce the number of employees in the APS, operated from November 2013 to June 2015. Removal of these arrangements returns decision making closer to the point of responsibility, and provides greater opportunity to secure entry into the APS.
 - b. The APSC is working with agencies to review recruitment processes to reduce unnecessary red tape.
 - c. The APSC is undertaking a major review of the Commissioner's Directions with a view to making it easier and quicker for agencies to make hiring decisions.

Question 4. What lessons and leading practices can we learn from other countries to address employment discrimination and increase workforce participation of people with disability/older Australians?

People with disability

49. The APSC has identified initiatives targeting recruitment and retention of people with disability in New Zealand, Canada, the United States of America, the United Kingdom, Sweden and Norway.

50. Initiatives across these jurisdictions include:
- a. disability employment equity measures that streamline recruitment processes
 - b. targeted traineeships, graduate programs, and broader employment programs
 - c. partnership with the private sector and universities
 - d. identification of barriers and development of strategies to improve disability representation
 - e. targeted employment registers
 - f. improved accessibility
 - g. flexible working arrangements.
51. The Canadian Government has developed the Federal Contractors Program (FCP). The Program ensures that those who do business with the government achieve and maintain a representative workforce. Contractors who bid on government contracts estimated at \$1 million or more must commit to employment equity. Failure to comply can result in cancellation of contract and/or losing the right to bid on future contracts.
52. All the countries above have mandated legislation to support the recruitment and continued employment of people with disability.
53. Government and private sector employers may benefit from implementing targeted recruitment programs and paid internships for people with disability. The APSC is exploring further work in this area.

Question 5. How adequately do existing laws protect people with disability/older Australians from employment discrimination? How effective are the legal remedies for people with disability/older workers who have experienced discrimination? How could existing laws be amended or supplemented?

54. The APS has range of protections and avenues for redress for people who suffer discrimination in their employment. It would appear that the incidence of such discrimination is low against people with disability or older employees.
55. In addition to the requirements of anti-discrimination legislation, the *Public Service Act 1999* and subordinate legislation provide that in the APS:
- a. decisions relating to promotion and engagement must be based on merit (s10A(1)(c))
 - b. workplaces must be free from discrimination, patronage and favouritism (s10A(1)(f))
 - c. diversity is fostered (s10A(1)(g))
 - d. employees must treat other people with respect and courtesy and without harassment (s13(3))
 - e. employees act in a way that models and promotes the highest standard of ethical behaviour (Commissioner's Direction 1.3(a))
 - f. employees treat all people with dignity and recognise that all people have value (Commissioner's Direction 1.4(a)).
56. A failure to meet the standards established under this framework may be investigated as a potential breach of the APS Code of Conduct. Where it is determined that an APS employee has breached the Code of Conduct, under section 15(1) of the PS Act a variety of penalties may be imposed, up to and including termination of employment.

57. Complaints that an employee has breached the Code of Conduct in this manner may be lodged directly with the employer, or with the Commonwealth Ombudsman under the Public Interest Disclosure Scheme established by the *Public Interest Disclosure Act 2013*. That scheme allows disclosures to be made confidentially and anonymously, and provides for substantial penalties in the event that reprisal action is taken against a person making a disclosure. Further information about the operation of the Public Interest Disclosure scheme is available from the Office of the Commonwealth Ombudsman at <http://www.ombudsman.gov.au/pages/pid/>.
58. APS employees who feel that they have been unlawfully discriminated against on the basis of age or disability may have access to the Australian Human Rights Commission on specified grounds.
59. For more information about the rights of Australian Public Service employees, see: <http://www.apsc.gov.au/working-in-the-aps/your-rights-and-responsibilities-as-an-aps-employee>

Question 6. What difficulties are there for employers in understanding and complying with legal obligations?

60. The APS, in common with other employment sectors in Australia, is highly regulated. This can in some cases impede an individual employer from readily understanding their rights and obligations.
61. Work is being done to simplify regulation in the APS. This will make it easier for employers and employees to understand and comply with their legal obligations.
62. An independent Review of Whole-of-Government Internal Regulation (the Belcher Red Tape Review) was commissioned by the Secretaries Board in March 2015. The report was presented to the Secretaries Committee on Transformation and Secretaries Board in September and October 2015. The Secretaries agreed to implement all recommendations, noting that some require consideration by Government.
63. The review recommended the adoption of Principles for Internal Regulation that would require regulation to be:
- the minimum needed to achieve whole-of-government or entity outcomes
 - proportional to the risks to be managed and supportive of a risk-based approach
 - coherent across government and not duplicative
 - designed in consultation with stakeholders for clarity and simplicity in application, and
 - reviewed periodically to test relevance and impact.
64. For more information see <http://www.finance.gov.au/publications/reducingredtape/>
65. It is important to draft legislation in plain language. The Office of Parliamentary Counsel has developed a Plain English Manual which provides the foundation for its approach to plain English drafting.

People with disability

66. Additional work will be undertaken to ensure that all line managers and employees are aware of the legal obligations around reasonable adjustments in the workplace.

67. Anecdotal evidence suggests that the adjustments that APS agencies generally find the hardest to comply with are those involving physical accessibility, as this can be costly. ICT accessibility adjustments can also be complicated for agencies.

Question 7. What are the distinct challenges faced by certain groups of people with disability/older Australians (e.g. women, Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds or LGBTI people) in relation to employment discrimination?

People with disability

68. The Department of Social Services is developing the National Aboriginal and Torres Strait Islander Disability Action Plan to address the specific needs of Indigenous people with disability. The APSC has contributed to the development of this plan.

69. In Indigenous languages, there is no word for disability. People with disability are not segregated, but rather are included in mainstream Indigenous society. Consequently, Indigenous employees may not identify as having a disability. They might not seek reasonable adjustments in the workplace or put themselves forward for opportunities, programs, or support for people with disability.

70. Work is underway to improve the way that opportunities for employees with disability are communicated to Indigenous employees and increase awareness about reasonable adjustments.

4 December 2015