



Marrickville Legal Centre

4 December 2016

Willing to Work
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001

Via email: ageanddisabilityinquiry@humanrights.gov.au

Submission - *Willing to Work: National Inquiry into Employment Discrimination Against Older Australian and Australians with Disability*

Marrickville Legal Centre (MLC) welcomes the opportunity to make a submission to the Australian Human Rights Commission (AHRC) in relation to the *Willing to Work: National Inquiry into Employment Discrimination against Older Australians and Australians with Disability*.

Marrickville Legal Centre is a community legal centre which undertakes a significant employment law practice. The Centre provides free employment law advice, assistance and representation to disadvantaged residents within the local government areas of Ashfield Auburn, Bankstown, Burwood, Canada Bay, Canterbury, Hurstville, Kogarah, Marrickville, Rockdale, Strathfield and Sutherland. In addition, Marrickville Legal Centre provides employment law advice to young people under the age of twenty-four across New South Wales. The Centre's employment law practice involves advising and assisting a significant number of people with issues pertaining to discrimination in the workplace.

The Centre welcomes the opportunity to contribute to this inquiry.

Please feel welcome to contact us if you wish to discuss any of the issues raised in this submission.

Yours faithfully,
MARRICKVILLE LEGAL CENTRE

Lisa Woodgate
Solicitor

SUBMISSIONS

Experience of providing services and advocacy for older Australians and Australians with disability (include case studies).

As described above, Marrickville Legal Centre has an extensive practice in employment law including workplace discrimination. The Centre has identified discrimination against workers with disability and older workers as a systemic issue. The following case study exemplify systemic age discrimination, in the form of older workers being selected for redundancy over younger workers:

Case study

Rolf (not his real name) had worked for a "Widget company" for 45 years, he had started the day the company opened for business. The owner had often promised him a gold watch and a big celebration for his years of service when Rolf retired. Unfortunately, when the owner retired due to ill health, his son took over, and soon after Rolf was made redundant and unceremoniously walked off the premises. Rolf never got his gold watch or his recognition celebration. At 65 years old Rolf was unable to get another job.

Case study

Dana (not her real name) was 63 years old when her employment was terminated. She worked as a medical receptionist. Two years earlier Dana experienced some health problems, which her employer accommodated. When the medical practice for which Dana worked was sold, Dana was made redundant within the first two months following the sale. Dana had been relying on working until she retired voluntarily at 65 years old, as this would enable her to pay off her mortgage and achieve some financial security.

Case study

"David" (not his real name) worked at a sign company that went into receivership and changed its name. The other employees were all offered new contracts except for "David" and two other employees who were all over 60 years old. Instead, his employer hired sub contractors in those roles.

It has been the Centre's experience that the following issues frequently arise in employment discrimination of older Australians and Australians with disability, and in some cases these issues may act to deter people from pursuing genuine complaints:

- (a) Multiple grounds of discrimination, involving both age and disability discrimination. For example:

Case study

Paula (not her real name) was a 68 year old non-English speaking woman in the garment industry who had been working for her employer for 38 years, when she was dismissed on the basis of her disability. Her employer was downsizing the company, and as Paula had been suffered a workplace injury several years earlier, they decided to dismiss Paula on the discriminatory basis of her disability. Her

employer requested a medical report from her, and dismissed Paula, claiming medical report showed that she was of high risk to herself and the workplace. The team leader the week before she was dismissed had sent around a petition to her work colleagues, trying to get them to agree that Paula was unfit for work. They did not afford Paula an opportunity to respond to the medical report, and only gave her one weeks pay.

- (b) Difficulty in bringing an age or disability discrimination complaint due to the burden of proof under the *Age Discrimination Act* and *Disability Discrimination Act* 1992 (Cth) resting with the complainant;
- (c) Lack of knowledge by employees and employers about the broad scope of the definition of a “disability” under the *Disability Discrimination Act*, which includes temporary and permanent disabilities; physical, intellectual, sensory, psychiatric disabilities; diseases or illnesses; medical conditions; and work related injuries; past, present and future disabilities; and association with a person with a disability. For example:

Case study

Katy (not her real name) was a young woman who had been unemployed for an extensive period of time, when she found a job as a sales assistant. She contracted chicken pox during her probation period and was terminated on the spot, even though she was able to provide a doctor’s certificate. Neither Katy nor her employer were aware that this conduct by the employer constituted disability discrimination.

Barriers and Impact of employment discrimination on older Australians and Australians with disability.

The Centre’s casework confirms the personal and structural barriers faced by older Australians and Australians with a disability in the workforce, as identified by the Australian Human Rights Commission. ¹

Further, the Centre is acutely aware of the negative impact discrimination has on the lives of individual Australians.

Case study

Ivan (not his real name) was 72 years old. He worked as a salesman and had won many company awards. Ivan had re-married 12 years earlier and had a young family to support. While the company did not expressly say that his age did not fit with the company’s image, Ivan believed that this was the underlying reason for his termination, as Ivan’s productivity levels continued to meet all the set KPIs. The termination of Ivan’s employment in these circumstances, and his limited prospects of future employment clearly had a devastating personal and financial impact on Ivan and his family.

Practices, attitudes or laws which discourage or prevent equal participation in employment of older Australians and Australians with Disability.

The number of complaints received by the Australian Human Rights Commission² indicates the continuing prevalence of workplace discrimination, and highlights the need for law reform to improve human rights protection at a Commonwealth level and promote the equal participation in employment of older Australians and Australians with disability.

The Centre notes earlier inquiries, reviews and reports³ with respect to employment discrimination against older Australians and Australians with disability, and supports the best practice recommendations for changes to Commonwealth anti-discrimination legislation.

In particular, the Centre strongly supports the following recommendations:

1. The consolidation of Commonwealth anti-discrimination laws and anti-discrimination complaints procedures, to provide a single piece of discrimination legislation; and
2. Extension of the scope of protection for the protected attributes of age and disability, consistent with that provided under the *Race Discrimination Act 1975 (Cth)*.

In general, the Centre values and supports the Commonwealth Government's commitment to the promotion and protection of human rights of older Australians and Australians with disability in seeking that the AHRC undertake this inquiry.

¹ Australian Human Rights Commission, Issues Paper: Employment Discrimination Against Older Australians, 2015; Australian Human Rights Commission, Issues Paper: Employment Discrimination Against Australians with Disability, 2015

² Australian Human Rights Commission, Employment Discrimination Against Older Australians, 2015, at p 6; Australian Human Rights Commission, Issues Paper: Employment Discrimination Against Australians with Disability, 2015, page 5

³ Australia's Human Rights Framework, Australian Law Reform Commission Access All Ages – Older Workers and Commonwealth Law Report, March 2013; 'Exposure Draft- Human Rights and Anti-Discrimination Bill 2012 (Cth)', Law Council of Australia, Senate Legal and Constitutional Affairs Commission, 24 December 2012; Australian Human Rights Commission, National prevalence survey of age discrimination in the workplace (2015).