**Willing to Work: National Inquiry into Employment Discrimination against Older Australians and Australians with Disability**

# Submission No 253

**Name** Basic Rights Queensland Inc.

**Submission made by**
[x]  Organisation
[x]  Membership based organisation
[x]  Legal practitioner

# Organisation or Government Agency Submission

### **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**

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

Basic Rights Queensland (BRQ) is a state-wide specialist community legal centre, providing advice, advocacy and free legal services to people having problems with social security or disability discrimination.

More than half our clients are people with one or more disabilities, 90% of our clients are living on under $500 a week and nearly one-fifth have no income at all at the time they contact us. Just under a third of our clients are aged 55 years or older. A tenth of our clients are aged 55 years or older and identify as having a disability.

With over thirty years’ experience of advocating for our clients’ rights to their social security entitlements and to live a life free from discrimination, we well understand the challenges facing people with disability and older persons and their families, carers and associates dealing with barriers to those people finding meaningful employment and asserting their right to receive an income to which they are entitled.

Our submission is based on our expertise in assisting, advocating and representing job seekers through the social security appeals system and in seeking redress for disability discrimination through early intervention negotiation, and the Australian Human Rights Commission or the Anti-Discrimination Commission of Queensland processes.

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

1. “A” is a 61 year old male who has worked manually in a trade since his teens. He has developed a deteriorating spinal condition, which means he can no longer do that work. His condition is not so severe at the moment for him to qualify for a disability support pension. He receives Newstart and is struggling to support himself. He is keen to work. He lives in a regional town with high unemployment. He cannot get work. He suspects that it is due to his age, his back and narrow qualifications. He requires re-training, however, he believes that still no-one will employ him. He has become socially isolated due to his low income and not having a workplace. He has become depressed and feels like he’s “just waiting for the age pension”.

2. “B” is in his late fifties. He was on a disability support pension due to being profoundly deaf, but wanted to work. He found a job as a cleaner at a location near his home. He worked there for a number of years. Instead of communicating by a two-way radio he communicated by SMS. The cleaning company changed hands, and his new supervisor complained about having to communicate by SMS. After 6 months with the new company he was told that he didn’t “pass his probation”. No reason was given. He didn’t know he was on probation. He decided after the experience that he would “retire”.

3. “C” is an experienced chef in his fifties having worked for mining companies, hospitals and other large scale operations. He trained other chefs as part of his roles. He became sight impaired which meant he could not continue as an actual chef. He wanted to continue working as a trainer. He needed a qualification, so he engaged with a training provider to apply for the qualification with recognised prior learning. He paid a fee. He requested that the training organisation assist him with his written application due to his impairment. Initially this request was accepted, however, the attitude changed when a manager learned that an employee was assisting him. He was told blind people can’t teach cooking. They kept the fee. As a result of the experience he didn’t apply and “gave up”. He now receives a disability support pension.

4. “D” is in his mid-thirties with experience in the mining industry on-site. He had to take time off work for a hip replacement. After a full recovery, he applied for a job similar to his previous employment, and went through the compulsory medical. His application was refused as his hip replacement, according to his employer, was a workplace health and safety risk. It turns out that his pre-employment medical stated that the company was to avoid placing “D” in situations that would “place strain or pressure on his replaced hip”. “D” argued that this was the same WH&S obligation for any employee. “D” was able to find employment with another mining company.

It should be noted that an underlying issue is that for every job there are five jobseekers.

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

Being unable to obtain or keep meaningful employment can lead to the further barrier of the development of mental illness. People with disabilities and older people can end up below the poverty line due to the reliance on social security payments, which also impacts on the economy due to the lack of stimulus, and the burden on the taxpayer.

As is evidenced in the first three case studies, the negative experience of discrimination can lead to people “giving up”. They can feel a lack of self- worth. The impact spreads to their families. It often leads to social isolation, which in turn exacerbates mental health problems.

Employment can improve health outcomes by keeping people active and engaged.

It is widely accepted that a reliance on social security payments, which are low, in itself a barrier to finding employment.

### **Barriers**

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

[x] Yes

[ ] No

[ ] Not sure

**Please tell us more**

As is evidenced in the fourth case study, employers can become focused on risk minimisation due to the impact of workplace health and safety and workers’ compensation regimes. Often this can be over-emphasised, when the risk is no more than for any worker. Ignorance of what is unlawful age and disability discrimination is common amongst employers. Not understanding that an employer is required to make reasonable adjustments if a person can do the inherent qualities of a job is reasonably widespread and across a whole range of employers, including, alarmingly, within the public service .In Queensland, claims of unlawful discrimination in the public service are fought hard by the State, rather than looking at a solution for the parties.

Often the focus of employers is on what they see as limitations that people within these groups have, rather than the attributes, skills, life and work experience which would make the person an asset to the employer. The employer may not weigh up the benefits that the individual can bring against what they see as a human resources “burden”.

Older people can often be seen as not worth employing because “they won’t be here for long” or without the same “energy” as a person who is younger. Often efficiency through experience and the value of having them as mentors are not considered as being an asset.

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

[x] While working in a job

[x] While looking for work

[ ] While dealing with recruitment companies

**Please tell us more**

Our second case study illustrates what difficulty a person with a disability may find keeping their employment, especially when a manager/supervisor is involved who does not understand what unlawful discrimination is. We come across a number of cases where the unlawful discrimination is suspected, but difficult to prove, as a lawful reason is given for the termination of the employment.

We are also aware that some people with disabilities have suffered under the supported wage scheme. These affect those whose jobs are less skilled, and are compared to others doing the work that doesn’t have a disability. Often the person with the disability is very happy doing the work, and remains at it longer than others without. Often diligence is ignored. They are shifted down to a supported wage level, which can lead to the person leaving the employment.

Our first case study is quite a common experience for our clients as they age and develop health problems, which prohibit them from their life long trade. Essentially they are “starting over”, having to commence completely new re-training with a limited work expectancy. .As discussed, they can be considered a risk to the employer, and not a good “investment”.

In our third case study, the reliance on private training organisations that are profit-driven to assist older people and people with a disability to gain qualifications and skills to obtain meaningful employment can be a barrier. There is a great deal of evidence that some training organisations are signing up people for courses whose attributes mean that they will not find employment in the field. Employers have complained that training organisations can grant qualifications to people who are not job ready. People with a disability and older people can be especially vulnerable to such practices. In our case study, it was quite apparent that the trainer was not prepared to use extra resources to assist their student.

Our fourth example illustrates the “risk-adverse” culture of some employers when the person does not pose any greater risk to the employer in reality compared to other workers performing the same work.

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

Older people and people with a disability facing discrimination are not considered for employment. A return to work if a person is in these groups who has had to go on leave due to illness can be resisted by the employer, and employment can otherwise be lost. 17

The social, health and financial impacts this causes on the individual, their families, and society, including the economy has been discussed above.

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

[x] Yes

[ ] No

[ ] Not sure

The issues of workplace health and safety and workers compensation regimes have been discussed above.

An ignorance of or unwillingness by employers to follow anti - discrimination law is a major barrier for these people. Often if legal rights are exercised, this can cause a great deal of stress and so the decision is taken not to exercise those rights because of it “not being worth it” This encourages unlawful practices.

The current Job Access and Disability Employment Services schemes can be problematic for older people and people with a disability. Often these people are put through courses with no improvement to their employment prospects, leading to disillusionment. There is little or no ongoing support on obtaining employment for the person to maintain their job.

Issues with private training organisations have been discussed.

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

**Incentives**

The supported wage scheme is an incentive if a person commences employment due to it. However, as discussed above, some existing employees have been placed within it to their detriment.

**Disincentives**

The following disincentives exist:

1. Workplace health and safety and workers’ compensations considerations being the focus rather than what skills and experience the worker brings or has.

2. For every job there are five jobseekers. Competition for available jobs is fierce with employers able to pick and choose. Under these circumstances it is even harder for older Australians and people with disability to secure employment.

### **Good practice**

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

[x] Yes

[ ] No

[ ] Not sure

**Please let us know about practices you are aware of.**

We have experienced some excellent solutions in conciliation conferences when an employer has become aware of practices within their organisation that has led to unlawful discrimination. Employer policies and practices have been updated and improved staff awareness has been made to ensure the employer complies with their anti-discrimination obligations in the future. This suggests that when employers are made aware of not just their obligations under the law, but also of practical ways to fulfil their obligations – i.e. creative, not very costly solutions can be found to the benefit of all parties – then they are willing to comply. The other important factor here is that through the conciliation process, employers come face to face with the “person”, as opposed to just seeing the complainant as a “person with a disability”. BRQ notes it is deeply regrettable that sometimes it has to come to the point of the complainant taking action to assert their human rights before this can happen.

### **Solutions**

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

Employers’ anti-discrimination obligations - and also the mutual benefits and actual minimal cost of providing reasonable adjustments should be promoted.

It is suggested that rather than older people and people with a disability be made to attend training courses through the Job Access / Disability Employment schemes, that subsidised on-the-job training be provided, via an extension of the existing Commonwealth scheme. to give practical training, and also an opportunity for the employers to recruit those who would be an asset to their organisation on completion. Research shows that on-the-job training is more effective for job seekers to be job-ready, rather than course- based training.

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

Consideration should be made to have company or other tax incentives if a certain percentage of an employer’s workforce are people with a disability or older people.

This may not be a cost to government as it should lead to savings of social security payments including Newstart, the Disability Support Pension and Aged Pension. Other payments could also indirectly be reduced as a result, for example, those paid to carers.

Other costs to government should reduce due to the benefits of having more people with a disability and older people finding or maintaining work, as wages are earned household savings increase and income tax revenue increases. Examples are in public health and housing.

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

We note that Government promotion of the benefits of employing people with disability and older Australians, while necessary, will not convince a lot of employers to increase the diversity of their staff group. Small businesses, with a small profit margin, in particular cannot afford to take what they see as the risk of having to “carry” what they fear may be a less productive employee. If paid employment for all Australians who are able to work is the accepted Government and community goal, then the Government needs to take the lead by providing a genuine incentive to employers to come on board. An employer tax incentive scheme would be such an incentive and BRQ recommends this be evaluated and piloted.