

Submission to the Australian Human Rights Commission  
Willing to Work:  
National Inquiry into Employment Discrimination against  
Older Australians and Australians with Disability

**12 January 2016**

WILLING TO WORK  
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We are a coalition of solicitors and law students, with experience in the study and practice of human rights and employment law in Australia who wish to make the following submission in our personal capacities in response to the **Issues Papers: Employment discrimination against Australians with disability and Employment discrimination against older Australians (Issues Papers)**. We thank the Commission for the opportunity to make this submission.

## Summary of Recommendations

We recommend the following measures be implemented to improve the representation of older Australians and those with disabilities in the workforce, and to tackle the incidence of discrimination on the basis of age and disability prevalent in the practices associated with the hire and retention of staff in Australia.

1. Greater education and awareness of the contributions and experience that people with a disability and older workers bring to the workforce for employers and society more generally.
2. That, in disability discrimination claims concerning an employer's refusal to make a reasonable adjustment, the burden of proof to show that the requested adjustment would impose an unjustifiable hardship should rest on the employer.
3. That the Fair Work Act 2009 (Cth) (FWA) be amended to provide a definition for disability, in line with the definition under the Disability Discrimination Act 1992 (Cth).
4. A reverse onus of proof be implemented under the Age Discrimination Act 2004 (Cth) and the Disability Discrimination Act, to allow for fairer resolution of disputes.
5. That a provision equivalent to s 570 of the FWA be inserted into the Australian Human Rights Commission Act 1986 (Cth), such that absent extenuating circumstances, each party pays its own legal costs in federal discrimination proceedings.
6. That the conciliation process conducted by the Fair Work Commission should more closely mirror the conciliation process conducted by the Australian Human Rights Commission which is more accessible to the diverse needs of applicants.
7. A review of the current standing provisions in respect of commencing court proceedings under the Disability Discrimination Act and the Age Discrimination Act be conducted, to broaden and/or clarify that representative organisations are allowed to commence court proceedings on behalf of vulnerable applicants without having to demonstrate that the organisation is necessarily or directly *“aggrieved”* or *“affected by the contravention”*.

# The need for anti-discrimination laws in employment

We are strongly supportive of the existence of anti-discrimination laws in employment. Being able to participate freely in the workforce and to receive remuneration to support oneself and one's family is a significant contribution that any adult can make to their society, and a fundamental human right which is recognised in article 23 of the Universal Declaration of Human Rights. Anti-discrimination laws prevent unlawful distinctions, exclusions or preferences made on the basis of characteristics such as race, age, gender and religion in order to promote equality and protect the self-worth and social inclusion of individuals.

With high rates of mental health issues amongst older Australians and Australians with a disability, effective laws against age and disability discrimination in employment are imperative to ensure that older workers and workers with a disability can participate actively in the workforce in order to assist in promoting a sense of purpose and self-worth. Effective laws against age and disability discrimination in employment improve mental health outcomes among older Australians and Australians with a disability by more generally tackling any stigma associated with aging and disability.

Laws against age and disability discrimination in employment also bring a number of economic benefits. The Australian Human Rights Commission itself reports that according to Deloitte Access Economics, increased labour force participation will significantly increase real GDP.<sup>1</sup> A higher participation rate will also constrain wage-price inflation during times of rapid economic growth.<sup>2</sup> As more older Australians and Australians with a disability are employed, the government collect more income tax revenue, pay fewer pensions and improve its budget position. In the case of older Australians, higher employment may also increase productivity as older workers tend to possess superior knowledge, skills and experience in many industries.<sup>3</sup>

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<sup>1</sup> Deloitte Access Economics, *Increasing participation among older workers: The grey army advances* (2012), p i. <https://www.humanrights.gov.au/increasing-participation-among-older-workers-grey-army-advances2012>

<sup>2</sup> Parliament of Australia, *Labour force participation rate* (2014) <<http://www.aph.gov.au/~media/05%20About%20Parliament/54%20Parliamentary%20DEpts/548%20Parliamentary%20Budget%20Office/Reports/03-2014%20The%20sensitivity%20of%20budget%20projections%20to%20changes%20in%20economic%20parameters/6%20032014%20%20chapter%204.pdf?la=en>>

<sup>3</sup> Australian Government Business, *Employing mature age workers*, <<http://www.business.gov.au/business-topics/employing-people/diversity-in-the-workplace/Pages/employing-mature-aged-workers.aspx>>

Furthermore, Australia has international legal obligations to promote substantive equality and eliminate discrimination under international instruments such as the International Covenant on Civil and Political Rights and the Convention on the Rights of Persons with Disabilities. Additionally, under our International Labour Organisation obligations, Australia has committed to ensuring the right to work, free from discrimination, for older workers and workers with a disability. The Age Discrimination Act 2004 (Cth) (ADA) and Disability Discrimination Act 1992 (Cth) (DDA) implement these obligations in our domestic law.

## Persons with a disability

Amongst all unemployed people, having a disability is one of the factors which most reduces the probability of becoming employed.<sup>4</sup> Having a severe disability reduces the probability of being employed to approximately the same extent as long-term unemployment.<sup>5</sup> The Organisation for Economic Cooperation and Development (OECD) has noted that disability continues to have a substantial effect on employment despite good economic conditions.<sup>6</sup> In Australia in 2012, the labour force participation rate for persons with a reported disability aged 15-64 years was 52.8%, compared to 82.5% for people without a reported disability.<sup>7</sup>

In June 2013, 91.7% of recipients of the Disability Support Pension (DSP) reported nil earnings in the fortnight before data extraction.<sup>8</sup> 38.1% of recipients had been on income support (DSP or other) for fifteen years or more (an increase from 23.5% in June 2007).<sup>9</sup> The most common destination on leaving the DSP was movement to the age pension

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<sup>4</sup> Melbourne Institute of Applied Economic and Social Research, 'The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 12' (Report, Faculty of Business and Economics, The University of Melbourne, 2015) 41, <<https://www.melbourneinstitute.com/hilda/>>.

<sup>5</sup> Ibid.

<sup>6</sup> Organisation for Economic Co-operation and Development, 'Sickness, Disability and Work: Breaking the Barriers' (Report, OECD, 2010) 31.

<sup>7</sup> Australian Bureau of Statistics, 'Disability, Ageing and Carers, Australia: Summary of Findings, 2012' (Disability Tables, Australian Bureau of Statistics, 13 November 2013) Table 9

<<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4430.02012?OpenDocument>>.

<sup>8</sup> Australian Government Department of Social Services, 'Characteristics of Disability Support Pension Recipients' (Report, Australian Government Department of Social Services, June 2013) 28,

<<https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/characteristics-of-disability-support-pension-recipients>>

<sup>9</sup> Ibid 31.

(62.0%); only 14.6% of recipients exited because they moved off income support entirely.<sup>10</sup>

These statistics indicate that it is very difficult for people with a disability to exit unemployment, and reflect the need for stronger anti-discrimination protections to ensure greater participation for people with a disability in the workforce.

## Older Australians

Australia has a higher employment rate for the 55-64 age bracket than the OECD and European Union (EU) averages.<sup>11</sup> However, people over 50 are much less likely to find employment than other unemployed people, all other factors being equal.<sup>12</sup> The OECD reported that the incidence of long-term unemployment among people over 55 is 31.9%.<sup>13</sup> Older Australians are also likely to remain underemployed for longer than younger Australians.<sup>14</sup>

The main difficulty in finding work reported by 36% of men and 28% of women aged 55 or over was that they are considered too old by employers.<sup>15</sup> An even larger proportion (64%) of 'discouraged job seekers' reported this as their reason for unemployment.<sup>16</sup> We note the recent finding of the Australian Human Rights Commission that 13% of Australians aged 50 and over expected to experience some form of discrimination upon entry into the workforce, which deterred them from working.<sup>17</sup> These trends indicate that intervention is necessary to support those who are willing and able to work. While this submission primarily focuses on the legal framework necessary for ensuring protection from discrimination for older workers and workers with a disability, we recognise the importance of education and awareness of the contributions and experience that people with a disability and older workers bring to the workforce.

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<sup>10</sup> Ibid 46.

<sup>11</sup> Organisation for Economic Co-operation and Development, 'Scoreboard on Older Workers' (Table, OECD, 2014)

<http://www.oecd.org/employment/ageingandemploymentpolicies.htm>.

<sup>12</sup> Melbourne Institute of Applied Economic and Social Research, above n 1, 41.

<sup>13</sup> Ibid.

<sup>14</sup> Australian Bureau of Statistics, 'Australian Social Trends September 2010' (Report, Australian Bureau of Statistics, September 2010) 4.

<sup>15</sup> Ibid 6.

<sup>16</sup> Ibid 7.

<sup>17</sup> Australian Human Rights Commission, 'National prevalence survey of age discrimination in the workplace' (Report, Australian Human Rights Commission, 2015) 16.

# Legal and policy Issues (responses to Questions 5 and 6 of the Issues Papers)

## Definitional issues under the DDA and Fair Work Act

We recognise the importance of employers making adjustments in order to ensure participation by workers with a disability in the workplace. While the DDA provides for reasonable adjustments, and a defence of unjustifiable hardship, these concepts have remained contested, and the court's interpretation has not always been satisfactory.<sup>18</sup>

The DDA does not include a clear definition of these concepts, leading to the situation of employers refusing to make reasonable adjustments on the basis of unjustifiable hardship, when the adjustment could be accommodated without excessive cost to the business. This submission recommends that in cases where an applicant complains of disability discrimination involving an employer's refusal to make a reasonable adjustment, the burden of proof should be on the employer to show that the requested adjustment would impose an unjustifiable hardship on the employee.

## Interpretation of the protected attribute of disability under the FWA

The *Fair Work Act 2009* (Cth) (FWA) does not provide guidance nor a definition of the protected attributes. This has led to difficulties for applicants in attempting to establish that they possess a protected attribute such as disability. The Federal Circuit Court and Federal Court of Australia have displayed a tendency to interpret the attributes listed under s 351 of the FWA in a restricted manner in general protections matters, refraining from drawing on the concepts as defined under other anti-discrimination legislation such as the DDA, international law and other relevant jurisprudence. The courts have defined disability in a narrow sense, excluding conditions that would fall within the definition of 'disability' under the DDA. This has led to applicants having their general protections cases dismissed, for failing to establish that they possessed the protected attribute of

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<sup>18</sup> See for example, *Purvis v New South Wales* (2003) 217 CLR 92; *Vassallo v Jetswan Pty Ltd* [2010] FMCA 708. However, note that the 2009 amendments to the DDA have made clear that the DDA imposes a general duty to make adjustments.

disability.<sup>19</sup> Additionally, while the DDA covers discriminatory conduct done for actual and perceived disability, the Federal Circuit Court has recently ruled that the protection under s 351 of the FWA does not extend to perceived disability.<sup>20</sup>

The contrasting approaches to the definition of the protected attributes under the FWA and DDA have led to inconsistency and uncertainty for applicants in discrimination matters. Given this area of law is complex and difficult to navigate for self-represented litigants, this submission recommends that the FWA be amended to provide a definition for disability, in line with the definition under the DDA.

## Burden of Proof

Under the DDA and the ADA, in direct discrimination matters, the burden of proof rests with the applicant, posing a barrier to applicants from pursuing meritorious claims of discrimination. We submit that the reverse burden of proof in the FWA is more appropriate for discrimination matters, as it addresses the imbalance of power in the employee-employer relationship and does not place an onerous burden on the employer. Under the FWA, once an employee or prospective employee alleges that they were subject to adverse action, it is presumed that the adverse action was taken for a prohibited reason unless the employer proves otherwise.<sup>21</sup> The burden is on the employer respondent to rebut this assumption by bringing evidence that the reason behind the adverse action is not one of the prohibited grounds. This strikes a fair balance, as evidence as to the state of mind of the employer when they engaged in the alleged action will not easily be accessible to the employee.

We note that the reverse burden does not pose an unfair advantage for employees as employees are required to clearly allege and particularise the motivation for the adverse action,<sup>22</sup> and simply providing evidence of an alternative reason for the adverse action alleged may discharge the evidentiary burden placed on employers.<sup>23</sup>

We recommend that a reverse onus be implemented under the ADA and DDA, to allow for fairer resolution of disputes.

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<sup>19</sup> See for example *Construction, Forestry, Mining and Electrical Union v Leighton Contractors Pty Ltd* (2012) 208 FCR 386; *Corke-Cox v Crocker Builders Pty Ltd* [2012] FMCA 677; *Hodkinson v Commonwealth* (2011) FMCA 171.

<sup>20</sup> *RailPro Services Pty Ltd v Flavel* [2015] FCA 504 [112].

<sup>21</sup> *Fair Work Act 2009* (Cth) s 361.

<sup>22</sup> *Fox v Stowe Australia Pty Ltd* (2012) 271 FLR 372 at [27].

<sup>23</sup> See *Board of Bendigo Regional Institute of Technical and Further Education v Barclay* (2012) 290 ALR 647.

## Costs Jurisdictions

There are several administrative bodies charged with conciliating complaints of discrimination between employers and older persons or persons with a disability. Where conciliation fails to resolve a dispute, the cost of enforcing workplace rights in court is often prohibitive.

In relation to the cost regimes applying to the main avenues for pursuing discrimination claims, this submission takes the view that applications to the Federal Court of Australia and Federal Circuit Court following failed conciliation attempts at the Australian Human Rights Commission (**AHRC**) should be jurisdictions in which costs cannot be awarded against the applicant unless he or she has acted unreasonably in bringing the claim.

A change of this type would bring AHRC complaints in line with applications to the Federal Court of Australia and Federal Circuit Court asserting workplace discrimination under the FWA.

## Claims under the Fair Work Act

Where claims of employment discrimination based on age or disability are made under the general protections provisions of the FWA,<sup>24</sup> the Fair Work Commission (**FWC**) is required to convene a private conference to attempt to resolve the dispute. Each party bears its own costs in relation to the conference,<sup>25</sup> unless the application:

- o was vexatious or made without reasonable cause;<sup>26</sup> or
- o had no reasonable prospect of success.<sup>27</sup>

If a conference fails to resolve a dispute and the complainant applies to the Federal Court of Australia or the Federal Circuit Court for relief,<sup>28</sup> the court's power to award costs is slightly wider than that of the FWC's, however it is still constrained. A costs order can only be made against a party if:

- o proceedings are instituted vexatiously or without reasonable cause;
- o the party's unreasonable act or omission caused the other party to incur the costs; or

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<sup>24</sup> Fair Work Act 2009 (Cth) Part 3-1.

<sup>25</sup> Fair Work Act 2009 (Cth) s 611.

<sup>26</sup> Fair Work Act 2009 (Cth) s 611(2)(a).

<sup>27</sup> Fair Work Act 2009 (Cth) s 611(2)(b).

<sup>28</sup> Applications are made to the Federal Court and Federal Circuit Court under *Fair Work Act 2009* (Cth) ss 562 and 566 respectively.

- o the party unreasonably failed to participate in the matter when it was before the FWC.<sup>29</sup>

Consequently, older Australians or Australians with a disability that are victims of workplace discrimination can be confident that, so long as their complaint is reasonable and they have abided by the directions of the court and of the FWC, they will not be saddled with the respondent's legal costs.

## Claims under the Australian Human Rights Commission Act

The situation is different in respect of age or disability discrimination claims made under the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**). After a complaint is lodged, the AHRC holds a conference in which attempts are made to conciliate or mediate the dispute.<sup>30</sup> Each party pays its own costs in relation to the conference, and if the matter does not settle, then the applicant can apply to the Federal Court of Australia or Federal Circuit Court for relief.<sup>31</sup>

Unlike claims under the FWA, where s 570 constrains the usual jurisdiction of the federal courts to award costs,<sup>32</sup> the courts' costs powers in respect of claims under the AHRC Act are governed by their constituent statutes. Costs in the Federal Court are at its discretion<sup>33</sup> and the normal rule is that the unsuccessful party pays the other's legal costs.<sup>34</sup> Similarly, where an application is made in the Federal Circuit Court, costs are at the discretion of the court and usually follow the event.<sup>35</sup>

As a result, applicants with meritorious claims of age or disability discrimination often decide not to pursue their claim at the court stage, due to the risk of costs. Applicants are often compelled to settle a matter prematurely or on unfavourable terms, because he or she is unable to assume the risk of an adverse costs order should the matter proceed to court.

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<sup>29</sup> *Fair Work Act 2009* (Cth) s 570.

<sup>30</sup> *Australian Human Rights Commission Act 1986* (Cth) s 46PJ.

<sup>31</sup> *Australian Human Rights Commission Act 1986* (Cth) s 46PO.

<sup>32</sup> See *Federal Court of Australia Act 1976* (Cth) s 43(1)(b) and *Federal Circuit Court of Australia Act 1999* (Cth) s 79(1).

<sup>33</sup> *Federal Court of Australia Act 1976* (Cth) s 43(2).

<sup>34</sup> Human Rights Guide (April 2013) Federal Court of Australia

<http://www.fedcourt.gov.au/law-and-practice/areas-of-law/human-rights>

<sup>35</sup> *Federal Circuit Court of Australia Act* (1999) s 79(3).

## Proposed amendments

This submission recommends that a provision equivalent to s 570 of the FWA be inserted into the AHRC Act, such that absent extenuating circumstances, each party pays its own legal costs in federal discrimination proceedings.

An amendment of this type would harmonise the law of costs pertaining to general protections and unlawful discrimination claims. It would also better accord with state and territory law. For example, in claims before the administrative and equal opportunity division of the NSW Civil and Administrative Tribunal (**NCAT**), each party pays its own legal costs.<sup>36</sup> This is the case unless special circumstances warrant a different order, for example where a party has made an untenable claim, or where the proceedings were frivolous, vexatious, misconceived or lacking in substance.<sup>37</sup>

## The complaint-handling process

We recognise the importance of an accessible complaint-handling process for applicants in discrimination matters. As conciliation is often the first and final step for vulnerable applicants in the process of resolving a discrimination dispute, it is important that complaints are handled consistently across various jurisdictions and in a manner conducive to resolving the legal and non-legal grievances for the parties involved. In considering the most appropriate process, it is important to consider the particular vulnerabilities of an applicant who has a disability or who is older.

The value of the informal conciliation process often lies in the opportunity for applicants to voice their concerns and to seek an outcome where the respondent understands their concerns and any further occurrences of unlawful discrimination against the applicant or others at the workplace are prevented. The conciliation process is also an efficient means of providing access to the law by providing applicants with an understanding of the anti-discrimination legislation and whether their particular concerns fall within the statutory protections.

Currently, the mechanism for handling complaints of unlawful age and disability discrimination across the federal framework is broadly similar in that applicants are required to lodge a written complaint or claim which are then handled at the initial stage by way of a conciliation conference. However, there remain inconsistencies between the

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<sup>36</sup> *NSW Civil & Administrative Tribunal Act 2013* (NSW) s 60(1).

<sup>37</sup> *NSW Civil & Administrative Tribunal Act 2013* (NSW) s 60(3)

conciliation conferences conducted by FWC (for the purpose of a general protections or unlawful termination application under the *FWA*) and the conciliation conferences conducted by the AHRC (for the purpose of a complaint of unlawful discrimination under the ADA or the DDA. In addition to the differences between jurisdictions in matters of burden of proof and costs which have been addressed in other parts of these submissions, there are also differences between jurisdictions which can practically impact the applicant's experience of the conciliation process and the prospects of satisfactorily resolving the dispute for both parties. They are set out in the table below:

Features of the conciliation process	Australian Human Rights Commission	Fair Work Commission
1. Who can lodge a complaint	The complaint may be lodged by, or on behalf of, <b>one or more</b> "aggrieved" persons (see ss46P and 46PF of the <i>Australian Human Rights Commission Act 1986</i> (Cth)).	The claim may be made by a person who alleges a contravention of the general provisions or in the case of a contravention involving a dismissal or alleged unlawful termination, by the person who was dismissed or an industrial association that is entitled to represent the industrial interests of the person (see ss 365, 372 and 773 of the <i>FWA</i> )
2. Length of the conciliation	The conciliation conference will often be set down for <b>half a day</b> .	The conciliation conference will often be set down for a session of <b>60-90 minutes</b> .
3. Participation of parties	Where appropriate, the Commission will invite the respondent to participate and the President <b>can compel respondents to attend</b> the conciliation.	It is <b>not always compulsory for respondents to attend</b> . In a general protections dispute involving a dismissal or an unlawful termination dispute, both parties must attend the conference.  However, it is not compulsory for a respondent to attend a conciliation

		conference in a general protections dispute which does not involve a dismissal and is during the course of an applicant's employment.
4. Nature of conciliation	<p>Conferences can be held <b>face-to-face or over the telephone</b>.</p> <p>The conference is conducted by a conciliator of the Commission.</p>	<p>Conferences can be held <b>face-to-face or over the telephone</b>.</p> <p>The conference is conducted by a member of the Commission. However, we note that the Commission is currently piloting a general protections program in which non-member staff conciliators conduct the <b>conference over the telephone only</b>.</p>

We strongly support a conciliation process that is consistent across the federal framework. A consistent approach to resolving complaints and claims should be reflected not only in the statutory regime but also in the implementation of the statutory protections in the dispute resolution process. Currently, the protections under s 351 of the *FWA* mirror those under the *ADA* or the *DDA*. We recommend that the conciliation process conducted by the *FWC* should also more closely mirror the conciliation process conducted by the *AHRC*. This is because we consider that a more accessible process that better promotes a satisfactory resolution of the legal and non-legal issues for vulnerable applicants, including those with disabilities or who are older, would be one which:

1. allows applicants to have their complaints handled jointly or commenced on their behalf by better-resourced persons;
2. is set down for a longer period of time (particularly where the matter involves sensitive or complex issues);
3. requires respondents to attend the conciliation conference regardless of whether there has been a dismissal involved in the dispute; and
4. allows the applicant to express a preference for a face-to-face or telephone conciliation, taking into account the applicant's emotional state and the severity of the discrimination experienced.

### **Standing to commence proceedings**

Where a matter is unable to be resolved at the initial stage of a conciliation conference, applicants may commence court proceedings with the Federal Circuit Court or the Federal Court of Australia. However, the formal, time-consuming and expensive nature of the Court process often deters applicants from pursuing their claims any further. Recognising the harsh realities of litigation for a vulnerable applicant, we recommend that the Court system is made accessible not only through direct paths in which the applicant commences an action on behalf of themselves and others, but also through indirect paths in which another person or organisation that may be better resourced may commence action on behalf of the applicant/s.

Currently, where a complaint or claim is not resolved at the Commission level, applicants may commence court proceedings with the Federal Circuit Court or Federal Court of Australia provided that they are:

1. *“an affected person in relation to the complaint”* lodged under the *AHRC Act* (see s 46PO); or
2. a *“person affected by the contravention”* of the general protections or unlawful termination provisions under the *FWA* (see s 539).

The result of these current standing provisions is that representative organisations are generally unable to commence court proceedings on behalf of individual applicants or in their own right due to the requirements of having to show that they are an *“affected person”*. A representative organisation may only be able to show that it is an *“affected person”* in limited circumstances where, for example, all or a substantial part of its members were *“aggrieved”* or otherwise *“affected by the contravention”*. Further, while there are provisions for representative actions under the *AHRC Act* and *Federal Court Rules 2011* (Cth), representative complaints may only be made by a member of the representative class.

We therefore recommend the review of the current standing provisions in respect of commencing court proceedings to broaden and/or clarify that representative organisations may commence court proceedings on behalf of vulnerable applicants without having to demonstrate that the organisation is necessarily or directly *“aggrieved”* or *“affected by the contravention”*. In the case of complaints made under the *AHRC Act*, allowing representative organisations to commence court proceedings on behalf of vulnerable applicants in this way would be aligned with the initial standing of a complainant to lodge a complaint with the AHRC on behalf of those who are *“aggrieved”*.

## Success stories

A major barrier to increased workforce participation for older Australians and Australians with a disability is the widely held view that employing people with these attributes is commercially inefficient. This submission has made reference to research that refutes this assumption, however to further illustrate the benefits of employing older Australians and Australian with a disability, we note the following anecdotal accounts.

Dial-An-Angel Pty Ltd (**DAA**) provides housecleaning, aged care and family care across Australia. Sixty per cent of its employees are aged 45 or older.<sup>38</sup> The decision to hire older staff was made for business reasons, with DAA's Chief Executive Officer, Danielle Robertson, stating that 'the value of older workers to [DAA] is the life experiences they've had.'<sup>39</sup>

Ms Robertson's views reflect those of Bunnings Warehouse, which is known for its high proportion of older employees. In February 2015 a quarter of Bunnings Warehouse employees were aged 50 or over. The company's Store Operations Director, Michael Schneider, has stated that 'having such experience helps engage and energise our time, it ensures confidence and trust for our customers, and most importantly it helps our business learn.'<sup>40</sup>

Businesses in Australia also benefit from employing people with disabilities. We note the example of Benbro Electronics,<sup>41</sup> a quarter of the workforce of which have a disability.<sup>42</sup> The founders of Benbo Electronics maintain that the benefits of having staff members with a disability include a low turnover and high productivity; a sentiment borne out in research alluded to in the Issues Papers to the effect that workers with disabilities have

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<sup>38</sup> *We Want You - Boom Sectors for Older Workers (11 August 2014) National Roads and Motorists' Association* <<https://www.mynrma.com.au/living-well-navigator/work-volunteering/boom-sectors-for-older-workers.htm>>.

<sup>39</sup> Ibid.

<sup>40</sup> Peter Trute, Bunnings opts for age-old wisdom with employees (20 February 2015) Herald Sun <http://www.heraldsun.com.au/news/victoria/bunnings-opts-for-age-old-wisdom-with-employees/news-story/6de5041e8b7e47e8f464b5b718c9651f>

<sup>41</sup> DBD Group Pty Ltd t/as Benbro Electronics

<sup>42</sup> Employing people with disability success stories, JobAccess, Australian Government <<http://www.jobaccess.gov.au/sites/default/files/documents/08-2015/JobAccess%20Case%20Studies%20-%20Toolkit%20for%20employers%20%28Employing%20people%20with%20disability%209.pdf>>.

higher retention rates, better attendance and fewer occupational health and safety incidents.<sup>43</sup>

People with disabilities contribute to both high-skilled and low-skilled jobs in the Australian economy. The global information technology company, IBM, has recognised the value of employing persons with a disability, with its CEO and Managing Director in Australia and New Zealand, Glen Boreham, stating that 'innovation requires differences of opinion: and you only get that with an extremely diverse workforce.'<sup>44</sup>

## Concluding Comments

We thank you for the opportunity to make this submission. We would be pleased to provide further assistance if required and can be contacted via the undersigned.

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<sup>43</sup> Australian Human Rights Commission, *Willing to Work, Issues Paper: Employment discrimination against Australians with disability*, 7.

<sup>44</sup> <http://www.jobaccess.gov.au/sites/default/files/documents/08-2015/JobAccess%20Case%20Studies%20-%20Toolkit%20for%20employers%20%28Employing%20people%20with%20disability%209.pdf>