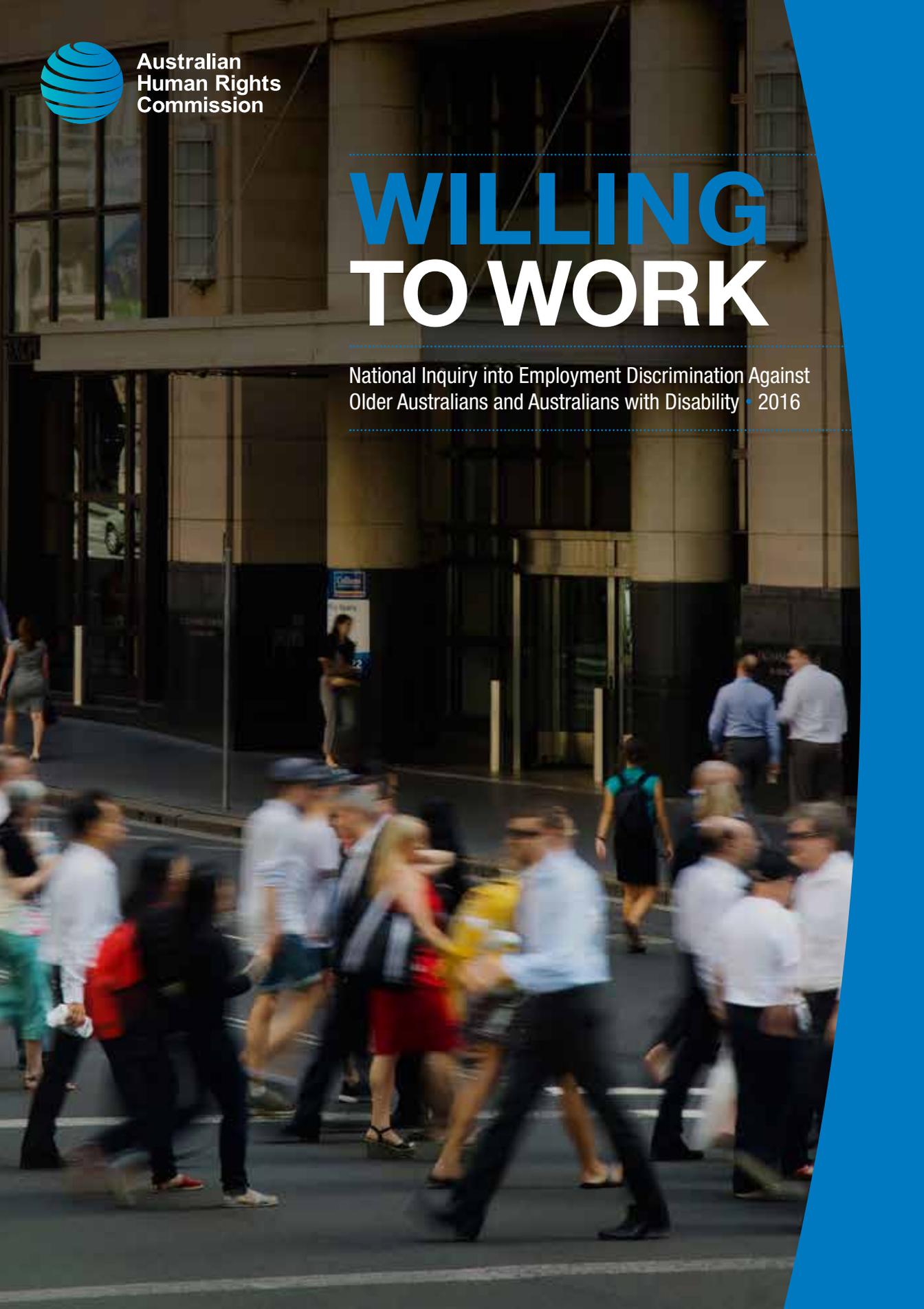




Australian  
Human Rights  
Commission

# WILLING TO WORK

National Inquiry into Employment Discrimination Against  
Older Australians and Australians with Disability • 2016



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**National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability • 2016**

ISBN 978-1-921449-76-5

**Acknowledgments**

The Australian Human Rights Commission thanks the following people for their assistance with the Inquiry:

President Gillian Triggs (President, Australian Human Rights Commission), Social Justice Commissioner Mick Gooda, (Former) Human Rights Commissioner Tim Wilson, for assisting with consultations.

Minister Fifield (former Minister for Social Services) and Departmental Secretary Finn Pratt for providing \$75,000 to the Commission to assist with the accessibility requirements of the Inquiry.

Minister Abetz (former Minister for Employment) and Departmental Secretary Renée Leon for providing \$150,000 to the Commission to undertake the Qualitative Study of Employment Discrimination against Older Australians.

**The Commission also thanks and acknowledges:**

The Commonwealth Bank of Australia for supporting the secondment of Donna Purcell, Diversity Manager, Commonwealth Bank of Australia (CBA) for 12 months to work on the Inquiry.

Secretary Finn Pratt for supporting the secondment of Mr Tony Davidson from the Department of Social Services.

(Former) Secretary Lisa Paul for supporting the secondment of Ms Liz Drakopoulos from the Department of Education and Training.

Secretary Renée Leon for supporting the secondment of Mr William La from the Department of Employment, and members of the Inquiry team and students and interns assisting the Inquiry team.

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This publication can be found in electronic format on the Australian Human Rights Commission's website at <http://www.humanrights.gov.au/about/publications/>.

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**Design and layout** Dancinggirl Designs

**Printing** Graphitype Printing Services

**Cover Image** iStock

# WILLING TO WORK

National Inquiry into Employment Discrimination  
Against Older Australians and Australians  
with Disability

**Australian Human Rights Commission 2016**



**Australian  
Human Rights  
Commission**





**Australian  
Human Rights  
Commission**

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2 May 2016

Senator the Hon George Brandis QC  
Attorney-General  
PO Box 6100  
Senate  
Parliament House  
CANBERRA ACT 2600

Dear Attorney

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

I am pleased to present to you the Report of the Willing to Work National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability 2016, in response to your reference pursuant to sections 11(1)(d), 11(1)(e), 11(1)(j) and 11(1)(k) of the *Australian Human Rights Commission Act 1986* (Cth).

The Inquiry examined practices, attitudes and Commonwealth laws that deny or diminish equal participation and makes recommendations as to Commonwealth laws that should be made or amended, and action that should be taken to address employment discrimination against older Australians and Australians with disability.

The Inquiry consulted widely and bases its findings on the evidence heard as well as research, statistics and reports. The Report also includes case studies and showcases examples of good practice in recruitment, retention and workplace adjustments from Australia and overseas.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Susan Ryan', written in a cursive style.

The Hon Susan Ryan AO  
**Age and Disability Discrimination Commissioner**

---

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The Hon Susan Ryan AO

*Age and Disability Discrimination Commissioner*



## Commissioner's Foreword

The right to work is a fundamental human right, but one that far too many older people and people with disability in Australia do not enjoy.

As Australia's Age and Disability Discrimination Commissioner I was pleased to receive the Terms of Reference from the Attorney-General to undertake the *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*.

The Inquiry is grounded in the voices of individuals affected by discrimination, the experiences and perspectives of employers of all sizes and across all sectors, extensive research and the ideas and expertise of advocates, legal practitioners, policy experts, industry representatives and unions.

The Inquiry found that too many people are shut out of work because of underlying assumptions, stereotypes or myths associated with their age or their disability. These beliefs lead to discriminatory behaviours during recruitment, in the workplace and in decisions about training, promotion and retirement, voluntary and involuntary. The cost and impact of this is high, for individuals and for our economy.

People who are willing to work but are denied the opportunity are also denied the personal and social benefits—of dignity, independence, a sense of purpose and the social connectedness—that work brings.

Discrimination has an impact on the health of individuals, their career and job opportunities, their financial situation and their families.

Workplace discrimination as described to the Inquiry by those who have been damaged by it, undermines basic human rights with consequences that are devastating and often tragic.

It also has consequences for workplaces. These include higher absenteeism, lower or lost productivity, higher staff turnover and increased recruitment costs, as well as lost business opportunities from abandoning experience and corporate knowledge.

From a broader economic perspective, employment discrimination is also a huge waste of human capital.

The Australian Human Rights Commission is uniquely positioned to understand and respond to employment discrimination and the role of business in human rights. Most discrimination complaints received by the Commission's investigation and conciliation service are in the area of employment. The Commission works closely with business to develop resources to assist employers to comply with specific discrimination laws and the way they provide goods and services.

People of all ages experience discrimination, and discrimination in employment is not exclusively experienced by older people. However the Inquiry's Terms of Reference required us to focus on employment discrimination experienced by older Australians.

The Willing to Work Inquiry followed on from Australia's first national prevalence survey of age discrimination in the workplace which was conducted by the Australian Human Rights Commission in 2015.

That survey revealed more than a quarter of Australians aged 50 years and over had experienced age discrimination in the workplace during the past two years. One third were aware of other people in the same age range experiencing discrimination because of their age. Of great concern, a third of those who had experienced age discrimination gave up looking for work.

It is unthinkable that people who lose their jobs in their 50s may live up to another forty years without paid employment.

International comparisons by the OECD show Australia lagging behind similar countries in terms of employment of older people and people with disability.

The disturbing reality is that labour force participation for people with disability in Australia has changed little over the past twenty years. As well as having a negative impact on individuals, such low participation remains a persistent public policy problem.

The Inquiry has drawn on multiple sources of evidence and found that employment discrimination against older people and people with disability is systemic and acts as a significant barrier to workforce participation. It requires response at multiple levels.

At the individual level, attitudes and beliefs need to change. Attitudes can be changed. Well focussed and sustained community education and awareness campaigns have changed entrenched attitudes and behaviours, for example, reducing smoking, wearing seat belts and using sunscreen.

The Inquiry also learned there is a pervasive lack of understanding among employers of the range, type and impact of different disabilities, and a perception that workplace adjustments are costly and difficult.

The Inquiry also learned that the operation of some government policies are creating disincentives to workforce participation, and that programs and subsidies to encourage businesses to employ older workers or workers with disability have only limited impact.

Programs funded by government to increase skills training are not delivering the intended outcomes.

Most workers at mid-life need a retraining opportunity so that they can secure an available job in a growth industry. The current gap in reskilling opportunities for mid-life workers, particularly those in declining sectors like manufacturing, condemns many able and experienced workers to years of poverty on benefits.

Another challenge, and one that will only escalate as our population ages, are the negative attitudes and treatment experienced by people who have caring responsibilities. We are all likely at some stage in our lives to care for a family member who becomes unwell or has a disability. It is clear that more access to flexible working arrangements would help keep people with caring responsibilities connected to the workforce.

Labour force participation rates for older people and people with disability remain far too low. Without deliberate and concerted action, participation rates, though increasing slowly for older people, will not increase fast enough to address the human rights and national economy deficits caused by this discrimination.

The Inquiry's recommendations are cognisant of the realities of the needs of the national economy now and through future decades. They are designed to foster a broad national approach, supported by clear leadership, cross portfolio action and collaborative engagement with employers and employees.

The Inquiry recommends a range of practical strategies and new systematic monitoring of progress and outcomes. These changes are to be underpinned by community education and awareness, supported by accessible information and the removal of policy barriers.

We know that the solutions we propose are realistic. They are evidence based and already in place in some workplaces.

The Inquiry met with many employers who have implemented diversity and inclusion programs and are achieving positive results. The Inquiry takes the opportunity to showcase some of this good practice and trusts this success will inspire and motivate others.

This Report is a reflection of the contributions of many people and I am grateful to those who took the time to attend a consultation, write a submission and assist the Inquiry. I also acknowledge and thank the members of the Inquiry's four reference panels (Appendix 1) for helping engage with stakeholders, interrogate our findings and test our ideas in a robust and frank manner.

I trust that the findings and recommendations of this Inquiry will spark action and commitment and intensify efforts to address employment discrimination, remove policy barriers and lift labour force participation of older people and people with disability who are willing to work. We all stand to gain.



The Hon Susan Ryan AO  
**Age and Disability Discrimination Commissioner**  
May 2016



# Terms of Reference

Having regard to:

- the obstacles faced by older persons and persons with disabilities in actively participating in the workforce
- discrimination against older persons and persons with disabilities as a systemic problem and a considerable barrier to their enjoyment of human rights
- the economic and social costs, and the costs to productivity, that result from discrimination against older persons and persons with disabilities in employment
- the Australian Government's commitment to the promotion and protection of human rights of older Australians and Australians with a disability.

I, Senator the Hon George Brandis QC, Attorney-General of Australia REFER to the Australian Human Rights Commission for inquiry and report pursuant to sections 11(1)(d), 11(1)(e), 11(1)(j) and 11(1)(k) of the *Australian Human Rights Commission Act 1986* (Cth):

- practices, attitudes and Commonwealth laws that deny or diminish equal participation in employment of older Australians and Australians with a disability
- the Commission's recommendations as to Commonwealth laws that should be made or amended, or action that should be taken, to address employment discrimination against older Australians and Australians with a disability.

## Scope of the reference

In conducting this inquiry, the Commission should have regard to other inquiries, reviews and reports that it considers relevant, including the *National Disability Strategy 2010–2020* and its progress reports to the Council of Australian Governments, and the Australian Law Reform Commission *Access All Ages—Older Workers and Commonwealth Laws Report, March 2013*.

In conducting its inquiry, the Commission should base its findings on research, including that into the prevalence and impact of age discrimination and disability discrimination, and the extent to which discrimination contributes to people being unemployed or underemployed.

The Commission should also identify and consult with older persons and persons with a disability, and other relevant stakeholders, including relevant Government departments and agencies, key non-government stakeholders and peak employer and employee bodies.

As part of its report the Commission may wish to identify best practice examples of recruitment, retention, and of reasonable adjustment in the workplace for older Australians and Australians with a disability.

## Timeframe

The Commission should provide its report to the Attorney-General by July 2016.

# Executive Summary

In 2015, the Attorney-General asked the Age and Disability Discrimination Commissioner, on behalf of the Australian Human Rights Commission, to undertake the *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with disability*.

The Terms of Reference for the Inquiry required the Commission to examine practices, attitudes and Commonwealth laws that deny or diminish equal participation in employment and make recommendations to address employment discrimination against older Australians and Australians with disability.

The right to work, free from discrimination on any basis, is a fundamental human right. Too many older Australians and Australians with disability are denied this right and as a result are prevented from enjoying the independence, dignity and sense of purpose that work brings.

Australia has committed to prohibiting discrimination and protecting the right to work under international human rights law. This includes binding human rights obligations under the *United Nations Convention on the Rights of Persons with Disabilities*, which sets out the rights of people with disability generally, including in respect of employment. The domestic legal framework in Australia includes the *Age Discrimination Act*, *Disability Discrimination Act* and *Fair Work Act* which prohibit employment discrimination on the basis of age or disability.

In conducting this Inquiry the Commission consulted widely. 120 public consultations were held around Australia, including in all state and territory capital cities and some regional locations. Through this consultation process the Inquiry met with over 1,100 people, including older Australians, Australians with disability, carers, advocates, community organisations, employers, businesses, trade unions, peak bodies and academics. The Inquiry also received 342 submissions.

In addition to the information presented to the Inquiry through consultations and submissions the Inquiry Report presents:

- Complaints and enquiries data from state and territory anti-discrimination and equal opportunity agencies, as well as the Australian Human Rights Commission (Appendices 7 & 10)
- Data from the 2015 Australian Bureau of Statistics Survey of Disability, Ageing and Carers: First Results (Appendix 2)
- Data from the National prevalence survey of age discrimination in the workplace (2015) as well as from follow up qualitative research
- Data from Commonwealth, state and territory public service workforces (Appendix 8).

The Inquiry gained a deep understanding of the nature, prevalence and impact of employment discrimination against older Australians and Australians with disability and has based its findings and recommendations on the multiple sources of evidence it received.

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## Key data

### *Older Australians*

People aged 55 years and over make up roughly a quarter of the population,<sup>1</sup> but only 16% of the total workforce.<sup>2</sup> This age cohort is the fastest growing in Australia, and will remain so for the foreseeable future. While labour force participation for older people has been growing in recent years, particularly for older women, labour force participation continues to decline with age. In November 2015, 73.8% of Australians aged 55–59 years were participating in the labour force, with 56.5% of 60–64 year olds and 12.7% of those aged 65 years and over in the labour force.<sup>3</sup>

While mature-age people have a lower unemployment rate than younger people, they tend to have greater difficulty finding subsequent employment when they do become unemployed. In November 2015, the average duration of unemployment for mature-age people was 68 weeks, compared with 30 weeks for 15–24 year olds and 49 weeks for 25–54 year olds.<sup>4</sup>

The rise in mature-age long-term unemployment,<sup>5</sup> coinciding with the increase in the average duration of unemployment,<sup>6</sup> is of particular concern given that people who have been unemployed for a significant length of time, on average, face greater difficulty finding subsequent work.<sup>7 8 9</sup>

In April 2015 the Commission released the first national prevalence survey of age discrimination in the workplace. The survey findings indicated that 27% of people over the age of 50 had recently experienced discrimination in the workplace. One third of the most recent episodes of discrimination reported occurred when applying for a job. A third of those who had experienced age discrimination gave up looking for work.<sup>10</sup>

In 2014–15 the Commission received 1,102 enquires about age discrimination. 61.8% of enquiries and 70.9% of complaints about age discrimination were in the area of employment. Collectively, data from other state and territory anti-discrimination and equal opportunity agencies confirms that when an age discrimination complaint is reported, employment is one of the most common contexts in which older people make a complaint.

### *Australians with disability*

In its most recent Survey of Disability, Ageing and Carers, the Australian Bureau of Statistics (Appendix 2) reports that the labour force participation rate for people with disability (53.4%) has remained steady since the survey was last conducted in 2012 (52.8%).<sup>11</sup> This figure has changed very little over the last 20 years.

Lower proportions of people with disability were employed full-time (27.0%) compared to those without disability (53.8%).<sup>12</sup> Australians with disability are also more likely to be unemployed compared to those without disability (10.0% compared with 5.3%).<sup>13</sup> The amount of time unemployed people with disability had been looking for work was longer than people without disability.<sup>14</sup>

In the last 12 months almost one in 12 Australians with disability (8.6%) reported they had experienced discrimination or unfair treatment because of their disability. Young people with disability (aged 15–24 years) were more likely to report experiencing discrimination (20.5%) than those aged 65 years and over (2.1%). The source of discrimination was an employer for almost half of those aged 15 to 64 years with disability who were unemployed (46.9%) or employed full-time (46.2%), and just over one third (34.6%) of those employed part-time, at the time of the survey.

In 2014–15 the Australian Human Rights Commission received 3,529 enquiries about disability discrimination with 1,249 (35.4%) of these enquiries being in the area of employment. In the same period the Commission received 742 complaints about disability discrimination, with 304 (41.0%) being in the area of employment. This is consistent with data from other state and territory anti-discrimination and equal opportunity agencies. In 2014–15 the average proportion of disability discrimination complaints related to employment across all jurisdictions was 40.4%.

## Key findings and the case for change

Employment is important for individual welfare and economic security, allowing people to provide for themselves and their families, improve their standard of living and save for retirement, including through superannuation. Employment is also important in facilitating mental and physical health, and social connections.<sup>15 16</sup>

Individuals who are subject to negative assumptions, stereotypes and discrimination can experience stress, and a decline in physical and mental health. The experience can also diminish a person's self-confidence, self-esteem and motivation to remain in the workforce.

Discrimination can occur at all stages in the employment cycle. Older Australians can feel 'shut out' of recruitment, be offered less professional development opportunities, or perceive that they are targeted for redundancy during periods of organisational restructure. There are negative assumptions and pervasive stereotypes about older people that contribute to discriminatory practices.

Employment discrimination against people with disability is ongoing and systemic. At the recruitment stage, bias, inaccessibility and exclusion are recurring issues. People with disability face a conundrum regarding if, when and how to disclose their disability and can experience barriers in accessing necessary workplace adjustments and opportunities for career progression. Discrimination is underpinned by negative assumptions and attitudes that are held by many employers and throughout the community about the productivity and capability of people with disability and perceptions that they present a higher work health and safety risk.

Employers may lack knowledge, awareness and skills to develop inclusive workplaces, implement recruitment and retention strategies to support older people and people with disability and meet their legal and regulatory requirements. They may also be unaware of government programs and supports that can assist them. This contributes to barriers faced by older Australians and Australians with disability in employment.

The Inquiry also found that some government policies and the operation of some government programs are not achieving their intended objectives and may be serving as a disincentive to workforce participation.

Coordinated and effective action is required to address employment discrimination and reduce the barriers to workforce participation.

Benefits to the Australian economy as a result of increased workforce participation are well established including increased gross domestic product (GDP), reduced overall welfare expenditure and increased self-reliance in retirement. A 7% increase in mature-age labour force participation would raise GDP in 2022 by approximately \$25 billion,<sup>17</sup> while an estimated \$50 billion could be added to GDP by 2050 if Australia were to move up into the top eight OECD countries for employment of people with disability.<sup>18</sup>

---

Eliminating discrimination and removing barriers to equal workforce participation is also beneficial to business and the economy. Organisations that are inclusive and diverse report tangible benefits in terms of productivity, performance and innovation while also having access to a broader talent pool and an improved organisational reputation.

## Recommendations for change

In recognition of the distinct experiences and perspectives of older Australians and Australians with disability, this Inquiry was conducted in two separate but related streams. This Report is structured to reflect these two streams. It presents issues and recommendations to address employment discrimination against older people and against people with disability in separate chapters.

There are however some areas where the Inquiry's recommendations overlap, as will be indicated in the text. This executive summary presents the Inquiry's recommendations thematically and cross references the specific recommendations and discussion in the Report.

The Inquiry's recommendations vary in level and priority. Some call on the Australian Government to make high level strategic commitments to achieve significant change over a period of time. Others are detailed in their focus or are tied to a particular program or issue. These could be achieved in a shorter timeframe.

The recommendations are grouped into three key themes:

1. Priority Government Commitments
2. Improving existing systems
3. What employers and business can do

### 1. Priority Government Commitments

These are the key priority areas for change. The recommendations in this section call upon government to commit to lifting the labour force participation rates of older people and people with disability over set timeframes, establish targets, plan actions, publicly report on progress and build community awareness to address stereotypes and discriminatory practices.

Recognising governments as major employers, a range of recommendations address employment discrimination in the Australian Public Service (APS) as well as in state and territory public services.

#### **Minister for Longevity**

Successive Australian Governments have had a portfolio focus on people with disability at the Ministerial level. Apart from a focus on aged care, this is not the case for older Australians. The Inquiry recommends (**Recommendation 1**) that in light of our ageing population and to increase the productivity of our national economy, that the Australian Government appoint a Cabinet Minister for Longevity to address employment discrimination, the economic dimensions of longevity, drive the increase in labour force participation of older Australians, coordinate and monitor the implementation of the recommendations of this Report.

To ensure whole of government action the Minister for Longevity should:

- establish a sub-committee of Cabinet to bring together Ministers from other portfolio areas including Employment, Treasury, Social Services, Education, Health and Industry, Innovation and Science
- establish an independent advisory board to provide expert input and strategic oversight of the implementation of the Inquiry recommendations. The advisory board should include policy experts, employer organisations representing large, medium and small businesses, economists and key sector advocates.

The Inquiry makes a series of recommendations to address employment discrimination against both groups; older Australians and Australians with disability.

### **National strategies**

In order to effect change, stimulate targeted activity and monitor progress, two recommendations call on the Australian Government to develop, implement and monitor national workforce strategies to lift the workforce participation of older Australians (**Recommendation 2**) and Australians with disability (**Recommendation 25**).

The Inquiry recommends that the Australian Government work with key stakeholders and employers to develop a national strategy to significantly lift the labour force participation rates for older people and people with disability. The national strategies should include targets, actions, performance indicators and timeframes. Progress on the implementation of the strategies and achievement of targets should be reported publicly on an annual basis, and with regard to older Australians, in subsequent Intergenerational Reports.

In order to support achievement of the national strategies, the Australian Government should fund the provision of a network of outreach workers through Business Chambers or other relevant peak or industry bodies to work directly and collaboratively with businesses, particularly small to medium enterprises. This outreach will provide practical assistance tailored to the individual and business needs to encourage the employment of older people (**Recommendation 3**) and people with disability (**Recommendation 27**).

### **Expanded National Agency**

As an integral part of monitoring and tracking progress of the national strategies the Inquiry recommends that the Australian Government consider expanding the role of the Workplace Gender Equality Agency (WGEA) to become the Workplace Gender Equality and Diversity Agency. This monitoring would support increases in the labour force participation of older people (**Recommendation 4**) and people with disability (**Recommendation 26**). An expanded and adequately resourced agency would, over time, collect data, publicly report on progress against voluntary targets, and engage collaboratively with employers and business to reduce employment discrimination. This expanded role would be incorporated into the agency's supporting legislation.

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## National community education campaigns

Negative attitudes, stereotypes and misinformation can drive behaviour which has a discriminatory impact. The Inquiry was told repeatedly about the power of effective community education campaigns to redress myths and negative beliefs and change behaviour. The Inquiry recommends **(Recommendations 5 and 28)** that the Australian Government develop and deliver sustained, focused national community education and information campaigns, that where appropriate are customised for specific geographic regions, to:

- lift awareness about the economic benefits of employing older people, people with disability and a diverse workforce
- dispel myths and stereotypes to change the way we value the contributions of older people and people with disability
- promote government supports and schemes
- raise awareness of the ways in which recruitment and retention practices may be discriminatory
- educate people on their rights and responsibilities
- promote positive stories, images and experiences and acknowledge inclusive employers.

In support of community education campaigns it is critical that reliable information, advice and support is readily accessible. To this end the Inquiry recommends that the Australian Government allocate funding to enable a collaboration between the Australian Human Rights Commission, business, unions and community organisations, to produce and disseminate clear, comprehensive and consistent information about employer obligations, employee rights and responsibilities, leading practices and strategies, tools and resources to address employment discrimination against older people **(Recommendation 6)** and people with disability **(Recommendation 29)**. These messages should be embedded consistently into all government related announcements regarding employment, training, business support schemes and economic stimulus measures. These campaigns should be run in collaboration with business and employers.

## Government as a buyer of goods and services

Government is a major buyer of goods and services in Australia and through its procurement strategies, has the capacity to shape and influence the market. The Inquiry recommends that Government should consider leveraging this position to encourage the labour force participation of older Australians **(Recommendation 23)** and Australians with disability **(Recommendation 43)**. The Inquiry recommends that in order to achieve the outcomes of the national strategies to lift the labour force participation of older Australians and Australians with disability that the Australian Government consider ways in which it can influence the supply chain, for example, by requesting that suppliers demonstrate their commitment to the implementation of:

- workforce diversity strategies
- non-discriminatory recruitment and retention practices for older workers and workers with disability
- setting and reporting on voluntary targets for the employment and retention of older workers and workers with disability.

In relation to people with disability the Inquiry also makes a series of recommendations to government as a buyer of information and communications technologies (ICT) to ensure that government policies mandate the purchase of accessible ICT (**Recommendation 44**), develop a whole of government approach to accessible ICT and procurement (**Recommendation 45**) and that all new products and software used meet accessible design guidelines (**Recommendation 46**).

### **Government as an employer**

Government is a major employer. Over many years governments have had strategies in place to shape their workforces in order to achieve a variety of outcomes. The Inquiry argues that deliberate action is required in relation to older Australians (**Recommendation 24**) and Australians with disability (**Recommendation 47**). In summary, the elements common to the Inquiry's recommendations made to governments as employers are, that in order to address employment discrimination in the public services, that the APS and state and territory public service commissions:

- develop and deliver sector wide and agency specific publicity and/or education campaigns led by champions in each agency to raise the issues, articulate the case for reform and clarify why such measures do not detract from the merit principle
- adopt sector wide and agency specific targets based on workforce data, build performance against these targets into performance management systems and report on progress annually to public service commissions and in annual reports
- determine that all positions at all levels be deemed to be 'flexible' unless there are sound documented reasons to prevent it.

These strategies should be supported by targeted long-term training of managers and human resources specialists which covers:

- the benefits of employing older people, people with disability and a diverse workforce
- the debunking of common myths, for example health and safety risks, costs, absenteeism
- the nature of discrimination in employment
- flexible work practices
- availability of support and resources, for example for workplace adjustments
- how and where to obtain information and advice.

All programs and initiatives should be routinely evaluated to assess impact and effectiveness and make changes as required.

There is also a need to raise the understanding and management competencies of those responsible for recruiting, retaining and managing diverse workforces. The Inquiry recommends that (**Recommendation 30**) the Australian Government convene discussions with universities, particularly faculties of business, TAFEs and vocational education providers to promote diversity and inclusion training in all management and supervisory related courses.

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## 2. Improving existing systems

These recommendations address the operation of current laws and policies and examine the ways in which they are acting as barriers to employment for older Australians and Australians with disability.

In relation to older Australians, recommendations are made across a number of areas including skills training, healthier workplaces, insurance, superannuation, workers compensation and government subsidies.

In order to lift workforce participation of people with disability a series of recommendations are made including reform of the Disability Employment Framework and Services, and the operation of targeted government programs including the Employment Assistance Fund and JobAccess.

Recommendations are made to government to consider strengthening the operation of federal discrimination laws and the Fair Work Act, the key pieces of legislation in this area.

### Older Australians

#### *Skills training*

The Inquiry is convinced that there is a damaging gap in access to skills training and retraining for workers approaching mid-life. The Inquiry believes that many individuals will require redirection and retraining, either because they work in a sector in decline such as manufacturing, or because their physical strength has reduced, such as in mining or nursing. They need to retrain to use their experience and knowledge in less physically demanding tasks. In the absence of retraining options, the consequences are unemployment and worsening health. The recommendations made by the Inquiry in relation to skills training are in this context. The Inquiry expects that these changes will also be of benefit to people with disability.

The key recommendations are that the:

- Department of Employment routinely undertake and publish evaluations of the structural adjustment programs to track outcomes and inform continuous improvement to policies and programs. The Department should also bring different industries together to develop strategies to transition people from declining industries to growth industries. It should also review the availability of resources and supports for displaced older workers from small and medium enterprises (**Recommendation 7**).
- VET sector prioritise the provision of high-quality information which is accessible, targeted and personalised (**Recommendation 8**).
- Australian Government incorporate the findings of the Skills Checkpoint evaluation and roll out the service across Australia. (**Recommendation 9**).
- Australian Skills Quality Authority undertake a strategic review of the availability and administration of Recognition of Prior Learning, RPL, at a national level (**Recommendation 10**).
- Australian Government fund the National Centre for Vocational Education Research to undertake a research project that reviews literature and existing good practice regarding effective and appropriate approaches to apprenticeships for older people (**Recommendation 11**).

- Australian Government develop and promote a program to target senior entrepreneurs which incorporates training and mentoring, and review current taxation and benefit systems to ensure there are no disincentives to participation (**Recommendation 12**).

### **Facilitating longer, healthier working lives**

The Inquiry makes a series of recommendations in recognition of extensive evidence of the strong link between being healthy and working longer. The Inquiry has established that there are many ways in which employers can support people to stay at work and remain productive. Implementation of these recommendations will also be of benefit to people with disability.

The Inquiry recommends that the Australian Government:

- develop and implement a national healthy ageing strategy to promote evidence-based preventative health practice particularly in the employment context, and improve access to workplace adjustments. This strategy is to be supported and overseen by an expert advisory panel. As part of this strategy the government will actively engage industry groups, peak bodies and trade unions (**Recommendation 13**).
- develop a national public education campaign that reinforces the importance of healthy ageing and, in particular, emphasises the relationship between health and work (**Recommendation 14**).
- investigate the provision of tax or other financial incentives to encourage businesses and employers to adopt health and wellbeing initiatives, for example, extend the fringe benefits tax exemption to off-site fitness services, and broaden the Medicare benefits scheme to exercise programs for people with chronic conditions (**Recommendation 15**).
- establish and fund a healthy and productive workers initiative to be administered jointly by government departments including the Department of Health and Department of Employment to actively promote evidence-based workplace health programs, disseminate information and showcase good practice (**Recommendation 16**).
- expand the Employment Assistance Fund (EAF) to: include training for managers and co-workers about employees with chronic health conditions; develop information and resources provided by JobAccess that specifically address workplace adjustments for employees with chronic health conditions; review the current EAF guidelines to ensure they do not exclude people with chronic health conditions from accessing workplace adjustments (**Recommendation 17**).

### **Law and government policy**

The Inquiry identified a number of government policies which act as barriers to increasing the workforce participation of older people and are therefore in need of review and action.

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The Inquiry recommends that the Australian Government:

- Convene an expert panel to consider access to insurance products, particularly income maintenance and travel insurance products, insurance industry codes of practice, and the extent of publication of actuarial and statistical data for older Australians and Australians with disability. Following the panel's advice the Australian Government consider limiting or otherwise changing the operation of the insurance exemption under section 37 of the Age Discrimination Act 2004 and under section 46 of the Disability Discrimination Act (**Recommendation 18**).
- Consider the taxation treatment of redundancy payments made to people over 65 years of age in light of changes to Age Pension qualifying age (**Recommendation 19**).
- Work with state and territory jurisdictions to review the evidence regarding the removal of age based limitations from workers compensation schemes, model any costs against the benefits of increased workforce participation of older people and ensure that, as a minimum, age based limitations and cut offs for workers compensation salary replacement payments are linked to the Age Pension qualifying age (**Recommendation 20**).
- Remove the requirement to have been on benefits for at least six months in order to be eligible for the *Restart* wage subsidy (**Recommendation 21**).
- Promote the availability of *jobactive* employment services to jobseekers who are not in receipt of an income support payment, in particular marketing these services to older workers (**Recommendation 22**).

## Australians with disability

### *Law and government policy*

The Inquiry found that there are government policies in place which are barriers to increasing workforce participation of people with disability and which are in need of review and action and makes the following recommendations:

- That Centrelink routinely provide information to individuals notifying them of their rights and obligations in relation to income support payments, particularly in relation to their right to suspend their Disability Support Pension for up to two years and the requirement to notify within 14 days if they do wish to suspend their payment (**Recommendation 31**).
- That the Australian Government consider extending the period of eligibility to concession cards for people who obtain work after being in receipt of an income support payment (**Recommendation 32**).
- That the Australian Government collect and make publicly available national data regarding post-school outcomes for students with disability in order to provide a clearer picture of the effectiveness of transition from school to work policies (**Recommendation 33**).
- That the current restrictions on access to employment services for school leavers be removed to allow all students with disability in their final year of high school (either Year 10 or Year 12) to access employment services support (**Recommendation 34**).
- That the Australian Government allocate funding to enable a collaboration between state and Commonwealth education authorities and relevant agencies to develop guidance materials for teaching staff about supporting students with disability to transition from school to work (**Recommendation 35**).

- That *New Enterprise Incentive Scheme* providers be enabled to register participants directly without the requirement that the applicant first be referred by a Disability Employment Service provider or *jobactive* (**Recommendation 36**).
- That Australian Government reforms to the Disability Employment Services framework should be based on the principles of choice and control which underpin the National Disability Insurance Scheme (**Recommendation 37**).
- That the following principles underpin reform of the DES system which is currently underway (**Recommendation 38**):
  - » Outcome Payments should be linked to longer-term outcomes (for example, 12 to 18 months in a job rather than three to six months)
  - » Star Ratings should be linked to the achievement of longer-term outcomes to ensure accountability
  - » Accessible, user friendly information is provided which enables people to make informed choices
  - » Ongoing support funding should be assessed and linked to the needs of each individual candidate rather than based on set limits
  - » There should be incentives for providers to place people in positions for more than their minimum benchmark hours — if the individual is willing and able to do so
  - » The Star Ratings system should be aligned with the National Disability Standards, particularly in relation to measures of client satisfaction
  - » The provision of training for DES providers in key areas in relation to supporting people with disability to find employment, including: disability awareness, cultural competence, job matching and engagement of employers.
- That the Australian Government promote an information program to build employers' awareness of government supports available through Disability Employment Services, JobAccess, the Employment Assistance Fund and the National Disability Recruitment Coordinator (**Recommendation 39**).
- That the Australian Government amend eligibility requirements for National Disability Recruitment Coordinator (NDRC) support to allow small to medium-sized enterprises to access NDRC support (**Recommendation 40**).
- That the Australian Government work with state and territory jurisdictions to examine best practice injury prevention and return to work policy and practices and embed these in workers compensation schemes, report and make recommendations to relevant governments (**Recommendation 41**).
- That in order to improve access to reasonable workplace adjustments for people with disability, the Australian Government (**Recommendation 42**):
  - » expand the Employment Assistance Fund to support work experience and internships, in order to enable greater job readiness for people with disability
  - » increase the funding available through the Employment Assistance Fund for Auslan interpreting and captioning
  - » change the process for obtaining funding for reasonable adjustments so that adjustments are paid for directly by JobAccess.

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## Federal Discrimination Laws and the Fair Work Act

As part of its Terms of Reference the Inquiry also examined Commonwealth laws that deny or diminish equal participation in employment of older Australians and Australians with disability. Chapter 7 examines federal discrimination laws and the Fair Work Act in detail and makes the following recommendations.

### *Federal discrimination laws*

- That the Australian Government further consider approaches to standing in federal discrimination law matters which provide consistency between who may bring complaints to the Commission and who may commence court proceedings. Any new approach to standing should promote access to justice without imposing undue regulatory burden. In particular, the Commission suggests consideration of provision for initiation of matters by representative organisations and other bodies with a sufficient interest, but only by leave of the court with regard to appropriate criteria (**Recommendation 48**).
- That the Australian Government consider the benefits of a positive duty to promote substantive equality or eliminate discrimination being inserted in federal discrimination laws (**Recommendation 49**).
- That the Australian Government consider amending federal discrimination laws to remove the comparator test in establishing direct discrimination and instead use the detriment test based on the *Discrimination Act 1991* (ACT) (**Recommendation 50**).
- For the small proportion of matters which proceed to the federal courts, the Inquiry recommends that parties bear their own costs of proceedings, with the courts retaining a discretion to make costs orders if it was considered just to do so, having regard to the conduct of the parties and the merits of the matter (**Recommendation 51**).
- That the Australian Government amend federal discrimination laws to apply to discrimination based on a combination of attributes protected under federal discrimination laws (**Recommendation 52**).
- That the Australian Government further consider the definition of disability under the Disability Discrimination Act in light of obligations under the United Nations Convention on the Rights of Persons with Disabilities (**Recommendation 53**).
- That the Australian Government further consult with individual, employers and peak bodies to consider the merits of developing disability standards for employment (**Recommendation 54**).

### *Fair Work Act*

- That the Fair Work Commission undertake a review of the operation of section 65, which provides employees with the right to request flexible working arrangements, in order to assess whether the provision is achieving its intended objectives (**Recommendation 55**).
- That the Fair Work Commission conduct a review of the 21 day time limit to make a general protections or unfair dismissal claim to assess whether it is meeting its objectives of promoting efficiency and effectiveness while also ensuring access to justice (**Recommendation 56**).

### 3. What business and employers can do

Employers, businesses and the organisations that represent them, have a critical role to play in recruiting, retaining and training older people and people with disability. The Inquiry offers a suite of strategies based on research and evidence heard by the Inquiry about how employers can lift representation and ensure non-discriminatory recruitment, retention and training practices while maintaining and improving productivity. There is no single ‘one size fits all’ approach and the Inquiry acknowledges the broad range and diversity of large, medium and small businesses, industries and contexts. Some of the strategies may lend themselves more readily to larger employers however the Inquiry trusts that small and medium enterprises will find strategies that they can usefully adopt in their context. The Report includes many good practice examples which showcase these ideas and practices in action.

The Report also includes a chapter which presents recommendations for what peak bodies and professional associations can do to increase employment of older people and people with disability.

#### **Leadership commitment**

Leaders should commit to recruiting and retaining older people and people with disability and building inclusive workplace cultures by developing and communicating a strong statement of commitment to action by CEO and leadership. This needs to be supported by a coherent and systemic organisational business strategy which clearly links to business goals, articulates the business case and incorporates the following:

- setting voluntary targets for the recruitment and retention of older people and people with disability based on analysis of workforce and customer data
- developing and implementing practical strategies to achieve targets and articulating them into performance agreements and appraisals
- collecting baseline data to raise visibility of issues, tracking and reporting on progress regularly
- monitoring and accountability within the organisation and externally
- networking and employer–employer mentoring
- partnerships with expert or specialist organisations
- working with or encouraging the supply chain to recruit and retain older people and people with disability and adopt inclusive practices
- providing guidance to support disability disclosure in a non-threatening and non-discriminatory manner
- providing accessible ICT across all the organisation’s functions and access points
- making it easy to provide workplace adjustments
- facilitating and supporting employee networks to support diversity initiatives
- providing internship/traineeship/apprenticeship, mentoring programs.

#### **Ensure non-discriminatory recruitment and retention practices**

- Review attraction, recruitment and retention processes to ensure non-discriminatory practices, language and accessibility
- Where recruitment agencies are used, build organisational expectations about diversity, non-discriminatory practice and compliance with legal obligations into contracts

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- Ensure retention practices do not discriminate against older people and people with disability, for example, access to opportunities for promotion, training and professional development.

### **Build workplace flexibility**

- Ensure that flexible work practices are ‘mainstream’ by making job design and work environments flexible for all (rather than only on request or by exception), as far as the demands of the role allow.

### **Facilitate transitions**

- In situations in which preparations are being made for older staff to leave an employer for reasons other than voluntary retirement, support can be provided to facilitate their transition into other industries or occupations by providing timely, relevant skills training and identifying transferable skills.
- For carers, facilitate leave for caring responsibilities or entry back into work.

### **Provide targeted education and training in the workplace**

- Support older people and people with disability in the workplace with information about
  - » their rights and responsibilities, organisational policies, grievance mechanisms
  - » flexible leave options
  - » employee driven networks.
- Support managers and supervisors in creating and managing diverse teams and flexible workplaces by assisting with job redesign, building skills to manage employees flexibly, providing information for managers for example mental health guidelines, manager support and training on the nature and impact of discrimination.

### **Recommendations for peak bodies and professional associations**

To further support achieving significant change, the Inquiry recommends that peak bodies and professional associations consider the following:

- fostering networks and partnerships to share ideas and experience
- promoting champions and awards programs, showcasing good practice and positive stories
- developing partnerships with employment agencies, educational institutions, skills training programs, and social enterprises to build a skilled workforce
- bringing different industries together to develop strategies to transition people from declining industries to growth industries
- providing information and resources, for example, on how to provide more flexible workplaces, the availability of government-funded programs like the Restart wage subsidy and the Employment Assistance Fund
- consider developing industry or professional standards and accreditation systems for workforce diversity. Accreditation would be positioned and promoted as a valued asset by business which allows consumers to make an informed, reliable choice.

# Methodology

## Inquiry approach

In recognition of the differing needs, perspectives and experiences of older Australians and Australians with disability the Inquiry was conducted in two separate but related streams. The Inquiry took great care to ensure that the situation and views of older Australians and Australians with disability were not conflated and that their unique contributions and voices were heard.

In practical terms this meant that separate consultations were held with people with disability and with older people, two separate issues papers were developed and different reference panels were established.

## Reference panels

The Age and Disability Discrimination Commissioner established three reference panels to provide expert input, strategic advice and overarching governance for the Inquiry (Appendix 1):

- Age reference panel
- Disability reference panel
- Employer reference panel.

The Inquiry was committed to engaging deeply with the diversity of experiences and perspectives and to ensure these informed Inquiry processes, considerations and outcomes.

Each member of the reference panels represented a critical stakeholder to ensure that the Inquiry reached and engaged each constituency and that the Inquiry was informed by contemporary research and policy.

Members of the reference panels provided strategic advice on the conduct of the Inquiry, assistance with engaging and consulting constituencies, advice on leading practices and examples of good practice and advice on the analysis of findings and recommendations for reform.

Reference panel members also provided practical support to the Inquiry by:

- facilitating the participation of older Australians or Australians with disability in consultations, or encouraging them to make submissions
- the provision of 'in kind' assistance such as hosting consultations and roundtable events
- surveying membership
- using their communications channels to inform people about the Inquiry and encourage involvement
- sharing relevant research and reports.

Reference panels met on three occasions throughout the course of the Inquiry:

- June 2015 to focus on planning and engagement strategies.
- December 2015 to provide feedback on key themes arising from consultations and submissions.
- April 2016 to focus on the Report and recommendations of the Inquiry.

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As well as the abovementioned reference panels an additional area of concern which emerged from Australia's first *National prevalence survey on age discrimination in the workplace* was the issue of healthy ageing. One of the survey's key findings indicated that for those who had not been engaged in the workforce for the last two years but would have liked to, 44% cited health reasons as the reason that they were not in the workforce.<sup>19</sup>

This prompted the Commissioner to convene a healthy ageing reference panel (Appendix 1) comprising key researchers, academics and practitioners. Panel members guided the Commission's research in this area and helped shape the recommendations arising in this Report.

## Principles which underpinned the Inquiry

### *Consultative and inclusive*

The Inquiry aimed to consult as widely as possible with older Australians, Australians with disability, representative and advocacy organisations and stakeholders in order to hear their views, experiences and suggestions for change. In addition, the Inquiry took measures to ensure that individuals impacted by sharing their experiences of discrimination during the consultations had access to information and support services.

### *Comprehensive and accessible*

Older Australians and Australians with disability were provided with as many avenues as possible through which to communicate with the Inquiry, including the Inquiry website, online, by phone or email, through face-to-face meetings and consultations, and through the use of accessible formats.

Easy English and braille versions of issues papers and other documents were made available, videos about the Inquiry were produced in Auslan, and Auslan interpreters were available at consultations. The Inquiry also offered some individuals one-on-one consultations by phone or by video conference. All venues in which Inquiry consultations were held were physically accessible and wherever possible access to assistive communication technology was made available.

### *Evidence based*

The Inquiry based its findings and recommendations on extensive quantitative and qualitative research gathered through the Inquiry process, as well as through academic and social policy research.

## Management of information

The Inquiry team recorded the substance of all interviews, face-to-face meetings and consultations through the use of comprehensive note-taking. Information gathered from these consultations and used in the Inquiry Report was de-identified. Contributors who made formal submissions to the Inquiry were able to do so on either a fully confidential, a public but anonymous, or a fully public basis. Public submissions were published on the Inquiry website.

## Approach taken to intersectional discrimination

Discrimination sometimes occurs on the basis of a combination of attributes — like age and gender or disability and sexuality — for example an older woman’s experience of discrimination may be different from a man of the same age. The Inquiry was sensitive to this and aimed to capture, so far as possible, such intersectional experiences.

The Inquiry’s issues papers specifically asked people to consider whether discrimination on the grounds of age and/or disability is experienced differently by particular groups of people, such as women, Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse (CALD) backgrounds or lesbian, gay, bisexual, transgender and intersex (LGBTI) people.

The Inquiry conducted several consultations to consider the impacts of intersecting grounds of discrimination on individuals’ lived experiences. Specifically, the Inquiry held consultations focusing on the effects of age and disability-related employment discrimination on women, Aboriginal and Torres Strait Islander people, people from CALD backgrounds and LGBTI people.

## Outline of methodology

As required by the Terms of Reference in order to examine practices, attitudes and Commonwealth laws; and to make recommendations as to Commonwealth laws that should be made or amended, or action that should be taken to address employment discrimination against older Australians and Australians with disability, the Inquiry’s methodology included the following elements.

### *Consultation and engagement strategy*

The Inquiry was launched by Attorney-General Senator the Hon George Brandis QC and the Hon Susan Ryan AO, Age and Disability Discrimination Commissioner on 15 April 2015. The National Inquiry website went live on this date.<sup>20</sup> The website provided information of how to contact the Inquiry. This included a specific email address for the Inquiry which remained open and was monitored on a daily basis for the duration of the Inquiry. Over the course of the Inquiry, 1,024 people registered their interest in the Inquiry and received information and updates.

The website provided information in multiple accessible formats including:

- Terms of Reference
- issues papers to inform discussions and consultations
- processes and timetable for consultations/meetings
- details of how to contact the Inquiry
- how to make a submission — confidential and public
- public submissions.

Information was provided in a number of accessible formats including Microsoft Word documents, pdfs, Braille, Auslan videos and Easy English versions.

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The Inquiry used a number of qualitative approaches to inform its considerations, including focus groups, meetings, interviews, consultations and roundtables with:

- older Australians
- Australians with disability
- employers
- industry, business, employer, employee groups and trade unions
- advocacy, peak and community organisations
- targeted population groups — Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse (CALD) backgrounds, lesbian, gay, bisexual, transgender, intersex (LGBTI) communities.

### *Consultations*

The Inquiry conducted 120 consultations. 1,175 individuals participated in these consultations which were held in over 20 locations around Australia (including capital cities, regional, rural and remote areas).

The Inquiry made every attempt to ensure that all consultation venues were accessible, had hearing loop facilities, and were in locations that could be accessed by public transport. Where available, consultations were conducted with the assistance of Auslan interpreters. The Commission received \$75,000 from the Department of Social Services in order to assist with the accessibility of all Inquiry processes.

Regional, rural and remote locations were chosen by researching population demographics, industry and economic profiles. The Inquiry aimed to select places that are distinct from one another to ensure there was a mix of different types of locations.

Inquiry consultations were held in:

- Canberra
- Sydney (including Redfern, Parramatta and Granville)
- Geelong
- Melbourne
- Townsville
- Mount Isa
- Brisbane
- Albury–Wodonga
- Alice Springs
- Darwin
- Adelaide
- Port Lincoln
- Launceston
- Hobart
- Newcastle
- Wollongong
- Perth
- Geraldton.

At each location at least three consultations were held with:

- older people, peak organisations, key stakeholders
- people with disability, peak organisations, key stakeholders
- employers.

Organisations that attended a consultation are included at Appendix 3.

### *CEO engagement*

The Inquiry also developed a CEO engagement strategy to:

- engage CEOs, business leaders and decision makers in addressing employment discrimination against older Australians and Australians with disability
- identify and test solutions, strategies and good practices
- encourage commitment to strategies to increase the employment and retention of older Australians and Australians with disability.

The approach targeted growth sectors in the Australian economy including health care and social assistance, accommodation and food/retail, finance and insurance sectors as well as a focus on small and medium businesses. A list of key meetings held can be found at Appendix 4.

### *Submissions*

Submissions opened on 26 June 2015 and remained open until 4 December 2015. Submissions were accepted in a variety of different formats including Word and PDF documents, via email, online and verbally.

A number of people and organisations contacted the Inquiry for an extension of this deadline, all of which were agreed to by the Inquiry team. The Inquiry received 342 submissions (Appendix 3). They can be broken down as follows:

- Regarding age: 133
- Regarding disability: 117
- Regarding both age and disability: 92.

Some submissions incorporated the results of surveys which had been undertaken in relation to the Terms of Reference of the Inquiry. Seven organisations undertook surveys representing the views of 8,918 people (Appendix 3).

### *Research*

The Inquiry undertook extensive research throughout the course of the Inquiry in order to develop issues papers, inform the conduct and recommendations of the Inquiry.

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## **Literature review**

An extensive literature review was undertaken drawing upon existing research, statistics and materials including:

- academic, economic and social policy research from Australian and international sources
- Australian Bureau of Statistics data
- key government documents including Productivity Commission reports, Australian Law Reform Commission reports
- federal case law.

## **Enquiries and complaints data**

As a key indicator of the incidence of discrimination, the Inquiry requested relevant data on enquiries and complaints received by the Australian Human Rights Commission, the Fair Work Ombudsman, and state and territory anti-discrimination and equal opportunity agencies.

## **Public service data**

Public services are large employers in every state and territory of Australia. The Inquiry requested relevant data about the employment of older people and people with disability from state and territory public service commissions and the Australian Public Service Commission.

## **National prevalence survey into age discrimination in the workplace (2015)**

The Inquiry drew upon the findings of the Commission's *National prevalence survey into age discrimination in the workplace (2015)*. This survey is Australia's first national prevalence study on the prevalence, nature and impact of workplace discrimination amongst the Australian population aged 50 years and older. A total of 2,109 interviews were conducted and the sample was designed as a quota sample to ensure that the survey coverage was representative of the populations aged 50 years or older in terms of age, gender and geographic characteristics.

## **Survey of Disability, Ageing and Carers 2015**

The Commission worked with the Australian Bureau of Statistics to obtain early release of data from the 2015 Survey of Disability, Ageing and Carers (SDAC) in order to inform the Inquiry's findings and recommendations. The SDAC was conducted throughout Australia between July and December 2015 and is the eighth comprehensive national household survey conducted by the Australian Bureau of Statistics to measure disability. The aims of the survey are to:

- measure the prevalence of disability in Australia
- measure the need for support of older people and those with disability
- provide a demographic and socio-economic profile of people with disability, older people and carers compared with the general population
- estimate the number of, and provide information about, people who provide care to people with disability, long-term health conditions and older people.

The 2015 SDAC introduced a new disability discrimination module designed to estimate the prevalence of disability discrimination, and identify the nature and impact of this discrimination. The disability discrimination module included four questions to determine whether persons with disability aged 15 years or older living in households:

- had experienced unfair treatment or discrimination in the last 12 months because of their condition/s, and the source of the unfair treatment or discrimination
- had avoided situations in the last 12 months because of their condition/s, and what situations were avoided.

### **Qualitative Study of Employment Discrimination against Older Australians**

The Inquiry commissioned a follow up qualitative study to the *National Prevalence survey of age discrimination in the workplace, 2015*. The Commission received funding of \$150,000 from the Department of Employment to undertake this research and engaged a social research firm, EY Sweeney, to conduct the study. The results of this study are used in this Report.

#### *Media and communications*

Media and communications strategies were developed within the Commission publicising the Inquiry via the website, through networks and media to maximise the reach of information about the Inquiry and to encourage participation. All available Commission mechanisms were used to support communications about the Inquiry. For example, from the Inquiry launch date people could register their interest on the website. Over the course of the Inquiry 1,024 people registered their interest and were informed about the release of the issues papers and the consultation schedule. They were also invited to participate in consultations when the Inquiry came to their location.

In every location visited by the Inquiry, the Commission's communications team tried to arrange an interview with the Age and Disability Discrimination Commissioner on local radio to talk about the Inquiry a day or two before the team arrived. This was a very successful strategy and often people came to consultations after having heard the Commissioner on the radio that morning.

The Inquiry was also supported by a social media strategy which provided regular updates and information on the Inquiry's activities.

### **Inquiry report**

This Report is based on extensive research and evidence presented to the Inquiry through submissions, meetings and consultations. The Inquiry appreciates the time and thought people gave to contributing to the Inquiry in constructive and positive ways. The Inquiry also acknowledges that many participants went to great personal lengths to make arrangements to travel to consultations and to prepare their input or submission. At times the experiences shared with the Inquiry were deeply distressing and the Inquiry thanks those people for their courage and willingness to bring about positive change.

The Inquiry is grateful to the many academics, policy experts and researchers who shared their data and findings to contribute to the evidence base of the Inquiry's recommendations.

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The Report is presented in two main streams. In keeping with the Inquiry's approach, issues related to employment discrimination for older people and people with disability are presented separately. There is of course some overlap in the experiences and issues faced by older Australians and Australians with disability but where possible these are treated separately.

**Chapter 1** details the current situation in Australia and the importance of this Inquiry. It then articulates the case for change and outlines why employment discrimination must be addressed to lift the workforce participation of older people and people with disability.

**Chapter 2** focuses on evidence presented to the Inquiry through consultations, meetings and submissions regarding employment discrimination against older people. Three perspectives are presented:

- individual — experiences, attitudes and behaviours
- employers — small, medium and large business, peak organisations and industry groups
- law and government policy.

**Chapter 3** presents the range of ideas and suggestions to address the barriers identified for older people and the Inquiry's recommendations for change. It also includes case studies and showcases examples of good practice.

**Chapter 4** focusses on evidence presented to the Inquiry through consultations, meetings and submissions regarding employment discrimination against people with disability. Three perspectives are presented:

- individual — experiences, attitudes and behaviours
- employers — small, medium and large business, peak organisations and industry groups
- law and government policy.

**Chapter 5** presents the range of ideas and suggestions to address the barriers identified for people with disability and the Inquiry's recommendations. It also includes case studies and showcases examples of good practice.

**Chapter 6** presents recommendations for what peak bodies and professional associations can do to increase employment of older people and people with disability.

**Chapter 7** outlines what the Inquiry was told about federal discrimination laws and the Fair Work Act and includes recommendations.

The key issues and findings of the Report are illustrated by case studies, quotes and experiences presented to the Inquiry. Where necessary names have been changed or omitted to ensure no individual can be identified.

- 1 In 2009-10, there were around 5.5 million Australians aged 55 years and over, making up one quarter of the population. Australian Bureau of Statistics, 2010, *Australian Social Trends: Older people and the labour market – Sep 2010*, cat. no. 4102.0. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30Sep+2010> (viewed 26 April 2016).
- 2 In 2009-10, people aged 55 years and over made up 16% of the total labour force, up from around 10% three decades earlier. Australian Bureau of Statistics, 2010, *Australian Social Trends: Older people and the labour market – Sep 2010*, cat. no. 4102.0. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30Sep+2010> (viewed 26 April 2016).
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# Chapter 1:

## Why this Inquiry is important

## Summary

- The right to work, free from discrimination on any basis, is a fundamental human right. The Inquiry examines what more can be done to protect this human right to work, to identify and examine employment discrimination and to enhance the workforce participation of older Australians and Australians with disability.
- Discrimination related to age or disability is an ongoing barrier to workforce participation for older Australians and Australians with disability. Individuals who experience employment discrimination are denied the independence, dignity and sense of purpose that work brings.
- Australia has an ageing population and life expectancy is increasing. As a result there will be greater pressure for older Australians to remain in the workforce for longer.
- While older workers are a growing share of the labour market, labour force participation declines rapidly with age from 73.8% of Australians aged 55–59 years to 12.7% of those aged 65 years and over.<sup>1</sup>
- Labour force participation rates for people with disability in Australia are low. In 2015, the labour force participation rate for people with disability was 53.4%, compared with 83.2% for people without disability.<sup>2</sup> This figure has changed very little over the past two decades.<sup>3</sup>
- The business case for addressing employment discrimination is well-established. An increase in diversity across an organisation delivers tangible benefits in terms of productivity, performance and innovation; increased access to a broader talent pool; and improvements to organisational reputation.
- Benefits also extend to the Australian economy through increased GDP, reduced overall welfare expenditure and increased self-reliance in retirement. A 7% increase in mature-age labour force participation would raise GDP in 2022 by approximately \$25 billion,<sup>4</sup> while an estimated \$50 billion could be added to GDP in 2050 if Australia moved up into the top eight OECD countries for employment of people with disability.<sup>5</sup>

The greatest incentive for people to work is intrinsic. It is a sense of worth, of self-respect and self-esteem. Work offers independence and dignity.<sup>6</sup>

The right to work, free from discrimination on any basis, is a fundamental human right. Individuals who are denied the right to work are denied the independence, dignity and sense of purpose that work brings.

The Terms of Reference for the Inquiry require the Australian Human Rights Commission to examine practices, attitudes and Commonwealth laws that deny or diminish equal participation in employment of older Australians and Australians with disability. This Report explores what can be done to better protect the human right to work, by identifying and examining employment discrimination and recommending measures to enhance the workforce participation of older Australians and Australians with disability.

This Report begins by detailing current demographic and labour market trends and briefly outlining the international and domestic legal framework pertaining to the rights of older people and people with disability. The chapter then presents the case for addressing employment discrimination and lifting the labour force participation of older Australians and Australians with disability.

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## 1.1 The current situation for older Australians

### (a) Legal framework

The United Nations Committee on Economic, Social and Cultural Rights has said the right to work ‘forms an inseparable and inherent part of human dignity’ and is essential for realising other human rights.<sup>7</sup>

The right of older Australians to work, free from discrimination, is protected under both international and domestic law.<sup>8</sup>

Some of the key rights protected under international human rights law are:

- The right to work<sup>9</sup>
- The right to just and favourable conditions of work, including equal pay and conditions for equal work, safe and healthy work conditions, and equal opportunities for promotion in the workplace<sup>10</sup>
- The right to an adequate standard of living and to enjoyment of the highest attainable standard of physical and mental health<sup>11</sup>
- The right to enjoy all other rights without discrimination.<sup>12</sup>

Although the United Nations Principles for Older Persons (1991) does not have the legal status of a convention, it does address the employment rights of older people.<sup>13</sup> The principles state that older people should:

- have the opportunity to work or have access to income-generating opportunities<sup>14</sup>
- be able to participate in determining when and at what pace their withdrawal from the labour force takes place<sup>15</sup>
- remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations<sup>16</sup>
- be able to pursue opportunities for the full development of their potential.<sup>17</sup>

The domestic legal framework consists of anti-discrimination legislation and workplace relations laws — all of which prohibit discrimination on the basis of age in employment.

The *Age Discrimination Act 2004* (Cth) (Age Discrimination Act) makes it unlawful to treat a person unfairly because of their age and protects people in a range of different areas of public life.<sup>18</sup> In the workplace, the Age Discrimination Act covers situations where a person has been: refused employment; given less favourable terms or conditions of employment; denied opportunities for promotion, transfer, training or other benefits; dismissed; or subjected to any other detriment on the basis of their age.<sup>19</sup>

Further discussion of the legal and human rights framework can be found at Appendix 6.

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## **(b) Demographics and labour market trends**

Australia has an ageing population. The 2015 Intergenerational Report projects that the proportion of the population aged 65 and over will more than double by 2054–55. Life expectancy is also increasing such that by 2055, life expectancy at birth will be 95.1 years for men and 96.6 years for women in Australia.<sup>20</sup> As a result of the growing population of older people and increasing life expectancy, there will be greater pressure for older Australians to remain in the workforce for longer (for a fuller analysis of labour market trends for older Australians see Appendix 5).

The Australian Government is alive to this fundamental demographic shift. One policy response has been to lift the age of eligibility to access to the Age Pension progressively to 67 by 2023.

The labour force participation of older Australians — in particular older women — has risen considerably in recent years.

- The participation rate of mature-age women has increased from 28.9% in 1995 to 58.6% in November 2015.<sup>21</sup>
- The participation rate of mature-age men has increased from 62% in September 1995 to 72.9% in November 2015.<sup>22</sup>

Despite these increases, labour force participation continues to decline with age. In November 2015:

- 73.8% of Australians aged 55–59 years were participating in the labour force<sup>23</sup>
- 56.5% of 60–64 year olds
- 12.7% of those aged 65 and over were in the labour force.<sup>24</sup>

While mature-age people have a lower unemployment rate than younger people, older people tend to have greater difficulty finding subsequent employment when they do become unemployed. In November 2015, the average duration of unemployment for mature-age persons was 68 weeks, compared with 30 weeks for 15–24 year olds and 49 weeks for 25–54 year olds.<sup>25</sup>

The rise in mature-age long-term unemployment,<sup>26</sup> coinciding with the increase in the average duration of unemployment,<sup>27</sup> is of particular concern given that people who have been unemployed for a significant length of time, on average, face greater difficulty finding subsequent work due to, among other factors, skill depreciation,<sup>28</sup> the discouraged worker effect and marginalisation from the labour market (as there is often a ‘scarring’ effect,<sup>29</sup> whereby employer perceptions of a long-term unemployed person’s suitability for a job are negatively influenced by their time out of the labour force).<sup>30</sup>

This situation is not unique to Australia. Many other industrialised countries around the world face similar challenges arising from ageing populations. Countries such as New Zealand, Canada and Japan are doing much better than Australia at recruiting and retaining older workers. While Australia’s labour force participation amongst people aged 45–54 and 55–64 is higher than OECD averages there is still much scope to encourage older Australians to remain in or, re-enter, the workforce.<sup>31</sup>

Many older Australians need and want to work. In a recent survey conducted by the DOME Association, immediate financial commitments were cited by 56% of respondents as the main reason for seeking employment.<sup>32</sup> According to the Australian Bureau of Statistics (ABS), of the just over 4 million people living in low income households, 1.2 million were 65 years or older.<sup>33</sup> Older low income households were more reliant on government pensions and allowances than younger households. Three quarters (74%) of people in older low income households received at least 90% of their cash income from government payments (mainly Age Pension), compared with 36% of younger low income households.<sup>34</sup>

### **(c) Discrimination and stereotypes**

Ageing is a loaded term. Research produced by the Australian Human Rights Commission shows that the community holds predominantly negative connotations about ageing.<sup>35</sup> Many Australians believe pervasive stereotypes about older people, including that older people are more forgetful, inflexible and have difficulty learning new things or complex tasks.<sup>36</sup>

These kinds of negative stereotypes about older people can also lead to negative behaviours. For example, 44% of Australians feel sorry for older people because of perceived complex health problems, 35% feel they have to take extra time to explain complex topics to them and 20% avoid conversations about technology.<sup>37</sup>

Most disturbingly, one in ten business participants have an age above which they will not recruit — and that average age is 50.<sup>38</sup>

Age discrimination in employment is a significant concern. In 2014–2015, employment was the main area of complaint to the Australian Human Rights Commission under the Age Discrimination Act.<sup>39</sup>

The Commission's *National prevalence survey of age discrimination in the workplace* found that over a quarter (27%) of Australians aged 50 years and over indicated that they had experienced some form of age discrimination in the workplace in the last two years.<sup>40</sup> The highest incidence of age discrimination was observed in the population aged between 55 and 64 years old.<sup>41</sup>

The impacts of age discrimination can be severe. A third (33%) of those who had experienced age discrimination gave up looking for work as a result<sup>42</sup> and 60% found that it affected their self-esteem or mental health, or caused them stress.

The experience of discrimination disconnects older Australians from the workforce, preventing them from participating fully in society. If older people feel discarded or overlooked, they may enter their older age lacking in a sense of independence, control and confidence, with fewer financial resources and poorer health than they could enjoy.

Other impacts can include involuntary early retirement, unemployment and long-term unemployment, social exclusion, outdating of skills.

### **(d) Health and workforce participation**

The Inquiry's investigations found that poor health is a:

- significant barrier to workforce participation for older Australians
- leading cause of premature and involuntary retirement
- great cost to the economy as a result of reduced workforce participation.

The Commission's *National prevalence survey of age discrimination in the workplace* reported that health was the most common reason (44%) for not working for Australians aged 50 years and older who did not participate in the workforce in the previous two years but would have liked to work.<sup>43</sup> This startling finding led the Inquiry to investigate this area as a particular focus.

Recent research by AMP and the National Centre for Social and Economic Modelling (AMP.NATSEM) shows that older Australians with a self-rated health status of 'fair' or 'poor' are significantly less likely to remain in the workforce compared to those who rate their health as 'good' or 'excellent'.<sup>44</sup>

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People with chronic conditions across all age groups are less likely to be in employment and more likely not to be in the labour force than those without a chronic condition.<sup>45 46 47</sup> The Australian Institute of Health and Welfare estimates that 54% of 55–64 year olds have one or more chronic health conditions, compared with 21% of people aged 25–34 years.<sup>48</sup>

Based on current health trends, AMP.NATSEM modelling predicts that in 2035 one in four men and more than one in five women in their sixties will have a self-reported health status of fair or poor, with the majority of this group — 65.1% of men and 72.1% of women — likely to be unemployed.<sup>49</sup>

Along with reduced workforce participation, health is a leading cause of early and involuntary retirement. Research by the Productivity Commission into superannuation policy for post-retirement in 2015 found that involuntary retirement is relatively common among older workers and that ill health is the dominant driver of involuntary retirement when considered across all age cohorts.<sup>50</sup>

The Australian Bureau of Statistics Survey of Retirement and Retirement Intentions for July 2014 to June 2015 shows that those who retire for health reasons (own sickness, injury or disability), retire on average earlier than those retiring for most other reasons, at 53.0 and 54.9 years for women and men respectively.<sup>51 52</sup>

The financial and psychological implications of early and involuntary retirement are significant.<sup>53</sup> Individuals with poorly managed health conditions face a double jeopardy in the sense that they face extra costs associated with poor health and also worse employment outcomes. It has also been reported that poor health will prevent one in four Australians from saving enough for retirement.<sup>54</sup>

Income, wealth and superannuation are also greatly reduced for those who exit the workforce prematurely, with previous studies showing that ‘households forced to take retirement due to a shock such as illness...fare much more poorly in retirement and have a much greater drop in their standard of living post-retirement than those that have a planned, voluntary retirement’.<sup>55</sup>

The national cost of this reduced workforce participation and early retirement is also significant — both as a result of extra welfare payments and lost taxation revenue.

Projections indicate that the cost of lost workforce participation due to chronic conditions in people aged 45–64 years will continue to be large, with foregone gross domestic product (GDP) forecast to exceed \$60 billion by 2030.<sup>56</sup> This is particularly critical in the context of an ageing workforce and increasing pressure on economic sustainability.

## 1.2 The current situation for Australians with disability

### (a) Legal framework

The right of Australians with disability to work, free from discrimination, is protected under both international and domestic law.

The *Convention on the Rights of Persons with Disabilities* (UNCRPD) sets out the rights of people with disability generally, including in respect of employment.<sup>57</sup> This includes:

- the right to work on an equal basis to others
- the right to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions
- the right to effective access to general technical and vocational training.<sup>58</sup>

The UNCRPD also protects the following rights:

- the right to live independently and participate fully in all aspects of life, including equal access to transport, information and communication technologies and other facilities and services<sup>59</sup>
- the right to live in the community, with choices equal to others, and to full inclusion and participation in the community<sup>60</sup>
- the right to the greatest possible independence through personal mobility<sup>61</sup>
- the right to an adequate standard of living.<sup>62</sup>

Persons with disability are also protected by other core international human rights treaties which protect the right to work; the right to just and favourable conditions of work, the right to equal opportunities for promotion in the workplace and the right to enjoy all other rights without discrimination.<sup>63</sup>

The Declaration on the Rights of Indigenous Peoples specifically addresses the social and economic rights of Indigenous people with disability, including the right to non-discrimination in employment.<sup>64</sup>

The domestic legal framework consists of anti-discrimination legislation and workplace relations laws — all of which prohibit discrimination on the basis of disability in the context of employment.

The *Disability Discrimination Act 1992* (Cth) (Disability Discrimination Act) makes it illegal to discriminate against someone on the basis of their disability. The Disability Discrimination Act protects people with disability from discrimination in many areas of public life, including in employment.<sup>65</sup>

Further discussion of the legal and human rights framework can be found at Appendix 6.

## **(b) Demographics and labour market trends**

There is a lack of reliable, comparable international data on labour force participation rates of people with disability but there is evidence that Australia lags behind other OECD nations in terms of employment of people with disability. Research conducted in 2010 indicated that Australia was ranked 21<sup>st</sup> out of 29 OECD nations in employment rates of people with disability.<sup>66</sup>

There are many factors which impact on how a person with disability is able to live, participate in society and realise their potential. Employment is one factor. Some other factors are education, transport, health care and housing.<sup>67</sup> Education, in particular, is a fundamental human right which must be realised in order for young people with disability to participate in the workforce.

If you can't access education you're not likely to access employment. If you don't have transport, you can't access education, health, work or social participation. And if you don't address negative community attitudes you might not access any rights on an equal basis with others.<sup>68</sup>

People with disability have lower rates of attainment of both secondary and tertiary education when compared with people without disability,<sup>69 70</sup> and available evidence clearly establishes the link between educational attainment and employment outcomes.<sup>71</sup> The transition of young people with disability from school to employment is a particularly critical issue.

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Many do not enter the labour force at all over the first seven post-school years (18% compared to 5% of those without a disability). But even though proportionately fewer young people with disabilities enter the labour force, those with a disability and seeking work struggle to secure full-time employment. They more often experience long-term unemployment (13% as against 7% for those without a disability). They also more often enter a pathway involving mainly part-time work (8% compared to 4%) or full-time work achieved after lengthy periods of unemployment, part-time work or not in the labour force (15% as against 13%).<sup>72</sup>

The National Disability Strategy notes:

There is an important relationship between educational outcomes for people with disability and their economic contribution as workers and taxpayers. Changing attitudes towards disability — accompanied by improved accessibility of buildings, transport, information and telecommunications — have the potential to increase the contribution of people with disability to the economy.<sup>73</sup>

The National Disability Insurance Scheme (NDIS) represents major reform in providing individualised support for eligible people with permanent and significant disability, their families and carers. Launched in 2013, the NDIS will begin rapid expansion from 1 July 2016 when 93% of people eligible for individualised support packages will begin to enter the scheme.<sup>74</sup>

Increased social and economic participation is a key objective of the NDIS. The NDIS will provide both direct and indirect support for people with disability to participate in employment by supporting people with disability to develop individual plans that may include the goal of getting a job, and providing funding for supports such as taxi fares that enable a person with disability to travel to work.

Currently, however, only 17.5% of participants have economic participation as a goal in their NDIS plans.<sup>75</sup> The Inquiry notes that the NDIS aims to increase this proportion in 2016<sup>76</sup> and agrees that:

Involving service providers more closely in planning would help raise expectations about the capacity of people with disability to work if they have access to the right supports.<sup>77</sup>

In 2015 there were 4.3 million Australians with disability, representing nearly one in five people (18.3% of the total population). Of the 15.4 million Australians living in households who were of working age (15 to 64 years) there were over two million people with disability. Just over half (50.7%) of Australians aged 65 and over reported living with disability.<sup>78</sup>

Labour force participation rates for people with disability in Australia are low. In 2015, the labour force participation rate for people with disability was 53.4%, compared with 83.2% for people without disability.<sup>79</sup> This figure has changed very little over the past two decades.<sup>80</sup> The unemployment rate for people with disability in 2015 was 10.0%, nearly twice the rate of 5.3% for people without disability.<sup>81</sup>

Over the 22 years from 1993 to 2015, the unemployment rate for 15–64 year olds with disability decreased from 17.8% to 10.0%, in line with a similar decline in unemployment for those without disability (from 12.0% in 1993 to 5.3% in 2015). However, in 2015 the unemployment rate for people with disability continued to be significantly higher than for those without disability.<sup>82</sup>

In 2015, nearly half (46.6%) of all working-age people with disability were not in the labour force, that is they were neither employed nor actively looking for work. Men with disability (51.1%) were more likely to be employed than women with disability (45.5%).<sup>83</sup>

Lower proportions of people with disability were employed full-time (27.0%) compared to those without disability (53.8%).<sup>84</sup> The amount of time unemployed people with disability had been looking for work was longer than people without disability.<sup>85</sup>

The likelihood of living with disability increases with age. In 2015, the disability rate among 15–24 year olds was 8.2%, and the rate was higher for successively older age groups, with 16.4% of 45–54 year olds and 23.4% of 55–64 year olds living with disability.<sup>86</sup>

In addition, there were differences in disability prevalence rates across Australia's states and territories, due in part to the differing age structures. For example, Tasmania and South Australia, which have older populations, recorded the highest disability prevalence rates (25.2% and 22.0%, respectively), for all people living in households. In comparison, Northern Territory, Western Australia and the Australian Capital Territory, which have younger populations, recorded the lowest disability prevalence rates (11.3%, 14.0% and 15.8%, respectively), for all people living in households.<sup>87</sup>

According to Australian Bureau of Statistics analysis of earlier data from the 2012 Survey on Disability, Ageing and Carers (SDAC):<sup>88</sup>

- In 2012, nearly half (47.3%) of all working-age people with disability were not in the labour force, that is they were neither employed nor actively looking for work. One-third (33.6%) of these people were permanently unable to work, while one-fifth (19.3% or 201,500) had no employment restriction, reporting that it was not their disability which was preventing them from working.
- The difference in labour force participation between people with and without disability increased with age. The participation rate for people with disability peaked in the 25–34 year age group while for those without disability, participation peaked at 45–54 years. People aged 55–64 years with disability had the lowest participation rate (40.9%) of all the age groups.
- People with sensory or speech impairment had the highest rate of labour market outcomes with a participation rate of 56.2% and an unemployment rate of 7.7%. People with a physical restriction had the next highest participation rate of 47.4% and an unemployment rate of 8.2%. The disability group with the lowest participation rate (29.1%), and the highest unemployment rate (20.4%) was people with a psychological disability.

### **(c) Discrimination and stereotypes**

Discrimination on the basis of disability is a significant barrier to employment.

Each year the Australian Human Rights Commission receives a significant number of disability discrimination complaints related to employment. In 2014–15, 34% of complaints to the Commission under the Disability Discrimination Act related to employment.<sup>89</sup>

In 2015 the Survey on Disability, Ageing and Carers (SDAC) introduced a new disability discrimination module designed to estimate the prevalence of discrimination for those with disability and identify the nature of this discrimination. The initial April 2016 release of SDAC 2015 data showed that almost one in 12 Australians with disability (281,100 people or 8.6%) reported they had experienced discrimination or unfair treatment because of their disability. However young people with disability (aged 15–24 years) were more likely to report experiencing discrimination (20.5%) than those aged 65 years and over (2.1%). Further, just under one in four people (24.2%) avoided work in the previous 12 months of the survey because of their disability.<sup>90</sup> Further details on the experience of discrimination for people with disability are provided in Chapter 4.

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In its review of the *Disability Discrimination Act 1992* in 2004, the Productivity Commission stated that:

The lack of a significant improvement in the employment situation of people with disabilities suggests that the Act has been relatively ineffective in reducing disability discrimination in employment.<sup>91</sup>

In a 2010 study, the Diversity Council Australia found that people with disability were twice as likely as people without disability to report having experienced an incident of discrimination (21% versus 9%).<sup>92</sup>

In 2014 the Age and Disability Discrimination Commissioner convened a National Disability Forum. Prior to the forum, the Australian Human Rights Commission conducted a survey to consult with the disability rights' sector and wider community about the key issues affecting persons with disabilities. Over 541 responses were received to the survey. The two issues ranked as the most important to respondents were participation and inclusion in society (15.8%), and work and employment (13.5%).<sup>93</sup>

A recurring theme in the forum was that stereotypes and negative attitudes towards people with disability are too prevalent, both across the community and among employers. These were described as the basis for discrimination and a key barrier preventing people with disability from living as equal citizens.<sup>94</sup>

Discrimination in the workplace actively drives people out of the workforce and into despair. There is a huge need for education programs in workplaces, from CEO level through to base level to appreciate what disability is and how to bust the stereotypes.<sup>95</sup>

Survey respondents were asked about the most important issues that require attention in order to create employment opportunities for people with disability. The most important issues by ranking were:

- addressing negative attitudes and stereotypes (18.9%)
- availability of jobs (17.6%)
- assistance in finding, securing and maintaining employment (12.6%).<sup>96</sup>

### 1.3 The case for change

Employment is important for individual welfare and economic security, allowing people to provide for themselves and their families, improve their standard of living and save for retirement, including through superannuation. Employment is also important in facilitating mental and physical health, and social connections.<sup>97 98</sup> The economic case for participation is equally strong: employment reduces Australia's overall welfare expenditure and increases self-reliance in retirement.<sup>99 100</sup>

There are also significant benefits to business to be realised:

As well as these financial advantages of preventing discrimination and enhancing workplace inclusion, employing older people and people with disability can have significant benefits in terms of an organisation's corporate reputation in a competitive market. Being seen as an employer of choice impacts not only on improving access to talent, but on customer views of an organisation.<sup>101</sup>

The link between health and workforce participation of older Australians also provides a very clear impetus for reform. The evidence confirms that improving health management has the potential to be a major policy lever in increasing workforce participation of older Australians.

### **(a) Older Australians**

There is a growing pool of older people in the Australian economy. This is an opportunity to be actively embraced if Australia is to maintain and grow its productive capacity and prosperity.

The government's series of Intergenerational Reports emphasise that:<sup>102</sup>

[O]ne of the key public policy responses must be to boost labour force participation, including the participation of older people, by supporting mature-age participation through a range of practical measures, including retraining and reskilling programs and enhanced assistance.<sup>103</sup>

While the past few decades have seen older Australians staying in the labour force for longer, they remain relatively more vulnerable to under-employment, long periods of involuntary unemployment and over-representation in long-term unemployment benefit statistics.<sup>104</sup>

Continuing to work brings benefits in the form of increased incomes and savings, and consequently living standards in retirement. It also helps to improve health outcomes and general wellbeing. This can only result in reduced demands on health and welfare systems.

#### *(i) Economic benefits*

The economic benefits of boosting mature-age participation and participation of people with disability are well established. In the Australian context, several studies reveal significant gains are potentially available to the economy.<sup>105 106 107</sup>

The 2012 Grattan Institute report *Game-Changers: Economic reform priorities for Australia* states:

If Australian governments are serious about raising rates of economic growth, they must reform the tax mix and increase the workforce participation rates of women and older people. This could contribute over \$70 billion per year to economic growth in the next decade.<sup>108</sup>

The Grattan Institute report estimates that a 7% increase in the mature-age labour force participation rate (to a level still less than New Zealand) would raise GDP in 2022 by about 1.4%, or \$25 billion in 2010 dollars. It also argues that promptly implementing policy changes to achieve this level of participation would reduce intergenerational unfairness.<sup>109</sup>

The study by Deloitte Access Economics *Increasing participation among older workers: The grey army advances*, commissioned by the Australian Human Rights Commission, also reveals significant potential economic gains.

Deloitte Access Economics estimated that achieving the changes in mature-age participation assumed in the 2010 Intergenerational Report would result in a \$55 billion or 2.7% increase in national income by 2024–25.<sup>110</sup>

Furthermore, the report found that if Australia were to achieve a further 3% increase in mature-age participation over and above that currently expected, the national economy would be \$33 billion, or 1.6% larger. Should the expected improvement in mature-age workforce participation be lifted further still to 5% above that currently expected, the national economy would be \$47.9 billion, or 2.4% larger.<sup>111</sup>

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In addition to the direct benefits to the national economy, the Deloitte Access Economics report notes that other indirect benefits would arise from higher participation, supporting positive outcomes for individuals and the Australian Government. These include increased retirement savings, reduced welfare costs for future governments, better social inclusion and improved health outcomes over time.<sup>112</sup>

More recently, PwC found that if Australia could match New Zealand's mature-age employment rate, it would generate an annual average increase of \$24 billion in nominal GDP.<sup>113</sup> PwC's modelling, based on federal Treasury's Intergenerational Report, projects the economy out to 2050 and shows that increasing participation among mature-aged workers to New Zealand levels at that time, would:

- increase GDP by 4.7% or \$198 billion at today's value
- improve the Commonwealth, state and territory budgets by 1.7% of GDP
- reduce net debt by 11% of GDP in 2050.

The Council on the Ageing notes that a report by the Productive Ageing Centre (2015) quantified the economic and social value of keeping and getting older workers into regular paid work.<sup>114</sup> The report found that older workers contribute around \$45 billion to the formal economy.

#### *(ii) Benefits to business*

An increase in the participation of older workers will have a direct and substantial impact on businesses. Broadening the talent pool, hedging against the loss of corporate knowledge and skills and maintaining competitiveness are recurring benefits identified in research in this area.<sup>115</sup>

The Australian Chamber of Commerce and Industry<sup>116</sup> identifies a large number of benefits for individual businesses in increasing participation of older workers, including:

- better returns on investment in human capital by retaining or recruiting the advantages of significant length of service, investment in training and wealth of accumulated experience
- maximising the chances of businesses employing the best people for the job by considering mature-age job seekers
- leveraging the networks, external interests and experiences that mature-aged workers have and which can add value to the business
- increased ability to respond to the changing age profile of customers and the need to reflect this in the workforce
- enabling an employer to market their business as a good employer by promoting diversity in the workforce
- taking advantage of government-funded financial incentives, provision of special training grants and support for job creation.

The Australian Institute of Management identifies the 'diversity dividend' of recruiting and retaining older workers as:

- better decision making
- increased sustainability, better adaptability, and less reliance on a particular type of worker or age cohort
- higher productivity
- closer connection with customers and suppliers
- wider reach into new markets, locally and globally.<sup>117</sup>

There is a common stereotype that older workers are less productive than their younger counterparts.<sup>118</sup> However, there are clear examples from around the world that refute these assumptions.

Research conducted by Ernst & Young suggests that personal productivity increases with age; 40% of workers aged 45–64 had the highest profile of productivity. This research also found that the importance of productivity increases with age. Sixty-five per cent of 55–64 year olds considered productivity to be extremely important, compared to 32% of 20–24 year olds.<sup>119</sup>

In a survey conducted by the Australian Human Resources Institute, respondents reported that the departure of older workers from their workplace in the last year had resulted in the loss of key knowledge and skills (46%) and caused the organisation to be less competitive (22%). Further, 83% of respondents wanted to see their organisation take steps to retain older workers and 67% believe the retention of older workers would benefit productivity.<sup>120</sup>

A review of published research carried out by Essex Business School found little evidence to back up ingrained stereotypes of older workers when it came to productivity, health, commitment or flexibility.<sup>121</sup> The findings are borne out by two separate studies of auto manufacturers: Mercedes-Benz and BMW in Germany — the country with the largest ageing population in Europe.

The study found that:

Age doesn't determine a person's commitment and productivity levels at work. Other social and psychological factors are much better indicators of the way older people behave... older people are often faster at carrying out complex tasks that allow them to draw on their contextual knowledge and years of work experience. While bottom line speed may deteriorate, the overall efficacy of older people offsets any impact to productivity.<sup>122</sup>

The key findings of the analysis of Mercedes-Benz was that productivity rises with age all the way up to retirement and that older workers make fewer serious mistakes and are able to cope better when things do go wrong. The authors described these findings as 'striking' because these jobs relied on 'physical strength, dexterity and agility — which tend to decline with age' and that any 'negative effects of ageing' were 'outweighed by the positive effects, such as the ability to cope when things go wrong'. The authors 'cast doubt' on economists' fears that Western countries will become less productive as their populations age and believe that their findings contradict the 'widespread and implicit' assumption that older workers were less productive, which was 'often used as a motivation for early retirement policies'.<sup>123</sup>

The BMW study found that the value of making small inexpensive ergonomic changes to a production line staffed by older workers (with an average age of 47) was demonstrated to return higher productivity.<sup>124</sup> Within three months, managers working with the production line were able to improve its productivity by 7%. The line's initial absenteeism rate was halved and the assembly defect rate dropped to zero.<sup>125</sup>

In the restaurant industry, the British Hospitality Association reported that McDonald's UK found a positive correlation between high performance, productivity and job satisfaction. They found the higher the mean age of the workforce, the higher the service quality, customer visits, sales profits and job satisfaction. McDonald's reported a 20% higher performance in their outlets where workers aged 60 and over are employed as part of a multi-generational workforce, and that similar benefits are reported by employers from all sectors and sizes.<sup>126</sup>

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The research clearly demonstrates the very real business value of recruiting an age diverse workforce...For McDonald's, we can show that the presence of older employees improves customer satisfaction, and in a service led business such as theirs, this drives the bottom line. Mature employees are a key part of the performance recipe. This is good news for the workforce given the changing demographics of our society.<sup>127</sup>

A study in the United States in 2013 found no evidence that an ageing workforce has reduced average worker productivity over the past quarter century. The research found that improved education among the population aged over 60 years and delays in retirement among better educated Americans have tended to boost the earnings of older workers compared with younger workers. The author also found that none of the indicators of productivity suggest that older male workers (aged between 60 and 74) are less productive than average male workers who are aged between 25 and 59.<sup>128</sup>

A 2010 study investigated the relationship between age-productivity and age-wage connections. Using longitudinal employer-employee data spanning a 22-year period, the authors found that productivity increases until the age range of 50-54, whereas wages peak around the age 40-44. The study found that the contribution of older workers to firm-level productivity exceeds their contribution to the wage bill.<sup>129</sup>

Successful organisations appreciate the business case for engaging and retaining older workers in order to ensure current and future productivity and to build workforces that better reflect the demographics of their consumer base.

Australians in the age bracket 45-64 own half of Australia's household wealth despite making up approximately a quarter of the population. Blueprint for an Ageing Australia notes the significant opportunities created for business by an ageing population:<sup>130</sup>

- between 1994 and 2012 people aged between 55 and 74 had the fastest growing household wealth of any age group
- in 2011, the 55-75 age bracket held the greatest average net worth, ranging from \$743,000 to \$828,800, giving them considerable discretionary spending power
- 50-69 year olds alone hold more than 40% of the nation's wealth
- employing older workers allows businesses to capture older people's perspectives in the development of strategies and decision making.

### *(iii) Benefits of a healthy workforce*

Health is a significant determinant of the workforce participation of older people. There is a clear business case for employers to implement measures to improve the health of their employees. Workplaces with formal health and wellbeing programs have a competitive advantage, reporting tangible gains in productivity, employee satisfaction and engagement.<sup>131</sup>

The cost of employees in poor health can be significant. Employers bear the cost of poor health through increases in both absenteeism and 'presenteeism' (not fully functioning at work as a result of a medical condition). The Australian Institute of Health and Welfare reports that those with chronic conditions have 0.48 days off per fortnight due to sickness compared to 0.25 days for people without a chronic condition.<sup>132</sup> The estimated cost of absenteeism to the Australian economy is \$7 billion, while the cost of presenteeism is nearly four times more.<sup>133</sup>

In 2008 a review of 55 organisations in the UK by PwC found that 45% of those with health and wellbeing interventions experienced reductions in absenteeism. The same review also found improvements in staff turnover, employee satisfaction and a decrease in accidents and injuries.<sup>134</sup>

Supporting the health and wellbeing of employees is crucial in retaining older workers because:

- Health is a prevalent factor in retirement decisions and chronic conditions can often be the cause of early workforce exit. Promoting good health and preventing risk factors are crucial aspects of retaining experienced, highly skilled older employees.
- Health and wellbeing measures tend to increase employee satisfaction. This is important in terms of retaining older employees, as those who stay in paid work later in life tend to be those who enjoy their work.<sup>135</sup>

### **(b) People with disability**

Increasing the labour force participation of people with disability brings benefits to individuals, businesses and the economy.

According to the Productivity Commission:

[R]eductions in discrimination can lead to an increase in the productive capacity of the economy. For example, reducing discrimination can enhance the participation and employment of people with disabilities in the workforce. In turn, better employment prospects can provide incentives to students with disabilities to improve their educational outcomes, making them more productive members of the community.<sup>136</sup>

#### *(i) Economic benefits*

A 2011 report by PwC estimates that almost \$50 billion in GDP (an additional 1.4%) could be added to Australia's economy in 2050 if Australia moved into the top eight OECD countries in employment of people with disability.<sup>137</sup>

Research commissioned by the Australian Network on Disability and conducted by Deloitte Access Economics has modelled the impact of increased employment participation for people with disability. This modelling suggested that if the labour force participation rate increased by 10 percentage points above the 2009 figure of 54% of working age Australians with disability participating in the labour force to 64%, Australia's GDP would be boosted by \$40 billion over a decade.<sup>138</sup> This research also indicated that if, in addition to the above, the unemployment rate for people with disability fell from the 2009 rate (7.8%) to 6.9%, GDP could increase by \$43 billion over the next decade.<sup>139</sup>

The economic benefits of disability employment were also investigated in a recent paper by the National Disability Insurance Scheme.<sup>140</sup> Australian Bureau of Statistics SDAC data shows that around 200,000 people with disability who are currently not in the labour force indicate they can work with support.

The paper goes on to report that the NDIS will empower those with employment restrictions to gain employment leading to some 45,000 new jobs (35,000 full time equivalents) from the NDIS.<sup>141</sup>

#### *(ii) Benefits to business*

The Australian Chamber of Commerce and Industry identifies the benefits of employing people with disability, including:<sup>142</sup>

- Independent studies provide evidence that people with disability have a very positive work attitude and work ethos. Employers see employees who have a positive attitude in the workplace as being valuable to their business.

- An employee with disability can lead to increased productivity, reduced absenteeism, reduced turnover, increased morale, more positive organisational culture and reduced workers compensation.
- The costs of hiring staff, advertising, on-costs, induction and training can be reduced as there is generally less turnover for employees with disability.
- Ongoing costs for employees with disability are generally lower. The number of work health and safety incidents for an employee with disability is six times lower than that of an average employee and the number of workers compensation incidents is four times lower than that of an average employee.
- Employees with disability have fewer days of sickness absence compared to an average employee. The accrued cost of sickness absence in employees with disability was less than half of the cost for an average employee.
- There will be a potential boost to the morale and productivity within workplaces as they become more inclusive.
- Hiring people with disability contributes to the organisation's overall diversity. It enhances the company's image among its employees, community and customers with positive benefits to the employer brand.
- An employee with disability can help a business to develop marketing strategies to reach this growth sector of the market. One in five people have some type of disability and the rate of disability is increasing as the population ages. That is also one in five potential customers.

The Business Council of Australia states that:

Boosting the active participation of people with disability will deliver individual, social and economic returns, including reducing the rate of spending growth in some areas. Benefits will flow to productivity through a diversified workforce and the inclusion of new ideas and perspectives.<sup>143</sup>

Further, the Business Council of Australia states that Australia has participation and productivity challenges that need to be addressed to achieve the growth required to underpin Australia's long-term prosperity and social wellbeing and that:

- For people with disability, employment is not just about jobs. It's about being valued, useful and included.
- For business, it's important to have access to diverse talent and a workforce that's inclusive of the community.
- For Australia, national prosperity is about helping create the context for everyone to participate and contribute.<sup>144</sup>

The Diversity Council Australia refers to studies that have found that people with disability:<sup>145</sup>

often surpass their counterparts without disability in terms of loyalty and productivity in the workplace. Research cited by the Australian Network on Disability indicates that 90% of employees with disability record productivity rates equal [to] or greater than other workers and 86% have average or superior attendance records.<sup>146</sup>

Other surveys have found similar results. Industry research conducted on behalf of Telstra Australia found that:

over a 15 month period, people with disability had 11.8 days absent, compared to people without disability who had 19.2 days absent; and there were no significant differences when comparing people with disability to people without disability in the areas of performance, productivity and sales.<sup>147</sup>

Research also indicates that over 90% of employers who had recently employed a person with disability said they would be happy to continue to employ people with disability; and 78% of employers described the match between their employee with disability and the job as good.<sup>148</sup>

The Diversity Council Australia argues that there is a competitive advantage to employing people with disability:

With approximately 20% of the Australian population having one or more disability, a similar percentage of most organisations' customers and clients are also likely to have one or more disability. Having a workforce that reflects the diversity in age and ability of an organisation's customer base, and the community in which it operates, can significantly enhance customer satisfaction and loyalty, and offers access to a depth of knowledge and experience in relation to clients, customers and stakeholders, giving organisations a competitive advantage.<sup>149</sup>

[A]pproximately four million people with disability have a combined disposable annual income of around \$54 million. One in three Australians either has disability, or is close to someone who does. With our ageing population, this figure is only set to increase. Despite the size and spending power of this group, many mainstream businesses still fail to recognise people with disability as an emerging market. Employing people with disability and developing accessible products and services for people with disability, is still more often than not thought of as [an] optional thing rather than just good business, and many organisations fail to see the link with improved business performance.<sup>150</sup>

Research has shown consumers recognise and respond positively towards businesses that hire people with disability. In a survey of more than 800 consumers 87% said they would prefer to give their business to companies that hired people with disability.<sup>151</sup>

### **(c) Concluding comments**

The case for reform is clear.

The benefits of increased employment participation for older workers and workers with disability extend to not only the individual workers involved, but also employers and the national economy.<sup>152</sup>

Increasing employment of older people and people with a disability creates a more diverse workforce. Diversity is a key driver of innovation.<sup>153</sup> Diverse groups offer a performance advantage because they tend to have more information, a richer range of perspectives and means of addressing problems, and a wider repertoire of problem-solving approaches.<sup>154</sup> Proactively seeking a diverse pool of candidates increases the likelihood of finding employees with the most suitable skills and experiences (the best person for the job).

Australia must address employment discrimination in order to increase labour force participation so that individuals, employers and our economy can reap the benefits of broader participation, greater productivity and diverse skills sets and perspectives.

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# Chapter 2:

## Employment discrimination against older Australians

## Summary

- Results from the *National prevalence survey of age discrimination in the workplace (2015)* indicate that age discrimination is an ongoing and common occurrence in Australian workplaces.
- Age discrimination can occur at all stages in the employment cycle. Experiencing discrimination diminishes a person's self-worth, self-esteem and can reduce motivation to stay in work. Other factors such as gender, cultural background, sexual orientation and geographic location also shape the nature and consequences of discrimination.
- Employers may hold negative assumptions and stereotypes about older workers. A lack of knowledge, awareness and skills can also be a barrier to public and private sector employers developing inclusive workplaces; implementing recruitment and retention strategies for older workers; accessing resources and support; and meeting legal and regulatory requirements.
- Some government programs, policies and federal laws including those relating to superannuation, taxation, insurance, skills training and workers compensation can be out of step with the goal of increasing workforce participation of older Australians.

The Inquiry consulted widely with older people, employers, peak bodies and advocacy organisations. From consultations, submissions, data and research, the Inquiry has gained a deep insight into the experiences, nature and prevalence of age discrimination in employment.

The section begins by presenting evidence, from a number of sources that outlines the prevalence of employment discrimination against older people and the barriers to their workforce participation. It then focusses on:

- individual experiences and perceptions of discrimination
- employer perspectives
- law and policy.

## 2.1 Prevalence of age discrimination

Age discrimination is an ongoing barrier to increasing the workforce participation of older people. Data presented includes information from the *National prevalence survey of age discrimination in the workplace (2015)*,<sup>1</sup> state and territory anti-discrimination and equal opportunity agencies and other data provided to the Inquiry through submissions and consultations.

Overall this data suggests that while the number of age discrimination complaints is relatively low compared to other protected attributes, there is a strong perception amongst older people that they have experienced age discrimination.

### (a) National prevalence survey of age discrimination in the workplace

In November 2014 the Commission conducted a national survey to investigate the prevalence, nature and impact of age discrimination in Australian workplaces amongst the population of people aged 50 years and older. This report is the first national prevalence survey of age discrimination in the workplace and was published by the Commission in April 2015.<sup>2</sup>

The results from the survey indicate that age discrimination is ongoing and a common occurrence in the Australian workforce. The survey found that over a quarter (27%) of Australians aged 50 years and over indicated that they had experienced some form of age discrimination on at least one occasion in the workplace in the previous two years (2013 and 2014). It also indicated that of people aged 50 years and over, age discrimination is more likely to be experienced by those aged between 55 and 64 years.

Another key finding was that Australians aged 50 years and over who were looking for paid work were more likely to experience discrimination because of their age when compared to those who worked for a wage or salary or those who were self-employed.

The survey also found age discrimination had different impacts on women than men. Women were more likely than men to report that the most recent episode of discrimination they had experienced affected their self-esteem or mental health or caused them stress and that it had a negative impact on their family, career or finances.<sup>3</sup> Older women were also more likely than older men to be perceived as having outdated skills, being too slow to learn new things or as someone who would deliver an unsatisfactory job.<sup>4</sup>

### **(b) Qualitative study of age discrimination in the workplace**

In August 2015 the Commission conducted a qualitative study as a follow-up to its national prevalence survey. The objective of this qualitative follow-up study was to explore in detail the experience and impact of age-related employment discrimination amongst older Australians.

The study included 52 in-depth interviews with 74 older Australians aged 50 years and over and five focus groups with employers and employees. Most participants for both the interviews and focus groups had participated in the national prevalence survey and had agreed to be re-contacted, or had attended public consultations as part of the Inquiry.

The majority of interviews occurred face-to-face, some telephone interviews were conducted to accommodate participants who were unable to take part in face-to-face interviews including those who lived in regional locations. Each interview lasted for approximately one hour. All focus groups were conducted face-to-face with sessions of three to six participants, lasting approximately 90 minutes.

Of the 74 participants, 45 were employees and 29 were employers. Interviews were conducted between 3 December 2015 and 3 February 2016, across metropolitan and regional locations in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Western Australia.

The findings of the qualitative study are described in this chapter and supplement many of the perspectives relayed to the Inquiry.

### **(c) Enquiries and complaints data**

Under various anti-discrimination and workplace relations laws at federal, state and territory levels specified agencies can receive and investigate complaints about age-based discrimination in the workplace.

The Inquiry sought data regarding enquiries and complaints made to the Australian Human Rights Commission, state and territory anti-discrimination and equal opportunity agencies, and the Fair Work Ombudsman with regard to age discrimination from people aged 45 and over for the 2012–13, 2013–14 and 2014–15 financial years. Key findings of the data are included in this section, while all enquiries and complaints data provided to the Inquiry is collated at Appendix 7.

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Enquiries and complaints data is an important indicator relevant to the prevalence of discrimination and also an indicator of the contexts in which discrimination occurs. However, it is important to note that while it is a useful indicator it is limited because the data only represents instances where a person has chosen to enquire about, or pursue a formal complaint with an agency such as the Australian Human Rights Commission.

Complaints of age discrimination are brought at lower rates than discrimination regarding other protected attributes.<sup>5</sup> The Inquiry's findings on underreporting are discussed in detail in Chapter 7.

In 2014–15 the Australian Human Rights Commission received 1,102 enquiries about age discrimination with 681 of these enquiries being in the area of employment. In the same period the Commission received 110 complaints about age discrimination from people aged 45 years and over, with 78 complaints or 70.9% being in the area of employment.

The Commission received significantly more enquiries and complaints related to age discrimination in employment than any other agency. Among state and territory anti-discrimination and equal opportunity agencies, in 2014–15 the Australian Capital Territory Human Rights Commission did not receive any age discrimination complaints in the area of employment from people aged 45 years and over, while the Victorian Equal Opportunity and Human Rights Commission received the most of any state and territory anti-discrimination and equal opportunity agencies with 49 complaints.

Collectively the data confirms that when an age discrimination complaint is reported, employment is one of the most common contexts in which older people will make a complaint. Across most jurisdictions age discrimination in the area of employment consistently made up a significant proportion of age discrimination complaints from people over 45 years of age.

According to the Commission's data, the incidence of age discrimination complaints are spread relatively evenly across the employment cycle, for example in 2014–15 30.1% of complainants said the discrimination occurred while looking for employment, 39.8% during employment and 30.1% at the end of employment/termination. The South Australian and Tasmanian commissions are the only state and territory anti-discrimination and equal opportunity agencies to collect this data with both also reporting a spread of complaints across all stages.

The Commission's data shows the single most common outcome of age discrimination complaints from people over 45 years of age is conciliation, with 45.1% of complaints being conciliated between 2012 and 2015. There was substantial variability between the state and territory anti-discrimination and equal opportunity agencies in this proportion. For example over the same period Queensland reported 40.5% of complaints as conciliated, Tasmania reported that 56.5% of their 23 finalised complaints as conciliated, while the Australian Capital Territory and Western Australia both reported less than 20.0% of complaints as conciliated.

Data provided indicates that the substantial majority of complaints regarding age discrimination brought to the Fair Work Ombudsman in the reporting period were not sustained. Between 2012 and 2015 the proportion of complaints not sustained was 84.0%.

The Commission's complaints data indicates that for complaints by people aged 45 years and over, 55–64 years old is the most common age group of complainant, with 53.8% of complainants in 2014–15 being in this age group. From the few state and territory anti-discrimination and equal opportunity agencies that collect this data, the 55–64 age group was also usually the most common age bracket of complainant.

## 2.2 Individual experiences

The following section describes the individual experiences of older Australians relating to employment, as told to the Inquiry. While this chapter refers to situations of alleged discrimination, the Inquiry did not investigate or make findings or determinations about any individual allegations of discrimination. It is the view of the Inquiry that all of these experiences are significant and provide insight into the perspectives of older Australians and have contributed to our understanding of employment discrimination against older Australians.

### (a) Impact of discrimination

There is a stigma attached to age — age equals lazy, age equals an unwillingness to learn, age equals a workers compensation risk. There is automatically a bias towards can't rather than can, or even, a let's explore.<sup>6</sup>

Discrimination can diminish a person's self-worth and self-esteem, impact a person's confidence and their motivation to stay in work:

My discrimination experience was when I was unemployed. The disappointment and frustration experienced after so many applications drove me to abandon any prospect of gaining useful employment.<sup>7</sup>

Sixty-eight per cent of submissions received by the Inquiry reported that discrimination had an impact on their workforce participation. The Inquiry heard from individuals who left their job or withdrew from the workforce entirely, experienced financial stress and experienced deterioration in their health as a result of discrimination.

Similarly the national prevalence survey found that age discrimination in the workplace had a negative effect on the majority (80%) of those who had experienced discrimination. The most commonly reported impact of age discrimination was on self-esteem, mental health or stress (60%). A negative impact on family, career or finances was the second most common effect of discrimination (54%). One-third of people who had been discriminated against gave up looking for work as a result.

### (b) Shut-out of recruitment

I've never felt my age until I had to look for work.<sup>8</sup>

A recurring theme heard by the Inquiry was that older people feel shut-out of recruitment. Older people told the Inquiry of having unsuccessfully applied for a number of jobs and that several factors led them to conclude that their age was a factor in the recruitment decision.

This sense of being shut-out of recruitment, was also reflected in submissions to the Inquiry from organisations. For example the Victorian Equal Opportunity and Human submitted that being denied a position is a common experience of age discrimination. Common reasons that employers provide are that the older applicant is over-qualified, lacks up-to-date skills, will not fit into the team or that they hold concerns about older candidates' health and fitness.<sup>9</sup>

The majority of individuals indicated that this sort of age discrimination is experienced in a subtle and cumulative way, rather than being clear or overt — although there were some instances of this too.

Age discrimination is strongly felt by older workers but is frequently hidden by euphemism, unwritten rules and deliberate omissions.<sup>10</sup>

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In particular individual experiences consistently pointed to the volume of rejections, the generic or unconvincing feedback provided for their rejection, evidence of their age being requested, and the general lack of interest from interview panels once the applicant's age was apparent.

It's as if I've got a use by date on my forehead.<sup>11</sup>

Ageism is rife in recruitment. I am 45 years old and have now been unemployed for 2 years, 7 months...I often get feedback after interviews that I am "too experienced", which is surely code for ageism.<sup>12</sup>

A number of individuals spoke of having applied for many jobs<sup>13</sup> which included applications for jobs that individuals felt they were well-qualified for and, in some circumstances,<sup>14</sup> internal positions that they had been fulfilling at the time in a temporary capacity, such as in the case study below. The Inquiry was consistently told that applicants felt that this sustained lack of success was related to their age.

### **Case study 2.1**

Elizabeth had a very positive, longstanding association with her employer. Elizabeth had been filling a replacement contract for this employer when the incumbent decided to retire and so the position was advertised.

Elizabeth presumed she was a strong applicant given her experience and existing relationships with staff. However, when she asked about the interviews she was told she would not get an interview as the organisation had a policy that when someone retires they want to replace them with someone who is younger. Elizabeth was told that they were 'looking for a new generation'.<sup>15</sup>

Many people inferred age discrimination from the generic,<sup>16</sup> unfounded or unconvincing feedback provided for their lack of success,<sup>17 18</sup> for example:

After being retrenched in my late 50s I have applied for countless jobs for which I am fully qualified and fully experienced but either get no response or a meaningless rejection.<sup>19</sup>

The huge number of applications one has to make, and the general response of over qualified/over experienced (code for old) has a very dispiriting impact.<sup>20</sup>

Others pointed to having provided evidence of their age such as a date of birth or year of qualification, in their application and from this presumed that their age had been a barrier. One submission described an older person successfully progressing to an interview after having been rejected for similar jobs by the same organisation. The difference was that in the successful application she did not disclose her age:

I live in a very small inland rural catchment area...and everyone here knows you, how old your children are and how old you are. After unsuccessfully applying for more than 50 positions in the last 18 months, I submitted an application for a position I am more than qualified to fill but under a fake name. When I was contacted to attend an interview I declined citing personal reasons...Ironically I had recently submitted several applications to this organisation for similar jobs and not been shortlisted.<sup>21</sup>

Some individuals also told the Inquiry that they had been explicitly told by recruitment agents to remove information, including a full history of their experience which may expose them to age-related recruitment bias,<sup>22</sup> for example:

I went into one of the employment agencies, and I was talking to the gentleman who was looking after my case, and I said, 'Look, I can't believe I can't even get an interview for any of these jobs'. And he said, 'Well, I'll tell you frankly, right now... You need to take your age off your resume'. He said, in his words: 'Your application is being binned by HR as soon as they see your age'.<sup>23</sup>

The Inquiry was told that another factor that contributes to this sense of bias is the language and selection criteria used in job advertisements. Many older people said that language such as 'energetic', 'fresh' and 'innovative' are euphemisms for young,<sup>24</sup> while others raised selection criteria, which reinforced the sense that the employer was not seeking an older person, for example:

One of the criteria for selection in this [state] public service is potential for development. An older person who may be transitioning to retirement and wants to scale back their working hours will not be assessed as highly on a merit scale as someone who is saying they want to develop. So they won't meet the criterion.<sup>25</sup>

The rejection email I got from the HR Manager [said] "I have now decided to make the role full time and targeting an up and comer for this role."<sup>26</sup>

The Inquiry received a submission from an individual who had previously recruited staff noting that, as a recruiter, he had been reluctant to employ an older person. Reflecting on this, he assumes that he is now coming up against this same bias, this time as an older job seeker himself:

My usual instinct was to find reasons to not employ [an older] person; I know that my colleagues tended to do the same. This reluctance to employ someone older seemed quite normal... It went without saying that, during recruitment, those who were more senior and experienced naturally chose applicants who were younger and less experienced. It would have seemed unusual, if not foolish, to hire someone much older.<sup>27</sup>

The Inquiry also heard from people who were repeatedly rejected for roles without any substantial feedback, along with being met by a lack of interest or disappointment from the interview panel, for example:

I feel that I am qualified for the jobs I apply for as I meet the selection criteria, but once I have an interview, I never hear back from the employer again. Given the fact that I have all the skills and experience required for the role, I am currently studying which demonstrates my ability to be trained, I have no other choice but to believe that I don't get the jobs because of my age.<sup>28</sup>

I have been for numerous interviews specifically for jobs that I know I am qualified for. I progress to the interview stage and then nothing... I progress well during phone interviews and employers show excitement to interview me face to face. I go for the interview, do well, but don't get [the job].<sup>29</sup>

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There was a consistent feeling of a subtle, yet distinct lack of interest and general disappointment when the older person appeared for an interview. Some individuals read this from the expressions and body language of the interview panel<sup>30 31</sup> while others identified a lack of relevant questioning:

Employers look at my grey hair and I am told I don't fit their client or customer base.<sup>32</sup>

Whilst engaging in a phone conversation prior to employment interview, my experience was highlighted as a positive by the potential employer(s). However, on face to face interview it became obvious that my age was a barrier to further consideration for the roles.<sup>33</sup>

In its submission Victorian Legal Aid indicated that bias in recruitment can be reflected in the interview questions, stating:

Our older clients report that employers often express concerns in job interviews about issues related to their age such as their ability to fit into younger teams, their expected retirement age, and even express concern about the fact they are entitled to a full adult wage.<sup>34</sup>

Some individuals relayed the generic reasons which were provided for their lack of success.<sup>35</sup> This contributed to their feeling of having been subject to age discrimination, for example:

In the 10 years after turning 49 I applied for more than 300 positions. Of those I received only 2 interviews. At those interviews I was told each time I was "overqualified" for the position.<sup>36</sup>

[A]fter receiving the typical bland "you are not what our client is looking for" or "you are too qualified", I eventually gave up asking. Most of the time these responses come in the form of an email usually which do not get monitored and you are told not to reply.<sup>37</sup>

There were also instances reported to the Inquiry of individuals being explicitly told, albeit off-the-record, that their age was a factor contributing to the rejection.

Only once did I strike someone in HR who told me the truth...During my interview, she informed me frankly that most employers weren't interested in people my age or older...Thereafter, I no longer wasted my time seeking feedback about my applications....And I lost hope of ever finding paid work again.<sup>38</sup>

### **Case study 2.2**

At age 59, Sandra had worked as a schoolteacher continuously for 38 years, with the last 20 of those years as a temporary employee. When a full-time position was advertised Sandra asked her school principal whether he thought she would have a good chance of securing permanent full-time employment. He replied that Sandra's chances would be virtually impossible due to her age.<sup>39</sup>

## Recruitment agents

A recurring theme of the Inquiry was older people experiencing age discrimination by recruitment agents, for example:

I am currently employed part time, but with my extensive skills and experience, feel that I should be able to find better employment...I get interviews with agencies who promise they can find me a better role, but when they see me and feel that I look older than they expected, advise they don't have anything.<sup>40</sup>

A number of submissions reiterated this perception and suggested that some recruitment agencies do not accept older clients. Many older people are concerned that recruitment agencies overlook their applications and do not put them forward to employers.<sup>41</sup>

I was recently sent for a job interview [related to aged care] — I wondered if that was a subtle message — it is the only job that an agency has sent me to...Generally I am applying directly to the companies or government organisations, not through agencies as I know of many people who are just not being put forward at all.<sup>42</sup>

One individual in his submission described having success after bypassing the recruitment agency he was registered with:

I was registered as seeking work with a search firm, but the firm did not submit my resume to the department...I applied through the NSW Government jobs website and was judged as suitable for the position.<sup>43</sup>

## (c) Discrimination in the workplace

Individuals reported to the Inquiry having experienced age discrimination in the workplace through isolation and bullying, inability to access flexible work arrangements, reduced career progression and a sense of being targeted for redundancies during organisational restructures.

### (i) Isolation and bullying in the workplace

Younger people do not see you as a colleague.<sup>44</sup>

The Inquiry heard that older people experienced feelings of isolation or that they were being bullied by colleagues and managers in the workplace because of their age.<sup>45</sup> Some individuals reported that feeling segregated from colleagues and managers had a detrimental impact on their ability to complete their job, for example:

The company I work for had just fired a lot of their older loyal employees and I was kept on to train new [employees]...After a couple of weeks they gave me the nickname of "old lady" and when I repeatedly asked them to call me by my name, they thought it was a big joke. At the end of the training...I was asked to give a written assessment of all the new employees and when I did this honestly and fairly...the boss said she had to answer to her boss and he only wanted young employees now so my assessments should be "modified". I refused to do this and my boss then said that she'd been told I was going to be "made redundant" in a few weeks so if I wanted a good redundancy package I should just do as I was asked.<sup>46</sup>

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Several older people experienced sustained, systematic bullying and harassment, with the most common form of bullying involving social exclusion.<sup>47</sup> Individuals told the Inquiry of experiences of constant belittling, excessive criticism and also some instances of derogatory language and name-calling.<sup>48 49</sup>

### **Case study 2.3**

Mary was 53 years of age and worked for a real estate company as a property manager. Mary felt that her employer preferred recruiting younger management staff and that her age was the topic of jokes and innuendo. When she made a complaint about this bullying, her employer argued that the comments about her age were jocular as opposed to ridicule or insults. Mary followed this matter through to conciliation where it was resolved via negotiation for \$15,000 compensation.<sup>50</sup>

#### *(ii) Flexible work arrangements*

Flexible work arrangements are of great significance to all workers and can increase job satisfaction and productivity. Such work arrangements can be of particular importance to older workers with chronic health conditions and/or caring responsibilities.

Despite this, the Inquiry heard from individuals who had experienced difficulties in accessing flexible working arrangements or as a result of requesting such an arrangement.<sup>51</sup> Some people told the Inquiry that their manager had an attitude of ‘full-time or not at all’, while others had experienced pressure to retire.<sup>52</sup>

One submission noted that older people can be refused flexible work arrangements because of the presumption that flexibility is available to those with young children, and that it is not so easily given to those who are caring for older parents, grandchildren or chronically ill partners.<sup>53</sup>

Survey results provided to the Inquiry by the New South Wales Public Service Association (NSW PSA) convey a perception that a denial of flexible work can be a barrier to workforce participation, with a quarter of respondents reporting that they were aware of an older worker, person with a disability or carer who was forced out of a job because they could not access flexible working arrangements.<sup>54</sup>

Further, NSW PSA reported individuals having arrangements approved only for short durations, having to endure lengthy negotiations and provide copious documentation to support requests, while there was usually no corresponding requirement for employers to detail the reasons for their decision. In addition many respondents spoke of arbitrary refusals, of being victimised after requesting flexible working arrangements, and of the process itself (especially with work from home agreements) being so complex and detailed that it was not worth the effort.<sup>55</sup>

#### *(iii) Discrimination or barriers experienced by carers*

Carers NSW defines a carer as anyone who provides unpaid care and support to their family member or friend who has a disability, mental illness, drug and/or alcohol dependency, chronic condition, terminal illness or who is frail. Approximately 2.86 million Australians — more than one in every eight people — is a carer.<sup>56</sup> Most carers are of working age, and most are women.<sup>57</sup>

In its submission to the Inquiry Carers NSW wrote that overcoming the barriers to work for older Australians and Australians with disability requires an understanding of care and must address the issues that face those who have a care role in their personal lives. Many older Australians, although 'retired' have in fact exited the workforce in order to provide care to ageing parents, or to spouses with illness or disability. Many older Australians who would like to work, have spent years excluded from the labour market because of their caring role.<sup>58</sup>

One in three carers have a reported disability of their own, and around one in five are aged 65 years and over.<sup>59</sup> Carers are therefore highly likely to personally experience issues common to older people and people with disability in relation to work.

This is the first time in history where there are routinely two older generations within one family. That is, baby boomers caring for their advanced aged parents, sometimes whilst also providing care to children or grandchildren. Carers NSW believes that employment practices that do not accommodate these needs are discriminatory in practice against older Australians.<sup>60</sup>

The Inquiry heard of many experiences where people felt they had been discriminated against or had received unfair treatment from an employer due to their responsibility as a carer. A common theme was the denial of flexible working arrangements to accommodate caring responsibilities.

In their submission to the Inquiry, the NSW Public Service Association reported:

- Around 11% of respondents had experienced discrimination in employment because they were a carer (for an older person or a person with a disability).
- Over 88% of respondents stated that they believed older Australians, Australians with disability and those who care for an older person or a person with disability experience barriers when they look for work, or in employment.
- Many respondents lamented the lack of ability to work from home, despite advances in technology that enable remote working. Many indicated this would make juggling work and carer commitments easier.
- Some respondents also pointed out that the timing of 'career breaks' from the paid labour force to meet carer commitments may occur at critical points which would normally be the 'prime' of a person's career.
- A number of respondents use their leave, including sick leave and long service leave, to cope with their disability or meet carer obligations and remain in the workforce because they had been led to believe that workplace adjustment (including flexible working agreements) was not available. Alternatively, they believed their application for workplace adjustment would not be approved, or they feared even making such a request.<sup>61</sup>

Some respondents indicated that accessing Family and Community Service Leave to care for family members was also often difficult. Individuals reported being 'cross-examined' by their managers about why they needed the leave. Some respondents expressed concerns over requests by managers and employers, with some people considering this to be a breach of privacy.<sup>62</sup>

There are strong cultural expectations for some people from CALD backgrounds — particularly women — to care for family members, as 'in many communities, formal aged care services, particularly nursing homes, are considered taboo and a strong source of community shame.'<sup>63</sup> This can create particular barriers to employment and retention for older people of CALD backgrounds.

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Nearly half of all carers are not in the labour force. Carers are most likely to be aged 55 to 64 years (21% of carers).<sup>64</sup> Carers who do work are more likely to work part-time than non-carers. In many cases this is a choice. However, carers' reduced participation in the workforce also suggests a system that does not always accommodate their needs.

Research indicates that many carers cease employment or reduce their hours to care, and that caring has adverse impacts on career progression. Carers often choose a role below their skill level or refuse a job offer or promotion to accommodate their caring responsibilities.<sup>65</sup> Caring can therefore also reduce carers' income-earning potential and their capacity to accumulate superannuation and other assets.

Income and assets, however, are not the only outcome of paid employment. Work also provides a sense of purpose and social engagement and can improve personal wellbeing. For example, the Carers NSW Survey 2014 found that:

- Carers who stopped working because of their caring responsibilities had reduced wellbeing in comparison to those who were still working.
- When returning to the workforce full time, after time away for carer commitments, older female respondents indicated it was difficult to compete due to their 'thinner resumes' or qualifications that are seen as outdated.
- The issue of sick leave and carers leave disproportionately impacts women. Many respondents indicated concerns that sick leave, carers leave, 'unscheduled absences' and overall attendance records were factored into promotional decisions.<sup>66</sup>

#### **Case study 2.4**

Assaf was an older man from a CALD background who requested a flexible work arrangement to care for his adult son who has a mental illness. His manager refused a transfer to an office based in a location close to his home, which would have enabled him to continue working while caring for his son. The refusal occurred despite there being suitable vacancies in that office and came after a period of him being treated rudely and unfairly and being pressured into leaving his job by his manager. He felt his manager's behaviour was related to both his age and because of his cultural background.<sup>67</sup>

#### *(iv) Career progression and being pigeon-holed*

You're old, why don't you take long service leave and retire?<sup>68</sup>

Older people experience age discrimination in the form of their careers stalling and becoming stuck or pigeon-holed in their job. Some individuals relayed to the Inquiry a feeling that management no longer encouraged them to further their careers, and of being overlooked for professional development and promotional opportunities, for example:

I think as you get older they stop asking you to do things, they stop asking you to learn anything new. It's all of that...in some cases I believe there's an assumption that you're just waiting for your retirement.<sup>69</sup>

The Inquiry heard from people who described a feeling of becoming invisible as they aged and that colleagues seemed uninterested in their opinions or advice and did not value their experience.<sup>70</sup> Some contributors to the Inquiry felt their age was a consideration when employers or managers were making decisions about training or career progression.<sup>71</sup>

Some of my colleagues used to call me the invisible woman...I was overlooked when they were looking for someone to go on a committee. Often I would be the obvious choice, but I was overlooked.<sup>72</sup>

Experiences relayed to the Inquiry suggest that some managers are reluctant to provide training or assume that older people may leave or retire soon, or are “too old to learn new things”.<sup>73</sup> A submission added that many older people felt they were being overlooked for training opportunities on the assumption that, due to their age, they would not be in the workplace long enough for the employer to recoup the benefits of any training.<sup>74</sup>

The qualitative study of age discrimination in the workplace (see 2.1 (b)) also indicated that this sense of being pigeon-holed was related to managers and colleagues holding age-related stereotypes.<sup>75</sup>

*(v) Being targeted during organisational restructure*

The Inquiry was told many times that older people were more likely to be made redundant during organisational restructures.<sup>76</sup> Many individuals told the Inquiry that they believed their age was a contributing factor to being made redundant, for example:

The newly appointed boss told us they were going to restructure and my job and that of others my age would no longer exist. I asked if we could retrain, to get skills needed for the new roles and he said it was not possible because...‘we know that old people can’t learn anything new’.<sup>77</sup>

The department is being restructured and I anticipate that I will be offered first a voluntary and then involuntary redundancy package...I sense that regardless of my personal situation, my position will be made redundant in order to dispose of an older worker on a higher than average salary.<sup>78</sup>

Some submissions from organisations also reiterated this sense of older people being targeted for redundancy during organisational restructures,<sup>79</sup> for example:

There is a wealth of anecdotal evidence to support the contention that involuntary redundancy is an effective tool for exercising age discrimination in the workplace...We believe [during organisational restructure] that older employees are selected [for redundancy] according to the various prevailing stereotypes (e.g. that they are less productive, forgetful, cranky, more likely to take leave).<sup>80</sup>

Many respondents noted that, in their observation, a disproportionate number of people let go in recent restructures...were employees who were older, or who had carer commitments.<sup>81</sup>

Many have reached a level of seniority and salary after years in the workforce that make them a first line target for cost saving and redundancy. Others have reported an assumption made by employers that they will want to retire if they are in their 50s and a further assumption that superannuation and pensions will provide an adequate safety net.<sup>82</sup>

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## (d) Experiences of intersectional discrimination

[There is a] lack of sensitive and responsive services that recognise a person may have multiple barriers that each need to be addressed effectively.<sup>83</sup>

Discrimination is not always experienced on the basis of one attribute such as age, disability, gender or race. Sometimes it is the intersection of attributes that can lead to the experience of discrimination.

The Inquiry heard from a number of older Australians who had experienced discrimination on the basis of a combination of attributes, including age and race, age and gender or age and sexuality.

Intersectional discrimination can be hard to identify. For this reason, we have chosen to highlight these experiences and case studies separately in this section of the report.

### (i) Women

The Australian Human Rights Commission's 2015 *National prevalence survey of age discrimination in the workplace* found that women and men had different experiences of age discrimination in the workforce.

- Women were more likely than men to be perceived as having outdated skills, being slow to learn new things, or as someone who would deliver an unsatisfactory job (51% vs 38% respectively).<sup>84</sup>
- Women were more likely than men to report that the most recent episode of discrimination they had experienced affected their self-esteem or mental health or caused them stress (68% vs 52% respectively).<sup>85</sup>

A submission to the Inquiry from the National Foundation for Australian Women notes that across all age groups:<sup>86</sup>

- women have lower labour force participation rates than men<sup>87</sup>
- women are less likely to be in paid employment than men<sup>88</sup>
- women have lower average weekly earnings than Australian men.<sup>89</sup>

There is also a significant gender gap in terms of retirement incomes. A 2015 report of the Association of Superannuation Funds of Australia (ASFA) states that 2011/12 data showed average superannuation balances at the time of retirement to be approximately \$197,000 for men and \$105,000 for women.<sup>90</sup> This is a gap of around 53.2%. The report notes that while balances would have increased since then, they would only be around \$260,000 for males and \$160,000 for females.<sup>91</sup> This is a gap of around 61.5%.

The Inquiry also heard from individuals and organisations about the specific experiences of older women in employment.

Emma is a mature-aged worker who was sexually harassed by a colleague. The sexual harassment included questions about her sex life as an older woman and during menopause versus her sex life prior to menopause.<sup>92</sup>

Older women...seem to become invisible.<sup>93</sup>

I can only speak as an older woman but I am often aware that I don't "look" the senior executive type but rather people see me as an "old lady" or a grandmother type.<sup>94</sup>

A number of submissions noted that for older women, their appearance as they age can be a particular source of discrimination.<sup>95</sup> One submission notes that ‘whereas early signs of ageing such as grey hair and wrinkles can be read as marks of maturity and authority on men’ this is not the case for women.<sup>96</sup>

This is known as *gendered ageism*, a phenomenon that some have attributed to the heightened value that bodily appearance carries as a form of capital for women in the labour market.<sup>97</sup>

Over two thirds (70%) of carers are women. This has an impact on their workforce participation.<sup>98</sup>

*(ii) Aboriginal and Torres Strait Islander people*

The labour force participation rates of older Aboriginal and Torres Strait Islander people are lower than for older non-Indigenous Australians. In 2012, the labour force participation rate for persons aged 45–54 was 62% for Aboriginal and Torres Strait Islander peoples compared with 86% for non-Indigenous Australians; and 43% for Aboriginal and Torres Strait Islander people compared with 67% of non-Indigenous Australians in the 55–65 age bracket.<sup>99</sup>

The Inquiry heard from older Aboriginal and Torres Strait Islander people about their experiences of employment discrimination on the grounds of both age and race.

If you’re a 40 year old Aboriginal man or woman, if you still are not employed then the chances of getting future employment is very slim.<sup>100</sup>

The main problem is racial prejudice. If it’s affecting young, vibrant Aboriginal people, then imagine the impact on older people or people with disability...you can’t separate the racism.<sup>101</sup>

For employers it’s all about the bottom line, efficiency and productivity — older Aboriginal people are capable of doing the work but there is a lack of flexibility from employers... Aboriginal people are culturally bound to attend family funerals and fulfill their family responsibilities but employers don’t accommodate these responsibilities.<sup>102</sup>

The Inquiry heard that older Aboriginal and Torres Strait Islander people may not have their experience and skills recognised or recompensed. Some Aboriginal and Torres Strait Islander people told the Inquiry that their particular skills can be undervalued and that they are expected to offer those skills and services for free.<sup>103</sup> For example, Aboriginal and Torres Strait Islander elders may be expected to share their knowledge of culture and country and perform welcomes to country on an unpaid basis.<sup>104</sup>

People told the Inquiry that connection to community and cultural competence are highly valued skills which greatly enhance service delivery for Aboriginal and Torres Strait Islander people. This has been demonstrated in relation to employment services delivery:

Service providers who create strong links with local Indigenous organisations, communities and employers find it easier to engage and assist Indigenous job seekers. In a 2011 survey of 149 Job Services Australia [employment service providers], over four in five of the 92 respondents were of the view that employing Indigenous staff in service delivery roles improved their linkages with the local Indigenous community (80.5%) and improved Indigenous job seekers’ view of their organisation (84.8%).<sup>105</sup>

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The Inquiry also heard that literacy can be a problem for some Aboriginal and Torres Strait Islander people in getting work.<sup>106</sup> Another concern was the lack of information available in Aboriginal languages about government services available to assist older people to find employment, such as employment services.<sup>107</sup>

*(iii) People from CALD backgrounds*

Almost 20%, or 1.34 million, of all Australians aged 50 years and over were born in non-English speaking countries.<sup>108</sup>

As of 30 September 2015, there were 142,989 job seekers from culturally and linguistically diverse (CALD) backgrounds registered with *jobactive* (the Australian Government employment service). Of these, 47,765 were aged over 50 years, which is approximately 33% of the CALD job seeker cohort.<sup>109</sup>

The Inquiry heard examples of older people whose CALD background as well as their age were relevant to the negative treatment they received, for example:

The combination of a 'strange' surname, heavy accent, qualifications that are not recognised in Australia and the fact that they are nearing conventional retirement age effectively place many older CALD people at the back of the queue in trying to access the job market in their chosen field.<sup>110</sup>

One woman told the Inquiry she was made fun of for her accent, the way she dressed and that assumptions were made about her capabilities.<sup>111</sup>

According to a report prepared by the Australian Centre for Financial Studies for the Australian Institute of Superannuation Trustees, *Involuntary Retirement: Characteristics and Implications*, English language proficiency is a telling determinant of early retirement in Australia:

50% of Australian males with a strong command of English will be working until at least 60, compared with just over a quarter of Australian males with poor English.<sup>112</sup>

Less than 10% of women with poor English work beyond the age of 60.<sup>113</sup>

**Case study 2.5<sup>114</sup>**

An older woman in Perth from a CALD background was told she had 'communication issues' which was why she was not successful in getting a job in her field, despite her qualifications, experience and excellent recommendations. She had an accent and had no difficulties with English. The same woman could not access any government support to assist her with gaining employment because she was on a permanent visa and had worked in Australia for less than 10 years.

Older people from CALD backgrounds can be more vulnerable to workplace discrimination because they may not be aware of their rights under Australian laws:

Many older CALD workers have been shaped by workplace cultures where complaining about discrimination or bullying, or seeking compensation for an injury is not a cultural norm or would put them at risk of losing their jobs... For this reason, even when they are aware of Australian workplace laws many older CALD workers are reluctant to assert their right to such services for fear that they will lose their job or face further discrimination. Many people prefer not to complain about poor treatment at work for fear of losing a job that was difficult to come by in the first place and because they are not fully informed about the complaints procedures and remedies, and support mechanisms available to them.<sup>115</sup>

The need for information about government services to be provided in community languages was also raised with the Inquiry.<sup>116</sup>

*(iv) Lesbian, gay, bisexual, transgender and intersex people*

The Inquiry heard that older lesbian, gay, bisexual, transgender and intersex (LGBTI) people may face employment discrimination. In particular, older gay men may face discrimination on the basis of criminal records for consensual homosexual activity between adult males.<sup>117</sup>

Homosexual acts were decriminalised in all Australian jurisdictions between 1975 (in South Australia) and 1997 (in Tasmania). It appears that the laws against homosexual activity were still being enforced in most Australian jurisdictions until the mid-1970s and, in Queensland, the late 1980s.<sup>118</sup>

In addition to the requirement to disclose criminal records on many job application forms, in some circumstances, these convictions have resulted in registration on a sex offenders register and consequent inability to work in professions, such as teaching, which require a criminal record check or working with children check. The Inquiry heard that this can have significant impacts on the ability of older Australians with this conviction to obtain employment.<sup>119</sup>

The Inquiry is aware that in 2012, the Australian Senate passed a resolution that called 'on all Australian states and territories to enact legislation that expressly purges convictions imposed on people prior to the decriminalisation of homosexual conduct'<sup>120</sup> however, this is not yet the case in all jurisdictions.<sup>121 122</sup>

*(v) People in regional and remote areas*

The Inquiry heard from older people in regional and remote areas about some of the barriers they face in gaining employment. One concern raised was that workers in regional and remote locations have fewer options in terms of employment:

Everyone is scared to go against the mining company because they are the heart of this town. I was very loyal to the company and stayed in [here]. [The way they treated me] was an insult.<sup>123</sup>

The Inquiry also heard that employers in some regional locations do not need to provide flexibility as they have a 'large pool of potential workers so when they face issues with older people or people with disability they just let people go'.<sup>124</sup> A related issue raised with the Inquiry was the oversupply of workers in some areas.<sup>125</sup>

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## 2.3 Employers and business

This section outlines the key issues raised by employers regarding older workers including attitudinal, structural, legal and policy barriers.

### (a) Knowledge and skills

The Inquiry heard that lack of understanding of the value of older employees and of experience working with older people can act as a barrier to recruitment and retention. The benefits of having older experienced people as part of the workforce are not always widely understood. This barrier is further compounded when human resource (HR) professionals and line managers lack knowledge of supports that are available and where to go for assistance in order to educate their workforce and increase awareness.

The biggest gap for us [a large employer in retail industry] is the education component...of the benefits of older workers and what they can bring.<sup>126</sup>

Taking on an older worker is seen as a social service rather than acknowledgement of the value of an older worker.<sup>127</sup>

On several occasions, employers told the Inquiry they believed that some of their older and long-serving employees were ‘sticking around’ for a redundancy rather than transitioning to retirement. Although employers were attuned to this, managers and employees lacked the confidence and skills to have conversations about transition to retirement options and succession planning.

[We] have one fellow who is 73...and is transitioning. This relies on a very open culture of people being able to talk to you that far out of their retirement. I think for some people there is a psychological barrier to having that conversation. In a job market which isn’t going well... people may be more reticent to be open about that type of discussions because they might be made redundant.<sup>128</sup>

Managers and decision-makers require skills and training to work with a diverse workforce, including older people.<sup>129</sup> Without these skills employers told the Inquiry that they may avoid having conversations about flexible work, performance issues, and retirement. The Inquiry heard that employers were keen to get more assistance and training to address this barrier.

There should be help for employers to help discuss this [performance issues], transition to part time or to retirement. The easiest thing is to terminate, pay an unfair dismissal because they don’t have [the] training [and are] not confident to have those discussions.<sup>130</sup>

When you have someone who might be 70 or in that age bracket...not performing its actually really difficult for management to manage that. In just about every experience I have had the managers are very reluctant to performance manage an older person in that situation because of the dignity issues. They don’t want to end up terminating someone at the end of their career and have them end their working life on that note.<sup>131</sup>

## **(b) Workplace culture**

Workplace culture can contribute to employment discrimination against older people. The Inquiry heard that some employers were aware that managers, HR professionals, and other employees held negative assumptions and attitudes towards older workers.

Research indicates that stereotypes of older people in the workplace includes assumptions that older employees:

- have more difficulty adapting to change
- will not be in a role as long as younger employees
- have difficulty learning new knowledge and skills
- do not have the same technical skills as younger employees.<sup>132</sup>

The Inquiry heard that these stereotypes and negative assumptions persist in the workplace and can be a significant barrier to recruitment and retention.

Older workers are seen as unionised, inflexible, and there are biases around that. They think that they won't adapt to changes.<sup>133</sup>

There is still a mentality [among] some employers that the retirement age is still 60 or 65.<sup>134</sup>

[Industry] is focused on innovation in order to stay relevant to clients. [This is not] an attribute that is typically associated with older/disabled candidates.<sup>135</sup>

Such stereotypes are also evident with regards to career progression. The Commission's recent qualitative research on age discrimination found that:

Across workers and managers it was clear an overriding assumption is that one's career occurs in a linear and predictable fashion. Moreover, there is a perception that as a worker journeys through the course of their working life there is an expectation and desire for continual progress and promotion. This post-industrial notion of the workplace engagement follows a standard pathway that starts with accumulation of experience, followed by a period of consolidation and by the time the individual reaches 50 years old he or she begins to transition out of work. This is partially driven by the assumption that by this age, most workers will have reduced financial needs. However, in today's community these assumptions are not necessarily valid for many workers.<sup>136</sup>

The Inquiry was told that older employees showing interest in a lateral transfer or roles with less responsibilities can be viewed negatively. Older people can be overlooked for roles in which they appear to be over qualified, or if there is an assumption that an older person will be retiring soon and may not be 'worth' the investment.

A barrier in recruitment is the perception of a linear career.<sup>137</sup>

Recruitment process [and] training is expensive. If the perception is that you will only have that person for three or four years, a 62 year old person might be leaving you at 65 or 66 — then the value of the investment you have made on that person is much less likely to come back, that might be a deciding factor.<sup>138</sup>

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Another prevailing stereotype that can negatively affect workplace cultures and act as a barrier to diverse and inclusive workplaces and employment of older people is the 'ideal worker model'. This has been described as employees who are available at any time and have unbroken career records, typically, a male aged 18–50 years old<sup>139</sup> with no caring responsibilities. Employers told the Inquiry that such perceptions can be held by hiring teams and managers, as well as amongst workers.

We have a 24 hour, 7 days a week service. This is the mentality. If you can't work these hours, if you are not available or need flexibility for any reason, it is a problem. There is a perception that a white Anglo male is the best employee. We need to start thinking outside of this but it is hard to start and culture is slow to change.<sup>140</sup>

In my experience, staff are very worried about being present and seen in the office. People still often work towards time patterns not jobs.<sup>141</sup>

### **(c) Recruitment**

The Inquiry found that very few organisations have recruitment and retention strategies specific to older workers. Given Australia's ageing population and the trend towards longer working lives, this lack of focus must be addressed to ensure that employers benefit from the skills and experience that older people bring to the workplace.

The Recruitment & Consulting Services Association (RCSA) told the Inquiry that it can sometimes be challenging for recruiters to identify and source older candidates. It was reported that this could partly be due to changes in recruitment methods, such as e-recruitment through particular social media sites, and older people lacking awareness and skills that may give them greater visibility within this new 'hidden' job market.<sup>142</sup>

The recruitment industry is no longer just business development and writing job advertisements, but also involves a heavy use of social media and other software technologies.<sup>143</sup>

Often, older job seekers haven't applied for a job in the last five or so years. As a result mature-age workers are unaware of new recruitment strategies, such as e-recruitment and this excludes them from the job search process even before the recruitment phase.<sup>144</sup>

Older workers should be assisted in the development of basic IT skills to make themselves visible in the employment market.<sup>145</sup>

They [older people] don't know how to get the job with these technologies.<sup>146</sup>

Some recruiters also said that while there are employers who are receptive to hiring older workers, there were certain industries, sectors and clients who were drawn to younger workers and noted it could be difficult to convince an employer to consider older workers if the employer already had a pre-existing idea of the ideal employee.<sup>147</sup>

Ageism is pretty strong, particularly in professional services.<sup>148</sup>

Industries in creative and technology sectors tend to give preference to younger workers in order to align their workforce with their target market and audience.<sup>149</sup>

Aged care work is very physically demanding. It is very difficult to employ people over the age of 55 in these roles.<sup>150</sup>

If we [recruitment company] send them [employers] older workers, we stop doing business with them.<sup>151</sup>

[Recruitment] agents get employers to describe the perfect candidate for the available role and often times words like vibrant, dynamic, innovative, energetic are used and can send a subliminal message that the right candidate for the role, the one that is going to get them their commission, is youthful and often times it is those candidates who are pushed to employers.<sup>152</sup>

I'm in recruitment — [employers] say the person has to fit in with our culture and that can mean anything. You can put [an older candidate] forward but an employer will find every reason not to employ them. People like to work with people who they are comfortable with. Especially in small businesses, the person has to fit in.<sup>153</sup>

Some employers were conscious that the lack of diversity within recruitment teams could be a factor to people 'hiring in their own image'.

There is little diversity in HR teams — they [consist] generally of [people in the] same age bracket [and] little cultural diversity.<sup>154</sup>

HR training is a key issue. Need to see more diversity and education in the HR curriculum.<sup>155</sup>

#### **(d) Flexible work arrangements**

The Inquiry consulted with many employers who understand the benefits of working flexibly to the business and their older workforce. Numerous examples were identified by the Inquiry of leading flexible work policies and practices that assist with attracting and retaining older people.

The Inquiry also heard that not all roles are easily made flexible. For example, flexible work arrangements may be available to people in office-based roles, but may be more limited for employees working in reception roles, in management, or on rostered hours.

Flexibility has been a key challenge for many sectors and industries in employing older people. For example, if a person is at the point of delivery for a service, or working on a factory floor, their tasks cannot be completed from home or outside of core working hours.<sup>156</sup>

Some employees see flexible work as only available to parents and people with caring responsibilities.

Basically we have old fashioned thinking when it comes to flexibility...[Flexible work] is seen as something for mothers and parenting.<sup>157</sup>

People still tend to use flexible working arrangements to care for children rather than as they age.<sup>158</sup>

Some employers also told the Inquiry it can be difficult to talk about flexible work options and solutions without cooperation from employees. Challenges can also arise when there is resentment from other employees that an older person is able to access flexibility.

Employees also need to be flexible, not just employers.<sup>159</sup>

One of the problems we get is the resentment of other workers. When they think people are getting special treatment ... the workers who don't have [caring responsibilities] or disability work the bad shifts and it builds resentment. They carry the burden of the obligation of employers to make those adjustments.<sup>160</sup>

If only the manager is aware, other staff see flexibility for carers as special treatment.<sup>161</sup>

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Access to flexible work arrangements can be seen as a barrier to employment, but it can also be part of the solution. This will be explored in the following chapter.

### **(e) Retention**

The Inquiry heard that in order to maintain a sustainable workforce some employers must balance the need to retain the knowledge, skills and experience of their older workers while trying to attract other groups of people. Some employers told the Inquiry that they are facing the exit of a sizeable part of their workforce in the coming years. Rather than losing these skills and knowledge all at once, there is a growing recognition of the need for workforce and succession planning.

Businesses are understanding they can't just lose [older workers]. They have valuable skills and experience — [they need to] work out how to retain them or how to attract them.<sup>162</sup>

Our burning platform is anyone over 55. If we don't do something to keep these people we are going to be in trouble in the next ten years.<sup>163</sup>

Our industry...is experiencing skills shortages and is facing an ageing workforce, factors which could severely inhibit the industry's ability to meet...demand and the needs of a growing population.<sup>164</sup>

Some employers said training and skills development are important in changing work environments. This can present challenges if older people are not interested in retraining or updating their skills. Industries that are 'just trying to survive' also told the Inquiry that they have limited ability to invest in retraining and upskilling.

Another barrier is the perception that older people cost more. This can also make them a focus during restructures and downsizing.

Older age professionals tend to claim a larger salary than younger staff — understandably based on knowledge and expertise — so they can be targeted in redundancy situations.<sup>165</sup>

Redundancies mainly target the most expensive to retain.<sup>166</sup>

Older employees are often at the forefront during voluntary redundancy decisions.<sup>167</sup>

### **(f) Legal and regulatory barriers**

A recurring theme in discussions with employers and industry groups is that regulation can be burdensome and may discourage organisations from employing older people. In particular, some employers told the Inquiry industrial awards provide limited ability to take into account the individual needs of an older employee.<sup>168</sup>

The awards are set with a generic workforce in mind...The award doesn't allow for putting different things in place.<sup>169</sup>

The current industrial relations environment is not supportive of such flexibility as the current modern awards system and national employment standards do not allow employers and employees to agree upon reduced income as a basis for individual flexibility arrangements.<sup>170</sup>

In the case of [industry] the employment of older people provides greater productivity opportunities for employers, due to their reliability, many of whom come from senior management or professional backgrounds and are choosing a second career at the back end of their working life. The ability of industry to encourage employment of older people will have significant economic costs to the economy which is currently being deprived by the lack of flexibility within the industrial relations environment.<sup>171</sup>

Further, employers commented that restrictions in industrial awards can work against the interests of older people, such as people who may require access to flexible work arrangements or want to access transition to retirement options.

Flexibility is a crucial factor. For an older person on a pension, they might just want to do a few hours a week driving a bus to supplement their income.<sup>172</sup>

Contracting is quite a good way for people to get some economic independence. Can pick and choose who you work for, expand your network. Some people have provided feedback that it is quite empowering to work this way.<sup>173</sup>

Award restrictions like these operate to exclude the employment of older workers who often wish to work reduced hours or slowly transition into retirement as opposed to immediately exiting the workforce.<sup>174</sup>

Unions recommend full-time, long-term appointment and rosters — this doesn't allow for offering part-time [work] in mining. People retire as they don't want to work long shifts as they get older.<sup>175</sup>

Employers commented on challenges arising from frequent changes to relevant laws and policies and difficulties keeping up to date and informed on their obligations to older employees.

Changes to legislation [including the] Fair Work Act make employers wary of employing someone and of the recruitment process. They are very careful.<sup>176</sup>

[Industrial relations] laws have changed so much over the last five years, we would like some stability. In our opinion, the story hasn't been told well enough about the role of older people and people with disability in the workplace to argue for change to IR.<sup>177</sup>

Another issue raised by the Australian Industry Group (Ai Group) relates to transfer of business regulations.<sup>178</sup> These legal obligations can act as a deterrent for the new employer to transfer employees when their workplace instruments are incompatible with the terms and conditions offered by the new employer.<sup>179</sup> Ai Group argues that 'there is a great deal of restructuring going on in industries with a high proportion of mature-aged workers (i.e. automotive industry)', therefore the transfer of business laws can negatively impact many older workers.<sup>180</sup>

Employers told the Inquiry that complex and overlapping regulatory frameworks around anti-discrimination, employment, superannuation, and insurance and workers compensation, can make it difficult for employers to understand and comply with their legal obligations. According to the Housing Industry Association:

One particular area of difficulty is the operation of the exemption from age discrimination under the Age Discrimination Act 2004 (Cth) if a person is unable to carry out the inherent requirements of the job. Whilst guidance material is available, this is an invariably difficult area for business, particularly small business, to manage which is exacerbated by (potentially irreconcilable) obligations under work, health and safety laws.

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HIA submits that more work needs to be done in assessing and evaluating how those other laws [superannuation, retirement ages, licensing or re-qualification requirements, workers compensation schemes, and work health and safety laws] interact with anti-discrimination laws and how the current uncertainties can be resolved in order to facilitate the continued participation of older Australians in the workforce.<sup>181</sup>

Finally, employers told the Inquiry that introducing more regulations and increasing obligations on employers would not effectively address the barriers they face in employment of older people and may provide a disincentive instead.<sup>182 183</sup>

### **(g) Wage subsidies**

There is a lack of knowledge amongst employers, particularly small businesses, about government programs and initiatives that might assist them to employ older workers.

The Inquiry notes the low uptake of the *Restart* wage subsidy program, an Australian Government wage subsidy that encourages businesses to employ mature-age workers,<sup>184</sup> and was told that many individuals and even some *jobactive* and Disability Employment Service providers were unaware of the existence of the program. A further concern relates to the eligibility requirement:

One concern related to the requirement to have been on benefits for six months in order to be eligible.<sup>185</sup>

The Inquiry heard that people who have been unemployed for a significant length of time can face greater difficulty finding subsequent work due to perceptions about skill depreciation,<sup>186</sup> and the ‘scarring’ effect,<sup>187</sup> where employer perceptions are negatively influenced by the job seeker’s time out of the labour force.<sup>188</sup> This can work against the objectives of the *Restart* wage subsidy.

*Restart* was considered by some employers as a good incentive particularly for small business. However, the amount — up to \$10,000 over 12 months — is less significant as an incentive for large businesses. Many employers agreed that subsidies need to be better explained and targeted to the appropriate audiences if they are to make a difference.

Subsidies are not marketed in a good way. If employers had an understanding of what a subsidy was for it would make a difference.<sup>189</sup>

In terms of what is wrong with existing incentives such as *Restart*, there is lack of awareness and wage subsidies are not necessarily going to persuade every employer.<sup>190</sup>

Another concern raised by employers is the limited support provided by the subsidy. Subsidies are designed to provide assistance for a period of time and subsequently ‘sells the candidate’ for only that period of time. It was also suggested that subsidies may have the negative effect of reinforcing negative assumptions about older people.

*Restart* has been rejigged, but funding has not been taken up. This may be because subsidies can send the wrong messages i.e. reinforce negative assumption. Quite often having a subsidy creates a stigma of what is wrong with them [older job seeker].<sup>191</sup>

### **(h) Small business and self-employment**

The Inquiry heard that small businesses face particular challenges in employment of older people. Barriers identified include lack of knowledge and experience in working with older people. Unlike large organisations, small business owners do not have human resource (HR) departments to provide them with guidance and advice on diversity and inclusion and their obligations associated with employment of older people. Therefore, the onus is on the employers to educate themselves and this can take time and attention away from running their business.

The issue for small businesses is that it's too hard so they don't bother.<sup>192</sup>

Smaller organisations may lack knowledge and experience in employing and retaining older people, and may lack awareness of the support and financial resources available in doing so. Small organisations generally do not have a HR department to assist in the development or implementation of recruitment and employment policies and are often dependent on the skills and experience of one person.<sup>193</sup>

SMEs don't have flexibility to give flexible work arrangements, transition to retirement. There's a point where the business says — all these requirements to be flexible are preventing me from just doing my business. They find it is too hard.<sup>194</sup>

Challenges can also arise when small business owners lack confidence and capacity to have conversations with potential and existing older employees. There is a fear of doing or saying the wrong thing which can sometimes lead to inaction or avoidance.

SMEs just don't have the capacity to have those appropriate conversations and they are afraid of doing it because they think they will be liable so they go down a path which goes very badly and the employment relationship falls apart.<sup>195</sup>

In regards to self-employment and entrepreneurship, according to National Seniors Australia:

The proportion of people over 55 who are self-employed has risen dramatically over the past 25 years. The number of people aged over 55 who are self-employed is now on par with the number aged from 35 to 44 and 45 to 54 when it was roughly one-third less some 25 years ago. Self-employment may be a response to difficulty finding employment.<sup>196</sup>

However, older people can be deterred from reaping the social and economic benefits of creating and maintaining their own business because of the complex administrative procedures required to start a business, and lack of financial capacity to support themselves during the initial stages of starting a business.<sup>197</sup>

### **(i) Public services**

The Inquiry took particular interest in the public service because it employs a substantial proportion of the workforce and because governments have direct and legitimate influence over policies and employment practices of their public services.

Collectively, Australian governments are major employers, employing 12.5% of the entire Australian workforce in 2015.<sup>198</sup> Some state public services represent even larger proportions of their state labour forces, peaking at over 15% in the Northern Territory.<sup>199</sup> With over 328,000 employees,<sup>200</sup> the New South Wales public sector is one of the largest single employers in the country.

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Public service can directly influence workforce participation by providing employment opportunities, utilising non-discriminatory recruitment and retention practices, and also by modelling leading practices.

A number of contributors to the Inquiry argued that government should take the lead in the employment and retention of older workers:

The Australian Public Service Commission needs to show leadership by deliberately mandating recruitment policies that do not discriminate against older applicants, and, instead, provide practical incentives for hiring them. At present the Commission has many policies to discourage discrimination against indigenous and disabled Australians, but does not seem to have any policies to stop discrimination against older Australians.<sup>201</sup>

Data regarding the age profile of state and Commonwealth public service workforces indicates that the public service workforce is generally older than the broader workforce (see Appendix 8).

However, the age profile of newly recruited staff is skewed heavily towards younger people (see Appendix 8). This data shows that people aged under 45 years are being recruited at almost five times the rate of those over the age of 45 years. When this is considered in light of data that indicates that slightly less than 50% of the public service workforce and slightly less than 40% of the broader Australian workforce is over 45, it becomes clear that either very few older people are choosing to apply for public service jobs or very few of them are successful when they do apply.

This data suggests that the relatively older profile of the public service compared to the broader workforce is the result of retention rather than recruitment. There are many possible explanations for this data, but the Inquiry has heard much evidence that suggests it is likely that this retention is a result of staff simply 'growing older' in their jobs rather than deliberate strategies to attract and retain older workers.

Age discrimination in the public service has been a common theme throughout the Inquiry's consultations and submissions. The Inquiry heard repeatedly that in the public services:

- there is an aversion to employing and retaining older staff<sup>202</sup>
- older staff are targeted for redundancies during contractionary periods<sup>203</sup>
- older staff are pressured to retire<sup>204</sup>
- older staff are overlooked for development opportunities, training and promotion<sup>205</sup>
- older staff do not feel valued,<sup>206</sup> experience discrimination,<sup>207</sup> and may find themselves in an environment which inhibits them from contributing to their workplaces as fully as they could.

Some submissions to the Inquiry stated that:

Recruitment agencies are quite honest about the veiled attitudes in the Commonwealth Public Service towards interviewing/employing candidates over the age of 45. I was told that these attitudes exist in most departments.<sup>208</sup>

I applied for a graduate position with the public service only to be told that they wanted graduates with less than five years experience only.<sup>209</sup>

I believe that I have been unsuccessful in obtaining interviews for...public service positions due to my age (born 1952). I have applied for numerous positions in fields relevant to my extensive experience in the past five years but have obtained only one interview. All of these applications were for positions at levels lower than my last position as senior manager.<sup>210</sup>

In the public service there is pressure to retire on older people.<sup>211</sup>

Given the larger proportions of older workers in the public service, many public service managers, perhaps understandably, do not perceive that there is a problem. This might help to contextualise the lack of strategies or initiatives found by the Inquiry to ensure that public service recruitment processes and employment practices are inclusive and non-discriminatory towards older workers. There are also few measures in place to maximise the retention of older workers. Those that were identified to the Inquiry were limited to the availability of flexible or transition to retirement arrangements.

- APSC noted that flexibility provisions exist in very large proportion of public service EAs but [are] far less commonly used.<sup>212</sup>
- There are issues getting older people into entry level roles. Because they are seen as a role for a young person, who will move on to a career and move up in public service.<sup>213</sup>

The Inquiry argues that it is important for the public service to recognise that the presence of older workers per se does not necessarily mean that employment and retention practices and workplace cultures are inclusive and non-discriminatory.

## 2.4 Law and government policy

This section outlines the key issues raised with the Inquiry in relation to government programs, policies and federal laws which have an impact on the workforce participation of older Australians.

### (a) Superannuation and retirement intentions

The Inquiry heard that superannuation and savings can have a significant impact on older Australians' decisions about retirement. Adequacy of superannuation funds and retirement incomes was a significant concern for many individuals who made submissions to the Inquiry.

Many older Australians have not had the benefit of compulsory superannuation for the full duration of their careers, as it was not introduced until 1992.<sup>214</sup> Women also typically have lower superannuation balances than men.<sup>215</sup>

AustralianSuper told the Inquiry that:

The accumulation of wealth is an important mechanism triggering exit from the labour force. It is no surprise that those holding generous superannuation coverage have been found to retire earlier.<sup>216</sup>

This is supported by research from 2014–15 which shows that for Australians over 45 who intend to retire at some point; 40% of men and 35% of women identified financial security as the main factor influencing their decision about when to retire.<sup>217</sup>

Age discrimination in employment can also result in older Australians considering retirement or accessing superannuation. Australian Human Rights Commission research also shows that of the 27% of Australians over the age of 50 who have experienced age discrimination in employment, 46% reported that it made them think about retirement or accessing their superannuation fund.<sup>218</sup>

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*(i) Age limits on voluntary superannuation contributions*

Individuals and organisations raised concerns with the Inquiry about age limits on superannuation contributions.<sup>219</sup>

Because I am over 75 years old, I and other employees that are over 75 and still working fulltime are deprived of the benefit of making a 3% salary sacrifice to our superannuation fund which is matched by our employer as workers less than 75 years of age are allowed to do.<sup>220</sup>

The ability to make voluntary super contributions cuts out at 75 and I think that probably needs to be looked at as well.<sup>221</sup>

There are no age limits on mandated employer Superannuation Guarantee (SG) contributions to employee super funds.<sup>222</sup> There are, however, limits on voluntary contributions.<sup>223</sup>

Individuals aged 65 to 74 can only make voluntary superannuation contributions where they have been employed on a part-time basis during the financial year in which the contributions were made. This is known as the 'work test'. Individuals aged over 75 cannot make voluntary superannuation contributions at all.<sup>224</sup>

**(b) Taxation laws**

A number of submissions to the Inquiry raised the issue of taxation of redundancy payments made to people over the age of 65.

Redundancy payments are given preferential tax treatment where they are considered to be genuine redundancy payments.<sup>225</sup> In order for a payment to be considered a genuine redundancy payment, the employee must be dismissed before the earlier of:

- the day they turn 65; or
- if the employee's employment would have terminated when they reached a particular age or completed a particular period of service — the day he or she would reach the age or complete the period of service.<sup>226</sup>

The differential treatment of redundancy payments on the basis of age is not unlawful under the *Age Discrimination Act 2004* (Cth). Under section 40 of the ADA, any act done in direct compliance with Australian taxation law does not constitute unlawful age discrimination.<sup>227</sup>

Organisations and individuals raised concerns with the Inquiry that this element of the taxation law is out of step with policies aimed at encouraging older workers to remain in the workforce for longer:<sup>228</sup>

Professionals Australia considers this [taxation of redundancy payments] to be a substantial financial disincentive for employees to continue to work past the age of 65. Further, it is considered that employees who are aware of the different tax treatment depending on age may [choose] to accept a voluntary redundancy if they are close to age 65 and as a result may be forced into retirement if they are unable to secure future employment.<sup>229</sup>

A submission from the Shop, Distributive and Allied Employees Association discusses their recent involvement in a voluntary redundancy process which occurred in a large national department store:

This process resulted in almost 500 redundancies nationally, many of which were long-term employees over 65 years of age...For these members, who are less likely to have the same job opportunities as younger workers who were made redundant, it is even more important that any payment on redundancy at that age is maximised not reduced by discriminatory taxation laws... This unfair tax treatment creates further disincentive for employees to continue in the workforce particularly if they are offered redundancy before they turn 65.<sup>230</sup>

### **(c) Insurance**

Individuals, organisations and insurers discussed the issue of availability of income protection insurance and Total and Permanent Disability (TPD) insurance as a barrier to the workforce participation of older Australians.

Most income protection insurance products are unavailable to individuals over the age of 65. This Inquiry heard from individuals who had been refused an insurance product on the basis of age:

I was refused Income Maintenance Protection because I am a +65 year old employee. The company is self-insured and the Income Maintenance Policy only applies to employees less than 65 years old. I have appealed their decision and they are now saying they are going to review their policy.<sup>231</sup>

Organisations expressed similar concerns about the lack of coverage for older Australians seeking income protection or TPD insurance:

Private insurance cover providing income protection for workers is an important safeguard against financial hardship in the case of injury or illness. This form of income protection is particularly important for people who are self-employed or run a small business, a situation that is more prevalent among older populations.<sup>232</sup>

Most policies are only available up until the age of 65 years and premiums generally increase with age. This provides a direct disincentive for older workers to continue to participate in the workforce.<sup>233</sup>

The Inquiry was told that some employers encouraging people to go on to TPD so they retire early, rather than encouraging them to stay after injury or return to work and that:

Insurance [is] being used by some employers to encourage people to get out of the workforce.<sup>234</sup>

Two insurers also raised these issues in their submissions to the Inquiry:

AustralianSuper provides income protection insurance cover as part of membership of this fund. AustralianSuper has been able to negotiate to extend income protection cover for members up to age 70 years, where it is usually limited to age 65.

AustralianSuper is concerned that a lack of income protection insurance seriously limits the working life of mature-age workers. Limits on income protection insurance send a message to people in their mid-60s that they are too old to be in the workforce. They also act against policies that are aimed at keeping older people in work.<sup>235</sup>

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There are well documented barriers for mature-aged workers to enter or remain in the workforce. These barriers include the existing cultural mind set to retire at the qualifying age for the Age Pension. Other disincentives include the availability of insurance cover, particularly workers compensation insurance and personal products such as income protection policies.<sup>236</sup>

Some Inquiry participants raised volunteering as a way to maintain connection to the workforce and keep skills current.

While volunteering is not a replacement for those people who still want or need to stay in paid work, it can provide benefits including boosting job and career prospects and maintaining self-confidence.<sup>237</sup>

However, age limits on insurance coverage was raised as an area of concern. It is the responsibility of organisations to provide adequate insurance to volunteers. While the level of coverage differs between providers, companies generally offer protection to volunteers while they provide services on behalf of the policyholder.

While some policies may have age restrictions, many are now moving toward having no general age exclusion, meaning a level of cover is available to people of all ages.

#### **(d) Access to government services**

The Inquiry heard from older Australians, organisations and employers about their experiences accessing government supports available to assist older Australians to find employment.

Individuals and organisations, including employment service providers, raised concerns that older people who are unemployed but are not receiving income support payments ‘fall through the cracks’ because they may not be able to access government-funded services.<sup>238</sup>

How much more am I to contribute and pay for without some form of recognition or assistance as well. Why do we remain off the grid?<sup>239</sup>

A lady lives next door to me who along with her husband worked for many years as farmers. As they had a lot of assets, they were not eligible for support. They needed to be on their last \$4000 before they were able to get any government support.<sup>240</sup>

People expressed specific concerns about the eligibility criteria for the *Restart* wage subsidy. The Inquiry heard that the requirement to have been on income support for at least six months in order to be eligible for *Restart*<sup>241</sup> excludes many older Australians who would benefit from this support because they have been unemployed for less than six months or are ineligible for income support.

As discussed in Section 2.3, many employers also reported to the Inquiry that they were unaware of the availability of the *Restart* wage subsidy.

### (e) Employment services

The Inquiry also heard concerns from individuals and organisations about the assistance that employment services provide to older Australians to find employment. A common theme was that employment service providers do not have sufficient understanding of the challenges faced by older Australians seeking employment or the skills to provide them with effective support:

Unfortunately, mature-age workers are treated much the same as any other jobseeker when accessing assistance from Centrelink and through *jobactive* providers. Assistance is often generic and inappropriate and fails to take into account the specific circumstances of individual jobseekers.<sup>242</sup>

I registered with several employment agencies. Nothing came my way. I went to seek help and advice at Centrelink... Centrelink does not have facilities to help pensioners to find a job and another organisation told me they do not deal with that age group either.<sup>243</sup>

I went along to the employment provider for an interview and was told that I was highly employable — which was fantastic to hear. But nothing really happened from their point of view...So they basically supervised me and I put in 10 job applications a fortnight. I knew they weren't real jobs and we were pretty much just going through the motions.<sup>244</sup>

According to one organisation, many employment agencies are:

...just ticking the boxes without offering real assistance in finding work...there is a gap in understanding of the needs of older workers and an absence of tools to assist older workers in the search for work.<sup>245</sup>

### (f) Skills training

Having up-to-date skills, tailored to current economic needs is crucial for older people to maintain their employability.<sup>246</sup> The Inquiry received a number of submissions that reiterate the importance of access to skills training as a means of improving employment outcomes for older people.<sup>247 248 249</sup>

The Inquiry also heard from individuals seeking qualifications and training to re-enter or further contribute to the workforce.<sup>250</sup> This motivation to learn new skills and enhance existing qualifications arises from a variety of circumstances including: transitioning roles or industries due to retrenchment; reduced demand for current skills; a health condition; meeting new regulatory requirements; updating skills after a period out of work; lifestyle changes; and career advancement.

The willingness to undertake further training is reflected in a survey conducted by DOME (a South Australian community-based not-for-profit employment and training organisation), which reported that 92% of respondents were willing to learn new skills to gain employment.<sup>251</sup>

However, notwithstanding this willingness to undertake skills training the Inquiry heard that:

...it can be difficult for a mature-age person to justify the risk of taking time out of employment and taking on debt to invest in the development of skills when the returns of this investment are unknown and they have family responsibilities, existing financial commitments and shortened timeframes for paying back loans.<sup>252</sup>

It is therefore important to recognise that older people seeking further training do so for a variety of reasons and are likely to make their decisions based on a number of considerations specific to their stage of life.

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The Inquiry was consistently told that there is scope to improve the provision of skills training to older people.<sup>253 254</sup> A brief consideration of available enrolment statistics in the Vocational Education and Training (VET) sector across Australia reinforces this point:<sup>255</sup>

- In recent years there has been a reduction in enrolments by older people.
- In 2014 there were approximately 333,600 VET students aged 45 to 64 years, representing 19.0% of total VET students. This 2014 enrolment figure is approximately 27,600 (7.6%) less students aged 45 to 64 years than in 2012.
- The participation rate in VET courses of this age group has also declined from 6.4% in 2012 to 5.8% in 2014.<sup>256</sup>

It is clear that there is an opportunity for the skills training sector to enhance workforce participation and productivity, but before this goal can be reached a number of barriers to skills training must be addressed. This includes the overarching challenge of shifting the presumption from the VET sector being predominately orientated towards preparation for first-time entry into the workforce, to a culture of lifelong learning.

#### *(i) Barriers to training*

The Inquiry heard from older people who had experienced barriers to undertaking skills training.<sup>257</sup> In particular lack of employer support, cost of training courses, lack of apprenticeships, difficulty accessing recognition for skills and experience, and insufficient information and guidance were recurrent themes that will be discussed in this section. The discussion will focus on training at the certificate III and IV level as these trade-level qualifications are most relevant to the circumstances described above.

#### *(ii) Lack of employer support*

Stereotypes and negative assumptions about older people can reduce access to training and professional development opportunities offered in the workplace. In particular assumptions about older people — such as that they are unwilling to, or incapable of, learning new things, or that returns on investment in training, retraining or upskilling decline with age — can reduce the level of employer support offered.

The Inquiry heard during consultations that a lack of employer support can be a barrier to undertaking skills training.<sup>258</sup> A 2009 Australian Bureau of Statistics survey also found lack of employer support to be a barrier to skills training, reporting that approximately a quarter of 45–64 year olds who would have otherwise been willing to undertake training did not undergo training for work-related reasons, including a lack of employer support.<sup>259</sup>

#### *(iii) Cost of training*

The cost of training courses, as well as gaining recognition for prior learning, was raised as a barrier to accessing skills training.<sup>260 261 262</sup> As one contributor to the Inquiry wrote: ‘older workers are likely to be discouraged from participating in training because of the cost of doing so’.<sup>263</sup>

The cost of skills training is dependent on a number of factors including the field and mode of study and level of qualification being sought, the institution, and whether or not a government subsidy, concession rate or other financial support is available.

Income-contingent loans (VET FEE-HELP) are available to assist students undertaking eligible diploma or advanced diploma vocational education and training (VET) qualifications to pay their tuition fees. There is also a pilot program currently underway that extends VET FEE-HELP to selected certificate IV courses. In effect this can mean that where a person is undertaking a certificate III or IV they may be required to pay for the course upfront. For older people, making this upfront payment can present a barrier as they may not have a regular or substantial income flow,<sup>264</sup> and may be under financial stress as a result of involuntary retirement related to retrenchment, caring responsibilities or a health condition – all people likely to benefit significantly from retraining or upskilling.

The cost of a course is substantially reduced where a government subsidy is available, the cost can then be further reduced if a concession is available. Course fee amounts are not always published and so it can be difficult to compare the difference in costs, however some published costs indicate the difference is substantial.<sup>265 266</sup>

These sorts of eligibility criteria tend to exclude older people seeking a non-linear skills training or retraining pathway. As one submission wrote; ‘There are also barriers when it comes to reskilling or retraining. If you aren’t on a benefit you don’t qualify for education assistance. If you already have a certificate or degree you are denied assistance’,<sup>267</sup> with another noting ‘Many people who need [a government subsidy] do not qualify for the funding’.<sup>268</sup>

Eligibility for government-subsidised places is determined by state and territory jurisdictions. Under the National Partnership Agreement on Skills Reform there is a very high degree of flexibility, however a minimum requirement is that all working-age Australians have access to a government-subsidised training place up to their first certificate III qualification.<sup>269</sup>

While all jurisdictions have gone beyond this minimum requirement, each has done so in a different way. Some jurisdictions restrict eligibility to the subsidy to those who have no prior qualification above a certificate III, while others impose an ‘upskilling requirement’ such that a person cannot access the subsidy unless it is above their previous qualification. Several jurisdictions have quite complex eligibility criteria with a number of exclusions and exceptions.

The problem with these sorts of ‘onward and upward’ entitlement approaches can be to potentially restrict access to a subsidy in situations where multiple qualifications at the same, higher or lower level are required such as retraining, upskilling and updating qualifications.

The disproportionate impact that eligibility criteria related to prior qualifications can have on older people was noted in separate reviews in NSW and Victoria, with both reviews recommending changes to the eligibility criteria.<sup>270 271</sup> As a result in NSW there is no longer a restriction based on prior qualification.

In some jurisdictions people seeking a second or subsequent qualification or one that is at the same level or lower than a qualification they already hold may not qualify for a government subsidy. The Inquiry heard from a number of older people frustrated at being ‘excluded’ from subsidised training on ‘a relatively arbitrary and inequitable’ basis, as an individual wrote ‘I am 61 years of age, have retired from being a Paramedic due to chronic problems with both shoulders. I hold greater than a Certificate III, and this excludes me from being eligible for ‘fee free’ training’.<sup>272</sup>

As illustrated in the below case study, those with a prior qualification felt particularly perplexed at being denied a government-subsidised place on the basis of an existing, unrelated qualification completed many years prior.

## Case study 2.6

In early 2015 Harriet responded to an online job advertisement for workers in aged care. While the role stipulated that there was no experience necessary, there was a requirement to complete a Certificate III in Aged Care. Harriet was willing to undertake this training until she found out that due to her prior Diploma in Business Management completed over 10 years ago, she would not be eligible for a government-subsidised place. As a result she would have to pay \$3,500 in advance to complete the course. Harriet felt frustrated by the fact that she was excluded from the subsidy, particularly because aged care is 'an industry screaming for workers'.

Soon after this experience, while Harriet chose not to undertake the Certificate III in Aged Care she did decide to progress with a Certificate IV in Training and Assessment. Harriet understood that she would have to pay a full non-subsidised fee upfront, but was then dismayed to learn that her prior learning associated with her diploma would not be recognised as it was completed over 5 years prior. Harriet says 'this is inane — we can't win and the two issues are in complete contradiction to each other' — the same qualification that prevented her accessing a government subsidy is then considered too old to be recognised for a credit transfer.<sup>273</sup>

### *(iv) Recognition of existing qualifications and experience*

The ability to gain recognition for existing skills, qualification and experience through assessment processes such as recognised prior learning (RPL), is significant in terms of reducing barriers to engaging in formal skills training, in particular for older people.

Despite this, the Inquiry heard that the process and cost of applying for and gaining RPL can be a barrier to undertaking training through the VET sector.<sup>274</sup> For example a submission from an individual wrote:

Many older workers have a wealth of experience and skills, but getting their skills and experience recognised can be very difficult...Recognition for prior learning (RPL) should be a more streamlined and regulated process. Every organisation seems to have their own process and there is no consistency amongst organisations regarding how the process should work.<sup>275</sup>

Skills recognition practice is underpinned on a national level by the principles outlined in the Australian Qualification Framework, but administered with a high level of flexibility by registered training organisations. In practice this means that the process and costs involved in gaining skills recognition varies between institutions, which can create difficulty for prospective students, including older people, many of whom may have limited knowledge or experience in navigating the VET sector.

Skills recognition processes and costs as a barrier for older workers was recently noted by the National Centre for Vocational Education Research writing that RPL is not an 'easy or standalone option'. It went on further to note that 'if the time and cost involved in an RPL application comes close to the cost of training itself, then any benefits of choosing the RPL option, especially if there is a likelihood of its being unsuccessful, are diminished'.<sup>276</sup>

Available data about use of RPL also suggests that older people experience barriers in accessing skills recognition. It shows that older people are less likely to have their training shortened with RPL. For example in 2015, 38.4% of students aged 45 to 64 years and 47.8% of students aged 65 years and over, had prior experience and skills related to the training they undertook but did not have their training shortened through RPL.<sup>277</sup> These proportions are higher than for younger age groups.<sup>278</sup> Older people are also less likely to be offered an RPL assessment by their training provider — almost half of students aged 45 to 64 years did not have their training shortened because their training provider did not offer to assess their skills for RPL.<sup>279</sup>

*(v) Lack of apprenticeship opportunities*

In Australia an apprenticeship involves commitments by the employer, the apprentice or trainee, and a registered training organisation to an agreed training program in a specified occupation. As a mode of training, apprenticeships may be attractive to older people as they ‘offer one way of achieving a work/skills balance because they include paid employment, on-the-job training and formal training that lead to a recognised qualification’.<sup>280</sup>

In the last decade structural changes to the traditional apprenticeship model have meant that people of all ages can now undertake apprenticeships.<sup>281</sup> This has correlated with an increase in the numbers of older people undertaking apprenticeships, with the number of apprentices aged 45 years and over increasing from 1,459 (2.1% of all apprentices) in 2004 to 10,462 (10.6% of all apprentices) in 2013.<sup>282</sup>

However, despite this increase, National Seniors Australia submitted to the Inquiry that uptake of apprenticeships amongst older people is still relatively low.<sup>283</sup> This is confirmed by student outcome surveys which indicate that the proportion of graduates from the VET sector aged 45–64 years undertaking training as a part of an apprenticeship is consistently lower than for other age groups — in 2015 12.9% of graduates aged 45–64 years undertook their training as a part of an apprenticeship as opposed to 18.6% of 25–44 year olds and 36.4% of 20–24 year olds.<sup>284</sup>

Through consultations and submissions the Inquiry heard of barriers to accessing apprenticeship opportunities that may explain this relatively low uptake. One barrier raised was the perception that the apprenticeship system is for younger people rather than for older people.<sup>285</sup> Previously apprenticeships were limited to younger people and to some extent this contributes to the continuing assumption that they are not suitable for older people.

Another barrier identified was the level of pay offered during apprenticeships, which may be insufficient for an older person, as one submission notes ‘not everyone will be in a position to accept the relatively low wages offered during apprenticeships and traineeships’.<sup>286</sup> This issue was also raised during Inquiry consultations with employer groups where some relayed a reluctance to take on older people because there was a sense that they would not manage with the low wage.<sup>287</sup> On the other hand some submissions to the Inquiry also argued that older apprentices attracting a comparatively higher award than younger apprentices were a disincentive.<sup>288</sup>

An underlying aspect of this issue is the perceived complexity or inaccessibility associated with early completion of apprenticeships and the use of recognition of prior learning (RPL) to achieve this shortened time frame, as the National Centre for Vocational Education Research (NCVER) has noted:

The ad hoc nature of the funding, support and practices associated with RPL and early completion options may also be creating barriers for both employers and individuals attempting to navigate the system...the complexity of the systems governing RPL means it is not meeting the requirements of employers and it therefore remains a relatively hidden option.<sup>289</sup>

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*(vi) Inadequate information and guidance*

Experiences relayed to the Inquiry suggest that the information and guidance available to older people considering formal skills training is inadequate and does not support people to overcome barriers, and in some circumstances can be a barrier in and of itself.

For example the Inquiry heard from an individual who had a computer course recommended to him, despite having low literacy and no desire to pursue a job in technology.<sup>290</sup> The Inquiry also heard from people frustrated at not being able to find employment after undertaking skills training and from people unwilling to pursue training because of the perceived 'risk' and 'uncertainty' of gaining employment afterwards. In each of these circumstances it is clear that inadequate guidance and information was a barrier to effective skills training.

The variability between jurisdictions, for example in terms of costs, availability of government subsidy and availability of RPL, have already been mentioned. This variability can be difficult to negotiate and can be a barrier to undertaking skills training, in particular for someone recently retrenched who may have never, or not recently, sought formal skills training.

Furthermore, inadequate provision of information can also contribute to negative attitudes of some older people themselves towards education and training, as the NCVET has previously written:

At least in part these attitudes may be indicative of or linked to a lack of information and guidance about skill requirements, career opportunities and learning options...Older workers have been found to be often haphazard and ill-informed in selecting training, lacking information about options and future skill demands.<sup>291</sup>

The supply of relevant and accessible information is crucial to supporting older people, particularly for those who may be vulnerable consumers as a result of long-term unemployment, financial stress or involuntary exit from the workforce.

Despite this importance, it is apparent that 'students still need more information to make good training choices'<sup>292</sup> for example people should be able to easily compare the costs of courses and RPL, and the performance of providers. Currently, 'platforms to enable the comparison of qualifications, subsidies available, course costs and registered training organisations are not well-advanced in any jurisdiction'.<sup>293</sup>

**(g) Workers compensation**

*(i) Age limitations on salary replacement payments*

All employees, regardless of age, are covered by workers compensation. However, in all jurisdictions except Western Australia and Queensland, there are limitations on the time for which older employees can receive weekly salary replacement payments because of a workplace injury which has affected their capacity to work.<sup>294</sup>

Older people told the Inquiry that age-based limitations on weekly salary replacement payments impacted on their ability to work. People said that the limitations made them feel concerned about what would happen to them if they did suffer a workplace injury.

You are not covered under workers compensation, so expect to lose your job if you are injured...makes working after reaching 65 not very attractive.<sup>295</sup>

Workers compensation for people over 65 is at the discretion of the insurance company, so if you're over 65 they can say you should not be doing that job and won't pay.<sup>296</sup>

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I'm happy to keep working at 68 years, but there are other issues — I found out that after 65 years, if I'm sick I can't get sickness benefits, my insurances have stopped. Workers Compensation will only carry me for one year. This discrimination works against keeping me in the workforce longer.<sup>297</sup>

A submission provided to the Inquiry by the New South Wales Public Service Association notes that in a survey of 1,257 of their members:

Anomalies in the workers compensation system were a concern for a number of respondents, who expressed concern at not being covered by workers compensation when working past retirement age.<sup>298</sup>

The Inquiry also heard of instances where people felt that the limitations on weekly salary replacement payments were interpreted by employers as a lack of workers compensation coverage, making them reluctant to hire older workers.<sup>299</sup>

I am 67 years of age. Prior to my 65th birthday, I was employed as a community care worker and in aged care administration. After moving north I have applied to quite a few aged care employers without success except one, which hasn't as yet provided any paid work. Most of my applications have not been acknowledged. I am of the opinion that the main reason for lack of interest is Workers Compensation laws... which inhibit employment of people over 65 years. From my own experience I know that the industry always needs carers and male carers are not in great numbers.<sup>300</sup>

A submission to the Inquiry noted that where older workers receive salary replacement payments for a limited period of time, it is expected that the Age Pension will support people once workers compensation runs out.<sup>301</sup> However, if an injured worker's partner has income at a certain level, the injured worker may not be eligible for assistance and may be forced to rely on their partner:

If you are over 65 years old and get injured at work you are expected to ask the Commonwealth Government for assistance after the one-year's workers compensation payments run out. But I do not think the Commonwealth Government should play that role. I also think it is unlikely that I would get anything in such circumstances because, for example, I applied for assistance earlier this year and was told I was not eligible because my wife earns \$50k a year.<sup>302</sup>

Reliance on a spouse for financial support can place people in a vulnerable position, for instance, older women who experience domestic violence.<sup>303</sup>

Treatment by insurers was also raised. A union told the Inquiry that claims for older workers are often prolonged because insurers know that the employee is reaching retirement age.<sup>304</sup>

#### *(ii) Perception of older people as a work health and safety risk*

The Inquiry heard from employers who were concerned that older workers presented a workplace health and safety risk.

[We] need to keep mature workers as long as possible but don't want to put their health at risk.<sup>305</sup>

A lot of the work is very physical... Our workers comp is going up, [and were] finding it hard to afford the premiums.<sup>306</sup>

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Risk of injury when performing manual labour remains one common concern for recruiters when considering older workers for physically demanding positions.<sup>307</sup>

In a construction job, you can't employ older workers — not physically up to the job.<sup>308</sup>

However, some employers did also concede that age is not the most important factor in determining a person's fitness for a job:

We need to measure a person's physical capacity and it is about the level of fitness, not age.<sup>309</sup>

We don't have good data on the physical capacity to work, a survey was done twenty-five years ago but the data is no longer relevant. We don't know what a typical person is able to do at age 67. This is a problem. As retirement age is going up, we need to look at this.<sup>310</sup>

- 1 Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015), 51. At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/national-prevalence-survey-age-discrimination-workplace> (last viewed 1 February 2016).
- 2 The definition of age discrimination in the workplace is open to interpretation by respondents and may vary according to people's perceptions and expectations. Past experience in measuring discrimination incidence in surveys has shown that responses based on a legal, or formal definition alone are likely to result in a limited or restricted incidence, whereas responses based on a list of behaviours are likely to result in a higher incidence rate. Thus a combination of responses to the behavioural questions and the formal definition questions yields the most realistic incidence. The measurement of discrimination was therefore asked in two ways:
  1. Respondents were initially asked if they had been treated less favourably than other people in a similar situation because of their age or because of assumptions made about older people, and if so, what was the nature of that unfair treatment,
  2. Respondents were then asked if they had been subject to specific examples of discriminatory behaviour.Age discrimination can be experienced when people are told directly that they are being treated differently because of their age or when people believe that their age was the reason for the discrimination, but they are not told directly. Some people might experience both of these forms. The survey questionnaire was designed to capture both forms of age discrimination, Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015), 8. At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/national-prevalence-survey-age-discrimination-workplace> (viewed 9 April 2016).
- 3 Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015), 51. At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/national-prevalence-survey-age-discrimination-workplace> (viewed 1 February 2016).
- 4 Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015), 49. At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/national-prevalence-survey-age-discrimination-workplace> (last viewed 1 February 2016).
- 5 Australian Human Rights Commission Annual Report 2014–15, 136. At [www.humanrights.gov.au/our-work/commission-general/publications/annual-report-2014-2015](http://www.humanrights.gov.au/our-work/commission-general/publications/annual-report-2014-2015) (viewed 13 April 2016).
- 6 Consultation with employers, Australian Industry Group, Sydney, 15 October 2015.
- 7 Peter Hayes, Submission 19 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (3 July 2015), 1.
- 8 Name withheld, Submission 194 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (29 November 2015), 1.
- 9 Victorian Equal Opportunity and Human Rights Commission (Age), Submission 298 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (9 December 2015), 9.
- 10 COTA Tasmania, Submission 227 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (3 December 2015), 4.
- 11 Consultation with older people, Townsville, 19 August 2015.
- 12 Confidential Submission 95 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (9 September 2015).
- 13 Peter Stanley Smith, Submission 150 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (12 November 2015), 8; Name withheld, Submission 165 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (17 November 2015), 8.
- 14 Neil McAllister, Submission 66 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (15 August 2015).
- 15 Victoria Legal Aid, Submission 319 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (18 December 2015), 16.
- 16 Raden Dunbar, Submission 25 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (7 July 2015), 16.
- 17 Name withheld, Submission 55 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (7 August 2015), 16.
- 18 Peter Stanley Smith, Submission 150, (12 November 2015); Name withheld, Submission 109, (28 September 2015); Name withheld, Submission 139, (4 November 2015) to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*.
- 19 Clive Rodney Seiffert, Submission 13 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (29 June 2015), 16.
- 20 Marcus Wigan, Submission 40 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (23 July 2015), 16.
- 21 Name withheld, Submission 15 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (30 June 2015).
- 22 Consultation with older people, Townsville, 19 August 2015; Consultation with older people, Canberra, 6 July 2015; Consultation with older people, Albury, 3 September 2015.

- 23 Australian Human Rights Commission, *A qualitative study of employment discrimination against older Australians* (2016), 23.
- 24 Consultation with older people, Albury, 3 September 2015.
- 25 Consultation with older people, Darwin, 22 October 2015.
- 26 Confidential Submission to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, 4 August 2015.
- 27 Raden Dunbar, Submission 25 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, 7 July 2015, 1-4.
- 28 Name withheld, Submission 154 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, 12 November 2015.
- 29 Confidential Submission to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, 20 November 2015.
- 30 DOME Association and Department of State Development, *Mature Age Employment Project Job Seeker Survey 2014–15* (2015), 39.
- 31 NSW Public Service Association, Submission 313 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (16 December 2015), 10.
- 32 Consultation with older people and people with disability, Brisbane, 25 August 2015.
- 33 Confidential Submission to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (31 August 2015).
- 34 Victoria Legal Aid, Submission 319 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (18 December 2015), 7.
- 35 Raden Dunbar, Submission 25 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (7 July 2015).
- 36 Susanne Lorraine Johnston, Submission 145 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (7 November 2015), 2.
- 37 Graeme David Moorhouse, Submission 239 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (4 December 2015).
- 38 Viktoria Rother, Submission 111 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (1 October 2015), 3.
- 39 Margaret Sandra Shanahan, Submission 143 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (6 November 2015), 1.
- 40 Confidential Submission to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (22 August 2015).
- 41 COTA SA, Submission 182 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (20 November 2015), 6.
- 42 Confidential Submission to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (22 October 2015).
- 43 David Adams, Submission 118 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, (11 October 2015), 10.
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# Chapter 3:

Addressing  
employment  
discrimination  
against older  
Australians —  
conclusions and  
recommendations

## Summary

- A targeted focus on addressing employment discrimination and overcoming barriers to work currently experienced by older Australians is required to increase workforce participation.
- The Inquiry recommends that Government attention at the highest level be focussed on addressing employment discrimination against older Australians. The Inquiry's recommendations also address Government's law and policy role as well as what Government can do as an employer and as a buyer of goods and services.
- Recommendations are also made to assist older workers who need to retrain or reskill themselves in order to continue working longer.
- Given the strong link between health and workforce participation of older Australians, recommendations are made about what Government and employers can do to facilitate longer, healthier working lives.
- The Inquiry also provides a suite of strategies and good practice examples that employers, and the organisations that represent them, can adopt to ensure non-discriminatory practices and create more inclusive and flexible workplaces.

The challenge facing us is not our ageing population, but the need to create policies that embrace the social and economic potential of longer lives. Healthy and active ageing presents us with great opportunities for older Australians to keep participating in the workforce and the community for longer.<sup>1</sup>

The Inquiry has established that employment discrimination is a major barrier for older people. Successive Intergenerational Reports have identified increasing the labour force participation of older workers as a key public policy priority.

The benefits of raising participation rates would accrue to the whole population through increasing revenues, decreasing expenditures and providing people with extra years of savings, investments and superannuation,<sup>2</sup> not to mention the other tangible benefits of work.

This Inquiry argues for a targeted focus on addressing employment discrimination and increasing the labour force participation of older people.

This chapter will cover the many ideas and suggestions for change raised with the Inquiry. The chapter is rich in case studies and examples of good practice. These form the basis of the Inquiry's recommendations regarding employment discrimination against older Australians.

Some of the recommendations will be able to be implemented relatively quickly and at little cost. Others will require a longer term view and incur some expense. Given the findings of the Inquiry and the case for change, doing nothing is not an option. The Inquiry argues that benefits will accrue to individuals, employers and the economy which will outweigh the costs incurred.

The Inquiry trusts that the suggestions in this chapter will encourage innovation and motivate employers, recruiters, managers and staff to adopt these ideas and practices to address employment discrimination, employ older people and create inclusive workplaces.

## 3.1 What government can do

### (a) Minister for Longevity

In recognition of the contribution to Australia's economy of an increase in the labour force participation of older people, government has a range of policies and incentives in place to support and encourage the employment and retention of older workers. One of the key policy levers used by government has been to progressively increase the qualifying age at which people will be able to access the Age Pension. By 2023 the qualifying age will have increased to 67 years of age.

However, labour force participation continues to decline rapidly beyond the age of 60. This pattern contradicts attempts by government to lift labour force participation of older people.

The Inquiry argues that government attention at the highest level should be focussed on addressing this issue and coordinating whole of government action.

**Recommendation 1: The Inquiry recommends that the Australian Government appoint a Cabinet Minister for Longevity to address employment discrimination, the economic dimensions of longevity, drive the increase in labour force participation of older Australians, coordinate and monitor the implementation of the recommendations of this Report.**

**In order to ensure whole of government action the Minister establish a sub-committee of Cabinet to bring together Ministers from other portfolio areas including Employment, Treasury, Social Services, Education, Health and Industry, Innovation and Science.**

**An independent advisory board be established to provide expert input and strategic oversight to the implementation of the Inquiry recommendations for older Australians across government and the economy. The advisory board to include policy experts, employer organisations representing large, medium and small businesses, economists and key sector advocates.**

### (b) A national strategy

Many consultations and submissions called upon government to establish clear strategies, goals and targets for the employment of older people. Some called for national action plans, mandated quotas or targets.

The Inquiry finds merit in a clear national strategy which will serve to concentrate focus, drive activity and coordinate effort. The Inquiry further argues that the national workforce strategy be linked closely with other government initiatives including the National Innovation and Science Agenda, the *New Enterprise Incentive Scheme* (NEIS), small business initiatives, entrepreneurship and social enterprises to ensure that such existing and future strategies include a focus on older Australians.

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**Recommendation 2: That the Australian Government work with key stakeholders and employers to develop a national workforce strategy to significantly lift the labour force participation rates for older people, particularly those over 60 years of age. The national strategy should include targets, actions, performance indicators and timeframes. Progress on the implementation of this strategy and achievement of targets to be reported publicly on an annual basis and in subsequent Intergenerational Reports.**

**Recommendation 3: In order to support achievement of the national strategy and engage directly with business, the Australian Government fund the provision of a network of outreach workers through Business Chambers or other relevant peak or industry bodies to work directly and collaboratively with businesses, particularly small to medium enterprises.**

### **(c) A national agency**

The role of the Workplace Gender Equality Agency (WGEA) is to promote and improve gender equality in Australian workplaces. The agency works collaboratively with employers, provides advice, tools and resources and assists employers meet their reporting requirements under the *Workplace Gender Equality Act 2012* (Cth).

Many of the themes raised with the Inquiry have strong resonance with issues around achieving gender equality in Australian workplaces like equality of representation, non-discriminatory work environments and flexible workplaces. Australian workplaces have already learned much from their experience in addressing gender equality. However, the Inquiry also heard that in some organisations there are competing priorities between diversity areas and a focus on one area at the expense of others.

The WGEA is well recognised and has strong working relationships across employer and business sectors. It also has strong connections within government. The existing gender equality indicators address: composition of the workforce; composition of governing bodies; equal remuneration; availability and utility of employment conditions and practices relating to flexible working arrangements; consultation with employees; and harassment- and discrimination-free workplaces. These are matters of direct relevance to older people and people with disability. These functions also advance the protection of human rights by protecting against discrimination on the grounds of age or disability, and freedom from discrimination in employment.

The Inquiry considers that the role performed by the WGEA in promoting and improving gender equality in Australian workplaces may also be considered for the promotion and improvement of equality for older Australians and Australians with disability. It may be an efficient use of resources to build on the WGEA's existing structure, legislative base and expertise by broadening its role to include the promotion and improvement of equality for older people and people with disability in employment, and thereby support improvement in the productivity and competitiveness of employers and the economy.

A statutory agency with such responsibilities (whether a new agency or an expanded, appropriately resourced WGEA) could, over time, achieve many of the solutions put to the Inquiry including:

- encouraging employers to gather and analyse their own workforce data, set voluntary targets, focus action and track progress
- reporting on performance against voluntary targets to share information between employers, within industries and with the public
- acting as a central point for resources, materials, contacts, education, advice and support
- showcasing employers who have made commitments in this area
- providing assistance with developing action plans, audits of recruitment processes for discriminatory practices, advisory visits
- facilitating networking to encourage sharing of information and good practice
- working with growth sectors and emerging industries to target recruitment of older people and people with disability, for example aged care or disability services.

**Recommendation 4: That the Australian Government consider expanding the role of the WGEA to become the Workplace Gender Equality and Diversity Agency to increase the labour force participation of older people and people with disability. An expanded and adequately resourced agency would, over time, collect data, publicly report on progress against voluntary targets, and engage collaboratively with employers and business, to reduce employment discrimination. This expanded role would be incorporated into the agency's supporting legislation.**

#### **(d) A national campaign**

Many contributors to the Inquiry made the point that discrimination against older people and people with disability is a community-wide issue, not just an issue in employment. They therefore identified, as a key issue, the need for increased insight and understanding across the Australian community of the abilities, needs and human rights of older people and people with disability.

The point was often made that there is therefore a need for a targeted long-term public information and education campaign. Many people pointed to long-standing changes to community attitudes and behaviour that can be achieved by well-focused, targeted and sustained community education and awareness campaigns. Examples regularly raised included public health campaigns such as 'Life. Be In It', the 'Slip Slop Slap' and anti-smoking campaigns. Many argued that such campaigns are required to address employment discrimination, communicate the business benefits and change the way we value the contributions of diverse groups.

**Recommendation 5: That the Australian Government develop and deliver sustained, focused national community education and information campaigns, that where appropriate are customised for specific geographic regions, to:**

- **lift awareness about, and the benefits of, employing older people and a diverse workforce**
- **dispel myths and stereotypes and reduce stigma to change the way we value the contributions of older people**
- **promote the various government supports and schemes that are available**
- **raise awareness of the ways in which recruitment and retention practices may be discriminatory**
- **educate people on their rights and responsibilities**
- **promote positive stories, images and experiences, acknowledge positive employers.**

**These messages should be embedded consistently into all government related announcements regarding employment, training, business support schemes and economic stimulus measures. A key feature of these campaigns should be that they are run in collaboration with business and employers.**

**Recommendation 6: That the Australian Government allocate funding to enable a collaboration between the Australian Human Rights Commission, business, unions and community organisations, to produce and disseminate clear, comprehensive and consistent information about employer obligations, employee rights, leading practices and strategies, tools and resources to address employment discrimination against older people in support of the national community education and information campaigns.**

## 3.2 Skills training

As explored in Chapter 2, the Inquiry consistently heard that there is substantial scope to reduce barriers and improve the accessibility and provision of skills training to older people through the Vocational Education and Training (VET) Sector.

In particular, recurrent barriers identified included:

- a lack of employer support
- costs and ineligibility for subsidised training
- difficulties in accessing skills recognition such as through recognised prior learning (RPL)
- lack of apprenticeship opportunities
- inadequate provision of information and guidance.

These barriers are broadly consistent with research by the National Centre for Vocational Education Research (NCVER):

Older workers face barriers to participation in skills development including employer attitudes, lack of information about options, work and family commitments, financial difficulties and their own attitudes to participation — including doubts about their ability to succeed.<sup>3</sup>

The Inquiry argues that making the VET sector more accessible to older people is crucial to raising workforce participation and productivity.<sup>4</sup> In achieving this policy-makers must engage and collaborate with individuals, employers, industry groups and training providers to help establish clear and effective training pathways. It is also important to recognise and cater for the diverse characteristics and motivations for undertaking skills training within this cohort.

Ensuring that the VET sector delivers high-quality skills training in an effective and equitable way is not only important to individuals and employers, but also to government which has invested significantly in this sector.<sup>5</sup> Furthermore it is crucial that both public and private providers maintain high standards of quality and accountability.

Drawing on suggestions made to the Inquiry as well as existing research, this section will discuss recommendations for change regarding the VET sector to reduce cost barriers, improve access to skills recognition, increase the provision of high-quality information and career guidance, and create more opportunities for apprenticeships.

The Inquiry recognises that older people have a responsibility to engage in ongoing career planning and to actively seek opportunities to improve employability through skills training. Alongside this, employers too need to support and develop their workers to ensure that they remain productive.

### **(a) Effective approaches to skills training**

Skills training provided in a timely and effective way is a key avenue to older people maintaining employability. This is confirmed by the 2015 VET student outcomes survey where 57.4% of students aged 45 to 64 years reported an improved employment status after completing their training.<sup>6</sup>

While the Inquiry recognises the diverse reasons older people choose to undertake skills training, it is clear that for a very significant proportion a key reason is to facilitate transitions into new roles or industries, particularly as a result of downsizing and retrenchment. Effective skills training can support older workers to transition from downsizing industries into expanding ones, such as the IT sector.<sup>7</sup> It is therefore important to consider how skills training can most effectively support these transitions.

The NCVER has recently undertaken a project to identify evidence-based practices that lead to successful skills transfer, reskilling, training and the attainment of new jobs for older workers displaced from often low-skilled jobs in manufacturing. The Inquiry considers this to be important research that should inform future skills training policies.

In this extensive body of work the NCVER has reviewed national and international case studies and literature, this includes case studies of responses to industry restructuring in the regions of the Hunter, outer metropolitan Adelaide, greater Geelong and Tasmania. From this the NCVER identified a number of elements that underpin effective skills training for displaced older workers:

A coordinated approach to the provision of training and support is critical. Training is more likely to be effective when training providers and support agencies partner to ensure displaced workers access upfront career counselling, training for in-demand skills and follow-up assistance with job search and attainment.<sup>8</sup>

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Furthermore, the NCVET notes that older workers displaced through industry restructuring are best assisted through the following broad practices:<sup>9</sup>

- Early intervention that occurs well before the workers reach their retrenchment dates, with ongoing mentoring after retrenchment.
- Holistic programs that are tailored to the backgrounds and requirements of the individual worker.
- Regional job-creation initiatives to assist workers in finding new jobs locally.
- Offer upfront screening prior to the commencement of any training to ensure that the program is appropriate for the individual.
- Design age-inclusive training that is highly experiential, practical and fills gaps in existing knowledge and skills, identified through upfront skills recognition.
- Provide foundational skills training including core literacy and numeracy skills, employability skills and digital literacy.
- Provide accelerated training where possible to support older workers into work quickly.
- Include tailored job search and self-promotion services after training.
- Seek effective partnering between training providers, employers and industry groups.

The Department of Employment offers structural adjustment programs for workers retrenched from eligible companies. The program provides a range of tailored assistance and access to intensive employment services, and includes aspects of the good practices identified by the NCVET.

The Inquiry supports the continued availability and development of structural adjustment programs to facilitate transitions for displaced workers. It is also important that these programs are evaluated, employment outcomes of participants are tracked and that the results are used to inform future policy responses.

In addition the Inquiry notes that there is value in bringing industries together to facilitate transitions, as well as a need to evaluate whether sufficient supports and resources are available to those workers in small and medium enterprises who may not have access to structural adjustment programs.

**Recommendation 7: That the Department of Employment routinely undertake and publish evaluations of the structural adjustment programs to track outcomes and inform continuous improvement to policies and programs. The Department should also bring different industries together to develop strategies to transition people from declining industries to growth industries. It should also review the availability of resources and supports for older workers displaced from small and medium enterprises.**

### **(b) Improved provision of information and career guidance**

Better provision of information is crucial to broadly increasing engagement of older people with the VET sector, and also improving employability following skills training.

As discussed in Chapter 2, information currently provided to individuals and employers about the VET sector is not adequate to overcome the complexities of the system and processes, and is at times inconsistent, ad hoc and difficult to navigate. Improving the quality and flow of information about VET training options will assist employers, older job-seekers and existing workers to engage with skills training opportunities.

A number of submissions to the Inquiry supported the idea of fostering a culture of ‘lifelong learning’ to challenge the presumption that skills training and apprenticeships are for young people and those entering the workforce for the first time.<sup>10 11</sup> The idea of specialised career guidance was also well-supported as a way of helping older people to make good choices about skills training.<sup>12</sup>

*(i) Provision of accessible information*

There are gaps in the provision of accessible information across the VET sector. Individuals should be able to easily consider and compare options regarding skills training, and to do so they need accessible information from a variety of sources. If information is not readily available and people are unable to compare their options they are unlikely to continue exploring the opportunity.

The Inquiry supports the continued improvement of the Australian directory of training via the My Skills website and would also encourage each state and territory jurisdiction to ensure that their website provides sufficiently clear information and functionality to enable older people to understand, compare and consider their options. It is also important to ensure that as far as possible, there is national consistency and harmonisation in the provision of information.

*(ii) Targeted promotion of skills*

Promotion of skills training opportunities that is appropriately targeted to relevant stakeholders is crucial to engagement with the VET sector and has arguably been lacking in previous initiatives. There is a need for information to be targeted to older people, job service providers and employers to encourage engagement with skills training and to clearly outline the specific benefits, programs, incentives and supports available. This will help to facilitate clear and effective skills training pathways.

The VET sector should ensure that it continues to make connections with industry groups, peak bodies, advocacy groups and community organisations as these are crucial avenues for connecting with individuals and employers. Information should be distributed to employers and older people through peak bodies and community organisations, and include specific information sessions, open day events and other targeted communication strategies.

*(iii) Personalised advice and career guidance*

Older people have different characteristics and seek skills training for a variety of reasons, therefore ‘rather than presuming to know the workers it is important to identify their needs and determine how these might be best met’.<sup>13</sup> The provision of information should recognise this diversity and be individualised accordingly, this includes the provision of appropriate career guidance.

Furthermore, certain groups of older people are likely to be in particular need of this personalised information and guidance. This includes people disengaged with formal education and training who are likely to need more information about the specific employment opportunities training can deliver, while people impacted by chronic conditions who are seeking to retrain into a more suitable industry will require specialised guidance about pathways into appropriate careers. In all cases where an older person is at risk or has recently become unemployed proactive, positive and intensive support and guidance may prevent situations where they become long-term unemployed.

### **Good practice example 3.1: Skills Checkpoint**

The Skills Checkpoint pilot is a free career advisory service funded by the Australian Government for employed individuals aged 45 to 54 years. The pilot program was conducted by three providers in several states and territories from December 2015 to May 2016.<sup>14</sup>

Through Skills Checkpoint, service providers offer individuals an assessment of their current career situation and guidance if a change in career direction is needed or desired. This may include obtaining advice about transitioning into new roles within their current industry or pathways to a new career with the view to encouraging reskilling and supporting ongoing engagement in the workforce.

Providers use screening and testing tools to analyse and assess the individual's skill level, interests and experience. This enables the provider to give individualised advice to support the individual progress in their career, change roles and explore new opportunities.

A broad range of targeted marketing and engagement activities were implemented to promote Skills Checkpoint, including:

- online promotion and advertising activities via provider websites and other relevant media channels
- development of flyers and factsheets for key target audiences
- age specific social media promotion and advertising via Facebook, LinkedIn and Twitter
- electronic direct marketing to providers' existing stakeholder databases
- placement of mainstream advertising in print media
- interior bus advertising in selected locations.

Providers also held targeted events and workshops and encouraged participants to 'tell a friend' to also promote the initiative through word-of-mouth.

Skills Checkpoint shows that the provision of high-quality information and guidance can support older people to overcome barriers and engage more effectively with the VET sector. As one participant in the pilot stated:

It has helped me to identify gaps in my skills and knowledge. At my age, the thought of training can be daunting, especially if you don't know what course to complete or training provider to use. The program has equipped me with the confidence to pursue training pathways I never knew existed.

### **Recommendation 8: The Inquiry recommends that the VET sector prioritise the provision of high-quality information, under the principles:**

- **accessible** — including improved website functionality
- **targeted** — including developing relationships between stakeholders and peak bodies
- **personalised** — including upfront skills screening and career guidance.

**Recommendation 9: That the Australian Government incorporate the findings of the Skills Checkpoint evaluation and roll out the service across Australia.**

**(c) Reducing cost barriers**

As discussed in Chapter 2 cost was consistently identified as a barrier to older people seeking training and retraining opportunities. In particular a number of individuals raised with the Inquiry ineligibility for government subsidised training as a significant barrier.

There was strong support for reducing cost barriers and some submissions proposed specific ways to do this such as broadening eligibility for Austudy,<sup>15</sup> and providing financial incentives for the individual.<sup>16</sup> The Inquiry also notes that the potential expansion of VET FEE-HELP loans to a broader range of certificate IV courses would reduce cost barriers by deferring payment in applicable circumstances.

A number of experiences relayed to the Inquiry raised ineligibility for government subsidised training under the National Partnership Agreement for Skills Reform as a cost barrier. As previously discussed each state and territory jurisdiction has different eligibility criteria for this government-subsidised training entitlement, overall the two criteria most at issue are:

- ineligibility based on any prior qualification above a certificate III such as under the Queensland *Certificate 3 Guarantee* and prior to 2016 the New South Wales *Smart and Skilled* subsidy
- ‘upskilling requirement’ that restricts subsidised training to people seeking a qualification above their existing qualification such as under the *Victorian Training Guarantee*.

The Inquiry considers these eligibility criteria as arbitrary and inequitable, and as having a disproportionate impact on older people. In particular these restrictions add cost barriers for people seeking retraining and other non-linear skills training, which may be an otherwise attractive option for older people.

Some jurisdictions, such as Western Australia and the Australian Capital Territory (ACT), administer more open entitlement schemes and do not restrict student eligibility for subsidised training under the National Partnership on the basis of prior qualification, while other jurisdictions such as South Australia and Tasmania provide exceptions to restricted eligibility on the basis of being unemployed or recently retrenched.

The Inquiry favours an approach that is open rather than providing exceptions. This is because where exceptions are provided the possibility remains that older people may be excluded on an arbitrary basis with detrimental consequences. For example under an open entitlement system a currently employed older worker with a chronic health condition in a physically demanding job could access subsidised training to retrain or upskill into more appropriate employment while they are still employed, whereas an entitlement system with exceptions, as described above, would initially exclude them from a subsidy while they are employed and as a result they are more likely to wait until their role becomes unmanageable and they become unemployed — in which case they are likely to experience increased difficulty in re-entering the workforce even after training.

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The ACT's research that underpins its Skilled Capital initiative under the National Partnership provides a discussion of student eligibility criteria, concluding with a recommendation for a 'more open entitlement system' in which the entitlement for subsidised training is only subject to budgetary constraints and the qualification being undertaken is identified as an existing skills shortage.<sup>17</sup> This approach is beneficial for both the individual, by reducing cost and improving employability, and the local economy, by addressing skills shortages.

The ACT research notes that this 'open entitlement system' best aligns with the objectives of the National Partnership:

If the objective of the system is to increase education attainment of students in skills training, then an administratively simple entitlement system should be preferred over a complex one that students cannot or do not feel confident partaking in.<sup>18</sup>

A review of VET funding in NSW included a recommendation to remove eligibility restrictions based on prior qualification, with the review noting that this requirement particularly impacted older people and that it acted like a 'penalty' for retraining.<sup>19</sup>

The Inquiry supports the removal of restrictions related to prior qualifications and the implementation of more open eligibility criteria that is principally based on meeting skills shortages.

#### **(d) Improved access to skills recognition**

Recognition of prior learning (RPL) is a way of gaining formal recognition for relevant previously acquired skills and experience. In this way RPL enables qualification completion in a shorter time, often at a reduced cost, and facilitates formal skills acquisition for experienced workers. RPL is therefore an attractive option for older people and also beneficial to employers seeking to upskill or retrain workers. An effective RPL process supports the development of individualised and flexible training options.

However, as highlighted in Chapter 2 the Inquiry heard from older people who had experienced barriers in accessing RPL. Further investigation of access to RPL also revealed that older people with relevant skills and experiences are less likely to be offered RPL assessment than younger people.<sup>20</sup> The barriers relayed to the Inquiry align with those identified by existing Australian research, which points to the overall complexity of the RPL system, and inconsistent information and guidance as major barriers to both individuals and employers engaging with this process.<sup>21</sup>

Improving the RPL process by making it more accessible, consistent and effective should be a priority for reducing barriers to skills training currently faced by older people. It is crucial to ensure that older people with relevant skills and experiences are offered an RPL assessment followed by appropriate gap training.

Another aspect is to ensure that older people are able to make informed decisions about RPL. For example given that the process of RPL can vary amongst institutions, it would be beneficial for older people to be supported in choosing the institution that offers the most suitable method of RPL for their needs.

Suggestions made to the Inquiry support streamlining of the process and the reduction of costs associated with RPL, including for example the introduction of free skills assessments.<sup>22</sup> The Inquiry broadly supports the following findings by the NCVET:

More and effective recognition of prior learning requires: greater promotion; improved support and resources to assist individuals gather evidence; and trained and experienced professional assessors available to offer cost-effective skills recognition. It requires training providers to model a consistent and effective approach to RPL but also to be supportive of the flexibility required to meet individual and employer needs. This requires funding models and audit and compliance regimes that genuinely support the flexibility required.<sup>23</sup>

An effective RPL process is also a crucial element of improving the apprenticeship system, which is described in greater detail in the following section.

At a minimum, all state and territory jurisdictions should ensure that high-quality information about the cost and process involved in RPL is readily accessible for prospective students and employers. Career guidance and advice services, such as through Skills Checkpoint, should also ensure that RPL options are appropriately explained and made accessible to older people seeking skills training.

**Recommendation 10: The Inquiry recommends that the Australian Skills Quality Authority undertake a strategic review of the availability and administration of RPL at a national level. This strategic review would provide a comprehensive overview of RPL including the variable costs, complexities and barriers that have been identified by this Inquiry. It would also establish specific ways to achieve a clearer and more effective approach to RPL that would support older people to undertake skills training.**

### **(e) Improving the apprenticeship system**

Apprenticeships are a mode of training that offers access to a formal qualification while undertaking paid employment in accordance with a training program. In this way apprenticeships offer a work-based training pathway that is mutually beneficial to the individual and their employer.

Both federal and state government policies have recognised the importance of encouraging older people to undertake apprenticeships and promoted this group to employers, for example through the Mature Aged Workers Commencement and Completion Incentives.

While enrolments into apprenticeships by people aged 45 years and over have increased in the last 10 years there is still scope to improve this training option to increase access for older workers and support longer working lives. Views of individuals and employers presented to the Inquiry confirm that increasing workforce participation of older Australians through a more suitable apprenticeship system is well-supported.<sup>24 25</sup>

To achieve this it is crucial to facilitate more flexible and affordable apprenticeship pathways into expanding industries. The Inquiry believes that for those older people who want to undertake apprenticeships, facilitating shortened completion times and increasing employer demand are essential to ensure that this mode of training is effective.

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A growing number of individuals across all age groups are completing apprenticeships in a shorter timeframe. This is especially true for apprentices over the age of 45, with nearly 82% completing within two years — this is significantly higher than the overall average of 44.1%.<sup>26</sup>

Early completion is achieved by collaboration between the apprentice, their employer and the training provider. In practice the early completion can be facilitated by a range of options such as early sign-off, competency-based progression or RPL combined with gap training. It makes sense that older people with relevant, existing skills and experiences would consider early completion an attractive option, in particular because it reduces the time where a person is on the lower apprentice wage.

Promotion of competency-based and therefore shorter apprenticeships also supports a more responsive system that can meet skills shortages more quickly, in this way it is also beneficial to employers.

One key challenge of facilitating shortened completion times is to promote a culture of competency-based, rather than the outdated perception of time-based apprenticeships, and in particular ensuring that this does not reduce the quality or productivity of the apprentice. This is facilitated by an effective and accessible RPL process that is supported by personalised gap training.

### **The National Apprenticeships Program**

The National Apprenticeships Program (NAP) is an existing model that could be used as a basis for the development of an apprenticeships program that is more suitable to older people. The NAP began in 2011 and the last intake period of the pilot closed in April 2014. It involved a two-stage pathway: RPL with a benchmark entry point of the individual having at least 40% of the required skills and then identified gap training. A key focus of the initiative was to deliver apprentices in a reduced timeframe without a reduction in quality. This was met by the RPL benchmark, combined with very strong relationships with employers.

When the pilot program closed in April 2014, 246 apprentices had signed an apprentice contract and a very low cancellation rate of only 5% was reported. An independent review of the program by PwC also reported significant productivity gains through early completion along with cost-savings for government through the effective and efficient use of RPL. Demand for the program was far greater than supply, with over 9,500 applications to join the program over the pilot period.<sup>27</sup>

The Inquiry sees potential in the NAP model as a basis for an apprenticeship program focussed on the upskilling and retraining of older people to work in areas of identified skills shortages. It sees particular relevance for people currently in industries with diminishing employment opportunities due to industry downsizing or who are seeking transition due to individual circumstances such as a chronic health condition. Crucial elements of the NAP that would underpin this sort of program are:

- the use of RPL combined with gap training to achieve shorter completion times
- strong relationships with committed employers
- a focus on apprenticeships in areas of identified skills shortages
- identification of specific groups likely to have transferrable skills.

The other key aspect is to ensure that employer demand for older apprentices is high. Negative attitudes along with the higher wage attracted by an older apprentice present a challenge in this regard.

The government currently provides Mature Aged Workers Commencement and Completion Incentives, which includes a payment to the employer of \$750 at commencement and \$750 at completion by an apprentice who is a disadvantaged person aged 45 years or more. A submission to the Inquiry suggested increasing this incentive,<sup>28</sup> while other submissions supported the introduction of new financial incentives, including tax deductions.<sup>29</sup>

The Productivity Commission recently noted the complexities of the apprentice wage and incentives system and recommended that it undertake a review of these arrangements to determine effective strategies. The Inquiry would support this review, in particular to better understand ways to increasing employer demand for older apprentices.

Aside from financial incentives, other ways to increase employer demand would be to ensure that apprenticeships are undertaken in areas of identified skills shortage and that there are strong links between training providers, employers and industry groups to promote positive employment outcomes.

**Recommendation 11: That the Australian Government fund the National Centre for Vocational Education Research to undertake a research project that reviews literature and existing good practice regarding effective and appropriate approaches to apprenticeships for older people. This project would:**

- promote a better understanding of barriers and enablers to older people undertaking apprenticeships
- identify case studies and good practice for developing an apprenticeship system suitable to older people
- develop a framework for the effective design and delivery of apprenticeships for older people.

#### **(f) Self-employment**

The Inquiry was told that self-employment is an attractive option for many older people to continue contributing to the workforce and economy.

In the 2015–16 Federal Budget the Australian Government announced funding of \$5.5 billion for the Jobs and Small Business package to help small business grow and create jobs. The package recognises that small business is ‘the engine room of our economy’, employing over 4.5 million people and producing over \$330 billion of Australia’s economic output per year. Ninety six per cent of all Australia’s businesses are small businesses.<sup>30</sup> The package includes a range of measures such as tax cuts for small business, help for start-ups and entrepreneurs and flexible wage subsidies. The particular measures announced for helping to employ older workers were changes to the *Restart* wage subsidy program.<sup>31</sup> There is also a range of resources available to businesses at different stages of their development, with links to *jobactive*, apprenticeship schemes, and free and low-cost training courses.

Senior entrepreneurship (sometimes referred to as ‘seniorpreneurship’) is emerging as a significant phenomenon across the globe.<sup>32</sup> Senior entrepreneurship refers to people aged 50 years or over who participate in business startups. Senior entrepreneurship is the fastest growing segment of entrepreneurship.<sup>33</sup>

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In Australia, there is a growing trend of older people starting their own business.<sup>34</sup> Australian Bureau of Statistics data shows that there were 611,000 people aged 55 years and over who were self-employed in November 2013, up from 554,100 in November 2008. Between November 2008 and November 2013, the proportion of independent contractors who are 55 years of age or over increased from 24.7% to 27.7%, while the proportion of other business operators who are mature-aged increased from 29.6% to 33.4%.<sup>35</sup>

Research suggests that older people are 'pulled' into, or choose self-employment as a late-career option, because it is a flexible alternative to organisational employment that offers an attractive work-life balance, or because it generates additional income in, or for, retirement that allows the individual to maintain their preferred lifestyle.<sup>36</sup> For people who are 'pushed' from the workforce due to factors such as age discrimination in recruitment or employment, starting up a business may present an attractive option<sup>37</sup> or may be the only alternative for mature individuals wishing to resume or continue economic activity.<sup>38</sup>

The promotion of entrepreneurship for older people is 'a prospective policy option to prolong the working lives of older people, reduce older-age unemployment, enhance the social inclusion of older individuals',<sup>39</sup> and to a lesser extent, 'enhance the innovative capacity of the economy by employing the human and social capital of mature individuals through new innovative start-ups'.<sup>40</sup>

From an economic perspective, maintaining labour market attachment or promoting start-ups of the ageing population may be able to, in the short-run, offset expected labour and skill shortages in certain regions in Australia and facilitate a transfer of human capital between generations.<sup>41</sup>

Australia is lacking in entrepreneurship policy and initiatives aimed at the older market. Recent Australian research outlines ways to reduce barriers for older entrepreneurs and identifies a number of policy and intervention supports to make entry into self-employment simpler including:

- increasing awareness of the feasibility of senior entrepreneurship
- developing targeted initiatives for example capital, financial incentives and providing start-up information for older people
- developing policy initiatives to enhance senior entrepreneurship
- targeting education and training for nascent and current senior entrepreneurship
- mobilising mentorship activities for senior entrepreneurship
- developing networking opportunities.<sup>42</sup>

In Australia, the *New Enterprise Incentive Scheme* (NEIS) provides training and business set-up mentoring assistance to enable eligible unemployed people to become self-supporting and independent by establishing and running their own business.<sup>43</sup> The NEIS is delivered by a network of 21 providers who provide individualised help for job seekers to become self-employed business owners. NEIS provides job seekers with:

- accredited small business training and business mentoring for up to 52 weeks
- income support for up to 39 weeks (NEIS Allowance) and NEIS Rental Assistance for up to 26 weeks (if eligible)
- personalised mentoring and support from a NEIS provider in the first year of the new business to help a job seeker put their business idea into practice.

A total of 6,300 NEIS places are available nationally each year.<sup>44</sup> Participants must be eligible for *jobactive* or a DES participant and not convert to the Age Pension before or during participation in NEIS. As yet NEIS has not resulted in enhanced entrepreneurial activity compared to initiatives and programs abroad.<sup>45</sup>

**Recommendation 12: That the Australian Government develop and promote a program to target senior entrepreneurs which incorporates training and mentoring, and review current taxation and benefit systems to ensure there are no disincentives to participation.**

### 3.3 Facilitating longer, healthier working lives

Chapter 1 presented current evidence of the link between health and workforce participation of older Australians, emphasising that poor health, in particular as a result of chronic health conditions is a barrier to workforce participation and is a leading cause of premature and involuntary retirement. There is a clear impetus for all stakeholders to facilitate longer, healthier working lives.

The Inquiry considers improving health and wellbeing as fundamental to improving workforce participation of older Australians. Government has a crucial role in broadly making the case for wellbeing to business and individuals.

The Inquiry recommends that action be taken in two main areas:

- Targeted, proactive health strategies to curb adverse trends in disease risk factors such as obesity, poor nutrition and physical inactivity. The workplace is a key avenue for delivering preventative health strategies.
- Workplace adjustments and the availability of flexible work arrangements are the other crucial aspect. Organisational support very strongly influences the ability of a person with a chronic health condition to stay in the workforce.

With regard to these two broad actions, the key policy challenges are to join up existing initiatives, invest in those that deliver the best results and make it easier for all stakeholders to engage with and contribute to healthy ageing. The Inquiry considers that overcoming these challenges would be supported by a national strategy that encompasses the two main aspects mentioned above. This strategy would outline an overarching plan, and set clear objectives and timeframes and measures of success.

**Recommendation 13: That the Australian Government develop and implement a national healthy ageing strategy to promote evidence-based preventative health practice particularly in the employment context, and improve access to workplace adjustments. This strategy is to be supported and overseen by an expert advisory panel. As part of this strategy the government will actively engage industry groups, peak bodies and trade unions.**

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### **(a) Public health education campaign**

In Australia there have been a number of public health campaigns that have promoted the importance of good health, including better nutritional choices and regular physical activity.<sup>46</sup>

In the context of aiming to increase workforce participation of older people a worthwhile government investment would be to establish a public health campaign that more specifically showcases the importance of healthy ageing and its link with work, and the means through which this can be achieved. This would include emphasising the benefits to overall wellbeing of meaningful work and regular exercise. Building a broad community awareness of the importance of healthy ageing will increase support for broader elements of healthy ageing policy and enhance business engagement with this message.

A campaign specifically targeting older people could also be useful as some risk factors, including physical inactivity are particularly problematic amongst this age group — 61.6% of males and 62.6% of females aged 45–54 do not undertake sufficient physical activity.<sup>47</sup>

**Recommendation 14: That the Australian Government develop a national public education campaign that reinforces the importance of healthy ageing and, in particular, emphasises the relationship between health and work.**

### **(b) Facilitating good health in the workplace**

Government has a multifaceted role in promoting and facilitating good health in the workplace. As a policy-maker government has a clear role in facilitating safe and healthy work environments and practices, particularly through the provision of financial incentives, dissemination of information, and promotion of best practice. In addition as an employer, government should be a leader in promoting the health of its employees.

It is important for government to encourage and support health and wellbeing initiatives in all workplaces, in both the public and private sectors, through the provision of incentives and also information to make implementation easier.

Financial incentives are important as budgetary constraints are often cited as a barrier to implementation of health initiatives in the workplace. In particular it is crucial to specifically consider incentives for small and medium-sized businesses.

One suggestion made to the Inquiry was to broaden access to the fringe benefits tax exemption currently provided for on-site fitness services only. The recommended change was to make this incentive more accessible to smaller businesses, which are unlikely to have on-site fitness services by extending the tax exemption to off-site fitness services. More information about this proposal can be found at <http://www.fitnotfbt.org.au/>.

The Inquiry also heard that there is scope to more thoroughly investigate a range of worthwhile health and wellbeing initiatives both new and existing, to ensure that health and wellbeing programs provided in the workplace are evidence-based and suitable to all employees, including those with existing chronic conditions.

Specialised exercise programs for people with chronic conditions can improve exercise capacity, wellbeing and reduce absenteeism and hospital admissions. Extending the Medicare benefits scheme to cover these sorts of programs is important to provide greater access to effective exercise programs that can also be promoted through the workplace.

**Recommendation 15: That the Australian Government investigate the provision of tax or other financial incentives to encourage businesses and employers to adopt health and wellbeing initiatives e.g. extend the fringe benefits tax exemption to off-site fitness services, and broaden the Medicare benefits scheme to exercise programs for people with chronic conditions.**

Government also supports wellbeing in the workplace through disseminating information and ensuring that the Australian public service is a model employer. The Investing in Experience: Working for Today model specifically promotes health, safety and wellbeing in the workplace.<sup>48</sup> In particular it emphasises the crucial role that workplaces have in facilitating the good health of employees and provides practical guidance to more effectively recruit and retain older workers. This Comcare program is connected to the APS 200 Project: Work Ability and Ageing Framework for Action that was endorsed in 2012 by the APS Secretaries Board.

Until 2014, the Australian Government had a broad healthy workers initiative under the National Partnership Agreement on Preventative Health.<sup>49</sup> The partnership was agreed to by the Council of Australian Governments in 2008 with the aim of facilitating preventative health strategies in various settings, including the workplace. Through this the Australian Government invested in partnerships with state governments and established the healthy workers portal ([www.healthyworkers.gov.au](http://www.healthyworkers.gov.au)) which provides information about the case for wellbeing and examples of good practice. While the federal government initiative has been discontinued, a number of state-based initiatives have continued.

The Inquiry argues that there is merit in the Australian Government re-establishing a similar initiative in order to support the health and longevity of the Australian workforce.

**Recommendation 16: That the Australian Government establish and fund a healthy and productive workers initiative to be administered jointly by government departments including the Department of Health and Department of Employment to actively promote evidence-based workplace health programs, disseminate information and showcase good practice.**

### **(c) Workplace adjustments**

Organisational support is an important aspect of facilitating a longer working life, particularly where an employee has a chronic health condition. Flexible work arrangements, adequate workplace adjustments, good job design and a supportive manager are all elements that can help a person with a chronic condition to remain employed.

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The government currently supports the provision of workplace adjustment for employees with disability through the Employment Assistance Fund (EAF). This is administered through JobAccess, which is an information and advice service funded by the Australian Government. The financial support provided by the EAF includes costs of workplace equipment and modification for employees with a health condition that meets the EAF guidelines.<sup>50</sup>

Given the impact of chronic health conditions on workforce participation, the Inquiry considers that more could be done through JobAccess and the EAF to facilitate the provision of workplace adjustments specifically for older people with a chronic health condition to support their continued participation in the workforce. Particular challenges to overcome may be that the person with the chronic health condition and/or their employer are unaware of the supports available or do not consider the condition to be a disability.

For example, the EAF could be extended to specifically include relevant training for managers and co-workers, while the information service provided by JobAccess could more explicitly outline supports that are available under the EAF for workers with a chronic health condition.

**Recommendation 17: That to support continuing workforce participation and to improve access to workplace adjustments for people with chronic health conditions, the Australian Government:**

- **expand the Employment Assistance Fund to include training for managers and co-workers about employees with chronic health conditions**
- **develop information and resources provided by JobAccess that specifically address workplace adjustments for employees with chronic health conditions**
- **review the current EAF guidelines to ensure they do not exclude people with chronic health conditions from accessing workplace adjustments.**

## 3.4 Changes to laws and policies

This section outlines recommendations for change to government policies, programs and federal laws raised with the Inquiry due to their impact on the workforce participation of older Australians.

### (a) Insurance exemptions

The Inquiry heard that the ability to insure against risk is a key concern for older people and people with disability. It is important that insurance products match Australians' longer and healthier lives, and increasing participation, to ensure everyone can insure against risk if they wish to do so.

The objects of the Age Discrimination Act and the Disability Discrimination Act are to eliminate, as far as possible, discrimination on the grounds of age or disability in various areas of public life.<sup>51</sup> However, it is not necessarily unlawful under either Act to discriminate on the grounds of age or disability in the provision of insurance products.

Section 37 of the Age Discrimination Act provides an exemption in relation to age-based discrimination in the terms and conditions on which the insurance policy is offered or refused, where the discrimination:

- is based upon actuarial or statistical data on which it is reasonable for the discriminator to rely; and
- is reasonable having regard to the matter of the data and other relevant factors; or
- in a case where no such actuarial or statistical data is available, and cannot reasonably be obtained — the discrimination is reasonable having regard to any other relevant factor(s).<sup>52</sup>

Like the Age Discrimination Act, the Disability Discrimination Act prohibits discrimination in insurance and superannuation but allows for reasonable distinctions and exclusions based on disability where these are on the basis of actuarial data on which it is reasonable to rely or where it would cause unjustifiable hardship to the discriminator.<sup>53</sup>

Concerns about the existence of these exemptions have been raised in a number of other reports and reviews. For instance, the Productivity Commission's 2004 review of the Disability Discrimination Act outlined issues in relation to the insurance exemption, including:

- access to insurance
- the nature of and access to actuarial and statistical data
- the nature of 'any other relevant factors'
- and reliance on stereotypes.<sup>54</sup>

The use of the exemption by insurers, and in particular the inaccessibility of actuarial data upon which insurers rely, remains a problem. Concern about this was expressed by many contributors to the Inquiry.

### **Case study 3.1: Ingram v QBE Insurance (Australia) Ltd (Human Rights) [2015] VCAT 1936 (18 December 2015)**

In 2015, an applicant came before the Victorian Civil and Administrative Tribunal claiming that her insurer had discriminated against her on the grounds of her disability. The Victorian Equal Opportunity Act, like the Disability Discrimination Act, contains an insurance exemption.<sup>55</sup>

The applicant had taken out a travel insurance policy with QBE. She experienced depression and was unable to go on her trip and subsequently sought to make a claim against her travel insurance. QBE rejected her claim on the basis that the policy she purchased contained an exclusion that said there is no cover where the claim arises due to mental illness. QBE stated that this was based on statistical data which demonstrates that there is a high risk of cancellation of travel due to mental illness.

The tribunal found that the insurer was not entitled to rely on the exemptions under the DDA or the Equal Opportunity Act because QBE were unable to produce evidence that:

- the discrimination was based on actuarial or statistical data; or
- that QBE would have suffered unjustifiable hardship if they had offered a policy without the mental illness exclusion to the applicant.

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The Inquiry concludes that further scrutiny is needed of data being used by insurance and superannuation companies to justify higher premiums or exclusions for older people and people with disability.

*(i) Income protection insurance*

The Inquiry heard that access to income protection insurance beyond the age of 65 is of particular concern. Income protection insurance provided in conjunction with superannuation commonly ceases at age 65. This is inconsistent with the expectation that more people will be working beyond age 65 in the years ahead, as indicated by changes to the age of eligibility for the Age Pension.

This issue was considered in the *Access All Ages — Older Workers and Commonwealth Laws* report by the Australian Law Reform Commission (ALRC).<sup>56</sup> In that report, the ALRC noted that barriers to obtaining insurance can act as a disincentive to employment for older Australians:

[W]here mature-age workers are unable to access income protection insurance, this leaves them vulnerable in the event of illness or injury.<sup>57</sup>

In 2012, the Australian Human Rights Commission published a report looking at issues for older people working past their 60s. The report, titled *Working Past Our 60s* noted that some insurers and superannuation funds have already lifted their age limits, for example:

- In 2012, Australian Super raised the age limit on its income protection insurance to age 70 with up to two years of coverage.<sup>58</sup>
- In 2011 the health and community services industry fund HESTA, lifted the age limit on its income protection to age 67.<sup>59</sup>

*Working Past Our 60s* argues that the age limits on income protection insurance act as a disincentive to work in the following ways:

- they indicate to people in their mid-60s that they are too old to be in the workforce
- the resulting financial insecurity may encourage some people to retire rather than continue working with the uncertainty that they may be forced to retire if they have an accident or period of illness.<sup>60</sup>

The report also argued that:

- insurance companies should be encouraged to use health and well-being measures rather than chronological age to determine people's eligibility for coverage
- the Australian Government should consider providing incentives such as generous tax rebates for people over 60 with accident and illness insurance coverage. This may offset any increases in insurance premiums and increase the uptake of trade insurance policies.<sup>61</sup>

The ALRC report also made a range of recommendations in relation to insurance, including:

- that the Australian Government and insurers negotiate an agreement requiring the publication of data that is relied upon for age-based insurance offerings
- a review of insurance exceptions under Commonwealth, state and territory anti-discrimination legislation as they apply to age
- guidance material about the application of any insurance exception under Commonwealth anti-discrimination legislation

- that the General Insurance Code of Practice and the Financial Services Council Code of Ethics and Code of Conduct be amended to include diversity statements or objects clauses that encourage consideration of the needs and circumstances of a diverse range of consumers including mature-age persons.<sup>62</sup>

**Recommendation 18: That the Australian Government convene an expert panel to consider access to insurance products, particularly income maintenance and travel insurance products, insurance industry codes of practice, and the extent of publication of actuarial and statistical data for older Australians and Australians with disability. Following the panel's advice the Australian Government consider limiting or otherwise changing the operation of the insurance exemption under section 37 of the Age Discrimination Act 2004 and under section 46 of the Disability Discrimination Act.**

### **(b) Taxation of redundancies**

As considered in Section 2.4(d), another exemption to age discrimination is found in Section 40 of the Age Discrimination Act. This section provides exemptions for acts done in compliance with Australian taxation law.<sup>63</sup>

The age-based approach to taxation of redundancies is a clear financial disincentive to workers close to age 65 to remain in employment if they are offered a voluntary redundancy. The cut off age of 65 years is also out of step with the increase of the Age Pension qualifying age to 67 years by 2023.

This issue was considered in a recent Senate Committee Inquiry into matters that inhibit or discourage job-creation and employment by private sector small businesses and provide disincentives to individuals from working in such businesses. The committee recommended that the Australian Government 'reassess the policy case' for the taxation of redundancy payments made to people over age 65.<sup>64</sup>

**Recommendation 19: The Australian Government consider the taxation treatment of redundancy payments made to people over 65 years of age in light of changes to Age Pension qualifying age.**

### **(c) Superannuation**

A number of individuals and organisations raised with the Inquiry concerns about the operation of the superannuation system in regards to older workers.

While it is clear that the accumulation of retirement income has an impact upon the workforce participation of older Australians, it is difficult to elucidate the exact impact of superannuation policy on a person's decision about when to retire. This decision is usually based on a range of personal circumstances and, as the ALRC noted in their 2013 *Access All Ages* report, access to superannuation is 'an earned benefit and a statutory right'.<sup>65</sup>

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This Inquiry is concerned with measures which act as barriers to workforce participation for older Australians, rather than broader issues regarding access to superannuation.

*(i) Work test*

There is no age limit on mandated employer Superannuation Guarantee contributions to superannuation funds. However individuals aged 65 to 74 can only make voluntary superannuation contributions where they have been employed on a part-time basis during the financial year in which the contributions were made.<sup>66</sup> This is known as the ‘work test’.

Individuals aged over 75 cannot make voluntary superannuation contributions at all.<sup>67</sup>

The 2010 Henry Tax Review considered the work test and found that:

Given the very low rate of tax applied to superannuation fund earnings, compared to other savings, a restriction on people of Age Pension age accessing concessions should continue to apply.<sup>68</sup>

However, the cut-off age of 65 years for voluntary superannuation contributions will no longer be in line with Age Pension eligibility age from 2023, when the qualifying age will increase to 67 years.

In addition, the ALRC’s 2013 *Access All Ages* report found no evidence that age-based restrictions on superannuation contributions constitute either a barrier or an incentive to workforce participation for older Australians.<sup>69</sup> However, the report did recommend that the government review the work test for people aged 65–74 and consider removing the restriction on contributions by people aged 75 years and older and replacing it with a work test.<sup>70</sup>

In line with the ALRC’s findings, the Inquiry suggests that the government consider whether the policy objective of limiting access to superannuation concessions is being achieved or even whether it remains relevant in circumstances where older Australians are being encouraged to remain in work for longer.

**(d) Workers compensation**

The Inquiry heard widespread concerns about age-based limitations on weekly salary replacement payments for older people.

Individuals told the Inquiry that they were concerned about a lack of workers compensation coverage after they reached ‘retirement age’ because they felt that it would make employers reluctant to hire them.

Another concern raised by individuals was that if they suffered a workplace injury after ‘retirement age’ they would be more vulnerable because workers compensation would not cover them.

The notion that workers compensation does not cover people after the age of 65 is a misconception. All workers are covered by workers compensation. In many Australian jurisdictions, there are age-based limitations imposed on weekly salary replacement payments once people reach a defined ‘retirement age’ (which varies between jurisdictions).<sup>71</sup> Workers who are injured close to or shortly after the defined retirement age are still entitled to receive weekly salary replacement benefits for a period of one to two and a half years, depending on their jurisdiction.<sup>72</sup>

The national agency responsible for workers compensation policy, Safe Work Australia, recognises the need to correct these misconceptions as they ‘may deter older workers from continuing at work or deter employers from employing older workers’.<sup>73</sup>

The Inquiry also heard that age-based limitations in insurance schemes send a message to older people that they are too old to work and that:

Confidence in available cover is likely to act as an incentive for the over-50s and those with disability to enter or remain in work.<sup>74</sup>

In a submission to the Inquiry, the Insurance Council of Australia recommends that age-based limitations on salary replacement payments be aligned with Age Pension eligibility age, noting that:

The design of some workers compensation schemes in Australia has not kept pace with changing workforce patterns where more people wish to have a more flexible transition into retirement, often beyond the traditional retirement age of 65 years.<sup>75</sup>

In some jurisdictions legislation has been amended so that ‘retirement age’ for the purposes of workers compensation aligns with the Age Pension qualifying age but this is not yet nationally consistent.<sup>76</sup>

The Australian Human Rights Commission has previously recommended the removal of age-based limitations in workers compensation schemes on the basis that they are inconsistent with the Australian Government’s intention to encourage older people to remain in the work force.<sup>77</sup>

On the other hand, the Insurance Council of Australia told the Inquiry that the removal of age based limitations within workers compensation schemes may have ‘significant cost implications’.<sup>78</sup>

This could impact insurance affordability, as premiums increase to accommodate eligibility for benefits. Therefore, any changes to age-based restrictions need to be carefully assessed for the impact this may have on premiums paid by employers.<sup>79</sup>

Concerns about the cost of removing age-based limitation were discussed in the Australian Law Reform Commission’s 2012 *Access All Ages* report. The ALRC recommended that:

- Age-based limitations imposed under Commonwealth workers compensation schemes be amended to align with the Age Pension eligibility age.
- The length of time for which older workers are entitled to salary replacement payments under Commonwealth schemes should be extended.<sup>80</sup>

Two Australian jurisdictions — Queensland and Western Australia — have removed the age-based limitations on income replacement payments in their workers compensation legislation.<sup>81</sup>

In light of the information presented to the Inquiry which suggests that age-based limitations in workers compensation can present a significant barrier to employment for older Australians, further consideration is required.

**Recommendation 20: That the Australian Government work with state and territory jurisdictions to:**

- **review the evidence regarding the impact of the removal of age based limitations from workers compensation schemes**
- **model any costs against the benefits of increased workforce participation of older people**
- **ensure that, as a minimum, age based limitations and cut offs for workers compensation salary replacement payments are linked to the Age Pension qualifying age.**

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### **(e) Access to government services**

Restrictions on access to government-funded employment supports such as *jobactive* employment service providers and the *Restart* wage subsidy based on eligibility for income support payments, such as the Newstart Allowance, have been identified by multiple contributors to the Inquiry as barriers to employment.

The *Restart* wage subsidy has had relatively low uptake, although the Inquiry does note that the government has made some changes to the program to reduce its complexity and increase the uptake by employers.<sup>82</sup>

In order for an employer to receive the *Restart* subsidy, they must employ a candidate who has been on income support for at least six months. The Inquiry heard that this can restrict access for older people who are unemployed but ineligible for income support.

**Recommendation 21: That the Department of Employment remove the requirement to have been on benefits for at least six months in order to be eligible for the *Restart* wage subsidy.**

The Inquiry also heard from older Australians who said that because they were not in receipt of an income support payment, they were unable to access government-funded services.

In fact, people who are not in receipt of an income support payment are able to access *jobactive* employment services for up to six months and receive supports such as: help writing resumes, looking for jobs and preparing for interviews.<sup>83</sup> The feedback received by the Inquiry suggests that many older Australians who would benefit from the support of a *jobactive* provider are unaware of their entitlement to access these services.

**Recommendation 22: That the Department of Employment promote the availability of *jobactive* services to jobseekers who are not in receipt of an income support payment, in particular marketing these services to older workers.**

The Inquiry also heard from older Australians who did have experience accessing employment support through *jobactive* and Disability Employment Service providers.

Older jobseekers make up a large proportion of Newstart Allowance recipients. A submission from the Brotherhood of St Laurence cites Department of Employment data which shows that:

247,802 mature-age Australians received Newstart in June 2015 compared with just over 154,000 in June 2008.<sup>84 85</sup>

In addition, people aged over 45 years make up 35.7% of long-term Newstart customers.<sup>86</sup>

As noted earlier in this Report, on average, people who have been unemployed for a significant amount of time face greater difficulty in finding subsequent work.<sup>87</sup> The number of older Australians in receipt of the Newstart Allowance for significant periods reflects the importance of ensuring that people have access to the right services at the right time.

The recommendations made earlier in this section regarding changes to the eligibility criteria for the *Restart* wage subsidy and promoting the availability of *jobactive* support to older Australians would address some of these concerns. However, the Inquiry also heard concerns about the level of skills and knowledge demonstrated by *jobactive* providers.

Individuals and organisations reported that employment services — both *jobactive* and Disability Employment Services — sometimes lacked the skills or knowledge to provide older Australians with support to find employment. The skills and experience of DES providers is discussed in more detail in the chapters regarding people with disability.

The feedback indicates that better training of *jobactive* employment providers in providing targeted support to older Australians is also necessary. One submission stated that:

There is a gap in existing policy responses in terms of training and resources for labour market intermediary workers such as employment services staff. Current industry training packages, such as the Certificates III and IV in Employment Services, include modules on understanding jobseekers with disability, mental health issues and from culturally diverse backgrounds. However, no specific training is presently available on understanding or working with mature-age jobseekers.<sup>88</sup>

The Inquiry would support the development and provision of training for *jobactive* staff to improve their capacity to understand the challenges faced by older jobseekers and their ability to provide them with effective support.

### 3.5 Government as a buyer of goods and services

The Australian Government is a major procurer of services. In 2014–15 the value of total procurement contracts reported was approximately \$59.5 billion, representing over 69,200 contracts. The value of government contracts has more than doubled since 2006–07. In 2014–15, small to medium-size enterprises represented 28% of the total value of procurement contracts and held 59% of the number of contracts.<sup>89</sup>

The Australian Government enjoys a significant position of influence over the supply chain for goods and services across Australia, ranging from commercial and military vehicles, management, business and administrative services, education and training services to travel, food and lodging services.<sup>90</sup>

The Inquiry proposes that government consider leveraging this position to influence the supply chain. For example, government could consider requesting that suppliers demonstrate their commitment to, and achievement of, workforce diversity strategies, non-discriminatory approaches and/or recruitment targets. This could play a part in considerations regarding tendering, however it is critical that this would not be done in such a way as to disadvantage small and medium enterprises.

The Australian Government is already 'committed to improving access to government contracts for competitive small and medium enterprises, Indigenous businesses and disability enterprises'.<sup>91</sup> Government recognises that 'ensuring these suppliers are able to participate in Commonwealth procurement benefits the Australian community and economy'.<sup>92</sup>

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Further, the submission from the Australian Public Service Commission states that:

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.<sup>93</sup>

In Australia, Supply Nation is showing success in shaping the Indigenous business sector. Supply Nation is endorsed by the Australian Government to assist government procurement teams fulfil their targets under the new Indigenous Procurement Policy.<sup>94</sup>

For the first time, the Commonwealth Government has committed to a procurement target for goods and services from Indigenous businesses. The target — three per cent of Commonwealth contracts awarded to Indigenous businesses by 2020 — is ambitious and will be achieved. The government is committed to ensuring that every government portfolio meets its target.<sup>95</sup>

The focus of the policy is to stimulate Indigenous entrepreneurship and business development and to provide Aboriginal and Torres Strait Islander people with more opportunities to participate in the economy.<sup>96</sup>

This is an innovative approach by government and provides an excellent model for government to consider similar strategies to address employment discrimination and lift the economic participation of older people and people with disability.

**Recommendation 23: That in order to achieve the outcomes of the national workforce strategies to lift the labour force participation of older Australians and Australians with disability that the Australian government consider ways in which it can influence the supply chain, for example, by requesting that suppliers demonstrate their commitment to the implementation and evaluation of:**

- **workforce diversity strategies**
- **non-discriminatory recruitment and retention practices for older workers and workers with disability**
- **setting and reporting on voluntary targets for the employment and retention of older workers and workers with disability.**

### 3.6 Government as an employer

Commonwealth and state and territory public services collect data regarding the age profile of their workforces. This data shows that older age groups are comparatively well-represented in the public service workforce.<sup>97</sup> However proportionate representation is not the only indicator of possible employment discrimination.

The Inquiry was told that employment discrimination exists in the public services but there is little data available that specifically monitors discrimination against older people either in the recruitment process or in the workplace.

Possibly as a consequence of relatively high representation, there are few existing initiatives or strategies specifically aimed at either recruiting or retaining older staff, or monitoring and addressing age discrimination. In other words, the issue of employment discrimination against older workers appears to be relatively invisible in the public services.

Most of the strategies that were nominated to the Inquiry as ‘sector-wide or agency-specific strategies or programs to recruit or retain older employees’ that are currently in place consist of either workforce (succession) planning strategies or flexible working arrangements as a pathway to retirement. Almost all are available on request of the individual and at the discretion of management, that is, they are not automatically available to all staff, but rather provided only if and when an individual requests them and the manager concerned agrees that the organisation can accommodate them.

Many initiatives rely on expressed policy and executive directions but do not have clear accountability or reporting mechanisms. The effectiveness and reach of such approaches are largely dependent on the:

- ‘goodwill’ or commitment of particular executives or champions
- extent to which they are promulgated or supported or require reporting against
- understanding and commitment of managers to implementation.

There is clearly room for improvement to this ‘hit and miss’ approach.

A summary of the public service initiatives and strategies that have been identified to the Inquiry can be found at Appendix 8.

The Inquiry received a range of suggestions for approaches to improving the recruitment and retention of older people and reducing employment discrimination including:

- APS (and state and territory public services) to lead by example and model the benefits of a diverse workforce (including diversity in age)
- recognition of caring responsibilities and/or or volunteering work in recruitment, retention and promotion practices
- mandate diversity (in age) on interview/selection panels and in long and shortlists and ensure transparency in the recruitment process and feedback mechanisms
- ensure all selection panel interviewers are trained and supported to be ‘age-confident’ and undertake unconscious bias training
- external reviews of recruitment, selection and promotion mechanisms and processes to identify and address discriminatory practices
- all positions by default to be ‘flexible’, with the onus on management to justify not allowing flexibility where necessary
- appointment of senior officer responsible for improving employment of older people and addressing ageist stereotypes in the workplace (senior executive champion)

- education campaigns aimed at managers and HR specialists to address ageism and combat negative age stereotypes and behaviours which outline why such strategies are required and that they do not detract from the merit principle
- stricter policing of discriminatory behaviours (zero tolerance)
- annual reporting on employment of older people.

In the light of the evidence presented to the Inquiry regarding the extent of age discrimination in public services, there is a need to establish a clearer picture of the situation. It is therefore critical that key data is broken down by age to identify discriminatory practices against older people. For instance it would be valuable to regularly review the age profile of recruitment decisions, promotion and training opportunities, complaints, requests for flexible work and redundancies. This data will serve to provide a more complete picture of the prevalence and nature of employment discrimination and help to target action.

The recent Shergold Report notes the benefits of a diverse workforce and calls on the APS to ‘open itself to a wider diversity of perspectives’ and ‘build a more permeable public sector, providing greater opportunities for mobility within the APS, between jurisdictions and across sectors’.<sup>98</sup> Shergold recommends easier movement in and out of the public service and sourcing specific talent for particular projects.<sup>99 100</sup> The Inquiry trusts that older people and people with disability will also benefit from these opportunities as they arise.

**Recommendation 24: In order to address employment discrimination in the public services that the APS and state and territory public service commissions:**

- **develop and deliver both sector-wide and agency-specific publicity and/or education campaigns led by champions in each agency which raises the issues, articulates the case for reform and why such measures do not detract from the merit principle**
- **ensure key workforce data is collected and analysed by age, including recruitment decisions, promotion and training opportunities, complaints, requests for flexible work, and redundancies, in order to assess and respond to the issues of employment discrimination against older people**
- **based on workforce data, adopt sector wide and agency specific targets to address relevant issues, for example lack of recruitment or retention of older workers, complaints about discriminatory behaviours or lack of access to flexibility and workplace adjustments, workforce planning challenges including loss of skills**
- **include performance against these targets in performance management systems and report annually to public service commissions and in annual reports**
- **provide targeted mandatory long-term training of managers and human resources specialists (including contractors engaged to provide recruitment services) which includes:**
  - » **the benefits of employing older people and a diverse workforce**
  - » **debunking common myths (for example health and safety risks, costs, absenteeism)**
  - » **the nature of age discrimination in employment**
  - » **availability of support and resources, e.g. for workplace adjustments**
- **determine that positions at all levels be deemed to be ‘flexible’ unless there are sound documented reasons to prevent it.**

### 3.7 What employers can do

The Inquiry became aware of many employers — large, medium and small businesses — who understood the benefits of employing older people and people with disability and who had introduced innovative and effective strategies. The Inquiry was also told that small businesses can be time-poor and have limited access to information, however, the Inquiry found that some of the most innovative approaches came from small business.

Good practice and leading strategies common to increasing workforce participation of people with disability and older people include:

- adopting a combination of strategies rather than a single approach
- organisational leadership involving senior role models, a diversity and inclusion plan that includes consideration of older employees and people with disability
- setting voluntary targets and making this information public
- education and awareness raising regarding the benefits of diverse and inclusive workforces, including older people and people with disability
- building on existing programs, not ‘reinventing the wheel’
- improving recruitment practices so they are more inclusive and do not intentionally or unintentionally exclude older people and people with disability
- providing supports to older employees and employees with disability
- developing partnerships with relevant organisations to facilitate cultural change in the workplace and employment opportunities for older people and people with disability
- putting in place monitoring and accountability measures, such as workforce data collection, analysis and planning
- working, with or encouraging, the supply chain to recruit and retain older workers and workers with disability, and adopt inclusive practices.

The following section provides further information and specific case studies on strategies to create age friendly workplaces and improve recruitment and retention of older employees.

#### (a) Consider a combination of strategies

No single strategy will adequately address age discrimination in the workplace. Committed leadership, good data and a combination of strategies are required as demonstrated by the case studies below.

#### **Good practice example 3.2: Retaining an ageing workforce in the manufacturing industry**

FMP Group (Aust) Pty Ltd is a medium-sized brake parts manufacturer based in Ballarat. FMP employs more than 250 workers and is revamping its organisational culture and incorporating the needs of its mature-aged workers with its core business.

In order to survive in a changing local and global automotive industry and maintain business sustainability, FMP are learning to do things “differently”. This has required a significant change in mindset to respond to the increasing needs of its ageing workforce.

One of the immediate concerns related to workers compensation challenges. Despite being well managed, the company understood the impact that age-based claims were likely to have on claims and premiums. In addition, being a regional manufacturer there are difficulties in attracting high calibre white collar workers away from city life, creating more opportunities for employment of older people.

### **Good practice example 3.2:** (continued)

The CEO, management and HR manager made a commitment to keep FMP in the region and not lose the business and jobs.

In response, FMP introduced the following initiatives and policies:

- age-based analysis of workforce metrics and monitoring
- leadership briefings to raise the significance of the age demographics of the workforce
- one-to-one meetings with mission critical employees to understand their career aspirations
- conversations with employee groups and on an individual level to hear their ideas and needs
- age-based analysis of the biometric impacts associated with repetitive work
- a review of 'the way things are being done around here' – this included policies and practices
- identified the need to capture knowledge of older workers that would be leaving the organisation in the near future
- development of a model to assist employees with life planning.

More recently, FMP has included a Transition to Retirement (TTR) clause in their Enterprise Bargaining Agreement, which provides older workers with a variety of options for either remaining employed or planning a dignified departure from the workforce.

The company has conducted life planning and financial education sessions during work time to better prepare employees in their transitions from work.

Knowledge transfer and skills sharing now occurs between experienced and less experienced employees.

Individual benefits, such that there has been an increase in salary sacrificed voluntary superannuation contributions, workers seeking information on TTR, financial planning and alternative working options.

The Ageing Workforce Program in conjunction with an Employee Wellness program has seen the injury rate reduce.

In partnership with a consultancy service to assist employers to prevent musculoskeletal injury, FMP identified work health and safety risks to employees in a particular occupational area. The problems identified include very heavy physical work, high injury and absentee rates, ageing personnel and a large number of workers compensation claims.

Subsequent interventions include one-on-one and group consultations with the workers, discussions on possible engineering solutions, one-on-one sessions with a physiotherapist, and group body knowledge and movement information sessions.

These responses resulted in a reduction in injury rates and costs from claims. For example, where previously, carpal tunnel represented the large majority of claims, the company has not received a carpal tunnel claim in five years, since it introduced regular ergonomic reviews, monthly on-site visits by the physiotherapist and health education seminars.

Workers are more engaged and likely to consider all of their options as they encounter age related issues. There has been demonstrated confidence to discuss issues in a safe and private environment between workers and managers.

### **Good practice example 3.3: INPEX**

INPEX CORPORATION is a worldwide oil and gas exploration and production company involved in more than 70 projects across more than 20 countries, including Australia.

INPEX has a mature workforce and recognises its value. As at January 2016, more than 18% of staff at INPEX Australia were aged 50 years or older. This presents both opportunities and challenges. The opportunities include a tacit and formal transfer of knowledge to other employees. On the other hand, when these older employees choose to reduce their participation in the workplace, the organisation can be left with a skill gap.

INPEX recognises that mature employees hold a wealth of knowledge and experience and there is value in having them in the workplace. It is good business practice to manage talent across the age spectrum and maximise the outputs of a diverse organisation. The resources boom challenged INPEX to maintain a talented workforce, which was a factor in the company's pursuit of a diverse organisation, however it was not the key driver.

INPEX has the following measures in place to promote the continued engagement of older Australians:

**Compliance:** INPEX complies with legislative requirements and has a Discrimination and Harassment Standard outlining collective obligations under the 'Equal Opportunity Act'. It is mandatory for all INPEX staff to participate in equal employment opportunity training, assisting with creating both knowledge and awareness around the inclusion of older workers and to maintain a positive, accepting culture.

**Transition to retirement:** INPEX has a 'Flexible Work Arrangement' standard and a 'Transition to Retirement Standard' which facilitates employees staying in the workplace longer.

On a case by case basis, INPEX offers flexible work arrangements such as reduced hours, granting of unpaid leave if leave entitlements are exhausted and the consideration of position changes for those who still wish to work within the company but prefer a less demanding role.

**Age diversity within teams:** Age diversity is considered when developing workforce plans for new team members. INPEX encourages age diversity within teams which promotes a variety of perspectives.

**Social responsibility:** INPEX has embedded Corporate Social Responsibility (CSR) practices and governance at the highest level within the company. A CSR Committee chaired by INPEX's chairman and president and CEO oversee the development of INPEX's Sustainability Report each year. Promoting diversity is a key focus area of the report and highlights INPEX's commitment to sustainable development, including of its own workforce.

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## **(b) Organisational leadership and strategy**

Senior employee role models, diversity and inclusion plans, voluntary targets and mandatory quotas can similarly play a critical role in articulating the business case for employment of older people, increasing awareness amongst leaders and employees of the benefits of diverse and inclusive workplaces, and ensuring that older employees are central in the development and delivery of organisational strategies and outcomes.

For example, Johnson & Johnson's Credo sends a clear and powerful message about their commitment to provide equal opportunities for all their employees.

We are responsible to our employees, the men and women who work with us throughout the world. Everyone must be considered as an individual. We must respect their dignity and recognize their merit. They must have a sense of security in their jobs. Compensation must be fair and adequate, and working conditions clean, orderly and safe. We must be mindful of ways to help our employees fulfil their family responsibilities. Employees must feel free to make suggestions and complaints. There must be equal opportunity for employment, development and advancement for those qualified. We must provide competent management, and their actions must be just and ethical.<sup>101</sup>

Westpac also provides an example of the power of setting organisational expectations and a range of strategies including targets, flexibility and education.

### **Good practice example 3.4: Westpac Group's strategies to attract and retain older employees**

With five generations in the workforce at once for the first time in its history, Westpac Group knows that the power of its people lies in the richness of the diverse skills, experience and knowledge they offer at different stages in their career. Its 'Prime of Life' employees aged 50+ are a vital part of the workforce and hold a significant amount of skills, company knowledge and experience. Westpac Group offers them a range of options to help plan their next move, and reach their full potential through initiatives around flexibility, training, and transition to retirement.

The 'All in Flex' initiative was established in June 2015 to encourage and support flexible working for all employees — in existing roles or for those coming new into the organisation. This was in response to the insight that 89% of their employees (both male and female) indicated they would need some form of flexibility in the next three years. A wide range of options include flexible work hours, mobile working, part-time work and job sharing. There are also a range of leave choices available such as purchased leave, career breaks, sporting leave, parental leave, grandparental leave and carers' leave.

The rollout of All In Flex included toolkits to increase people leader capability in leading teams who work flexibly. As a result of this initiative, the uptake of flexible working has increased. Currently more than 71% of Westpac Group's employees are working flexibly, up from 44% in 2010.

**Good practice example 3.4:** (continued)

Westpac Group's Enterprise Agreement, which came into place in January 2016, includes transition to retirement provisions for employees aged over 50. The Agreement offers flexible working arrangements in an employee's existing role or a new role while they transition to retirement, as well as three days of paid leave during this time to pursue activities related to retirement. Westpac Group further takes a flexible approach to long service leave. The Agreement allows employees to take a day at a time, a day each week or a month or more in one block, after 10 years of service.

Other initiatives to support employees aged 50 and over include:

- The Prime of Life Employee Action Group is a network of champions offering a range of information, events and resources to employees.
- 'Envisage: Create Your Future' assists employees with future career planning. The program is run in partnership with Sageco and covers topics such as identity, finances, career, health and relationships.
- The 'Navigate' workshop helps people leaders support the Prime of Lifers in their team, plan for the needs of their workforce and ensure the knowledge held by their people is retained.
- The 'Your Experience, Your Future' intranet hub, developed as part of the Australian Government Corporate Champions program, is a one-stop shop for 50+ employees and their leaders to find relevant information about careers, flexibility and health amongst other topics.
- In 2014, Westpac Group received international recognition for its policies on mature-age employment when it was awarded 'Best Employer International' by US organisation AARP, an advocate for mature-age people. It was also awarded the Australian Human Resources Institute's 2015 'Inclusive Workplace' award.

Westpac Group has set a target to increase the number of employees aged 50 and over to more than 20.5% by 2017. By early 2015 Westpac had reached 20.9% of employees being 50+, and the organisation has consistently met its target since this time.

Suncorp provides an example of a program developed as part of a broader corporate strategy which has produced benefits for both employees and the business.

**Good practice example 3.5: Suncorp Group Horizons Program**

The Suncorp Group Corporate Governance Statement 2014–2015 includes a Diversity and Inclusion Strategy broken down into age, gender, indigenous engagement, disability and flexibility.<sup>102</sup>

With respect to age, Suncorp launched the Horizons Program to support employees aged 50 and over to build a meaningful career and plan for transition into retirement, whenever that timing is appropriate for each employee. Suncorp runs eight half-day workshops twice a year.

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### **Good practice example 3.5: (continued)**

The Suncorp Horizon's Program involves showcasing mature-aged employees who are successfully leveraging flexible working arrangements to achieve a better lifestyle.<sup>103</sup> Participants are also encouraged to share their stories with colleagues and this has been a powerful tool for conveying to other older workers their options for career and working arrangements.

So far, 350 employees have completed the Horizons Program. Feedback demonstrates that 4 out of 5 participants valued the program, and 3 out of 5 have since thought about working flexibly. In addition, over 60% of participants found the health component useful and will consider making healthy lifestyle changes as a result — a win / win for Suncorp and its employees.

### **(c) Information and education**

Education and training in the workplace are important for addressing negative stereotypes towards older workers and promoting positive workplace cultures.

Importantly, employers should provide information and training to employees about their rights and responsibilities in the workplace, including under employment, anti-discrimination and workers compensation laws, to prevent age discrimination and create age-friendly workplaces. This could be made an essential part of management training, in particular for hiring managers, team supervisors and senior leaders. Some available resources are included below and at Appendix 9.

### **Good practice example 3.6: Information on creating age-friendly workplaces**

National Seniors believes that employers need to take the lead by making their workplaces age friendly and by ensuring that their hiring processes and training practices do not discriminate against older workers.<sup>104</sup>

National Seniors has developed an age management toolkit for employers, which provides a 'one-stop-shop' of comprehensive and practical information for employers, supervisors, managers and HR professionals, to successfully initiate, implement and evaluate effective age management strategies with the aim of recruiting and retaining mature-age staff. The toolkit is designed for individual tailoring according to specific sectors, industries, organisation size, workforce profiles and goals.<sup>105</sup>

More information is available at: <http://www.nationalseniors.com.au/be-informed/research/age-management-toolkit>.

### Good practice example 3.7: Awareness raising about the value of older workers

- Power of Oldness Campaign: The Power of Oldness is a video awareness campaign aimed at highlighting the value of older workers launched by the Age Discrimination Commissioner and Minister for Employment in August 2014. The short video exposes the stark difference between the skills and strengths mature workers offer employers and organisations, with the discrimination they face when trying to gain or maintain jobs.<sup>106</sup>

The Power of Oldness campaign is at [www.powerofoldness.com](http://www.powerofoldness.com).

- Ambassador for Mature Age Employment: In June 2015, the government established the role of Ambassador for Mature Age Employment, and appointed the Hon Susan Ryan AO, Australia's current Age and Disability Discrimination Commissioner, to the position. As the Ambassador for Mature Age Employment, Commissioner Ryan is driving greater awareness amongst employers of the business benefits of hiring older workers and helping to open new doors for job seekers.<sup>107</sup>

#### (d) Access to government support

Government supports and services have an important role in increasing employers' awareness and understanding of the value of older workers and supporting recruitment and retention. Information, tools and referral sources are provided at [www.business.gov.au](http://www.business.gov.au) to help small businesses improve their business sustainability and management practice.<sup>108</sup> See Appendix 9 and Appendix 12 for a list of other resources and government programs available to employers.

Some states and territories have additional supports and resources for employers. For example, the Victorian *Back to Work Scheme*,<sup>109</sup> which provides various forms of financial and training support for disadvantaged Victorian job seekers. The scheme was expanded in November 2015 to provide better support to employers of disadvantaged job seekers, and many of the supports provided to Victorian employers are not age specific. The Victorian scheme is complementary to the Australian Government's *Restart* wage subsidy in that Victorian employers can claim assistance under both if relevant eligibility criteria are met. The only restriction is that the total of all assistance received cannot exceed 100% of the wage paid.

#### (e) Recruitment

Employers, whether in the public or private sectors, large, medium and small, all have a role in fostering greater employment opportunities for older people. These can include developing internal policies and supports to ensure accessible recruitment and work practices, and creating safe and inclusive cultures where older people are valued and have opportunities for training, development and career progression.

Older people, employers, academics and advocacy organisations provided a range of strategies and suggestions for employers to consider for ensuring that older people have the opportunity to re-enter the workforce, change their career or maintain their current job. Solutions proposed include:

- targets for the recruitment and retention of older people supported by strategies to achieve these targets and reporting publicly on targets

- reviewing attraction and recruitment processes to ensure non-discriminatory practices, language and accessibility
- diversity training for managers and staff to remove any age bias
- building clear expectations of diversity into the supply chain
- close and regular review of ‘the inherent requirements of the job’<sup>110</sup>
- facilitating the provision of workplace adjustments
- flexible working options.

The Victorian Human Rights and Equal Opportunity Commission suggests developing recruitment policies and practices that accommodate the needs of older people and eliminate discrimination against them, for example:<sup>111</sup>

- including a statement in position descriptions welcoming applicants who are older, who have a disability or are from other backgrounds, for example, including a statement that the organisation or business is an equal opportunity employer
- exploring strategies for reaching the widest possible pool of applicants, such as using specialist media for specific cultural groups, Indigenous media, social media, information networks, community groups and organisations, industry groups and trade unions
- avoiding selection processes that may unfairly disadvantage older applicants, for example, do not eliminate applicants because they are perceived to have ‘too many years of experience’ in the workplace or based on periods of leave in their resume.

One of the common barriers raised by older people was perceived recruitment bias. While an employer’s intention may not be discriminatory, it is important to be aware that candidates may perceive bias if they are being asked to disclose their age on applications and subsequently fail to win a job without adequate explanation.

Some organisations address this through their diversity and inclusion programs, ensuring that recruitment practices are inclusive of all people regardless of age. Others advertise and promote vacancies through a variety of channels to ensure they are attracting the best pool of candidates. For example, Australia Post advertises in senior magazines and promotes flexible work to encourage older workers to apply.<sup>112</sup>

The provision of data on age should be optional. If it is collected for workforce planning or customer relationship reasons it should not be part of the decision making at recruitment.

### **Good practice example 3.8: Commonwealth Bank Group recruitment – diversity data collection**

The Commonwealth Bank Diversity and Inclusion Strategy is key to building a diverse and inclusive culture at the Bank. To measure performance on the initiatives that underpin this strategy, Commonwealth Bank identified the need to track job applicants by their diversity profile. Previously, the Bank diversity data collection was optional for applicants and only covered disability and Aboriginal/Torres Strait Islander heritage.

As of 14 March 2016, Commonwealth Bank now includes a comprehensive Diversity Survey with a broad range of diversity groups and updated accessibility and inclusion questions. Candidates have the option not to participate in the survey. Details are not visible in the recruitment process, and are only available to employees analysing the data from a diversity and inclusion perspective.

**Good practice example 3.8:** (continued)

Understanding the diversity of applicants and how they progress through the recruitment process provides valuable insight into whether Commonwealth Bank has an opportunity to focus on attracting specific demographics, or make adjustments to practices or processes so it can continue to develop its diverse and inclusive culture.

Many employers recognise the knowledge, transferable skills and life experience older workers can bring to an organisation and some have developed specific recruitment strategies to attract older job candidates. A number of leading practices are identified below.

**Good practice example 3.9: Returnships™<sup>113</sup>**

The Goldman Sachs Returnships™ Program is aimed at talented professionals who are looking to restart their careers after two or more years of absence from the workforce.

It is a 10-week paid program which offers opportunities in a variety of divisions and the chance to experience the vast network of resources at Goldman Sachs. In much the same way as an internship, a Returnship™ provides individuals with a guided opportunity to sharpen or learn new skills, and explore a new area of expertise. While there is no guarantee of a full-time career as part of the program, so far it has resulted in employment conversion for many participants in the Americas and Asia programs.

**Good practice example 3.10: Work experience program for older workers — Accor**

Accor Group is a large global employer in the hospitality and tourism sector. It has over 200 hotels and 10,000 employees in Australia. 8% of its workforce is aged 65 years or over, with 12% aged 44–55 years.

In 2014, Accor developed, trialled and implemented a five-day training program for experienced workers, aged 50 and above.

The Experienced Workers Program involves:

- work health and safety and complaints training
- basic skills training for food and beverage and front office services
- two days of on-the-job work experience
- interviews with human resources staff.

### **Good practice example 3.10:** (continued)

Upon completing the program, participants are given professional feedback and opportunities for future employment.

Joe, 63, participated in the program in 2014.<sup>114</sup> Due to personal and medical circumstances, Joe had been unemployed for almost three years. Despite his 40 years of work experience, he was routinely turned down for hospitality and service jobs. After he completed the experienced workers program, Joe was offered jobs by four of Accor Group's service divisions.

Mark, 62, found similar success with the Accor Group's experienced workers program after spending nearly six years out of work.<sup>115</sup>

Edward Pearce, the human resources manager for Accor NSW/ACT, said the program's success was due to its focus on maturity and customer service: '[The Experienced Workers Program] was more about what they could bring to the table with their life experience, with their interactions with guests, with the way they could show empathy,' he said.<sup>116</sup>

### **Good practice example 3.11: Bunnings**

Older, more experienced team members are an integral part of the Bunnings business and recruitment strategy. Bunnings General Manager, Human Resources, Andrew Macdonald, talks of the benefits of having a diverse workforce:

"Many mature-aged workers join us to utilise their experience and skills. Some have been on the tools for a lot of years and have a great deal of knowledge and are able to use those skills in a different kind of environment. We've also got team members that have held senior executive roles in businesses, or who have run their own businesses, and others who have been with us for their whole career — all of them have a great range of qualities."

"One of the most important and valuable aspects is that our older workers become mentors for the younger workers, and this creates a genuine blend of experience. This is a win for customers, it's a win for our younger team members and it's a win for the mature-age worker, many of whom, in our experience, get a huge buzz out of being in this role. Younger team members coming through naturally gravitate to these experienced people and we get informal mentoring and fantastic training and development out of all of this that ultimately our customers benefit from. Team work is absolutely integral to our business and you can't have teamwork without respect, which our older workers naturally command. It's a really important part of our culture", Andrew said.

On their Careers page, Bunnings highlights a number of team member benefits, including flexible working arrangements, an opportunity to participate in Wesfarmers Share Plan, ongoing career development and training and discounted offers on private health insurance.

## (f) Flexible work

The Inquiry heard repeatedly about the importance of flexible working. Flexible work can come in many forms including:

- location — for example, working from home or somewhere else more convenient, instead of the office
- hours — for example, changing start or finish times, or days of work to accommodate personal or family commitments
- patterns — for example, working longer days to provide for a shorter working week
- rostering — for example, split shifts
- job sharing — two or more employees share one full-time position
- graduated return to work — returning from time off due to injury or illness to initially work part-time and gradually build up to full-time work by an agreed date
- purchased leave or ‘48/52 leave’ — taking an extra four weeks’ leave per year but receiving proportionately less pay (for example 48 weeks’ salary paid over 52 weeks).

### **Good practice example 3.12: Flexibility in shift work<sup>117</sup>**

The Workability Project within Catholic Homes is an initiative to retain older workers in a working environment that can pose risks due to the unpredictable nature of working with patients.<sup>118</sup> The average age of the workforce in Catholic Homes is between 40 and 50 years and staff retention is high. One of the areas of focus has been ‘flexibility’ in shift work. The rationale is that flexibility in the length of shifts as well as the amount of physical work undertaken during the shift, or a combination of both, may reduce the possibility of injury for older workers. Catholic Homes reports that being flexible around shifts and tasks are key components of successful return to work outcomes.

In another initiative, Catholic Homes looked at combining a variety of suitable roles in sites across the business including retirement care, lifestyle management and community care. The various branches of the business contain a variety of roles that allow for a combination of administrative work and manual handling tasks to vary the working day. It also looked at varying shift times. Shifts in a hospital environment normally require the worker to be on the floor for a 7.6 hour shift. The Workforce Project explored the viability of a four or six hour shifts. This has resulted in a reduction in incident reporting, and has also allowed older staff to remain engaged in the workforce for much longer.

A flexible work policy formalises the principles, guidelines and procedures related to flexible working arrangements and conditions that support employees’ personal choices. A formal policy provides employees clarity around entitlements and expectations, and assists employers to meet legal obligations. Further, it supports managers to make consistent and reliable decisions which promote a culture of fairness. This benefits both the business and its employees.<sup>119</sup>

The Inquiry heard from many employers who shared positive experiences about introducing flexible working approaches. In some cases employers had adopted an ‘all roles flexible’ approach. Under this approach it is assumed that all roles can be done flexibly and if a manager disagrees, they need to justify that position with a sound business case.

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It's important that you don't have to be one of these special people to get flexibility...Making it safe for people to have conversations with their manager about what's meaningful to them from a flexibility perspective.<sup>120</sup>

Good employers make flexibility available to anyone at any time.<sup>121</sup>

Many companies in Australia, and globally, have developed flexible work policies as numerous studies have shown the benefits to workplaces and employees:

Non-standard labour forms must be promoted as a perfectly legitimate way of performing work in the modern economy...and must be supported because of the many benefits they provide.<sup>122</sup>

Research conducted by the Diversity Council Australia found that flexible work can result in improved organisational, individual and community outcomes. These include increased capacity of business to be sustainable and adaptable to change, assisting with talent attraction and retention, and increased workplace productivity.<sup>123</sup> Flexible work arrangements also help to improve employee satisfaction and commitment.

According to Bain & Company, there are several ways that organisations can make flexible work models more effective. These include:

- gathering input from employees to understand needs
- providing a set of flexible work options as one size does not fit all employers, or employees
- communicating options and raising awareness
- appointing a vocal and visible flexible work champion
- developing a career-management approach so employees understand how flexible and non-flexible roles will allow them to develop the skills required for advancement
- providing training to supervisors
- highlighting success stories to encourage flexible work.<sup>124</sup>

### **Good practice example 3.13: Johnson & Johnson**

Johnson & Johnson support work-life balance by providing flexible working arrangements to all employees, including people with disability and older people. The arrangements include job-sharing, working from home and altered work hours.<sup>125</sup>

To help ensure the implementation of Johnson & Johnson's disability employment strategy, there are formal policies on equal opportunity employment, employment laws and policies in conjunction with a global diversity and inclusion vision statement.<sup>126</sup>

Johnson & Johnson have voluntary employee resource groups where employees have an opportunity to share experiences, network, provide and receive support, and engage in career development and cultural awareness activities. Alongside this, Johnson & Johnson have inbuilt mentoring programs and an Office of Diversity and Inclusion.<sup>127</sup>

Recognising that education is essential to learning about the benefits of diversity and inclusion, Johnson & Johnson have established the Johnson & Johnson Diversity University. This is a dynamic online website designed to help employees build the competencies and skills required to understand and value older employees and employees with disability.<sup>128</sup>

### **Good practice example 3.14: Helping managers to implement flexible work policies**

Australia Post's Workplace Flexibility Kit provides guidelines for managers in responding to requests for flexible working arrangements. Flexible work applies to all employees, including parents, carers, people with disability and staff aged 53 years and over.

There are both formal and informal arrangements offered to all employees at Australia Post. These include changes to work hours, days of work or location of work, conversion to part-time work, employment breaks for up to three years for family reasons, job sharing, purchased leave, working from home and transition to retirement.<sup>129</sup> In responding to flexible work requests the three priorities for managers are that they must consider any application seriously, they must provide a clear business reason for refusing any request and they must put this in writing.<sup>130</sup> This reverses the onus on employees to substantiate why they require workplace flexibility to the managers making the business case for not providing flexibility.

Alongside the procedures, the Kit includes information on legal obligations under the Fair Work Act 2009, and clarity on specific business grounds on which a flexible work request might be refused. The Kit includes a step-by-step checklist to guide managers through the process and further information on frequently asked questions and contact persons.

### **Good practice example 3.15: TransGrid**

As part of TransGrid's Flexibility Arrangements Procedure, managers are required to consult with People & Culture prior to any response or decision regarding a flexible work request.

In practice, this ensures that HR are able to coach a manager through the process if needed, and talk through any concerns regarding the request. This helps to ensure that flexible work requests are not unnecessarily declined, mitigating the risk before a potential decline or appeal situation.

On occasions where managers may still have some concerns, rather than denying the initial request, HR will facilitate a trial arrangement or an adjustment. For example, negotiating which days are worked from home and at work to accommodate a working-from-home request and ensuring contact with the team.

Although the benefits of flexible working are well known, some organisations are still finding that take-up is low. This could be due to a number of factors including workplace cultures, lack of awareness amongst employees of flexible work policies, and unsupportive managers and supervisors. Senior role models who practice flexible working and lead by example will help to mainstream flexibility throughout the workplace and across all levels of staff.

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### **Good practice example 3.16: Flexible work options for the NSW Public Service<sup>131</sup>**

On 8 March 2016, NSW Premier Mike Baird, announced during a Sydney breakfast marking International Women’s Day that ‘100% of public service jobs will be flexible by 2019 on the basis of “if not, why not”’.

### **Good practice example 3.17: Flexible work guide for business<sup>132</sup>**

In a report developed by the Diversity Council Australia ‘Get Flexible: Mainstreaming Flexible Work In Australian Business’, 2012, employers are provided with a range of practical steps to make flexible work and careers standard business practice.<sup>133</sup>

Some of the actions identified that employers, the business sector and the broader community can take to mainstream flexible work include:

- change the language — from ‘work–life support’ and ‘flexible work arrangements/options’ to ‘flexible work’ and ‘flexible careers’. This can decrease the view that flexible work is ‘special treatment’ for a select few rather than part of the mainstream business
- build flexible work and careers into business strategy rather than bolting it on as a separate set of policies, a program or a set of arrangements
- engage senior leadership teams in a process to:
  - » develop a flexibility strategy that clearly identifies what success looks like
  - » integrate flexible work into: business, work, job and career design
  - » develop guiding principles for flexible work and flexible career
  - » develop a set of measures and a process to evaluate outcomes
  - » articulate the activities and resources needed to move to, and maintain, flexible work and careers as standard business practice
- develop management capabilities to:
  - » design workplaces, jobs and careers for flexible work
  - » lead teams engaged in flexible work
  - » engage in flexible work themselves.

### Good practice example 3.18: British Telecom

British Telecom has what is believed to be one of the largest flexible working projects in Europe — the BT Workstyle project.<sup>134</sup> Flexible work arrangements are available to almost everyone in BT and there are over 70,000 flexible working employees, from senior managers to contact centre staff.<sup>135</sup> In May 2006, the Chairman of BT Group said that:

Seven out of 10 people work flexibly and nearly 10% are home-based. It has saved the company millions in terms of increased productivity and cut costs. It has also motivated our people and released more potential.<sup>136</sup>

In order to assess the outcomes of flexible working, BT conducted research and found that 79% of respondents said flexible working arrangements led to more efficient internal communications, and 67% said it led to more efficient external communications. More than half of respondents also said that flexible working improved productivity.

In terms of employee satisfaction, motivation and retention, BT's flexible working solutions resulted in 63% of home workers taking less sick leave than their office-based counterparts, 99% retention rates of workers following maternity leave, and a significant decrease in absentee rates.<sup>137</sup>

As a result, BT saved over €725 million through reduced office real-estate, €104 million a year through reduction in accommodation costs associated with home working, and €7.4 million a year in recruitment and induction costs through improved retention following maternity leave.<sup>138</sup>

Alongside this, BT has cited other significant benefits of their flexible work regime, including better work-life balance, competitive advantage and greater corporate social responsibility.<sup>139</sup>

### Employee rights

According to the National Employment Standards in the *Fair Work Act 2009* (Cth), every employee covered by the national workplace relations system (most employers and employees in Australia) is entitled to request a flexible working arrangement if they:<sup>140</sup>

- have worked for the same employer for at least 12 months continuously
- are a casual employee who has worked for the same employer regularly and systematically over a period of at least 12 months, and are likely to continue working regularly.

And meet one of the following requirements:

- are a parent of a child who is school age or younger
- have responsibility to care for a child who is school age or younger
- have carer responsibilities
- have a disability
- are 55 years of age or older
- are experiencing family or domestic violence
- are supporting an immediate family or household member who requires support because of family or domestic violence.

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The employee must ask their employer in writing, give details of the proposed change and list the reasons for the request.

It was suggested to the Inquiry that there is a need for Fair Work Australia to more effectively promote this right to request for a flexible work arrangement.

Commonwealth Bank provides an example of flexible work policies, resources and flex arrangements available to employees.

### **Good practice example 3.19: Commonwealth Bank – Flexible work arrangements**

Flex has been at the core of the way that we work at the Commonwealth Bank for many years. Over recent months, we have committed:

- to reviewing, simplifying and automating the flex process
- to supporting staff and managers to be able to have the conversations that lead to more successful flex arrangements.

We understand that flex is not just for parents with caring responsibilities. We recognise that everyone will need some form of flex at some point in their lives — for carers and sharers, for elite sportspeople, for our paralympians, for passion pursuers, for commuters, for people living with disability, for millennials and those looking to transition to another phase of their lives. No two people are the same — neither are their needs for flex. This is why we have made our flex policy ‘reason-neutral’. This means that no one reason for requesting flex is any more or less legitimate than another.

To ensure that flex arrangements are sustainable and flexible, we have produced a number of tools and resources to assist our people and managers to make it work. We have produced:

- a job re-design tool which starts the conversation around what roles entail and how individual requirements can be supported
- communication packs for leaders and managers to share insights and processes easily and effectively with their teams
- a training program for HR practitioners to support them in supporting their business in implementing and managing flex
- online and hard copy self-help manuals for managers and employees to quickly and easily understand the approach to flex and how to go about starting the conversation.

We are producing a job share register that, when complete, will provide those looking for a job-share partner the ability to find the right person to share their role with.

The flex options available to our people include: reduced hours including part-time work, job share arrangements, remote working — both from home and from other Commonwealth Bank locations, flexible hours and career breaks. These arrangements can be either formal or informal in nature.

### **Good practice example 3.20: Mercy Health**

Mercy Health System is a not-for-profit, multi-specialty health system with facilities located throughout southern Wisconsin and northern Illinois in the US.<sup>141</sup> Mercy Health System employees age 55-plus are eligible for ‘Senior Connection’ membership within the organisation, which includes ease of admission at any Mercy Health System Facility, Medicare and health care claims assistance, prescription drug discount service, social and educational events and living will and power of attorney advice for health care.

They also have a ‘Work to Retire’ program which allows employees age 50-plus with five years of service the opportunity to work reduced, pool or work-at-home schedules. Employees aged 55-plus with 15 years of service can work seasonally while maintaining full-year, part-time benefits.<sup>142</sup> Mercy Health also has a range of inclusive policies and practices including maintaining its network of 171 retirees by communicating with them regularly, inviting them to organisation events and providing them access to information about flexible employment arrangements.

### **(g) Retention strategies**

The long-term success of business depends on the ability to recruit and maintain a broad range of talent, knowledge and skills. It is important for employers to have strategies in place to minimise the impact of losing experienced staff through retirement.

In addition to the costs of recruiting and training new staff, there is also the risk of a loss of knowledge of business and relationships with clients.

The Inquiry heard from employers who understand the value of retaining older employees within their organisations, acknowledging that while these staff are in their 50s and 60s, this does not necessarily mean they are wanting to retire any time soon.

National Australia Bank (NAB) has made the attraction and retention of older workers one of the key areas of their diversity strategy.

### **Good practice example 3.21: Older Workers and MyFuture at NAB**

At NAB, we are committed to creating and maintaining an inclusive culture that supports our people to reach their full potential throughout the various stages of their life. Gender equity, flexibility and the attraction and retention of older workers are key components of our diversity agenda.

Addressing the challenges and opportunities presented by an ageing population and workforce is important for NAB to meet the needs of our people and our business. We are focused on creating a culture that values the wisdom and experience of our mature-age employees and increasing the number of women in senior roles by supporting the career progression of our female employees.

### Good practice example 3.21: (continued)

With this in mind, NAB undertook a robust business case to examine our age workforce profile, seek qualitative feedback from older workers and to understand internal drivers, the external landscape and key risks and opportunities. Following this, we launched our mature-age initiative, MyFuture, which supports our mature-age workforce, and their managers, in preparing for the future.

NAB partnered with Sageco, age management specialists, to tailor our MyFuture program and associated resources to ensure sustainable change was created across:

- Capability: Improving employee and management capability through MyFuture workshops, tools and resources
- Culture: Embedding change through effective communication and education
- Structure: Building age friendly practices by looking at NAB's structure, policy and processes with a mature-age lens.

Sageco provides specialist consulting solutions to support people through organisational change. Their programs target redeployment, redundancy, retirement, role change or leadership change including knowledge transfer.<sup>143</sup> They run a number of programs for mature-age workers including:

Sageco Navigate<sup>®</sup>, which utilises workforce planning and focus group data to help employers raise awareness within their organisations, build a business case, create an age management plan and empower people leaders to take action.<sup>144</sup>

Sageco Envisage<sup>®</sup> is a seminar tailored for employees in their late career and retirement transition generally aged 55 and over. This program has been designed to engage mature workers and assist them in owning and planning for a positive and productive late career and future retirement.<sup>145</sup>

As a central element of our mature-age strategy, MyFuture is designed to provide mature-age employees and their managers with the capabilities to make informed decisions and plan for the future — whether this is career redirection, a change of pace, or transition to retirement. The program helps men and women aged 45 and over to extend their careers and plan their futures through education on flexibility, work-life integration and managing personal change.

MyFuture was successfully piloted in 2010 and has since been rolled out across Australia with over 1,000 employees having participated in the program to date.

Workforce planning can also assist organisations by identifying gaps and the future needs of the business in terms of talent, skills and human resources. This can help businesses avoid risks related to departures as a result of an ageing workforce and through mentorship and training transfer the skills and knowledge of older workers to less experienced staff:

[Workforce] planning is becoming increasingly more prevalent from a business strategy perspective. Businesses are understanding they can't just lose [older workers] as they have valuable skills and experience.<sup>146</sup>

Workforce planning is something all businesses need to do now, regardless of their size.<sup>147</sup>

### **Good practice example 3.22: Strategic workforce planning — TransGrid**

TransGrid undertakes strategic workforce planning each year to enable analysis of risks and skills gaps over the next 5–10 years. Planned strategies are based on the needs as they are identified.

Following a year of great change, in 2016 TransGrid is implementing a Talent Management Framework which will involve succession planning.

TransGrid has been fortunate to retain talent into the later stages of employees' careers such that the company employs people who are in their 70s, and there are 29 employees who have been with TransGrid for 40–50 years (about 3% of the workforce).

In technical roles, TransGrid has been able to manage the knowledge transfer and the intake rate of apprentices by forecasting rates of retirement and matching the intake of apprentices.

A number of years ago, there was an upcoming 'age-cliff' as many engineers prepared for retirement. In response, the organisation brought on quite a number of graduates over a few years in preparation for transferring mid-career engineers into senior engineering roles from which older employees were retiring.

Other individualised strategies have occurred, particularly where an individual's knowledge is known to be critical. For example, employees who retired have been allowed to return to work as contractors when they decided they wanted to continue working. Some older employees utilised flexible work arrangements to phase retirement such as working a condensed four-day week, or using leave accruals to scale down work hours while retaining full time salary. Other attractive employment conditions available to all workers, including older employees, include a nine-day fortnight, 35-hour work week, 15% superannuation, and personal leave of 18 days per annum.

Training and professional development opportunities can be attractive incentives for older workers to remain in the workforce. This ensures that older workers have up-to-date skills and remain competitive. Some employers have also found that providing such opportunities gives older workers motivation and demonstrates that the business is committed to, and values them.

While there is a wide range of training and professional development opportunities available, mentoring was raised with the Inquiry on many occasions as a positive way in which older workers could share their knowledge with less experienced employees while undertaking professional development. Mentoring has benefits for the business, the mentor and mentee as it can help to reduce staff turnover, facilitate training and increase staff morale:

In many instances there are skills deficits on both sides, with younger and older workers and it would be fitting to establish job sharing/mentoring relationships.<sup>148</sup>

The most productive work I have seen is the pairing up of mature-age employees with younger employees where both can learn from current modern practices tempered with experience.<sup>149</sup>

Older workers mentoring younger workers might help to address their lack of experience and help to promote the value of experienced older workers.<sup>150</sup>

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Maybe there is a place for employers like the NT public service to set up, in a mentoring part time role, a buddying program for older workers. With Aboriginal women that's how it works. When I go into communities I never go anywhere without an older Aboriginal woman as it affects my legitimacy.<sup>151</sup>

Mentoring can also address some of the stereotypes and assumptions that exist regarding older people in the workforce:

Older workers mentoring younger workers might help to address their lack of experience and help to promote the value of experienced older workers.<sup>152</sup>

### **Good practice example 3.23: Mentors in direct care work – Hobsons Bay City Council<sup>153</sup>**

Hobsons Bay is located south-west of Melbourne's central business district. The council is a large employer with 849 employees. Of these, 240 employees or 28.3% are aged 55 years and over.

Older people are mainly employed as direct care workers providing respite, personal and home care to Home and Community Care (HACC) clients, or as workers at the council's depot.

Older direct care workers who are no longer physically able to provide home or personal care to HACC clients are being transitioned into mentor roles. They accompany a trainee care worker to clients' homes, providing continuity for clients and an opportunity for care workers in training to benefit from the knowledge and skills of their mentor. At the same time, flexibility has been an important way to retain older workers in a different role.

Council also provides an option for older people to enter phased retirement. For example, hours of work are reduced and another staff member shares the role. This helps to build the other staff member's capacity to assume the substantive role upon the older person's retirement. It also ensures the transfer of valuable knowledge, skills and experience accumulated over many years which may otherwise be lost.

'Traditional' mentoring usually involves an older, more skilled person sharing with a younger less experienced person. However some companies are experiencing the value and benefits of reverse mentoring. Reverse mentoring is an approach where older employees, often senior executives, are matched with younger employees, sometimes graduates, to provide mentoring to address a particular knowledge gap or to share experience in areas such as social media, technology or trends and issues affecting younger people. In industries such as financial services or technology that rely heavily on the ability to effectively use and understand technology, reverse mentoring is one way of increasing the technical capability of older employees while tapping into the 'second nature' approach to technology of younger employees.

**Good practice example 3.24: RBA embraces competition and reverse mentoring to drive innovation<sup>154</sup>**

The Reserve Bank of Australia (RBA) is driving innovation by embracing concepts such as reverse mentoring, internal competitions like ‘code-a-thons’, and regular collaboration efforts, according to Chief Information Officer, Sarv Girn.

At a 2015 business forum in Sydney, Girn discussed digital leadership, and the critical nature of collaboration, courage and culture. Girn was the keynote speaker for CEDA’s Digital Bytes Breakfast event, held at PwC headquarters, Sydney.

When it comes to generating new ideas, Girn said to look to the younger, more tech-savvy workers in your organisation and utilise their knowledge to solve business challenges and educate older peers.

“A new approach to people management is a critical success factor to leadership today,” he said. “The courage of leaders is being tested more now than ever. And new generations will bring more uncertainty.”

In an article, ‘Tackling hidden issues for older workers delivers wide-ranging returns’, Research Fellow, Centre for Workplace Leadership, University of Melbourne, Ruth Williams, says:

Many often overlook the wealth of knowledge, experience and skills that equips mature-age workers to apply leadership in workplace settings and projects. Most older workers have crucial business relationships and industry contacts. These cannot be recorded in a manual for others to read and easily implement.

Mentoring programs positively and actively engage older workers, giving them a sense of value while retaining corporate knowledge within the organisation. But reverse mentoring is also an option. Here younger colleagues can share their specialised skills and knowledge with their older colleagues.

Such programs are useful as they often foster intergenerational relationships. More importantly, they help break down the stereotypes that contribute to age discrimination.<sup>155</sup>

Transition to retirement arrangements can act as incentives for older employees to remain in employment. The submission to the Inquiry from Professionals Australia argued that the opportunity for employers to have discussions with older employees about transitioning to retirement provides the benefit of understanding an employee’s retirement intentions, how a transition might occur in practice, and the opportunity to develop and implement a plan that is mutually beneficial.<sup>156</sup>

Professionals Australia suggested that a transition to retirement plan may include the following:

- flexible work arrangements, job-sharing and/or gradual reduction in hours of work
- use of accrued leave while undertaking flexible work arrangements so that the employee still gets a full-time salary
- employer supports for retirement planning such as information sessions, and superannuation and retirement seminars
- a structured handover period
- appointment to a role focussed on training and mentoring other employees
- a confirmed retirement date.

### **Good practice example 3.25: Australia Post transition to retirement**

Transition to retirement provisions are part of Australia Post's workplace flexibility initiatives. Currently, almost 50% of Australia Post's workforce is over the age of 45 and the organisation is keen to retain and transfer the skills and knowledge of older workers who may otherwise decide to leave.

From 1 January 2010, employees who are 53 years of age and have at least 5 years' continuous service with Australia Post have been able to request flexible working arrangements in order to transition to retirement. Employees normally need to have an intention to retire within the next two years. As part of a transition-to-retirement request, employees may also access their accrued long service leave (or annual leave) on a regular or patterned basis to maintain their salary.

This allows older workers a reduction in hours of employment to enable them to combine work and family responsibilities and phase in more leisure time. The provisions also provide older employees the opportunity to reduce working hours while maintaining their salary.

These arrangements assist Australia Post with knowledge transfer and succession planning, and helps to retain the skills and expertise of existing employees for a longer period.

### **(h) Caring responsibilities**

Most people will find themselves in the position of being a carer at some stage in their working life. There are a number of innovative ways businesses can accommodate the needs of carers:

### **Good practice example 3.26: UK Government**

Older workers disproportionately take on carer roles. This is especially so for grandparents. The UK Government has recently announced plans to extend its shared paid parental scheme to grandparents. The changes are expected to be implemented by 2018.<sup>157</sup> The current scheme comprises 52 weeks, of which 39 is paid, is a shared scheme aimed to create a cultural shift to get men to assume caring responsibilities. Extending the shared parental leave scheme to grandparents will help parents get back to work sooner and will particularly benefit single parents.

Nearly two million grandparents in the UK have given up work, decreased their hours, or taken time off to assist with childcare. Anecdotal evidence suggests the Australian experience is similar. Extending paid parental leave schemes to grandparents would encourage grandparents to stay in the workforce by giving them the flexibility to balance childcare with work commitments.<sup>158</sup>

Employers can further ensure that they provide support to older employees who are carers in a number of ways, including granting increased flexibility at work and increasing the number of carer's leave days. This acknowledges that there is not always a pattern in caring responsibilities and that some instances are episodic.<sup>159</sup>

Professionals Australia found that 53% of survey respondents said that flexible work arrangements would help them to manage their carer responsibilities.<sup>160</sup> Twenty per cent also said that they had considered leaving the workforce to allow them to better meet their carer responsibilities.<sup>161</sup>

Another way in which employers could support older employees who may need to take time away from work to undertake caring responsibilities may be to establish ‘end of life’ leave. This is described as being similar to parental leave (that is, ‘beginning of life’ leave), which entitles carers to a period of unpaid leave with guaranteed return to their position at the end of the leave.<sup>162</sup>

Further, employers can make their workplaces more carer-friendly by providing information to all staff about caring and different forms of carer responsibilities and needs. For example, the Inquiry heard that in Darwin, there is a carer-friendly business award which could be translated to a national campaign.<sup>163</sup>

### **(i) Organisational partnerships**

Many employers seek partnerships with other organisations and find them to be effective when they need to increase their knowledge and understanding about the benefits of having diverse and inclusive workforces, or to help them recruit and retain older workers. Employers could partner with specialist organisations such as: Council of the Ageing or National Seniors; relevant government agencies; or specialist consultants offering solutions and ideas. On many occasions it was suggested to the Inquiry that employers:

Develop partnerships with employment agencies, educational institutions, skill training programs, and social enterprises to build a skilled workforce that includes older people.<sup>164</sup>

#### **Good practice example 3.27: Developing transition-to-retirement initiatives in partnership with Activetics<sup>165</sup>**

As part of a suite of strategies and initiatives implemented by FMP Group (Aust) Pty Ltd to retain their older workforce, as discussed in 3.7(a), the company partnered with a workforce management company called Activetics to develop transition-to-retirement programs.

Activetics supports organisations in providing cost-effective solutions to challenges and opportunities arising from an ageing workforce. Activetics specialises in planning, policy development and interventions for businesses experiencing challenges related to an ageing workforce. The company helps employers to develop tailored solutions based on organisational need and works across a diverse range of sectors and industries.

Activetics organised financial planning, superannuation and life-planning information sessions for FMP Group’s older employees. As a result, employees gained knowledge and confidence to share their retirement plans with the organisation in advance. This subsequently helped FMP Group with succession planning.

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## 3.8 Recommendations for employers

The ideas and case studies showcased demonstrate a range of ways in which private and public sector employers can recruit older people and create inclusive workplace cultures and practices. There is no 'one size fits all' solution and the Inquiry acknowledges the broad range and diversity of employers, industries and contexts. Some of the strategies detailed may lend themselves more readily to larger employers however the Inquiry trusts that small and medium enterprises will find strategies that they can usefully adopt in their context.

The following suite of strategies are therefore offered for consideration by employers based on the research and consultation undertaken and evidence gained by the Inquiry.

### **(a) Leadership commitment**

In leading practices, the CEO and organisational leaders commit to recruiting and retaining older people and building an inclusive workplace culture by developing and communicating a strong statement of commitment to action. Such a commitment is supported by a coherent and systemic organisational business strategy which clearly links to business goals, articulates the business case and incorporates the following:

- setting targets for the recruitment and retention of older people based on analysis of workforce and customer data
- developing practical strategies and supports to achieve targets and including them explicitly in performance agreements and appraisals
- collecting baseline data to raise the visibility of issues, then tracking and regularly reporting on progress
- networking with other businesses and employers—employer mentoring
- partnering with expert or specialist organisations
- working with, explicitly preferencing or otherwise encouraging the supply chain to recruit and retain older workers and adopt inclusive practices providing guidance to support disability disclosure in a non-threatening and non-discriminatory manner
- providing accessible ICT across all organisation's functions and access points
- making it easy to provide workplace adjustments
- providing employee networks, mentoring, intergenerational mentorships
- providing internship/traineeship/apprenticeship programs without age restrictions
- promoting active career planning and transition planning for older people.

### **(b) Ensure non-discriminatory recruitment and retention practices**

These could include:

- reviewing attraction, recruitment and retention processes to ensure non-discriminatory practices, language and accessibility
- where recruitment agencies are used, building organisational expectations about diversity, non-discriminatory practice and compliance with legal obligations into contracts
- ensuring retention practices do not discriminate against older people, for example, access to opportunities for promotion or training and professional development.

### **(c) Build workplace flexibility**

- Normalise flexible work practices by making job design and work environments (for example locations and hours) flexible (rather than only on request or by exception), as far as the demands of the role allow.
- Job redesign can be a useful tool for employers to accommodate the diverse needs of an ageing workforce. As a strategy, it can help with retention of valuable experience and expertise, increased productivity and reduced workplace injuries.

#### **Good practice example 3.28: Redesigning jobs to meet the changing needs of an ageing workforce<sup>166</sup>**

Recognising the ageing profile of the workforce in its factories, BMW in Germany developed an innovative bottom-up approach for improving productivity. The project involved a pilot using a production line and staffing it with people with an average age of 47. Led by two production managers the project involved working with people on the line, supported by senior executives and technical experts, to develop productivity-improving changes, such as managing health care, enhancing workers' skills and the workplace environment, and instituting part-time policies and change management processes. Direct investment in the project was approximately \$50,000 and resulted in increased productivity by 7% in one year.

### **(d) Facilitate transitions**

- In situations in which preparations are being made for older staff to leave an employer for reasons other than voluntary retirement, support can be provided to facilitate their transition into other industries or occupations by providing timely, relevant skills training and identifying transferable skills.
- For carers, facilitate leave for caring responsibilities or entry back into work.

### **(e) Provide targeted education and training in the workplace**

Support can be provided for:

- older employees in the workplace with information about:
  - » their rights and responsibilities, organisational policies, grievance mechanisms and support
  - » flexible leave options for example leave without pay, extended leave, gap year
  - » employee driven networks.
- managers and supervisors in creating and managing diverse teams and flexible workplaces by:
  - » assisting with job redesign, building skills to manage employees flexibly
  - » providing training on the nature and impact of discrimination.

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## (f) Build healthy workplaces

The workplace is a key location for the prevention of chronic conditions and overall promotion of good health. As described in Chapter 1 there is also a strong case for business to invest in health and wellbeing programs.

There are a number of steps that an employer can take to help ensure that workplace health and wellbeing initiatives are implemented successfully. Commitment of staff and senior management is crucial to successful implementation. This can be facilitated through open communication, involvement in decision-making by employees and training of supervisors and management as to the importance of health. It is also important for businesses to understand their workforce in order to develop effective strategies, and to collect and evaluate data regularly to ensure sustainability.

The Inquiry heard from several employers that have implemented initiatives towards working well including ergonomic workplace assessments, subsidised gym membership and changes to the physical work environment.

### **Good practice example 3.29: Forest Coach Lines<sup>167</sup>**

The public transport industry is labour intensive, with an ageing workforce and diverse modes of employment including permanent, part-time and casual workers. The average age of bus drivers is approximately 53 years, and the workforce includes a number of people who have entered the industry as second or third careers.

At the Forest Coach Lines depot in Sydney the health of its workers became a focus when the business recognised that the physical and psychological demands of the job are difficult to manage over a long career.

An ergonomic workplace assessment was undertaken at the depot in Sydney, which identified the environmental, physical, cognitive and psychological stressors experienced by older bus drivers. As a result of this assessment a number of initiatives were trialled including:

- the introduction of a 1,000 step pedometer to encourage and motivate employees to exercise
- a healthy notice board was located in the drivers' staff room to promote the health awareness campaign and to provide social interaction opportunities
- a fresh fruit bowl was made available to staff, and staff were encouraged to take breaks at healthy food outlets
- a local chiropractor visited the depot on a monthly basis and provided a range of training sessions on the anatomy of the body, core strengthening and nutrition
- bullying and harassment training, and an employee assistance program was made available to all staff to assist in managing the psychological demands on drivers
- positive outcomes from this health focus have been increased employee engagement with their health and improved understanding of bullying and harassment issues.

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# Chapter 4:

## Employment discrimination against Australians with disability

## Summary

- Survey and complaints data, consultations, submissions and research all confirm that employment discrimination against people with disability is a systemic and widespread issue. Being subject to discrimination, stereotypes and negative assumptions can undermine a person's self-confidence, productivity and motivation to stay in work.
- Discrimination and barriers to workforce participation may arise for people with disability with regard to disclosure of disability, recruitment bias, accessibility, workplace adjustments, and career progression. Other factors such as gender, cultural background, sexual orientation and geographic location also shape the nature and consequences of discrimination.
- A lack of confidence and knowledge about disability among employers can contribute to bias and discrimination. Employers can also experience difficulties in supporting employees with disability with regard to recruitment practices, providing workplace adjustments, and meeting legal and regulatory requirements.
- Some government programs, policies and federal laws including those relating to social security; the disability employment framework; JobAccess and the Employment Assistance Fund and workers compensation can impact negatively on the workforce participation of Australians with disability.

The Inquiry has gained deep insight into the experiences, nature and prevalence of disability discrimination in employment through its consultation and submission processes and public submissions. This section compiles this information to provide a comprehensive overview of experiences and perspectives of employment discrimination against people with disability.

The section begins by presenting evidence from a number of sources that confirms the high prevalence of employment discrimination against people with disability and the barriers to their workforce participation. It then focusses on:

- individual experiences and perceptions of discrimination
- employer perspectives
- law and policy.

## 4.1 Prevalence of employment discrimination against people with disability

Disability discrimination in employment occurs in Australia and is an ongoing barrier to workforce participation. Quantitative data presented here includes information from the Australian Bureau of Statistics (ABS), state and territory anti-discrimination and equal opportunity agencies, the Fair Work Ombudsman and other data provided to the Inquiry through submissions. The information consistently confirms that people with disability experience discrimination at high levels.

We have issues of discrimination on our desk every day. It is systemic — advertising for jobs, jobs websites, access, and the interviewing process. When people disclose is also an issue. And unfortunately when they get a job it is not the end of discrimination.<sup>1</sup>

### **(a) Survey of Disability, Ageing and Carers 2015**

As part of the Inquiry, the Commission engaged the Australian Bureau of Statistics (ABS) to provide a summary report and data tables of relevant results from the Survey of Disability, Ageing and Carers (SDAC) conducted throughout Australia between July and December 2015. This survey provides the most recent data on this cohort, including prevalence of disability and the demographic and socioeconomic profile of people with disability in Australia. For the first time the SDAC also collected information on whether or not the respondent had experienced discrimination related to their disability and the context in which this discrimination occurred (Appendix 2).

In the 12 months prior to the 2015 survey:<sup>2</sup>

- Almost one in 12 Australians with disability (281,100 people or 8.6%) reported they had experienced discrimination or unfair treatment because of their disability.
- Rates of reported discrimination were similar for men (8.3%) and women (8.9%).
- However, young people with disability (aged 15–24 years) were much more likely to report the experience of discrimination (20.5%) than those aged 65 years and over (2.1%).
- The source of discrimination was an employer for almost half of those aged 15 to 64 years with disability who were unemployed (46.9%) or employed full-time, (46.2%) and just over one third (34.6%) of those employed part-time, at the time of the survey.
- Over one third (35.1%) of women and over one quarter (28.1%) of men aged 15 years and over had avoided situations because of their disability.
- Over one quarter (26.4%) of men and over one in five women (22.4%) avoided work in the previous 12 months because of their disability.
- Older people (aged 65 and over) were less likely to avoid situations because of their disability than younger people (20.1% compared with 46.5% for those aged 15–24 years).
- People with certain disabilities were more likely to report that they had avoided situations because of their disability. In 2015, around two-thirds (65.3%) of people with a psychosocial disability had avoided situations because of their disability. For those with multiple disabilities it is not possible to say which disability was associated with their having avoided situations.

### **(b) Enquiries and complaints data**

Under various anti-discrimination and workplace relations laws at a federal, state and territory level, specified agencies can receive and investigate complaints about disability-based discrimination in the area of employment.

The Inquiry sought data regarding enquiries and complaints made to the Australian Human Rights Commission, state and territory anti-discrimination and equal opportunity agencies and the Fair Work Ombudsman with regard to disability discrimination for the 2012–13, 2013–14 and 2014–15 financial years. Key findings of the data are included in this section, while all enquiries and complaints data provided to the Inquiry is collated at Appendix 10.

Enquiries and complaints data is an important indicator relevant to understanding the prevalence of discrimination and the contexts in which it occurs. Overall this data indicates that disability discrimination is alleged at higher rates than discrimination on the basis of other protected attributes.<sup>3</sup>

Not every perceived experience of discrimination results in a formal complaint being made under anti-discrimination legislation, or even an enquiry. Enquiries and complaints data therefore provide an indication, but not a complete picture, of the overall prevalence of discrimination.

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In 2014–15 the Australian Human Rights Commission received 3,529 enquiries about disability discrimination with 1,249 (35.4%) of these enquiries being in the area of employment. In the same period the Commission received 742 complaints about disability discrimination, with 304 or 41.0% being in the area of employment.

Collectively the data confirms that employment is a significant area of alleged disability discrimination. Across most state and territory anti-discrimination and equal opportunity agencies, complaints about discrimination in employment consistently made up a significant proportion of all disability discrimination complaints. For example in 2014–15 the average proportion of disability discrimination complaints related to employment across all jurisdictions was 41%. During this period the Equal Opportunity Commission Western Australia had the highest proportion of disability discrimination complaints related to employment with 52.7%, while the Australian Capital Territory Human Rights Commission had the lowest at 10.3%.

According to the Australian Human Rights Commission's data, most complaints of disability discrimination in employment relate to events that occur in the course of employment. In 2014–15, 54.6% of complaints were about events during employment, 34.7% were about the end of employment and the remaining 10.6% were about events while looking for employment. Of the state and territory anti-discrimination and equal opportunity agencies that collected data on the stage of employment the complaint related to, all reported a very similar breakdown to the Commission.

The Commission's data shows the single most common outcome of a complaint is conciliation, with 43.4% of complaints being finalised by conciliation between 2012 and 2015. State and territory anti-discrimination and equal opportunity agencies reported a similarly high proportion of complaints being finalised through conciliation. In 2014–15 all agencies that provided data about the outcome of finalised complaints reported that between 30.8% and 43.2% of complaints were conciliated.

Of complaints brought to the Fair Work Ombudsman, the data provided indicates that the substantial majority of complaints regarding disability discrimination are not sustained. The proportion of complaints not sustained between 2012 and 2015 was 82.8%.

The Commission's data from 2012–15 indicates that the most common type of disability reported by complainants was 'mental health/psychosocial disability', this was followed by 'physical disability' and 'medical condition'. Of the state and territory anti-discrimination and equal opportunity agencies that provided data on complainant disability type, most also reported 'mental health/psychosocial disability' and 'physical disability' as the most common.

## 4.2 Individual experiences

The following section describes the individual experiences of Australians with disability relating to employment, as told to the Inquiry. While this chapter refers to situations of alleged discrimination, the Inquiry did not investigate or make findings or determinations about any individual allegations of discrimination. It is the view of the Inquiry that all of these experiences are significant and provide insight into the perspectives of Australians with disability and have contributed to our understanding of employment discrimination against people with disability.

### **(a) Impact of discrimination**

Discrimination in employment is a barrier to workforce participation. In addition it can affect productivity and employee engagement. The Inquiry heard from individuals who had been isolated at work or left their job as a result of discrimination. Individuals also experienced financial stress and deterioration in their health. The impact of discrimination can be devastating and can diminish a person's sense of self-worth and self-esteem. Being subject to stereotypes and assumptions can undermine a person's confidence and impact their work performance.

It happened over a year ago but I am crying whilst writing this as I still feel so low. It's made me feel like I can't move on from my cancer. There were times after I was dismissed where I did not want to leave my house or get out of bed. I was confused and doubted myself to the point of seeking help for my mental health. I have applied for more positions but in interviews I am no longer myself due to the damage caused by the discrimination.<sup>4</sup>

The Inquiry received 101 responses to the question '*Did your experience of employment discrimination impact on your participation in the workforce?*' from people who provided submissions to the Inquiry. Sixty-eight percent (68%)<sup>5</sup> reported that discrimination did impact their workforce participation. Sample responses to the question include:

I was so isolated by managers in my workplace. People that I used to be friendly with stopped talking to me. I hated going to work. It increased my stress level significantly and in turn had major impacts on my health...I knew that if the stress and bullying that I had received for years continued, then I would continue to relapse and my disease would progress.<sup>6</sup>

My daughter used up all her sick leave. She found it increasingly difficult in her workplace due to excluding behaviours, intentional and unintentional bullying and lack of support.<sup>7</sup>

### **(b) Disclosure**

Disclosure is a complex issue faced by people with disability during recruitment and when in employment. The Inquiry repeatedly heard about the conundrum of disclosure and why it is a source of anxiety and stress for individuals.<sup>8</sup>

The decision to disclose a disability — including when to disclose and to whom, is a deeply personal decision. Individuals reported to the Inquiry feeling fearful of disclosure as this could expose them to stigma, assumptions and discrimination either when looking for work or when in employment.<sup>9</sup> Individuals also reported feeling uncomfortable and at times avoiding disclosure for as long as possible.<sup>10</sup>

On the other hand, people told the Inquiry that they want to be honest with their employer and colleagues. Some may also need to disclose because they require a workplace adjustment or need to explain why they may not be meeting performance objectives.<sup>11</sup>

When I started the job I wanted to be honest with them about my cancer and the small adjustments I would need. I didn't expect them to react the way they did. I was now being told that I could not work for this organisation because I had cancer.<sup>12</sup>

Some types of disability are visible and may preclude the need to disclose. However, concern about disclosure was a recurring theme. This reluctance to publicly disclose is also suggested by the consistent discrepancy between levels of disability reported in public and anonymous surveys in the public service.<sup>13</sup>

*(i) Disclosure during recruitment*

The Inquiry heard that for many people disclosure at the recruitment stage can be a fraught issue. Individuals were unsure whether disclosing their disability in their application would put them at risk of being denied an opportunity to progress through the recruitment process. On the other hand, some people were unsure about starting a job without informing their new employer about their disability.

At what point are you supposed to disclose? When you're applying for a job you are selling your abilities. Hard to know when to disclose it — 'you go through this tortured thing that goes on in your mind, should I, shouldn't I?'<sup>14</sup>

When applying for work it is a big issue to know when to disclose. I have had some bad experiences. My CV is good and companies indicate that they are delighted with me as an applicant, then at what point do I say I am in a wheelchair?<sup>15</sup>

Individuals and organisations also raised concerns about employers making unnecessary and unreasonable requests for people to disclose disability such as through questions on job application forms, for example:

For our clients with a disability, issues can arise when they are asked to disclose any pre-existing medical conditions or disability in their application form.<sup>16</sup>

Disclosure at the recruitment stage 'can result in job seekers with disability being concerned about discrimination or other elimination from the selection process'.<sup>17</sup> People may also feel uncomfortable discussing their disability with others and feel that requesting (or demanding) disclosure is an invasion of their privacy.

Where a person discloses a disability they may then be subject to negative stereotypes and assumptions by the prospective employer, such as that they are less capable, unreliable, present an increased workers compensation risk or are in need of expensive workplace adjustments. Individuals expressed to the Inquiry a strong sense that 'employers put up a red flag' when people disclose their disability.<sup>18</sup>

The Inquiry heard from individuals who receive more recruitment offers when they do not disclose their disability, while others reported offers of employment having been withdrawn following disclosure.<sup>19</sup>

**Case study 4.1**

Harry attended an interview for an executive assistant role with a large company and was offered the job the next day. Harry was very excited about this new job, as he had been looking for work for a few months.

When the Human Resources Manager discussed the hours of work with Harry, he told the Human Resources Manager that he would need to leave work an hour early once a month to attend an appointment. The Human Resources Manager demanded Harry reveal what the appointment was for. Harry disclosed that it was to see a psychiatrist, as he had been diagnosed with bipolar disorder, but that he was on medication and his illness was under control. The Human Resources Manager called Harry the next day and withdrew the job offer.<sup>20</sup>

The Inquiry heard from a number of people who choose not to disclose their disability at the recruitment stage, but still experience negative outcomes. For example the Inquiry heard that where individuals do not disclose they may appear more nervous at interviews because they feel they have lied on their application, while others have appeared at an interview and prospective employers have told them that it is 'fraudulent' to have not disclosed in their application.<sup>21 22</sup>

Some people with mental illness told the Inquiry that the decision whether to disclose or not can be particularly stressful for them because of the stigma and misconceptions associated with mental illness.<sup>23</sup>

### **Case study 4.2**

Larry was applying for an administrative position with a large accounting firm. The employment application form included an optional question about the applicant's medical history, including mental health.

Larry was reluctant to disclose that following a car accident he had experienced clinical depression requiring a period off work. However, he thought he might be seen as uncooperative or dishonest if he didn't answer the question so Larry provided details of his mental illness.<sup>24</sup>

### *(ii) Disclosure during employment*

Disclosure can also be an issue during employment for people with disability due to the fear of stigma and discrimination. The Inquiry heard from a number of people who experienced different treatment by their employers and colleagues after disclosing a disability, for example:

I was with a disability job agency but applied for the job not mentioning my disability. It became difficult to keep a secret as the company continually wanted me to increase my hours even though I couldn't manage. When I told the manager she said if I had of told her I had a disability when I went for the job she wouldn't have hired me.<sup>25</sup>

As illustrated by the case study below, some individuals reported strongly regretting their decision to disclose because of the negative treatment they received subsequently.

### **Case study 4.3**

Alison told of the experience of her colleague who had been a high-performing employee for a long time. However, a change in his work arrangements and systems necessitated disclosure of his disability. Following disclosure he was bullied and felt that his employers were 'trying to push him out'. His employer requested the disability be 'accredited' by a psychiatrist and while this confirmed his disability and his ability to do the job, he was totally traumatised by the experience and said he did not want to work again. As a result he spent the last year on sick leave.<sup>26</sup>

The Inquiry was also told of people being dismissed following disclosure.<sup>27</sup>

#### **Case study 4.4**

Robbie was a teenager in a manual role using machinery. He had worked for two years for an employer he trusted and had disclosed his epilepsy early in his employment. Robbie's condition was managed with medication and he had not had a seizure in some years. Robbie felt a bit lightheaded one day at work, switched off the machine he had been operating and bent over slightly until the feeling passed. He felt better within moments and kept on working.

Following this Robbie was summarily dismissed as 'unsuitable for the work'. His employer also let other employers in the town know about the dismissal and provided them with his view about how unsafe it would be for them to employ Robbie in roles which involved machinery.<sup>28</sup>

The fear of discrimination, including fear of being dismissed, contributes to people being very hesitant to disclose. The decision not to disclose can contribute to negative employment outcomes if it means a person with disability does not access workplace adjustments.<sup>29</sup>

#### **(c) Discrimination during recruitment**

The Inquiry heard from people with disability who had experienced discrimination while looking for a job. In particular inaccessible recruitment processes and bias were two recurring themes.

##### *(i) Inaccessible recruitment practices*

[T]he central issue is that employers do not anticipate that people with disability might apply for jobs and do not consider whether their recruitment process is accessible.<sup>30</sup>

The Inquiry was told of recruitment processes being inaccessible to people with disability, and role descriptors, selection criteria or other requirements unduly excluding people with disability in the job application phase.

People with disability can be 'precluded from applying or progressing to the interview stage for certain positions because of the format and manner in which applications are accessed and expected to be submitted and the use of online and/or psychometric testing to screen applicants'.<sup>31</sup> The Inquiry also heard that requirements to communicate over the phone can in particular, exclude people with hearing impairment.<sup>32</sup>

The Inquiry heard that job advertisements sometimes include requirements which create barriers to people with disability, for example:

A requirement which is increasingly appearing in position descriptions is the requirement for a driver's licence... This requirement, simply through its inclusion in a position description as a mandatory or 'essential' criterion, automatically eliminates people who are legally blind... and all people with a significant vision impairment who are unable to drive.<sup>33</sup>

The Inquiry was told that some employers are unwilling to remove requirements, even where it is not an inherent requirement of the job and/or where simple adjustments could be made to overcome the barrier.

#### **Case study 4.5**

Adrian worked for over seven years as a well-respected and skilled horticulturist before his stroke. After his stroke, Adrian was unable to drive, however he was still able to walk and perform most tasks required. He continued to work in horticulture for eight years after his stroke.

Being ambitious, Adrian applied for new jobs after his stroke and received positive feedback. Unfortunately though, they all deemed a driver's licence to be an essential component of the job, even when the position was at a managerial level.

Adrian had numerous conversations with these organisations and discussed alternatives to driving with very little inconvenience. This was met with negativism, with the perception being that organisations are risk-averse and not prepared to make minor adjustments to operations.

Adrian has now been forced to work in an office job outside the horticulture industry because there was no chance of furthering his career.<sup>34</sup>

#### *(ii) Recruitment bias*

The first thing an employer thinks about a person with disability is 'what a hassle', and then, 'what a risk'.<sup>35</sup>

Individuals told the Inquiry there is a strong perception of bias against recruiting people with disability including an assumption that they cannot genuinely compete with other applicants.<sup>36</sup> Generally the Inquiry heard that the discrimination experienced was subtle and inferred from a number of contributory factors such as continued lack of success following the interview and the line of questioning at interviews.<sup>37</sup>

#### **Case study 4.6**

After completing undergraduate degrees in commerce and business, Valerie unsuccessfully applied for more than 170 jobs in her chosen field of accounting. While waiting for one particular interview, Valerie overheard the interviewer say to another colleague on the panel, 'don't worry about the next candidate, we are only doing the interview to be seen as doing the right thing'.<sup>38</sup>

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As mentioned previously, a number of individuals reported avoiding disclosure due to concerns of recruitment bias, while others found that they receive more job offers when they do not disclose their disability, for example:

I found there was not open discrimination, but I found it hard to get a job — it didn't matter how pretty I made my resume...I was getting the interview on paper, and then I would front up and they would see the possible challenges.<sup>39</sup>

Others pointed to the line of questioning at interviews as being indicative of recruitment bias. Individuals noted that during interviews they had been asked irrelevant questions about their disability.<sup>40</sup>

At the interview stage, employers often focus on the impairment of the person with disability and what it might cost them, rather than the ability, skills and experience of the individual. Applicants without disability are not subjected to the same scrutiny, and as a result employers often consciously or unconsciously choose the candidate without disability.<sup>41</sup>

There is also a perception that recruitment bias is underpinned by negative assumptions about employing people with disability, for example, a person with hearing impairment told the Inquiry:

At the interview stage, employers are often put off by the communication barriers and 'extra work' for them required to ensure that the employee has access and find it easier...to employ a hearing person.<sup>42</sup>

#### **(d) Discrimination in the workplace**

The Inquiry heard that there is a general lack of understanding of the range, type and impact of different disabilities and that this contributes to misunderstanding and negative assumptions, for example as one person told the Inquiry:

For individuals with Autism Spectrum Disorder, like myself, we have a disability that seems very hard for those in the workplace to accept or see. Assumptions are put into play and our behaviour is interpreted as being a bully, rude or inattentive. When the [opposite] is most often true.<sup>43</sup>

People with disability also reported a sense of having been forced out of employment as a result of strategies to manage their disclosed disability. As Victorian Legal Aid stated in its submission; '[m]any of our clients are dismissed or treated unfavourably because they have required time off work due to their disability'.<sup>44</sup> In addition the NSW Public Service Association cited in its submission an example of a person being 'forced to resign because he required breaks due to mental health problems'.<sup>45</sup>

### Case study 4.7

Chantel started suffering panic attacks at work as she had become extremely stressed. This stress had a flow-on affect and exacerbated Chantel's other permanent health conditions. Despite her condition Chantel did her best to turn up to work each day and perform her duties. She had worked for her employer for over five years.

One day Chantel became unwell on shift and had to go home. She gave notice to a colleague and provided medical certificates, but was told that she would receive a warning for taking leave. Chantel then took two weeks leave as recommended by her doctors.

Following this, Chantel's employment was terminated, despite the fact that she had over 400 hours of accrued sick leave and had provided medical certificates. Chantel's employer said the decision was based on her performance but she strongly felt it was in relation to taking sick leave.<sup>46</sup>

The following extract is from a case heard in the Federal Circuit Court of Australia in 2015 where an employer failed to make reasonable adjustments for one of their employees with disability.

### Case study 4.8

Ms Huntley brought an application to the Federal Circuit Court (FCC) alleging that her employer, the Department of Police and Justice (Corrective Services NSW) (CSNSW), unlawfully discriminated against her in breach of the *Disability Discrimination Act 1992* (Cth) by failing to provide any reasonable adjustments to her workplace and treating her less favourably in her employment following her being diagnosed with Crohn's disease, and later idiopathic hypersomnolance. In her application Ms Huntley put forward that there were several key areas where CSNSW could have made reasonable adjustment but failed to do so. In its defence CSNSW argued that it was not obliged to put reasonable adjustments in place because Ms Huntley could not meet the inherent requirements of the position, or alternatively that CSNSW had attempted to reasonably accommodate Ms Huntley.

The FCC found that CSNSW had discriminated against Ms Huntley by repeatedly failing to provide reasonable adjustments to her position and treating her less favourably in her employment. In his decision, Justice Nicholls found that CSNSW's focus was not on providing reasonable adjustment in light of Ms Huntley's disability, but in dealing with a person whom they saw as having an illness which necessitated long, disruptive and unplanned absences from work which would impact on the efficiency of the office.

Ms Huntley was awarded \$173,863.89 in compensation by the FCC.<sup>47</sup>

People with a disability that is episodic can face particular difficulty in maintaining employment. The Inquiry was told of instances where people had experienced discrimination after an exacerbation of their disability such as in the case study below.

### **Case study 4.9**

Jacob was employed as a public servant for several years. After a depressive episode lasting more than two months he attempted suicide. Two days later, while still in hospital, he was 'presented' with a pre-typed resignation letter in his own name and asked to sign immediately.

Jacob was not aware at the time, nor advised, that by signing the letter he lost his entitlement to workers compensation. He was not offered any support options such as a rehabilitation package or leave without pay. Although he has been well for some years, since this episode Jacob has been unsuccessful in re-entering the public service and has remained on the Disability Support Pension.<sup>48</sup>

#### *(i) Inaccessible workplaces*

Many individuals reported to the Inquiry that accessibility can be an issue due to building design, inaccessible technology, software and methods of communication. In addition, the experiences conveyed to the Inquiry confirm that inaccessibility in the workplace impacts on participation and productivity, and contributes to feelings of isolation and exclusion.<sup>49</sup>

### **Case Study 4.10**

After completing a Bachelor of IT at university, Hugo applied for a job as a software developer. During the recruitment process Hugo discussed with the team that while he could generally manage his own needs, he may from time to time need assistance with minor physical tasks because he is a quadriplegic. A few days later Hugo was offered the job.

When he arrived at the workplace, he discovered the software department was upstairs and that there was no wheelchair access. This was not mentioned at any point during the application process.

Hugo was given an office downstairs away from the rest of his team. Upstairs the team had an open-plan office with shared collaboration spaces. Hugo felt that, although the team could be contacted by phone, when he did so he was interrupting. This made him feel excluded from the team and reluctant to ask questions.

Progressively, Hugo felt more and more isolated. This made it increasingly difficult to adequately perform his job. Hugo's ability to learn the systems being used was severely hindered as he didn't have access to his team members for training or support.

As a result Hugo failed his three-month probation assessment. Following this his employer decided not to employ him full-time and he resigned. Hugo feels that the outcome would have been different if he had been better able to access the team workspace.<sup>50</sup>

The Inquiry also heard from people with disability who had experienced difficulty in the workplace as a result of inaccessible technology and methods of communication.<sup>51</sup> Individuals also reported to the Inquiry instances of colleagues being unwilling to help overcome accessibility issues, even where this necessitated only small changes.<sup>52</sup>

The following case study describes a person experiencing difficulties in accessing information and instructions, and feeling segregated from colleagues as a result of inaccessible methods of communication.

#### **Case study 4.11**

Georgia was very happy and excited to be starting her new job. Unfortunately Georgia's excitement quickly dissipated when she arrived at her workplace to find that it was not accessible to a person with vision impairment.

Despite an assessment recommending workplace adjustments, Georgia was provided with inaccessible technology and she felt as though her colleagues were not willing to support her. Due to the lack of accessibility Georgia could not access the intranet or files to complete her work. Georgia told a colleague about the inaccessibility and his response was 'I wish I had that excuse'. Georgia also asked for documents to be sent in advance to her electronically, but her colleagues did not comply. Instead documents would be distributed in hard-copy at meetings, meaning that Georgia could not fully participate.

When Georgia raised these issues, her manager suggested that she move to a different section rather than implementing workplace adjustments. Georgia was also bullied by colleagues with regard to her disability and cultural background.

As a result of this experience Georgia says: 'I have never felt blind, but now I feel blind — I feel my disability now'. Georgia is currently on extended leave from work and has experienced a decline in her overall health and wellbeing.<sup>53</sup>

#### *(ii) Unable or unwilling to make workplace adjustments*

Workplace adjustments can be crucial for supporting people with disability in employment. When an employer is unwilling or unable to make workplace adjustments this can result in the employee not performing their duties to their full capacity.

The Inquiry heard that the provision of workplace adjustments is an aspect of employment where people with disability often experience issues.<sup>54</sup> Discriminatory practices reported to the Inquiry include the denial or inconsistent provision of adjustments, bullying and unreasonable demands for information to support a request, for example:

For a long period, I was...forced to take an unpaid leave of absence...It would have been easy for me to work with minor adjustments...Reasonable adjustments could have easily been made, though they did not take this route.<sup>55</sup>

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Some submissions to the Inquiry from organisations noted that in their experience employers sometimes deny workplace adjustments on the basis of requiring certainty or claiming unjustifiable hardship, even when the adjustment requested could readily be accommodated.<sup>56</sup>

#### **Case study 4.12**

Fatima had worked in the same office job for five years, when the office was renovated. Fatima gets migraines, and previously had a desk away from the windows, as strong light could aggravate her health condition. After the office renovation, she was placed at a desk facing a window. She raised this with her supervisor, asking to be moved to an empty desk facing a wall. Her supervisor refused to let Fatima move desks.

Fatima got a letter from her doctor detailing her condition and the reasonable adjustment required. The supervisor refused to make the adjustment, saying it would cause unjustifiable hardship. The employer did not provide any detailed reasons. Fatima resigned from her job.<sup>57</sup>

Some experiences relayed to the Inquiry indicate that employers can be dismissive of medical advice or refuse recommended adjustments, contrary to medical evidence. This can particularly be the case for people with a disability that is not visible, as one submission wrote:

[W]orkers with unseen and/or episodic disabilities often experience discrimination in the provision of reasonable adjustment [because] some employers doubt that employees really have a disability and consider that they are malingering or ‘playing the system’ for better employment conditions.<sup>58</sup>

#### **Case study 4.13**

Tamara is a person with disability and had an accessible parking permit. Tamara’s employer did not allow her to use the accessible parking space as her employer did not believe the nature of her disability justified this. Tamara was told by her employer that she had to park elsewhere.<sup>59</sup>

The Inquiry also heard that the provision of workplace adjustments can be ‘undone’ at times of organisational restructure or a change in supervisor, as one organisation wrote in its submission:

the single most common thread which runs through our (relevant) clients’ experience is that the problems for them arose in their workplace after a change in supervisor’.<sup>60</sup>

The following case study also demonstrates this point.

#### **Case study 4.14**

Abel is in his late fifties and had worked as a cleaner for a number of years. Abel is deaf and so instead of communicating by a two-way radio he communicated by SMS. When the cleaning company changed ownership, Abel's new supervisor complained about having to communicate by SMS. After six months under this new supervisor Abel was told that he did not 'pass his probation'. There was no reason given and Abel had been unaware that he was on probation. He decided after the experience that he would not seek further employment.<sup>61</sup>

The Inquiry was told that processes for applying for workplace adjustment can sometimes be overly complex and require highly detailed information.<sup>62</sup> As workplace adjustments are of increased importance for people with disability they may be unduly disadvantaged by difficult request processes.

#### **(e) Reduced career progression**

Career progression is another area where people with disability reported experiencing employment discrimination.<sup>63</sup> This could take the form of being expected to volunteer their time, work for extended probation periods and having fewer opportunities for professional development.<sup>64</sup>

Once engaged in employment, people with disability often find it more difficult than people without disability to progress, develop and advance their career. This is caused by both low expectations people with disability might have about their employment prospects and unwillingness to speak out for fear of losing their job and low expectations employers might have about people with disability's capacity to take on different or additional roles.<sup>65</sup>

The following case study describes a person having difficulty in having discussions related to career progression with her employer who wrongfully assumed that the issue was related to her disability.

#### **Case study 4.15**

Kate took up a part-time job based on her qualifications at a low level on the award scale. After working in the role for a short time Kate found that the work could not be adequately completed within the hours commissioned and that her award level was not commensurate with the level of expertise required. She had the capacity to do the work but felt that she was being exploited by not being put on the correct award rate and she made this known to management.

When Kate requested her hours and pay be reviewed, she was told by her manager that her attitude was due to her mental illness. Kate found that whatever she said, she kept being referred to as 'mentally ill' and was not listened to. At one stage she was told to 'take medication and see a psychiatrist'.

The fundamental issue of pay commensurate with duties was never addressed and Kate became more and more stressed, eventually going on stress leave.<sup>66</sup>

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Furthermore, some people with disability told the Inquiry that they are less likely to receive professional development opportunities and are provided with less guidance from managers about career advancement. There was also a perception relayed to the Inquiry that people with disability are more often targeted for redundancies during periods of restructure or downsizing.<sup>67</sup>

An example of reduced opportunity for career progression described to the Inquiry was where people with vision impairment are unable to perform higher-level management roles because human resources software is often not accessible. This prevents people with vision impairment enjoying the same opportunities for meaningful employment, skill development and career advancement as people without disability.<sup>68</sup>

## **(f) Experiences of intersectional discrimination**

Discrimination is not always experienced on the basis of one attribute like disability, age, gender or race. Sometimes it is a combination of attributes that lead to the experience of discrimination.

The Inquiry heard from a number of people with disability who had experienced discrimination on the basis of a combination of attributes, such as disability and gender, disability and race or disability and sexuality.

### *(i) Women*

Women with disabilities aged between 15 and 64 years have a labour force participation rate of 49.4%, which is lower than that of men with disabilities (57.8%).<sup>69</sup>

Australian women in general also have lower labour force participation rates than men,<sup>70</sup> have lower average weekly earnings than men,<sup>71</sup> and typically, have significantly lower superannuation balances than men.<sup>72</sup> They are also more likely to be carers than men.<sup>73</sup>

The *Disability Rights Now: Civil Society Report to the United Nations Committee on the Rights of Persons with Disability* noted that in the 2010 Concluding Observations made by the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) Committee, 'a number of concerns were expressed to Australia about the situation of girls and women with disability'.<sup>74</sup> The CEDAW Committee stated that it was:

...concerned about the labour force which continues to be segregated by gender; the persistence of the pay gap with women working full time earning eighteen percent less than their male counterparts; the caring responsibilities which continue to affect women's labour force participation and the limited access to job opportunities for women with disabilities and indigenous women.<sup>75</sup>

In 2013, the United Nations Convention on the Rights of Persons with Disabilities Committee made a recommendation that the Australian Government adopt initiatives to increase the workforce participation of women with disabilities.<sup>76</sup>

The Inquiry heard from women with disability who experienced discrimination as a result of stereotypes about both their disability and their gender:

I haven't actually got work yet with my completed massage therapy course because I was dissuaded by my teachers from starting a small business or gaining employment. They told me that because I am a woman and because of my vision impairment, I am at high risk of attracting stalkers. The male vision impaired student in the course didn't have that problem and he now has a flourishing home business.<sup>77</sup>

A submission from the Victorian Equal Opportunity and Human Rights Commission discussed the impact of family and domestic violence on the workforce participation of women with disability:

Research shows that it is predominantly women that experience domestic and family violence.<sup>78</sup> Women with disabilities are more likely to experience partner or sexual violence, of greater severity and for a longer period of time than women without disabilities.<sup>79</sup> Paid employment plays an important role in promoting women's independence and wellbeing upon exit from violent relationships.<sup>80</sup>

*(ii) Aboriginal and Torres Strait Islander people*

Aboriginal and Torres Strait Islander people overall have lower labour force participation rates than non-Indigenous people (64.5% compared with 78.6%), however, the gap is wider amongst those with disability (34.8% and 53.6%).<sup>81</sup>

Aboriginal and Torres Strait Islander people with disability are also significantly less likely than non-Indigenous people with disability to be employed (25.6% compared with 48.7%),<sup>82</sup> and the unemployment rate for Aboriginal and Torres Strait Islander people with disability is nearly three times as high as the comparable rate for non-Indigenous people with disability (25.3% compared with 9.0%).<sup>83</sup>

The Inquiry heard from Aboriginal and Torres Strait Islander people who felt that both their race and their disability contributed to the discrimination they experienced.

**Case study 4.16**

Bridie, an Aboriginal woman, moved to a town with a large Aboriginal population to work as a teacher. After moving, she was involved in a motor vehicle accident on the bus on her way to work. Bridie said that the driver was at fault because he had been drinking the night before and was not paying attention when he stepped on reverse while she was still getting off. As a result of the accident, she suffered from back and shoulder injuries. Bridie wanted to file a police report to support her workers compensation claim. However, her employer did not want her to. She pursued the claim but her relationship with her employer was negatively impacted. Bridie was living in an apartment supported by her employer. Given that it was a very small town, accommodation options were limited and expensive. After her accident, a non-Aboriginal male teacher began working at the school. Bridie was asked to move to a lower standard of accommodation so that the new teacher could move into her apartment. She couldn't afford to stay in a more reasonable accommodation and eventually left her job and the town. She didn't want to stop working but felt that she was pushed out because of her disability and Aboriginality.<sup>84</sup>

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The Inquiry also heard that there are cultural differences in relation to disability in Aboriginal and Torres Strait Islander communities which can impact on workforce participation.<sup>85</sup> For example, there is no word in many Aboriginal languages for 'disability'. This may mean that Aboriginal and Torres Strait Islander people with disability do not identify as 'having a disability' which could, in turn, mean they do not access government services.<sup>86</sup>

The starting point is the vast majority of Aboriginal people with disability do not self-identify as people with disability. This occurs for a range of reasons including the fact that in traditional language there was no comparable word for disability. Also many Aboriginal people with disability are reluctant to take on the label of disability particularly if they may already experience discrimination based on their Aboriginality.<sup>87</sup>

A related point which was raised with the Inquiry was the importance of services for Aboriginal and Torres Strait Islander people with disability which are culturally competent and which have a connection to the community.<sup>88</sup> This has been demonstrated as an important factor in relation to effective employment services delivery.<sup>89</sup>

Lack of identification can be a barrier to employment in a number of respects, for example accessing Disability Employment Services and applying for jobs. There are 'significant numbers of Indigenous Australians who are unable to prove their identity — either because their birth was never registered, or because they cannot satisfy the requirements of the Registrar of Births, Deaths and Marriages for obtaining a birth certificate'.<sup>90</sup>

This can lead to the inability to get a driver's license or passport which can act as a barrier to workforce participation.<sup>91</sup> For example, the Inquiry was told that a driver's license or other form of official identification was regularly required by recruitment agencies or prospective employers.

The Inquiry visited several regional and remote locations. Aboriginal and Torres Strait Islander people living in these communities faced particular issues which impact on employment. For example, in some locations the lack of jobs, poor health and high rates of homelessness in the local community were raised as barriers to employment.<sup>92</sup>

### *(iii) People from CALD backgrounds*

The Inquiry heard examples of people whose culturally and linguistically diverse (CALD) background as well as their disability were relevant to the discrimination they experienced.

In February 2016, 18.7% of people registered with a Disability Employment Service were from a CALD background.<sup>93</sup> Of 135 DES providers operating in Australia, two deliver specialist CALD employment services in five sites (three in New South Wales, one in Queensland and one in South Australia).<sup>94</sup>

A concern raised in relation to CALD people with disability was the need, as with Aboriginal and Torres Strait Islander people, for information about services to be made available in community languages and for services to be culturally competent.<sup>95</sup>

Although several government sites provide information throughout their site and fact sheets on the Translating and Interpreting Service for workers who experience difficulty speaking or understanding English, the Fair Work Commission site offers limited information through the Assistance link in the toolbar at the very end of the page.<sup>96</sup>

There was a concern that this may result in people from CALD backgrounds being less aware of services that are available to assist them and of their rights in respect of workplace discrimination.<sup>97</sup>

*(iv) LGBTI people*

The Inquiry heard that LGBTI people with disability can face particular issues in the context of employment discrimination. One participant told the Inquiry:

It is important to recognise that LGBTI people...are likely to have felt discrimination their entire life.<sup>98</sup>

Research indicates that LGBTI people have poorer mental health and higher rates of suicide than other Australians.<sup>99 100</sup> Sexual orientation, gender identity and/or intersex status 'do not elevate risk per se, but rather ongoing negative experiences and discrimination can increase the risks'.<sup>101</sup> However, work can also be an important protective factor. In a 2015 survey of LGBT people, those who were employed at the time they completed the survey reported lower levels of psychological distress than those who were unemployed.<sup>102</sup>

The HIV/AIDS Legal Centre also told the Inquiry about the limitations placed on people with HIV in certain workplaces, such as bans on performing certain medical procedures and on serving in the Australian Defence Force.<sup>103</sup> They argue that such limitations are based on evidence which is no longer relevant.

The policy leads to an unfounded change in professional duties, loss of opportunities to work, potential inadvertent disclosure of their HIV status to others, and damage to reputation.<sup>104</sup>

*(v) People in regional and remote areas*

There are a number of factors which can impact people with disability living in regional and remote locations.

One issue for people with disability is lack of transport in some areas.<sup>105</sup>

There are resource and geographical barriers, and a general lack of choice for employment in regional areas. Transport is also a major barrier, particularly regular transport on a daily basis, there are very few options.<sup>106</sup>

Accessible transport is a major barrier to people being able to access employment opportunities. If we don't address those aspects then nothing will change.<sup>107</sup>

The Inquiry heard of an individual who was employed by a taxi company in a remote area and who was dismissed from her job because she was unable to work on the weekend. She made a complaint against her former employer. On the day of the hearing, she needed a taxi to take her to court because she is a wheelchair user. However, the only taxi in town with wheelchair access was owned by her former employer who refused to pick her up because she had a complaint against them. As a result of the stress of the situation, the woman withdrew her complaint.

You can't make a complaint against another party in a small town as you need to live with them and use their services in the future.<sup>108</sup>

Workers with disability and workplace injury or illness may also face particular issues in regional and remote locations, for example the difficulty in accessing medical services and consequent delays in returning to work:

### Case study 4.17

An employee working in a remote locality suffered a workplace injury which required surgical intervention. All medical treatment and time off work was covered by the employer's workers compensation scheme. Due to that remoteness and lack of nearby specialists, his injury could not be treated in a timely manner. His condition was further complicated by associated health concerns, requiring rescheduling of planned surgery. This extended the time off work to more than 12 months. Immediately following the expiration of the legislat[ed] period during which termination would have been an offence under workers compensation legislation, the employer terminated his employment, shortly before the rescheduled surgery was performed.<sup>109</sup>

## 4.3 Employers and business

This section outlines the key issues raised by employers including attitudinal, structural, legal and policy barriers to the employment of people with disability.

### (a) Knowledge and skills

The Inquiry heard there is a lack of confidence and knowledge among employers about employing and working with people with disability.<sup>110</sup>

The Inquiry commonly heard about the lack of training for managers in the areas of diversity and inclusion. Many people reported that their managers had little or no understanding of disability or experience in supporting flexible working arrangements. Another common theme was the lack of awareness and support to implement workplace adjustments for employees who have a disability.

The Inquiry met with many employers who understand the importance of accessing a diverse talent pool and the value of employing people with disability. However, some employers lack understanding about disability and how to work with people with disability. In some cases the Inquiry was told that managers were 'scared' to ask questions that they considered 'private' and could lead to perceptions that they were discriminating against their employees. When asked about barriers to employment of people with disability, the Inquiry was told:

The majority of employers we are in contact with are crying out for assistance and help because they want to do the right thing.<sup>111</sup>

Australian employers are simply not aware enough — or convinced enough — of the business benefits of employing people with disability.<sup>112</sup>

Some employers do not feel confident and are afraid of doing 'the wrong thing'.<sup>113</sup> A recent survey conducted by the Business Council of Australia found that:

Concerns about seeming discriminatory, invading privacy, how to ask and lack of internal know-how were the top difficulties nominated by companies in seeking to identify the disability status of applicants or employees.<sup>114</sup>

The Inquiry heard that lack of understanding about disability in workplaces can perpetuate negative assumptions and attitudes towards employees with disability.

The lack of information and training for employees on disability awareness leads to negative perceptions of people with disability in the workplace. As there are relatively low numbers of people with disability employed in the workforce, their lack of visibility only serves to reinforce the perception that they are not effective in the workforce.<sup>115</sup>

According to Australian Human Resources Institute research on employer perspectives on recruiting people with disability, many employers have low levels of awareness, understanding and expectations of employing people with disability.<sup>116</sup> Some employers identified working with people with mental illness as potentially more challenging.

I think that while you do have employers who have experienced mental illness, not everyone is geared up for having those difficult conversations.<sup>117</sup>

Another barrier cited is employers' limited knowledge and capacity to interpret relevant laws and obligations to employees with disability. The Inquiry was told that employers face difficulties in getting 'training and advice in an open and confidential manner',<sup>118</sup> and that they need clear guidance on the operation of relevant laws.<sup>119</sup>

It is incredibly difficult for an employer to 'know what compliance looks like'.<sup>120</sup>

The current limited and ad hoc materials as to how to manage this specific issue [employment of people with disability] are sparse and provide employers little comfort that they are doing the 'right' thing by the individual whilst not placing others at risk.<sup>121</sup>

Even though a range of industry initiatives and government incentives, subsidies and supports are available to assist organisations with employing and retaining a person with disability, many employers were not aware of them.

People don't know about [JobAccess]. Employers and employees should be better informed of what is available.<sup>122</sup>

[The] Jobs in Jeopardy program coordinated by JobAccess...is one of the most underutilised programs. It needs the employer to ask for help for the person to retain their role.<sup>123</sup>

The information about what is available isn't that accessible. She [employee] knew what she was entitled to and how to get it, but without her knowing that I don't know how we would have navigated that process...it needs to be easier.<sup>124</sup>

Many employers are simply unaware that Disability Employment Services exist and as a result these services are underutilised — only 3% of employers use DES when recruiting.<sup>125</sup>

A key recurring barrier raised by employers and employees with disability related to problems arising at the line-manager level. The Inquiry heard that managers sometimes lacked the skills to manage people with disability, implement workplace adjustments and flexible work arrangements or consider job re-design.

Employers are community members and so one should not be surprised that employers reflect the prevailing negative attitudes of the general community towards people with a disability.<sup>126</sup>

If employers have had a bad experience, especially in SMEs [small to medium enterprises], it is easier just to say 'no'.<sup>127</sup>

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Culturally people aren't interested in changing their perspective. [People are] used to getting a bum on a seat quickly.<sup>128</sup>

The Inquiry heard that the absence of leadership commitment and a clear organisational strategy can be a barrier to employment of people with disability. Hiring managers and recruitment teams reported difficulties in setting objectives for employment of people with disability without direction and support from senior leaders. The Inquiry was told that approaches tend to be more ad-hoc without a disability inclusion or action plan. Further, there was less likely to be a centralised budget for any workplace adjustments in the absence of an organisational strategy.

Organisations without a disability employment strategy find that their approach tends to be more ad-hoc.<sup>129</sup>

[There] needs to be a whole of business approach, not just manager by manager and hire by hire.<sup>130</sup>

On the other hand, where there is high level commitment, sometimes the issue is the gap between leadership commitment and line management actions, or between workplace policies and practice. For example, in relation to flexible work arrangements, the Inquiry heard that while there are policies in place and awareness of these policies, there is not a great deal of knowledge about how to use them,<sup>131</sup> which could be part of the reason for low take-up amongst employees with disability.

The *Disability Discrimination Act 1992* (Cth) (DDA) encourages organisations to develop action plans to eliminate discriminatory practices, including in employment. However, according to the Disability Council NSW:

Many businesses have not created nor enforced disability discrimination action plans. The plans featured on the [Australian Human Rights Commission website] register are mainly from public sector organisations, with few private organisations represented...The fact that they are not mandatory and there have been no efforts in recent years to encourage employers to create disability action plans continues to undermine the effectiveness of the Disability Discrimination Act.<sup>132</sup>

Finally, the attitudes of co-workers towards people with disability and workplace adjustments, and limited exposure and experience working with a person with disability can contribute to negative workplace cultures and present challenges to employers.

We took on a school-based apprentice who had Asperger's syndrome...Everyone was on edge and he had little outbursts. The issue was the other workers, not the employer and the HR department. They [other employees] couldn't deal with it. I personally had conversations with other workers to explain his value, and how he was different. He didn't stay with the company because he didn't feel comfortable and we couldn't create relationships in the workplace. He couldn't interact with customers and the other workers got frustrated with his outbursts. His role was different to others and other staff saw this as special treatment. Outside support might have assisted.<sup>133</sup>

Other employees may see this flexibility as a special privilege, rather than as a means of ensuring people with disability can equally participate in the workplace. Employers may be unwilling to change their workplace policy around flexible working for a person with disability because they fear other staff may not be receptive and/or they fear it may impact on productivity.<sup>134</sup>

[It's] not a norm to have people with disability in the workplace. Would be good to have ambassadors...Need to show employers that doing this will help...have a better workplace.<sup>135</sup>

Individual employees operate within broader organisational cultures and environments. The Inquiry received anecdotal evidence which demonstrates that workplaces that do not exhibit a commitment to a diverse and inclusive workforce through leadership and actions tend to be those with low levels of employment of people with disability. They also face greater challenges in recruiting and retaining people with disability and fostering positive attitudes.

### **(b) Competing diversity priorities**

The Inquiry found that some employers had limited understanding of diversity and inclusion. Sometimes the Inquiry heard that inclusion and diversity related only to women's workforce participation or Aboriginal and Torres Strait Islander employment.

When I talk to clients about diversity and inclusion strategies, I find that one barrier is that everyone is just focusing on gender at the moment. We educate them that it is about including everyone.<sup>136</sup>

We don't have disability as part of our plan but it is still addressed under the radar.<sup>137</sup>

Those who took a broader view raised the difficulty of managing competing priorities.

Hard to focus on disability [with] so many other diversity balls to juggle.<sup>138</sup>

There are multiple barriers within the diversity space. 'Olympic employers' concentrate on women, then old people, then Indigenous...they need to approach diversity more broadly.<sup>139</sup>

For [employer's name redacted] we focus on one area and then other areas get forgotten... diversity is not a homogenous thing so we need a broader approach. People may fit across different strategies so you can't look at them individually.<sup>140</sup>

The Business Council of Australia also found that:

Limited resources are the main barrier for companies in implementing employment initiatives for people with disability. For many companies, a focus on disability is competing with other diversity focus areas — gender balance, Indigenous engagement — for resources.<sup>141</sup>

### **(c) Disclosure from an employer perspective**

Disclosure is a difficult issue for employers. Most employers shared the view that the large majority of employees with disability choose not to disclose even when only simple and minor adjustments to their work environments are needed. Some employers said that disclosure is essential for them to be able to make the necessary adjustments, understand the prevalence of disability amongst their workforce and provide a safe working environment.

We know that we have more staff with disability than those reporting it. We haven't yet broken down the issue of how to encourage staff to report. So we have the added challenge of ensuring people feel safe to report their disability.<sup>142</sup>

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If they [employees] are on some medication it has to be disclosed. [The] person is provided an information sheet regarding whether it's a class of drugs that impacts on [their] ability to operate machinery...they [employees] need to let them [employers] know because it's a safety issue.<sup>143</sup>

One hidden disability is mental health and this is an area people don't like to disclose.<sup>144</sup>

Employees with disability don't often disclose until issues come up.<sup>145</sup>

#### **(d) Recruitment**

There were three key areas raised by employers regarding the recruitment of people with disability:

- recruitment agencies
- Disability Employment Services (DES)
- in-house recruitment.

The Inquiry was told that recruitment agencies do not always provide a diverse pool of candidates. Employers expressed disappointment with homogenous short lists and recruitment agencies looking for the 'safest' candidates.

We [employer] use recruitment agencies. Short lists rarely contain older or disabled people... Recruiters are often younger themselves and they think that you, as the client, want younger candidates...We still get people's date of birth on applications. It is not relevant! I tell recruiters that it is irrelevant...We rarely get people with disability. Or it's flagged by recruiters as a disability and a problem, rather than 'here's a great person'.<sup>146</sup>

Many employers expressed dissatisfaction with employment service providers, in particular Disability Employment Services (DES). The Inquiry heard that:

DES don't understand the needs of the business, they are not funded to do this.<sup>147</sup>

[We] worked with various agencies and found [that] candidate matching [was] just not good.<sup>148</sup>

Some employment agencies for people with disability don't understand how to develop people's careers, more focused on the job.<sup>149</sup>

A number of employers have highlighted difficulties with DES services as a consequence of them being predominantly small and locally run...For national employers, this means considerable time is required to develop relationships with several DES providers to enable access to a wide range of talent.<sup>150</sup>

Employers who do use Disability Employment Services do not report positive outcomes as the system is complex and there are many compliance and regulatory requirements. Employers who seek a simple, streamlined procedure to help them employ people with disability find themselves bogged down in red tape, with time limited support that makes it difficult for them to maintain employment of people with disability. This difficulty is compounded where people with disability are incorrectly matched to jobs, and the combined effect of this is that employers may have negative experiences of employing people with disability and may be less likely to employ a person with disability again.<sup>151</sup>

Employers stressed that they are just focused on finding the right person for the job and sometimes, given the nature of the work it is difficult to employ a person with disability:

[We] would struggle to employ someone with a physical disability. The nature of the work and workplace is that they are hazardous, [and] difficult to navigate — involve stairs, manufacturing.<sup>152</sup>

Organisations relying on in-house recruitment said that one of the challenges they faced was knowing where to find potential employees with disability and people who are job-ready:

They [job seekers] could come with a million dollars, if they aren't the right person for the job the employer will not want them.<sup>153</sup>

Attracting people with disability to apply for positions is a constant obstacle...Despite advertising positions through the National Disability Recruitment Coordinator (NDRC) and [...], very few applications are received.<sup>154</sup>

People don't want employees who are long-term unemployed, don't want to spend that time training them up, it's a big barrier.<sup>155</sup>

Some people with disabilities have never worked.<sup>156</sup>

### **(e) Workplace adjustments**

Many employers described the process of obtaining support and implementing workplace adjustments for people with disability or returning to work following an illness or injury as 'too difficult' and 'costly'. There is also a perception that employees with disability present greater risks.<sup>157</sup> An additional challenge is understanding the various forms of adjustments and knowing where to go for assistance.

There are so many government agencies dealing with employment which has been hard for us to wade through, and then add to that the challenge of our own internal systems and it becomes very difficult. I was trying to buy a special iPad for a young person with disability who we had hired and I just couldn't work out a way of getting the equipment. Our own internal processes were so difficult. I couldn't make this happen for one person. Part of the challenge is to get these internal processes right so that when we bring on more people with disability their experience is just the same as everyone else. It's not right to be making them wait for the technology they need because our systems are too complex.<sup>158</sup>

The cost of reasonable adjustments is prohibitive...and the red-tape burden is substantial.<sup>159</sup>

The need to make modifications to the physical environment at the workplace, or to the work itself, to accommodate the physical challenges experienced by a person with a disability or an older person who possesses physical ailments, can be costly.<sup>160</sup>

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.<sup>161</sup>

Issue of entrenched myths that people with disability are expensive, [and] need more requirements.<sup>162</sup>

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In our experience many employers are confused as to what exactly is required by their obligation to make ‘reasonable adjustments’ under section 5 of the Disability Discrimination Act. No examples are given in the section as to what kinds of adjustments are envisaged to be reasonable. One of the biggest issues our clients face is employers insisting that they be fully fit to work their full hours and duties, with no adjustments required, before they are allowed to return to work from a period of illness or injury.<sup>163</sup>

Feedback from employer consultations indicate that many employers were not aware of the Australian Government’s Employment Assistance Fund (EAF) which provides reimbursement for work-related modifications and services provided to new or current employees with disability. Of those employers who were aware of the EAF, the Inquiry heard that the annual funding available was insufficient in some cases. For example, funds quickly run out when employees with hearing impairments require Auslan interpreters. In addition, the Australian Industry Group submits that:

The assistance does not extend to those workers (or persons) who may have an ailment that places limitations on their ability to work, say for example because of age, that is not diagnosed as a disability.<sup>164</sup>

Employers also expressed frustration with the inflexible nature of funding arrangements for government services and programs.

In relation to JobAccess...employers can’t access funding on behalf of an individual, making it difficult to seek funding assistance for workplace adjustments prior to an individual coming on board (i.e. wanting to set someone up prior to their arrival without burdening the individual with the application process).<sup>165</sup>

There is confusion amongst some employers regarding who is responsible for making an application for a workplace adjustment, the assessment process and funding arrangements. Employers struggle with finding information and knowing where to go for advice.

Workplace adjustments are also relevant in the context of returning to work after a workers compensation claim or other injury or illness. The Inquiry was told that employers do not always understand their obligations to provide workplace adjustments:

In the experience of Legal Aid NSW, employers are sometimes unaware of the obligation to comply with both discrimination laws and other workplace laws. For example, employers are sometimes unaware that a failure to provide light duties may not only be a breach of workers compensation laws but can amount to a failure to provide reasonable adjustment under the Disability Discrimination Act 1992 (Cth).<sup>166</sup>

## **(f) Productivity**

As discussed above, the Inquiry heard that employers are focused on hiring the right person for the job, as well as running their business. Some employers reported concerns about the productivity of people with disability, in particular if other employees were then required to ‘pick up the slack’.

Some workers who possessed a disability were less productive than those without a disability, for example workers with an intellectual disability.<sup>167</sup>

Many people believe that people with disabilities will be less productive and will cost their business more in insurance or benefits than people without a disability.<sup>168</sup>

Some employers had previously had a negative experience:

Our problem was that the staff [with] disability couldn't do a full day, or the workload, or needed breaks constantly or just didn't show up for work at all, but we had to pay them the same wage as my regular staff...My staff were at the stage where they couldn't give the [business] 100% because they were constantly fixing mistakes from my staff with disabilities...Why put someone on that can't give 100%, or even 80% of their time and effort but you have to pay them the same wage as someone who can?<sup>169</sup>

### **(g) Legal and regulatory barriers**

Some employers and industry peaks describe the legal and regulatory framework governing discrimination in employment as 'burdensome' and a barrier to employing people with disability. They identify difficulties in understanding all relevant legislation and industry codes regarding workplace adjustments, flexible work, and leave entitlements. This can lead to perceptions that it might be easier to hire a person without disability.

They [employers] will choose not to hire a candidate that has a likelihood of making them address such concerns.<sup>170</sup>

The regulatory framework surrounding the employment relationship in Australia is complex and daunting for employers, particularly small business. There is no need for further regulation. The creation of further regulation will only entrench the views of some that employing...older Australians and Australians with a disability is too 'risky' and will detract from the efforts of industry in helping to overcome stereotypes, myths or misconceptions.<sup>171</sup>

Compliance is an issue, fear of time required to support people.<sup>172</sup>

Why is the system so hard to work with — it shouldn't be so difficult.<sup>173</sup>

The Inquiry received submissions from industry groups and employers arguing that the existing workplace relations framework creates a barrier to employing people with disability, particularly the lack of flexibility in industrial awards. It is argued that restrictions in some awards and enterprise agreements create difficulties offering employees flexible work arrangements and can leave workers unable to access the flexibility they request.

Employers and industry bodies further argue that employment opportunities may not be made available for people with disability because the employer cannot accommodate the flexibility required.

The awards system does not provide employers and potential employees with flexibility to work reduced hours, long-term casual employment etc.<sup>174</sup>

The Australian Chamber [of Commerce and Industry] holds the view that the [workplace relations] framework still contains barriers to workplace flexibility that continue to hamper social inclusion through workplace participation and prevent the modern awards and minimum standards operating as a fair and relevant safety net.<sup>175</sup>

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Older Australians and people with disability may have particular needs and preferences that attract them to working in industries and roles that can offer flexibility...The inflexibilities within the award structure such as prescriptive minimum engagement periods, prescriptive part-time hours and excessive penalty rates impose significant limitations on the pattern of hours an employer can offer and are significant barriers to participation for those requiring ultra-flexibility...One size fits all minimum engagement periods of four hours are too inflexible given the very diverse circumstances faced by employers and their employees. Flexibility is required so that employers are not prevented from offering work.<sup>176</sup>

Regulations that force changes to the nature of an employee's contract of employment (e.g. from a casual contract of employment to a full-time contract of employment) or which place impractical restrictions on engagement patterns inherently discourage hiring.<sup>177</sup>

Requirements in industrial awards and enterprise agreements regarding changes to rosters or working hours constrain (or at the very least add an additional layer of red tape to) an employer's ability to offer flexible working arrangements to employees who request them.<sup>178</sup>

Some enterprise agreements contain provisions which limit the engagement of more flexible labour such as casuals, labour hire, independent contractors, fixed-term, fixed-project and part-time employment. Employers and employees value the flexibility that these forms of labour provide. Many employees cannot, or do not want to, work full-time. These alternative [forms] of labour are an essential part of the labour force mix.<sup>179</sup>

The Australian Industry Group (Ai Group) further expressed member concerns related to the complexity of interactions between state and federal discrimination laws.

The multiplicity of laws (both federal and state) dealing with discrimination specifically, compounded by the general protections in the *Fair Work Act 2009* (Cth), have resulted in a genuine concern amongst employers about these laws. The complexity of the relationship between these laws is also very daunting for an employer to understand. These factors have resulted in employers being reluctant to employ older workers or workers with a disability for fear of breaching these laws.<sup>180</sup>

In regards to government regulations, policy and program requirements, employers told the Inquiry that there was too much uncertainty caused by frequent changes and reforms. Consequently, employers need to invest time into ensuring that they are up to date with relevant rules and regulations that are already complex.

Policies in so many areas are just [until] the next election. It is so hard to keep on top of it.<sup>181</sup>

[There] is a lack of awareness because the name of [government] programs change and then people don't know where to find it.<sup>182</sup>

### **(h) Small business and self-employment**

The Inquiry heard that small businesses are ‘time poor, over-regulated and want to focus on their business.’<sup>183</sup> Small business employers reported struggling to navigate through complex legal and policy frameworks around employment, anti-discrimination, work health and safety and workers compensation and insurance, and argue that this can be a barrier to employment of people with disability.

There are different rules that apply to mature-aged Australians and those with disabilities in each of these workers compensation and CTP schemes. This of itself presents significant barriers for businesses (particularly smaller to medium-sized businesses) wanting to hire these groups of people, due to sheer red tape involved and uncertainties on how the scheme laws and processes would respond to an emerging risk profile.<sup>184</sup>

Not knowing where to start and what is required, I think many employers would stop at this point because, in all honesty, their role as a business owner is complex enough and if it isn’t simple enough to be easily implemented, and it isn’t explicitly beneficial to the business’ bottom line, then it isn’t done.<sup>185</sup>

For some small employers without a dedicated Human Resources section, they may be deficient in knowledge of all their employment obligations. While there is a large amount of freely available public information, for example on the Fair Work Ombudsman, Fair Work Commission and Australian Human Rights Commission websites, the complexity of workplace relations laws can mean that it is difficult, especially for small business employers (who may themselves come from non-English speaking backgrounds) to navigate and interpret how those laws apply to them despite their best efforts.<sup>186</sup>

It becomes too hard for small business, most are just trying to survive. Employment programs and systems change and they can’t keep up with it.<sup>187</sup>

Small employers struggle to provide flexible work options because it can create negative work environments. Someone working from home means that other workers have to pick up the slack or others want to work from home too. Employers feel like if they let one work from home, if anyone else asks they will have to say ‘yes’ — easier to say ‘no’.<sup>188</sup>

Challenges facing people with disabilities were greater in small to medium enterprises as these businesses often do not have inclusive policies.<sup>189</sup>

Another barrier to employment of people with disability for small business is the lack of targeted resources and assistance. For example, on several occasions the Inquiry heard that small and medium employers did not have access to support services provided by the National Disability Recruitment Coordinator (NDRC) which is only available to organisations with more than 100 employees.

By stating that only major Australian employers are partnered with [by the NDRC], an assumption can be made that only those major employers can handle the ‘barriers’ that are associated with employing people with disabilities...the ‘little guys’ are not being taken seriously.<sup>190</sup>

JobAccess may be an issue for small organisations who need to do major work because of [the] reimbursement policy.<sup>191</sup>

Some businesses may feel that the physical environment might be a barrier to employing someone with a disability and may not be aware of funding available for modifications or it may be difficult or impossible to adjust.<sup>192</sup>

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Other practical challenges can arise when small businesses are faced with uncertainty or employees with disability require flexible work arrangements such as changes to work hours and days.

For some small organisations there are additional costs to allowing people to work from home [such as] giving people a laptop, [buying] internet connection. They don't have skill to be able to assess the job [and] look at the output.<sup>193</sup>

The Inquiry heard that some businesses hold particular assumptions regarding working with people with mental illness. Research involving 256 SMEs in Australia found that two in five employers would not consider employing someone who has a mental illness citing unpredictable and changeable behaviour (57%), possibility of a breakdown (54%) and too many sick days (43%) as the biggest barriers.<sup>194</sup> Other findings from the study include:<sup>195</sup>

- 50% of employers would prefer to hire someone who has a physical disability. Employers felt it was more possible to 'work around physical disability' and that it was not seen to affect motivation or personality, unlike mental illness.
- 22% lacked awareness of the support and resources available to them if they chose to employ a person with a mental illness.

The Inquiry heard that small employers who were aware of the wage subsidies available for employing people with disability and older people found them to be a good incentive. However, many small businesses with whom the Inquiry consulted were not aware of these incentives.

### **(i) Public services**

Public services at Commonwealth, state and local levels employ a substantial proportion of the Australian workforce. Governments have direct and legitimate influence over the policies and employment practices of their public services.

A number of contributors to the Inquiry argued that government should be a leader in employing and retaining people with disability.

Public sector is the public example... see what is happening in government and to take [their] lead from public sector.<sup>196</sup>

The Australian Public Service Commission needs to show leadership by deliberately mandating recruitment policies that do not discriminate.<sup>197</sup>

Public services are major employers across Australia, but the employment rates of people with disability in the public service are low. While people with disability comprise 8.8% of the broader Australian workforce, employment rates for people with disability are lower in the Australian Public Service (APS), with 3.1% of APS employees reporting disability.<sup>198</sup>

Official figures for the number of employees with disability across the Australian and state and territory public services in 2015 range from 1.3% to 3.3%.<sup>199</sup> However, figures based on anonymous surveys of public sector staff report higher numbers, ranging from 2.2% to 7.1%.<sup>200</sup>

Not only are numbers of people with disability who are employed low, but in most jurisdictions they also appear to have been declining. For example in New South Wales, the official figure was 3.4% in 2013 and it has steadily declined to 2.8% in 2015. The Queensland and Western Australian public services also show steady declines over the past few years.<sup>201</sup> The Australian Capital Territory is an exception, with a small but steady increase in representation between 2013 and 2015.<sup>202</sup>

While it is not possible to establish causation, it is also notable that the ACT is the only jurisdiction that has sector-wide initiatives, including targets for employment of people with disability, and the appointment of a 'Whole of Government Inclusions Manager'.

One jurisdiction, Victoria, is not able to provide any data regarding numbers of people with disability employed across their public service. Public sector governance in Victoria is largely devolved to individual agencies and, unlike its counterparts in other states and territories, the Victorian Public Sector Commission does not have the power or responsibility to deal with equal employment matters across government.<sup>203</sup>

Information provided by the public service commissions in response to requests from the Inquiry make it clear that within the state, territory and Commonwealth public services there is awareness of the low numbers of people with disability employed and the need for action to address this underrepresentation. Most jurisdictions therefore attempt to:

- monitor the rate at which they employ people who identify as having disability
- ensure that employees with disability are treated appropriately when employed
- implement measures to facilitate access to recruitment opportunities
- retain the services of staff who identify as having disability.

However, in most cases the Inquiry was not able to acquire reliable or objective evidence on whether programs and initiatives had been evaluated, or what the outcomes of evaluation were. Some initiatives in some jurisdictions were able to refer to conclusions of 'reviews' but none seemed to be able to provide robust objective evidence to support the conclusions.

An example of one of the more robust and formal approaches to reviewing initiatives is the assessment of the Australian Public Service Commission's As One Disability Employment Strategy.<sup>204</sup> The objectives of this strategy were to:

- improve the accountability and commitment of APS leaders
- increase agency demand for candidates with disability
- improve recruitment practices to enable more candidates with disability to enter the APS
- foster inclusive cultures that support and encourage employees with disability.

One component of the As One strategy was the trial of the RecruitAbility scheme, which was designed to provide for people with disability an opportunity to progress to further assessment stages in an APS recruitment process, if they: declare they have a disability; opt in to the scheme; and meet the minimum requirements for the identified vacancy. The As One strategy stated that progress in achieving its outcomes would be measured by:

- a reversal in the long-term decline of the number of people with disability employed in the APS
- an improvement in reported job satisfaction for employees with disability
- an increase in retention rates.

The assessment was based on a range of administrative and program data collected from participating agencies, human resources practitioners and applicants in the course of managing the pilot; and from attitudinal surveys of stakeholders. The survey asked respondents about their awareness of the initiatives that comprise the strategy and their attitude towards the initiatives.

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While the information and data derived from the approach taken provided some insight into the impact of the strategy, it was generally subjective and the Inquiry proposes that some assessment of changes in the three identified criteria for progress might have provided more objective data. This could, for example, take the form of:

- analysis of changes in the proportion of employees with disability
- survey questions to employees with disability regarding any change in their job satisfaction
- analysis of changes in numbers of employees with disability leaving the public service.

Across all public services, the unreliability of data regarding the representation of people with disability due to reluctance to disclose, and the lack of evaluation of past and current initiatives, makes it difficult to assess what works and what does not. However it could be argued that existing strategies and initiatives are generally not succeeding because the numbers of people with disability in the public services in most jurisdictions are declining.

The collection and analysis of data is a basic prerequisite to identifying and addressing a problem, however most jurisdictions appear to lack any centralised coordination, monitoring or reporting of efforts across the sector. This could be the result of decisions to delegate control of human resource and workforce planning functions to individual public sector agencies.

There are broad statements of accountability across the public sector, as exemplified by Queensland, where there is a:

...focus on continuous improvement, as well as the system as a whole...[by] ensuring transparent metrics. Chief Executives are accountable through their performance agreements to ensure their workplaces support diversity...and... there is a focus on constructive workplace culture and inclusive practices.<sup>205</sup>

However the Inquiry finds there is a cost to this devolved approach in relation to the continuing underrepresentation of people with disability as employees of the public service.

The absence of objective data, formal evaluations, monitoring or reporting leads the Inquiry to conclude that there is significant room for improvement.

## 4.4 Law and government policy

This section outlines the key issues raised with the Inquiry in relation to government programs, policies and federal laws which have an impact on the workforce participation of Australians with disability.

### (a) Social security

The social security system can provide support to individuals to participate in employment, however it can also operate as a barrier or disincentive to work. The Inquiry has heard a great deal about some of the complexities and inconsistencies that exist within the Australian social security system. An overview of Australia's social security system is provided at Appendix 11.

*(i) Concerns about the benefits of work*

The concern most frequently raised with the Inquiry in relation to social security payments for people with disability was uncertainty about how earnings from work would impact on social security payments.<sup>206</sup> Some people told the Inquiry that they would be financially better off if they did not work and relied solely on an income support payment.

This issue has been raised in previous reviews of the welfare system; most recently in the 2015 review of Australia's welfare system (the McClure Report):<sup>207</sup>

Many recipients are unclear about the benefits of work. The complexity of the system leaves some income support recipients believing that any work will jeopardise their benefits. This concern highlights that perceived risks can be as damaging as real risks in determining and influencing how recipients interact with the income support system.<sup>208</sup>

Submissions to the Inquiry and evidence presented at consultations on this issue supported these findings.

Many people with disability are often economically worse off when engaging in employment, especially if they undertake part time, casual or low-paid work. The cost associated with employment (for example taxi fares and public transport) can be substantially higher for people with disability and is a significant barrier to employment.<sup>209</sup>

It's back to front... you're penalised more if you do work.<sup>210</sup>

When I was working casually... I'd get taxed at the normal rate from my employer, my Centrelink allowance would decrease, and it was the equivalent to working for half-pay. If I didn't have a back-up, or was more impacted by my disability/illness than I am... why would I go to work for half-pay when I could reserve my energy for day-to-day living activities?<sup>211</sup>

Another significant concern raised by individuals was the fear that if they were to get work, they would lose their social security payment and be unable to get back on the payment if they were unable to retain the job.

People want to work but they are paranoid about losing their benefits. It's easier to stay on a pension.<sup>212</sup>

Not all people with disability will be able to cope financially if immediately cut off from the Disability Support Pension when they obtain over 30 hours a week of work.<sup>213</sup>

People with episodic conditions, such as mental illness, reported that the notion of moving off a social security payment to work was particularly daunting.

Don't Centrelink take you off [the] Disability Support Pension if you've worked full-time for 8 weeks? That scares the life out of me. What if I relapse after 9 weeks? The nature of some disabilities/illnesses is such that it would be great to be kept on [the] Disability Support Pension at zero pay for a lot longer than 8 weeks even if you have scored a great full-time job.<sup>214</sup>

People with mental illness are fearful of taking a job and losing their pension. It's a big risk if you have an episodic disability.<sup>215</sup>

Carers of people with disability also reported similar issues.

### Case study 4.18

Joe is a carer for his brother Mark, who has schizophrenia. The episodic nature of Mark's disability means that when he is well, Joe can work full-time, but when Mark is unwell, Joe is reliant on a Carer Payment. Joe told the Inquiry that he finds it difficult to get back on the Carer Payment when he needs it and that this creates financial concerns and is a disincentive for him to work.<sup>216</sup>

Another aspect of the loss of entitlements discussed with the Inquiry related to the health care card. Individuals who receive the Disability Support Pension receive a Pensioner Concession Card,<sup>217</sup> and those on Newstart Allowance can receive a Health Care Card,<sup>218</sup> both of which entitle them to discounts on some medications and other services. Once people start working and are no longer receiving a pension or allowance, they also lose their entitlement to these associated benefits.

The unsubsidised costs of these essential goods and services, especially medication, can be very high and not all people with disability will earn a wage that will enable them to meet these costs. This is particularly an issue since people with disability are more likely to be engaged in low-income work than other types of work.<sup>219</sup>

The Health Care Card is a life saver. If they get a job they lose this and then if they need medication or support they can't afford it.<sup>220</sup>

If a person loses access to the Health Care Card as a consequence of gaining a job, a large proportion of their wages could be spent on medication.<sup>221</sup>

#### *(ii) Access to information about entitlements*

A number of individuals reported that their uncertainty about the benefits of work was due to difficulties accessing information about their entitlements and understanding how their earnings from work would affect their income support payments.<sup>222 223</sup>

It is so hard to get any information from Centrelink. It's chaos. The rules keep changing and there is no email service. You have to wait on the phone for hours or line up.<sup>224</sup>

The Centrelink website infers that everything can be done online but that isn't true.<sup>225</sup>

#### *(iii) Adequacy of payment rates*

The adequacy of payment rates — particularly Newstart Allowance, and the Disability Support Pension — was another issue raised with the Inquiry.

It is impossible to live adequately without a decent job, especially on Newstart which is impossible to live on without extra assistance.<sup>226</sup>

Moving from working to Newstart meant my income reduced significantly, even more than it would have if I'd been put on the Disability Support Pension. Also, due to the means testing of Newstart, what savings I had, had to go down before I even received assistance.<sup>227</sup>

Because a person has to deplete all their saved income before they are eligible for Newstart they are unable then to go to interviews due to the expense of getting there.<sup>228</sup>

In their submission, Disability Council NSW discuss the need for recognition of the 'cost of disability' in terms of income support:

The current income, welfare and taxation systems do not sufficiently recognise the significant and ongoing costs of disability that people with disability incur throughout their lifetime. This is a disincentive to employment for people with disability and is a form of discrimination that prevents people with disability from enjoying to the same extent as others the same opportunities that employment provides.<sup>229</sup>

## **(b) Young people with disability**

### *(i) Transition from school to work*

The transition from school to work was consistently raised with the Inquiry as a critical time for young people with disability.

The employment experiences and outcomes of young people with disability continue to be extremely poor...Consequently many young people with disability experience poverty, disconnection, exclusion and discrimination through the barriers that exist in relation to obtaining and accessing employment.<sup>230</sup>

A parent speaking of their child's difficulties in obtaining and securing employment told the Inquiry:

He just turned 17, he is right at the beginning of his life and we fear this will be a pattern.<sup>231</sup>

A number of people raised this issue of transition from school to work with the Inquiry in the context of school students' access to DES. In some, limited circumstances, DES providers can support students with disability who are in their final year of secondary school to find employment. These circumstances are set out in the DES Eligible School Leaver Guidelines.<sup>232</sup>

A number of submissions to the Inquiry raised concern that these guidelines are too limited, meaning that students who might benefit from DES support in their last year of high school but do not meet the definition of having a 'significant disability' are excluded from receiving this assistance.

Two DES employees told the Inquiry they had previously been able to provide support to high school students, however a change in their contracts meant this was no longer possible.<sup>233</sup> One of those individuals stated that this makes it difficult to offer effective school to work transitions and young people can 'fall through the cracks'.<sup>234</sup>

Other organisations raised similar concerns:

There are strict guidelines that inhibit DES from supporting students with disability and providing opportunities to gain that first job and work experience that can be so important. DES are only able to access students who are in their final year of school, receive additional educational funding and who attend a special school setting either within a unit in a mainstream school or at a special school or receive the Disability Support Pension. Students who may require support to find work but who are not eligible for DES student support are therefore excluded.<sup>235</sup>

The DES program cannot support young people to work in part-time jobs if they are still at school. This is discriminatory and denies these students valuable work experience and skills.<sup>236</sup>

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Young people in consultations also raised the issue of DES support being unavailable while completing tertiary study or vocational education.

Full-time students cannot access DES support to find casual or part-time employment and as such, struggle to attain employment experience, which can negatively impact on them later in life.<sup>237</sup>

One individual who was studying at TAFE articulated that it would be helpful to have the option of accessing DES support and obtaining valuable work experience while undertaking her course.<sup>238</sup>

Another concern raised was the lack of options presented to young people with disability after they leave school. A submission from a school for students with disability in Alice Springs states:

There is currently a significant lack of options for meaningful work and/or activities for students exiting Acacia Hill...There are virtually no paid ongoing employment options for young people with high needs disability in Central Australia.<sup>239</sup>

Children with Disability Australia have conducted their own consultations and produced a paper on Post School Transition and the experiences of students with disability and their families.<sup>240</sup> The stories shared discuss the importance of effective transition programs and trained transition coordinators in schools:

The school unconsciously sorted students according to perceived capability. This resulted in some students being provided with extra support to pursue employment, while other students were directed to supported employment and day programs.<sup>241</sup>

My teacher said I could not work with animals. I did a transition program working one day a week over two terms at the local pound.<sup>242</sup>

Awareness of what's out there can be quite a big barrier.<sup>243</sup>

Most schools provide a transition coordinator but information is totally dependent on the knowledge base of the coordinator which varies considerably.<sup>244</sup>

Queensland Advocacy Incorporated provided this case study which demonstrates the importance of young people with disability being provided with appropriate post school options for their level of ability:

A young person with disability, who attended school and received external support from a special education unit, has excellent skills in wood work and metal work. When he completed school, the only opportunity available to him was a placement in an ADE. That placement failed, however the man and his mother sought assistance from a DES.

The DES assisted him to find a role with a metal fabrication company. He was respected and supported and 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.<sup>245</sup>

#### *(ii) Educational attainment of students with disability*

Concerns about the low rates of educational attainment of students with disability were raised with the Inquiry by a number of organisations, who noted the impact that education can have on a person's future employment prospects:

Education and success (or otherwise) in gaining employment, seem to go hand in hand. Recent statistics show that Year 12 attainment was around 25% for people with disabilities, compared to just over 50% for people without disabilities.<sup>246</sup>

A quality education should provide the necessary knowledge, skills and resources to support future meaningful community participation including further education and employment pathways. However, students with disability commonly report poor educational experiences and outcomes. A typical education experience for students with disability involves limited choice of school, discrimination, bullying, limited or no funding for support and resources, inadequately trained staff and a culture of low expectations... These issues mean that students with disability are frequently leaving school without the necessary knowledge and skills to participate in further education and employment.<sup>247</sup>

People with disability have low levels of educational attainment outcomes compared to people without disability. For people with disability and particularly intellectual disability and mental illness, education systems often do not provide the flexibility and support needed to gain secondary and tertiary qualifications and as a result they are unlikely to have the education and skills they need to obtain and retain meaningful employment.<sup>248</sup>

### **(c) Disability Employment Framework**

The Inquiry heard a great deal about government employment programs aimed at assisting people with disability to find employment.

The major government disability employment initiatives are the Disability Employment Services (DES) and Australian Disability Enterprises (ADEs). These programs are managed by the Department of Social Services (DSS) and also interact with other government services such as the welfare system and the National Disability Insurance Scheme (NDIS).

The Disability Employment Services are provided by private employment service providers contracted by the federal government (DES providers). Australian Disability Enterprises provide what is known as 'supported employment' for people with disability with high support needs.<sup>249</sup>

A more thorough overview of the Australian disability employment framework is provided at Appendix 12.

The DES system was raised in around half of Inquiry consultations — 59 of 121 — and in around 35 submissions from individuals and organisations. The feedback received indicates that there is a high degree of variability in the quality of service provided by individual DES providers. The following matters were raised with the Inquiry regarding the ways in which inefficiencies and inadequacies in the disability employment system can result in barriers to workforce participation for people with disability.

#### *(i) Outcome payment system*

A large number of individuals and organisations drew the attention of the Inquiry to the payment and reporting structure of the DES system, which means that providers receive a payment once candidates have been in a job for 13 weeks and again at 26 weeks.<sup>250</sup>

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The performance of DES providers is measured against the Star Ratings Methodology, which measures provider's efficiency and effectiveness mainly in relation to the number of 13 and 26 week outcomes achieved.<sup>251</sup>

The information collected by the Inquiry suggests that both organisations and individuals are concerned that the 13/26 week outcome payments place too great a focus on relatively short-term outcomes. The incentives for providers, both financially and in terms of their Star Ratings, lie in this three to six month period.

The current system rewards short-term job outcomes and acts as a disincentive to providers to deliver ongoing support to help people with disability maintain employment... The lack of flexibility in programme rules and incentives means providers cannot always act in the best interests of people with disability and often focus on 'easy wins' rather than people with disability that are more challenging to place in employment.<sup>252</sup>

The DES system currently has too high a focus on compliance, consuming the work of DES's instead of supporting people with disability to gain and keep work long term. This is accompanied by a focus on the star-rating system under which DES operates which often results in an unwillingness to work with people with higher support needs who may require more immediate training and support.<sup>253</sup>

Job Services Providers run on KPI Indicators. The consultants are under that much pressure to get their targets. The whole system is petty.<sup>254</sup>

One individual provided the Inquiry with an example of his experience working with a DES:

A labour hire company was looking for warehouse factory workers. There were potentially 10 ongoing casual positions available and all case managers within the company put forward participants they thought would be able to do the job. There was no double checking of how suitable the participants were for the positions and the labour hire company randomly picked 10 participants to start working in the factory warehouse. Within the first two weeks of the participants starting their positions five of them had left with two not even turning up to their first shift. By the end of the six months only three people were working there on a semi regular casual basis. The reasons these placements were such a disaster were that the Disability Employment Service rushed too quickly to get any people into the position before the end of the month and before the end of the quarterly Star Rating period as they were having a big push to try and hit targets with financial rewards for offices that hit their respective targets.<sup>255</sup>

Some organisations and individuals raised concerns that this focus on short-term outcomes creates an incentive for DES providers to dedicate greater resources to people who are seen as being easier to place in employment:

This inadvertently results in creating an environment where service providers are inclined to dedicate more resources and energy to place individuals with disabilities who are more likely to be employed as opposed to others who possess more complex needs.<sup>256</sup>

DES funding is allocated based on category of disadvantage, rather than individual need so it is not accurately targeted. When funding is not directly attached to clients, services can ‘cream’ and ‘park’ clients. Creaming refers to provider behaviour that prioritises attention for clients with fewer barriers and who are therefore believed to be easier and cheaper to facilitate an outcome for and therefore release payments. Parking is behaviour that deliberately neglects giving time, energy or resources to clients with more substantial barriers. This is because it requires considerable, and usually expensive, support to realise an outcome and therefore a payment.<sup>257</sup>

*(ii) Post-placement support*

Another recurring theme in submissions and consultations was the key role of post-placement support in enabling people with disability to remain in employment.

The Inquiry spoke with DES providers who raised the importance of post-placement support for candidates with disability:

I know that they are looking at the way DES is delivered. But I do think they need to look at not just the outcomes or benchmark hours. We only have two years to work with someone to undo anything that’s happened to them over the course of a lifetime. It’s not always enough time.<sup>258</sup>

From a DES perspective, post-placement support is key, you can’t just put them in a job and leave them.<sup>259</sup>

The Inquiry also heard from individuals about the need for ongoing support in order to remain in a job:

Darren obtained a weekend job at a cinema. The weekends are the busiest time for the cinema, which is why he was employed, however Darren needed the support of a DES employee to complete his work tasks and this was unavailable because the job was outside their hours (Monday to Friday, 9am-5pm). Darren was unable to work without the support of a DES employee and lost the job.<sup>260</sup>

The Multicultural Disability Advocacy Association submits:

For those people with work experience, there was a common feeling that they had not been or were not well supported. Some people found that there were not enough hours of support available to them and others found that support stopped entirely after a short time.<sup>261</sup>

*(iii) Wage subsidies*

DES providers can pay a wage subsidy of up to \$1500 to employers under the Wage Subsidy Scheme.<sup>262</sup> A wage subsidy is paid to the employer once the participant has been employed for between 13 and 26 weeks.<sup>263</sup>

The concern raised with the Inquiry was that employers may exploit the Wage Subsidy Scheme by taking on an employee through a DES only to receive the subsidy.

Employers can use the wage subsidy as a ‘revolving door’ payment. For example, once the employee reaches their 3 month mark they are not progressed past their probationary period, enabling employers to access the scheme to pay for another employee.<sup>264</sup>

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One individual told the Inquiry 'I have a job while there is funding, but I lose it when the funding runs out'. The individual reported that after the 13 week period passed and the employer received the wage subsidy, they were dismissed from the role due to 'performance issues'.<sup>265</sup>

On numerous occasions a wage subsidy would be paid then issues would appear with the employees that were not present before the wage subsidy was paid to the employer...Wage subsidies sometimes attract the wrong type of employer. An employer who is looking for wage subsidies is generally struggling as a business so when the wage subsidy is finished they are looking for any reasons to dismiss the person who has been on the wage subsidy.<sup>266</sup>

One organisation notes that, on the other hand, there can be benefits to the use of a wage subsidy:

It can be an incentive for employing someone with a disability. This increases not only the employers and wider staff's experience of the positive contribution of people with disabilities but also the community in which the business is located. This experience can lead to future job opportunities within the community as they recognise the person first and their abilities, rather than just their disability.<sup>267</sup>

#### *(iv) Disability awareness of Disability Employment Service provider staff*

Many individuals who had experience receiving support from a DES provider told the Inquiry that staff required better training and greater disability awareness.

One particular issue raised with the Inquiry was DES employees' understanding of specific disabilities. For example, the Inquiry spoke with members of the deaf blind community who had been unable to identify a provider with knowledge of how to support people who are deaf blind to find employment.<sup>268</sup>

Similarly, Vision Australia notes:

There is no specific training for generalist DES or Job Capacity assessors in the needs of people who are blind or have low vision, or funding for professional development opportunities.<sup>269</sup>

Mental health was also identified as an area in which providers may require further training.<sup>270</sup> One individual told the Inquiry of a situation where she felt her DES caseworker demonstrated a lack of understanding of her disability:

I became overwhelmed during a meeting that I was having in a café with a DES caseworker. As is my habit when under stress, I started rocking in my chair to help myself settle and thereby avoid the situation escalating into one of self-harm. The caseworker responded to this by telling me she was ending the meeting and wasn't going to talk to me anymore. I left the café in an extremely chaotic state and the only reason the situation didn't escalate into something more serious was that the person I telephoned for help answered my call.<sup>271</sup>

#### *(v) Need for culturally competent services*

The Inquiry held consultations with members of the Aboriginal and Torres Strait Islander community and with people from culturally and linguistically diverse (CALD) backgrounds and with services working with these groups. A number of individuals and organisations expressed the need for more cultural awareness among Disability Employment Service providers.

One issue raised was the need for information about the DES system and providers to be made available in community languages.<sup>272</sup> Another concern was that there are not enough DES providers with specific skills in assisting Aboriginal and Torres Strait Islander people with disability.<sup>273</sup>

Organisations also raised these concerns:

People with disability who seek assistance from Disability Employment Services also report that these services are generalist and are not well-equipped to support the diverse needs of different groups, including people from CALD or Aboriginal and Torres Strait Islander backgrounds and people with mental illness.<sup>274</sup>

Disability Employment Services do not understand the needs of people from non-English speaking or CALD backgrounds who may be unfamiliar with Australian practices for resumes, applications and interviews and/or have qualifications and experience that are not recognised by Australian employers.<sup>275</sup>

The Inquiry also heard that Disability Employment Service providers lack cultural competency and understanding of the multiple types of disadvantage or intersectional discrimination facing Aboriginal and Torres Strait Islander people with disability.<sup>276</sup>

Disability Employment Services also do not always understand and employ the strength of family and community based kinships to assist people with disability from Aboriginal and Torres Strait Islander backgrounds. Until there is greater understanding amongst Disability Employment Services and employers of how to best support people with disability from Aboriginal and Torres Strait Islander backgrounds to participate in meaningful employment, it is likely these people will continue to face discrimination and barriers to employment.<sup>277</sup>

#### *(vi) Job matching*

Another area of concern raised with the Inquiry was the ability of DES providers to match candidates with roles that suited their qualifications, experience and career goals. The Inquiry heard from individuals who reported that their DES provider did not ask them about their career aspirations or that they had sent them to interviews for roles they were unqualified for or were simply able to do.

In one consultation a man with vision impairment told the Inquiry that his DES provider put him forward for a role that needed a licence and vehicle,<sup>278</sup> and on another occasion a participant told the Inquiry of a DES sending a person with a mobility disability, who uses crutches, to a job in an area which was inaccessible by public transport.<sup>279</sup>

I was told by a worker to put on my best suit and find work. They gave me jobs I was not skilled for... They sent me for a job that you needed a fork lift license for. I do admin.<sup>280</sup>

I was sent for a job which I was incapable of doing. The role was for a front office receptionist. This was precisely the role that I was fulfilling when I had the incident in a previous workplace, which led to me applying for the Disability Support Pension in the first place. I thanked the prospective employer, apologised for wasting her time, and then got in the car and cried my heart out. I felt ashamed, useless and utterly hopeless.<sup>281</sup>

Individuals also told the Inquiry that they felt that some DES providers did not have the necessary training and skills to assist individuals with disability with qualifications to find employment which matched their level of education and experience.

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My experience has been that mainstream employment agencies refuse to deal with people with disability and refer us to segregated (employment agencies for people with a disability) agencies. The segregated agencies do not have contacts for people who have professional qualifications.<sup>282</sup>

There seems to be an assumption that people with a disability are only suited to positions requiring little or no education. It was evident to me that none of the DES caseworkers that I dealt with knew what to do with the fact that I had a University degree (and was at that time completing a second, higher degree). This was most strongly evidenced by the caseworker who simply deleted my degree from my resume — an act that caused me enormous distress. At no time did any caseworker offer up any ideas regarding employment commensurate with my level of education.<sup>283</sup>

Whenever I tell them about my qualification at university, they don't take it seriously.<sup>284</sup>

Often people with disability are put into the 'too hard basket' when they do not match the characteristics of a 'typical' DES client.<sup>285</sup>

In 2012, Vision Australia conducted an employment survey of 600 of their clients.<sup>286</sup> In that survey, 51% of respondents reported encountering difficulty of some sort when looking for work.<sup>287</sup> One of the main reasons individuals identified as the source of this difficulty was 'matching skillset to potential jobs'.<sup>288</sup>

A former DES worker told the Inquiry:

Most jobs sourced by DES providers for clients are in retail or administration fields which are often minimum wage and have limited opportunities for career development. Many people with disabilities hold qualifications and/or want employment in a specialised field. Further discrimination may be faced as only limited opportunities may be afforded to explore employment areas of choice.<sup>289</sup>

The Inquiry also received representations that DES should, where it is a suitable option, have more flexibility to be able to support candidates to establish their own business:

For some people, self-employment is the only option because it removes all the barriers they experience in work.<sup>290</sup>

However, for some, their DES did not provide support for self-employment:

A former DES manager explained that she would avoid discussing self-employment as an option as it was just too difficult to work around the system. She explained that the [...] Web system that DES Providers use did not support self-employment, where the focus was on job seekers and their interactions with employers.<sup>291</sup>

#### *(vii) Geographical coverage of DES services*

The issue of a lack of availability of DES services in some geographical areas was raised with the Inquiry.<sup>292</sup> One participant told the Inquiry that they had a negative experience with one DES in their designated Employment Service Area. When they were subsequently looking to move to another provider, they found that of the four providers in their area, three were owned and run by the same company.<sup>293</sup>

According to one individual, in some areas oversupply of DES providers can be an issue:

There are too many services looking for work for people. In the Albury Wodonga area there are 20 plus service providers looking for work, apprenticeships or work experience for individuals. There is a mass crossover of services approaching the same businesses. Businesses do not have the time or patience to listen to all the services various pros and cons and do not know which one is the best for their company at that time or which ones are the same or different.<sup>294</sup>

Another DES employee raised issues relating to the interaction of the Community Development Programme (CDP) with DES funding in remote areas. The Community Development Program is a government initiative aimed at improving employment in remote areas.<sup>295</sup>

I work for a Disability Employment Provider and am concerned for people with a disability who live in remote areas and are unable to access support from a DES provider. ... The student with a disability is not eligible for this service usually provided by a DES provider. There is limited funding available for such support under the current Community Development Program — so therefore these students are not given the opportunity for employment. The student is highly disadvantaged under the CDP program. This disadvantage is applicable to all people with a disability who live in remote areas — the CDP provider is not able to access funding to support people with a disability with on job support and wage subsidy for the employer.<sup>296</sup>

*(viii) Job capacity assessments/Employment services assessment*

Job capacity assessments are conducted in order to assess the impact of a person's disability on their capacity to work; help determine their entitlement to the Disability Support Pension and decide whether they should be referred to a DES provider.

Participants are predominately referred to DES by Centrelink after undertaking an employment services assessment (ESAt) or job capacity assessment (JCA) to determine the most appropriate service for a job seeker. An ESAt provides a comprehensive work capacity assessment for people with disability and/or other potentially serious barriers to work. ESAts recommend the most appropriate employment service assistance and support interventions based on an assessment of the job seeker's barriers to finding and maintaining employment; and work capacity in hour bandwidths. JCAs provide a similar level of assessment for employment programmes, but are primarily used to inform Disability Support Pension claim decisions.<sup>297</sup>

Through the JCA or ESAt, participants receive employment benchmark hours of zero, eight, 15, 23 or 30 hours per week. A participant must be placed in a job by DES and be working at their benchmark hours in order for the DES provider to receive the outcome payment.<sup>298</sup>

This was of concern to some participants, who felt that assigning benchmark hours dictate the amount of support DES will offer a candidate to find employment<sup>299</sup> or that individuals could be assessed incorrectly.

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The current procedure for assessing work capability can result in people being placed in the wrong services and being funded at the wrong support level. A benchmark of working hours is based on the abstract concept of an individual's future work capacity, which can be problematic for many people with disability. The assessment guidelines are inflexible and do not adequately acknowledge different employment support needs people might have, which means the onus is on the assessor to predict how a person's impairment will affect their work capacity. This is a difficult task since work capacity is not just about impairment, but also about how the social and physical environment interacts with impairment and these influences need to be taken into account when determining work capacity.<sup>300</sup>

In another submission, an organisation stated that they had spoken with individuals who 'vocalised their discontent about being assessed incorrectly, assigning them to an employment pathway that didn't reflect their wants or needs'.<sup>301</sup>

Another issue raised was that people with an assessed work capacity of less than eight hours per week are ineligible for DES support.<sup>302</sup>

In some locations, the Inquiry heard from individuals who had waited for long periods to obtain a job capacity assessment to assess their entitlement to the Disability Support Pension:

In Darwin, a young woman told the Inquiry she had been waiting for over two years to receive an assessment so she can be referred to a DES. A DES employee agreed that the waiting periods for assessments had increased. She said that DES providers used to be able to book in the appointments themselves through the computer system, but that this is now not possible.<sup>303</sup>

In another location, a participant reported waiting longer than two months to be assessed and register with a DES.<sup>304</sup>

Another issue raised with the Inquiry was that individuals were being subject to participation requirements by Centrelink — such as registering with a DES and attending appointments — in circumstances where the DES provider and other organisations involved felt they were too unwell to be working. Although this issue does not directly impact on the work capacity of people with disability, it does go to the questions raised about the accuracy of the JCA and ESAt.<sup>305</sup>

#### *(ix) Availability of information about DES providers*

The Inquiry heard from individuals, organisations and DES employees concerned about the availability of information about individual DES providers and their performance. Some people felt that there was a lack of clear information which meant that their choice of provider was restricted and uninformed.

I tried to ring around my local disability employment support services to get an idea of who was best able to help me, so that I could ask Centrelink to connect me to the most appropriate service. None of the local providers would respond to or return my phone calls. When I spoke to someone, all they wanted to tell me was, 'you have to go through Centrelink'. They were unwilling to provide me with any information at all about their services. Perhaps they also have low expectations of me and don't believe I am capable of identifying my own needs.<sup>306</sup>

One person told the Inquiry he chose his provider because he heard them advertising on the radio:

There is no information about what providers are like. Centrelink doesn't give you any information.<sup>307</sup>

A woman who runs a DES told the Inquiry that 'many people have no knowledge of the DES' in their area and which ones would be good for them, 'so it's really difficult to choose from a list of names'.<sup>308</sup>

*(x) People with intellectual disability*

The Inquiry heard about the need to better support individuals with intellectual disability to find and remain in employment. People with intellectual disability are the most likely group of people with disability to require a support person to assist or train them on the job.<sup>309</sup>

One participant told the Inquiry:

More needs to be done to address the specific needs of people with intellectual disability. Employers often consider employing a person with intellectual disability as being too much work, it also often requires significant training of both the individual and employer. In terms of supporting a move to open employment, DES providers are available, although a barrier is that tasks need to be broken down stage by stage and this can be a costly and timely process for the employer and often this support in the workplace is not available. The funding for support services is often too limited and does not cover this kind of on-the-job support.<sup>310</sup>

According to an employee of one organisation that represents people with intellectual disability:

Everything is set up to exclude people with intellectual disability. The default position is exclusion, not inclusion and there are very few DES with the specialised skills required to support people with intellectual disability.<sup>311</sup>

#### **(d) Supported Wage System and Australian Disability Enterprises**

The Inquiry heard about the payment of wages to people with disability, either in open employment — through the Supported Wage System (SWS) — or in supported employment in Australian Disability Enterprises through the various tools available there.

*(i) Supported Wage System*

The Supported Wage System allows employers to pay employees with disability in 'open employment' a reduced wage where they are assessed as being unable to work at 'full productive capacity' when compared with another employee with disability, a supported wage.<sup>312</sup> This means that they are paid a proportion of the minimum wage, based on their assessed work capacity.

The Inquiry heard from people with concerns about the process for assessing a supported wage and about the length of time for which people with disability remain on a supported wage.<sup>313</sup>

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Many people with disabilities accessing SWS may be doing so for a significantly long period. The process of yearly reviews can be daunting for a person with a disability due to being assessed by someone they do not know. People with disabilities may be disadvantaged if they experience anxiety or do not test well and it may not be a true reflection of their ability to perform the role. Continuing existence on the SWS may impact an employee's chances for career progression or promotion when their capabilities are not adequately recognised.<sup>314</sup>

QDN is concerned that some employees may become 'stuck' in the supported wage system with little or no opportunity to trial open employment. QDN is also concerned about the potential for people to 'lose their place' in the supported wage system if they trial other options and that this ultimately acts as a disincentive for people to trial open employment.<sup>315</sup>

### *(ii) Australian Disability Enterprises*

The Department of Social Services describes Australian Disability Enterprises as 'not-for-profit businesses that provide supported employment for people with moderate to severe disability who face barriers to working in the open employment labour market.'<sup>316</sup>

Individuals working for an Australian Disability Enterprise are covered by the *Supported Employment Services Award 2010*. The award allows an employee with disability to be paid a percentage of the rate of pay of the relevant grade in the award as assessed under an approved wage assessment tool chosen by a supported employment service.<sup>317</sup>

The Inquiry received a number of submissions about Australian Disability Enterprises which represent a wide range of views. One of the main concerns raised was that people with disability who are placed in supported employment are not seen to be provided with adequate opportunities to move into open employment:

Employees working in ADEs have limited access to skills development, and after often unable to access the opportunities available within the open employment arena.<sup>318</sup>

Our experience tells us that once people with disability commence work in an ADE they are highly likely to remain there and may never be supported to pursue other employment options in the open market. Their skill set is limited to the skills needed to do the work of that particular ADE, and there are few opportunities for career progression or development. Many people employed by ADEs have the skills and ability to work in a range of different jobs but may not have received the support they need to transition from ADEs into open employment.<sup>319</sup>

ADE employees may not get the opportunities to build their capacity or skills which may limit their ability to participate in open employment.<sup>320</sup>

The Inquiry also received submissions which discussed issues of wage inadequacy due to the low wages paid to employees with ADEs and others which stated that ADEs play an important role in the lives of some individuals with disability,<sup>321</sup> their families and carers.<sup>322</sup>

The Inquiry acknowledges that there are a range of views on this issue, which are most comprehensively presented in submissions made to the Australian Human Rights Commission in relation to an application by the Commonwealth for an interim exemption under the DDA to allow the payment of wages to ADE employees on the basis of assessments conducted using a particular wage assessment tool, the Business Services Wage Assessment Tool (BSWAT).<sup>323</sup>

### (e) JobAccess and the Employment Assistance Fund

The Inquiry heard from a number of individuals and employers about the effectiveness of two particular government-funded supports: JobAccess and the Employment Assistance Fund (EAF).

- JobAccess provides information and advice on employment-related matters to people with disability and their employers via a website ([www.jobaccess.gov.au](http://www.jobaccess.gov.au)) and a free telephone service.
- The EAF is part of JobAccess and reimburses employers for the cost of work-related modifications and services provided to employees with disability.

Those who had experience using JobAccess and the EAF generally reported positive outcomes.

Through JobAccess we obtained deaf awareness training for the team and got adjustments that were needed.<sup>324</sup>

When people know about JobAccess it's very effective.<sup>325</sup>

We had a recent example of a woman with glaucoma. HR wanted to let her go because they did not know what to do. I worked with HR to use JobAccess to get adjustments to keep her in the job. It was a great solution, the employee was happy and told others about the positive experience. This brought other employees with vision impairment to disclose and ask for support.<sup>326</sup>

#### Case study 4.19

Two deaf people contacted a disability support agency for help in seeking employment. Both individuals had tertiary qualifications, one in accounting and the other in finance. Both had been seeking employment for more than two years. Through conversations with the support agency, it was identified that neither had any knowledge of Job Access, the EAF or assistive technology. Both individuals had been using the services of a DES provider who was also unaware of these services and supports.

The agency worked with the two participants and the disability employment provider to further develop their knowledge of the services and supports available, with special attention to allaying any possible employer fears and how to request reasonable adjustments in the workplace. Within three months, both participants gained employment.<sup>327</sup>

This case study highlights the importance of the support provided by these services, however it also raises another issue the Inquiry heard about on a number of occasions: a general lack of awareness of JobAccess and the EAF.

Many employers and HR in particular are not aware that there is funding available through JobAccess.<sup>328</sup>

The cost of reasonable adjustments is prohibitive and within the organisation there is a lack of awareness about JobAccess.<sup>329</sup>

JobAccess is not widely understood or utilised.<sup>330</sup>

Most small businesses don't know about JobAccess.<sup>331</sup>

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Another issue raised with the Inquiry was that, while funding was available for adjustments once individuals obtained a job, they were not able to access funding for the adjustments they needed to attend interviews or undertake other job-seeking activities. This was particularly an issue for people who are deaf or hard of hearing and require an Auslan interpreter in order to attend most job interviews.

The support is only available once the person is in a job, the funding is not available for interviews and for recruitment.<sup>332</sup>

If I find a job and am keen to go for it there is no funding to provide an interpreter to apply for it...I have been unable to go to some job interviews because there was no interpreter provided.<sup>333</sup>

The eligibility criteria of the Employment Assistance Fund needs to be addressed to ensure that people who are blind or vision impaired can access the aids and equipment they need as a job seeker or volunteer to enable greater job readiness. If a person who is blind or vision impaired does not have the equipment they need and the skills to use the equipment and to demonstrate their aptitude, it can make it much more difficult to compete for roles.<sup>334</sup>

The Inquiry also heard from individuals who had accessed the EAF for funding for Auslan interpreting services or captioning services and found that the allocated funding dissipated too quickly.<sup>335</sup>

For access to meetings and face to face contact, the \$6000 cap for interpreting and captioning often runs out very quickly.<sup>336</sup>

Employers told the Inquiry that the process for obtaining EAF funding can be frustrating. Currently, employers are required to pay for an adjustment and then submit the invoice to JobAccess for reimbursement. This was raised as a particular concern for small businesses, for whom the cost of an adjustment may be more significant than for a larger company:

The reimbursement policy of JobAccess may be an issue for small organisations who need to provide major, expensive adjustments.<sup>337</sup>

Some employers don't like to use it because they have to pay for it in the first instance and then get reimbursed.<sup>338</sup>

Another concern raised by the Diversity Council Australia was that employers cannot access funding to arrange adjustments for employees prior to them starting a role.<sup>339</sup>

## **(f) Workers compensation**

The Inquiry heard a range of concerns regarding workers compensation and workplace health and safety from people with disability.

- People told the Inquiry that they were required to disclose prior workers compensation claims or work-related illness or injury on job applications, and experienced discrimination when they did disclose
- People with disability told the Inquiry that they felt employers considered them to be a workplace health and safety risk
- People who returned to work after a period of illness or injury — often work-related — experienced discrimination in the workplace.

*(i) Disclosure of prior work-related illness or injury*

The Inquiry heard from individuals who had been required to disclose prior work-related illness, injury or workers compensation claims on job applications. The issue of disclosure of disability to an employer or prospective employer has been considered in further detail earlier in this chapter.

People told the Inquiry that they had been discriminated against by employers after disclosing prior work-related injury or illness. For example:

[T]hey outright told me it was because I had a previous WorkCover injury to my back and that despite the fact I was fully rehabilitated they still were not able to employ me as I was 'too high risk'.<sup>340</sup>

With workers comp, if I tick that box on an application, I won't get the job.<sup>341</sup>

Every job I have applied for since my injury has asked me whether or not I have had a previous WorkCover claim. I have, but was fully rehabilitated into my previous role on full duties however since leaving that job I was given legal advice suggesting I have to answer this question honestly. So it goes... 'Yes I have had a previous WorkCover claim, no it does not affect my work', 'oh sorry you were not successful in your job application'. I never had trouble finding work until I had to make a WorkCover claim.<sup>342</sup>

A union told the Inquiry:

The main barrier — and it is a brick wall for our members — is the need to disclose a previous compensation claim. You have to apply for jobs and tick 'yes I have had an employer's compensation claim' and then you don't get the job, if you tick 'no' you risk losing your job in the future if they find out.<sup>343</sup>

People reported that their workers compensation history follows them, even when they have changed occupations because of a disability acquired through a workplace injury:

[I]t is extremely discouraging for an injured worker to retrain for a new career and find that they are unable to even get an interview because of their workers compensation history.<sup>344</sup>

Legal Aid NSW told the Inquiry that in addition to the fear of re-injury, some employers consider a worker to have 'displayed bad faith by making a workers compensation claim'.<sup>345</sup>

One submission drew the Inquiry's attention to the fact that the same injury or illness from a non-work-related cause does not have to be disclosed:

I do not understand why someone with the same injury as me who did not do it at work does not have to disclose their injury yet I do just because mine was a WorkCover claim... I should not have to disclose an injury from which I have recovered and cleared from WorkCover as it quite clearly is preventing me getting work.<sup>346</sup>

*(ii) Perceptions of people with disability as a workplace health and safety risk*

The Inquiry heard that employers may consider people with disability to present a workplace health and safety risk.

A woman with vision impairment working in the community care sector told the Inquiry that her employer has recently told her and her colleague that they are a workplace health and safety risk and were unable to manage the duty of care over clients.<sup>347</sup>

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A union told the Inquiry that some employers use workplace health and safety issues to override the Disability Discrimination Act and discriminate against employees with disability.<sup>348</sup>

One individual with a disability was told that because of their disability they were ‘a hazard to themselves and to the business’.<sup>349</sup>

Many employers are using [workplace health and safety] as an excuse not to welcome people back because they argue ‘we are not discharging our duty to you or to others if we let you back’. Work Health and Safety legislation trumps their obligations under the disability discrimination act.<sup>350</sup>

*(iii) Discrimination when a person returns to work after injury or illness*

Some people told the Inquiry that they were discriminated against after returning to work following a period of illness or injury — whether the injury was workplace-related or not. In some circumstances, employers made excessive requests for access to employee’s medical assessments and information.

Full access is being sought by employers to all health information, rather than that which pertains to the injury, illness or disability.<sup>351</sup>

Many [Victorian Legal Aid] clients are placed in a difficult position when their employer requests their medical history or requests that they attend a medical assessment. Often this information is sought in circumstances where there are no reasonable grounds to question the client’s fitness to work, and employers often seek access to wide ranging medical information, arguably beyond what is reasonable or necessary.<sup>352</sup>

**Case study 4.20**

Tom had been off for several months when he attempted to return to work. He had received a medical report confirming his fitness to work, however his employer would not accept the medical clearance. Tom feels that this is because his employer considers him a liability.

After refusing to accept his medical clearance, Tom’s employer has requested further reports about his health, including an independent psychiatric assessment. This is despite Tom’s doctors previously confirming that his mental health does not impact on his ability to work. Tom feels extremely frustrated, apprehensive and insecure about this process and is concerned that his employer is making the return to work difficult in order to force him to resign.<sup>353</sup>

#### **Case study 4.21**

Rebecca took a short time off work following hospitalisation due to an ongoing medical condition. This time off was advised by her doctor. When she was deemed fit to work by her doctor, Rebecca attempted to return to work.

Upon her return, Rebecca's employer requested full unrestricted access to her medical records. Rebecca was not willing to provide this access and did not believe her complete medical history was relevant to her employer. Following this request she provided a letter from her doctor confirming her fitness to work. Rebecca's employer did not accept this as medical clearance and insisted on direct liaison with her doctor. She felt concerned about her privacy and refused to provide her medical records. Her employer walked her out and said she could not come back to work until they had her records. Rebecca has not since been able to return to work.<sup>354</sup>

#### **Case study 4.22**

Joe was a forklift driver working at a medium-sized logistics company. He sustained a back injury in the workplace. He made a workers compensation claim which was accepted. Joe took sick leave. After two weeks, Joe was fit to return to work on light duties. Joe worked on light duties for a few weeks. His employer then said it was unable to continue to provide light duties to Joe and stood him down without pay.

Joe's employer subsequently terminated his employment, despite a prognosis from Joe's doctor that, in time, Joe would be fit to perform his pre-injury duties.<sup>355</sup>

The Inquiry also heard reports of employers refusing to allow return to work until a person can perform their duties in full without adjustments. Victoria Legal Aid reports that:

One of the biggest issues our clients face is employers insisting that they be fully fit to work their full hours and duties, with no adjustments required, before they are allowed to return to work from a period of illness or injury.<sup>356</sup>

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- 200 Some jurisdictions provided the Inquiry with official workforce data only, others provided data from anonymous staff surveys only and some provided both. Generally, unless otherwise stated, in this report we are using official workforce data. Staff survey figures refer to the Western Australian public service (2.2%) from data provided to the Inquiry by the Western Australian Public Service Commission and Australian Public Service (7.1%), from the Australian Public Service Commission's *As One, Australian Public Service Disability Employment Strategy 2012-2014*, Final assessment February 2015, 2.
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# Chapter 5:

Addressing  
employment  
discrimination  
against Australians  
with disability —  
conclusions and  
recommendations

## Summary

- The case for addressing employment discrimination and raising workforce participation of Australians with disability is compelling. Government, employers, and the community can all contribute to removing stereotypes and discriminatory practices.
- The Inquiry recommends that Government work with key stakeholders to develop a national workforce strategy for Australians with disability to significantly lift labour force participation rates.
- The Inquiry's recommendations also address Government's law and policy role, as well as what Government can do as an employer and as a buyer of goods and services.
- It is crucial that Disability Employment Services function effectively to achieve sustainable employment outcomes for individuals with disability. As the Disability Employment Framework is currently under review, the Inquiry proposes the principles upon which reform should be based.
- The Inquiry also provides a suite of strategies and good practice examples that employers, and the organisations that represent them, can adopt to ensure non-discriminatory practices and create more inclusive and flexible workplaces.

The need for change is undeniable. Australia only stands to gain from increasing the workforce participation of people with disability.

Many submissions to the Inquiry called for government and employers, and the organisations that represent them, to take deliberate action to address employment discrimination and demonstrate leadership in employing people with disability.

The Inquiry's recommendations detail the changes that government and employers can take to achieve this outcome. However, everyone has a role to play — the Inquiry's findings demonstrate that community attitudes, lack of understanding and stereotypes can contribute to discriminatory practices.

The Inquiry recognises there is no 'one size fits all' approach. Australian businesses, workforces and industries are diverse and there are differences between operating in remote, regional and urban settings. Each entity is unique and faces its own opportunities and challenges.

The Inquiry also recognises that both the employment landscape and the nature of work are changing. The development of new technologies, the emergence and decline of certain industries and the existence of skills shortages in some areas all present challenges<sup>1</sup> but these changes also present opportunities. For example, technological developments mean that work is no longer 'tethered to a single location',<sup>2</sup> allowing for greater flexibility for those who need it.

This chapter presents recommendations, suggestions, case studies and examples of good practice to address employment discrimination against people with disability within this dynamic context.

Some of the Inquiry's recommendations will be able to be implemented relatively quickly and at little cost. Others will take longer to implement and will incur some expense. However, the benefits that will accrue to individuals, employers and the economy will outweigh the costs incurred. Given the findings of the Inquiry and the case for change, doing nothing is not an option.

The Inquiry trusts that the suggestions contained in this chapter will encourage innovation and will motivate employers and the community to adopt ideas and practices to address employment discrimination against people with disability.

## 5.1 What government can do

### (a) A national strategy

Being denied the right to work has negative impacts for individuals, employers and the nation's economy. Government has a clear role to play in addressing employment discrimination against people with disability. The Productivity Commission argues that there are:

Good economic reasons for government action...Neoclassical assumptions about rational behaviour are unlikely to hold when dealing with emotive issues like discrimination, and the existence of market failures means that relying on markets will not deliver efficient quantities of accessible goods, services, employment or education.<sup>3</sup>

In 2015, there were 2.1 million (13.9%) Australians aged 15–64 years with disability. The labour force participation rate for working-age people (15–64 years) with disability was 53.4% in 2015.<sup>4</sup> This means that nearly half (46.6%) of all working-age people with disability were not in the labour force, that is they were neither employed nor actively looking for work (compared with 16.8% for people without disability).<sup>5</sup> The Australian Bureau of Statistics SDAC data for 2012 show that while one-third (33.6%) of those not in the labour force were permanently unable to work, almost one-fifth (19.3% or 201,500) had no employment restriction, reporting that it was not their disability which was preventing them from working.<sup>6</sup>

Successive Australian Bureau of Statistics data indicates that these statistics do not change significantly. Without deliberate and concerted action there is no reason to think they will change significantly in the foreseeable future.

The Inquiry has established that employment discrimination is a major barrier to the human right to work. In the words of one Inquiry participant:

The more people with disabilities that can be employed and the more visible/ known they become to the general community including employers, the less likely that employment discrimination will continue at present rates.<sup>7</sup>

Australia currently has in place ambitious plans and reforms in relation to people with disability including the National Disability Strategy (NDS) and the National Disability Insurance Scheme (NDIS). These reforms are designed to create major shifts in the inclusion of people with disability in all aspects of life, including employment. The Inquiry urges government to continue its commitment to fully resourcing, implementing and monitoring the NDS and NDIS.

Many consultations and submissions called upon government to show leadership by establishing coordinated strategies and clear goals for the employment of people with disability, and to report on progress regularly.<sup>8</sup> Some called for national action plans, mandated quotas or targets.

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There are many avenues open to businesses, employers and government to work together to lift the labour force participation of people with disability. Implementation of the Inquiry's recommendations will contribute to this outcome. Given the extent of discrimination and low labour force participation of people with disability there is a need for a coordinated, national strategy which aligns with the principles contained in the NDS and the NDIS.

The current National Disability Strategy continues until 2020. The Inquiry argues that the national workforce strategy be a centrepiece of the 2020–2030 National Disability Strategy.

**Recommendation 25: That the Australian Government work with key stakeholders and employers to develop a national workforce strategy for Australians with disability to significantly lift labour force participation rates. The national strategy should include targets, actions, performance indicators and timeframes. Progress on the implementation of the strategy and achievement of targets to be reported publicly on an annual basis.**

### **(b) A national agency**

As outlined in Chapter 3, the Inquiry considers that the role performed by the WGEA in promoting and improving gender equality in Australian workplaces may also be considered for the promotion and improvement of equality for older Australians and Australians with disability. It may be an efficient use of resources to build on the WGEA's existing structure, legislative base and expertise by broadening its role to include the promotion and improvement of equality for older people and people with disability in employment, and thereby support improvement in the productivity and competitiveness of employers and the economy.

A statutory agency with such responsibilities (whether a new agency or an expanded, appropriately resourced WGEA) could, over time, achieve many of the solutions put to the Inquiry including:

- encouraging employers to gather and analyse their own workforce data, set voluntary targets, focus action and track progress
- reporting on performance against voluntary targets to share information between employers, within industries and with the public
- acting as a central point for resources, materials, contacts, education, advice and support
- showcasing employers who have made commitments in this area
- providing assistance with developing action plans, audits of recruitment processes for discriminatory practices, advisory visits
- facilitating networking to encourage sharing of information and good practice
- working with growth sectors and emerging industries to target recruitment of older people and people with disability, for example aged care or disability services.

The Inquiry restates its recommendation in the context of Australians with disability:

**Recommendation 26: The Australian Government consider expanding the role of the WGEA to become the Workplace Gender Equality and Diversity Agency to increase the labour force participation of older people and people with disability. An expanded and adequately resourced agency would, over time, collect data, publicly report on progress against voluntary targets, and engage collaboratively with employers and business, to reduce employment discrimination. This expanded role would be incorporated into the agency's supporting legislation.**

**Recommendation 27: In order to support achievement of the national strategy and to engage directly with business, the Australian Government fund the provision of a network of outreach workers through Business Chambers or other relevant peak or industry bodies to work directly and collaboratively with businesses, particularly small to medium enterprises.**

### **(c) A national campaign**

As discussed in Chapter 3 the Inquiry heard repeatedly of the power of focused, targeted campaigns as a means of shifting community attitudes and behaviours. The case was strongly made in relation to changing attitudes to people with disability.

Many argued that such campaigns are required to address employment discrimination, communicate the business benefits and change the way we value the contributions of people with disability.

The Inquiry restates its recommendation in the context of Australians with disability.

**Recommendation 28: That the Australian Government develop and deliver sustained, focused national community education and information campaigns that where appropriate are customised for specific geographic regions, to:**

- **increase awareness about, and the benefits of, employing people with disability and a diverse workforce**
- **dispel myths and stereotypes and reduce stigma to change the way we value the contributions of people with disability**
- **promote the various government supports and schemes that are available**
- **raise awareness of the ways in which recruitment and retention practices may be discriminatory**
- **educate people on their rights and responsibilities**
- **promote positive stories, images and experiences, acknowledge positive employers.**

**Recommendation 28:** (continued)

**These messages should be embedded consistently into all government related announcements regarding employment, training, business support schemes and economic stimulus measures. A key feature of these campaigns should be that they are run in collaboration with business and employers.**

**Recommendation 29: That the Australian Government allocate funding to enable a collaboration between the Australian Human Rights Commission, business, unions and community organisations, to produce and disseminate clear, comprehensive and consistent information about employer obligations, employee rights, leading practices and strategies, tools and resources to address employment discrimination against people with disability in support of the national community education and information campaigns.**

#### **(d) Management and leadership training**

There is scope to increase the level of knowledge and skill in building and managing diverse and inclusive workforces among managers. The Inquiry conducted desktop research on the extent to which diversity training is currently embedded in existing management courses offered through universities.<sup>9</sup>

Diversity training programs are available, but they are often stand-alone, short training courses, which are not included as core components of management programs. Sometimes they are part of training in human resource management. This reinforces the assumption that managing diversity related issues in the workplace is the responsibility, and part of the skill-set, of human resource practitioners rather than being the responsibility of all managers and leaders.

There are some specialist organisations already providing this kind of training and support in Australia:

- The Australian Network on Disability provides invaluable education, training and support to organisations to work with member organisations to become more confident and prepared to welcome people with disability into their organisations.
- Some diversity consultants also deliver tailored diversity programs in Australia, such as Diversity Australia, however these are primarily marketed to larger corporations.
- There are also numerous organisations and consultancies that specialise in the provision of programs and training in specific areas of diversity, for example, Sageco for age-related diversity programs or Pride in Diversity for LGBTI communities.

However, the Inquiry finds a gap in the provision of diversity and inclusion training for managers and supervisors. More can be done through mainstream education providers to train future leaders and managers so that diversity and inclusion skills and competencies are part of Australia's leadership capital.

**Recommendation 30: That the Australian Government convene discussions with universities, particularly faculties of business, TAFEs and vocational education providers to promote the universal inclusion of diversity and inclusion training in all management and supervisory related courses as a core component of skills and competencies.**

## 5.2 Social security

It is crucial that the social security system provides support for individuals to transition to employment and does not create additional barriers to work for people with disability and older people.

Many of the concerns raised with the Inquiry about income support payments related to people's uncertainty about their entitlements and the financial benefits of employment. A person who can work and who accepts employment should always be better off than they were when they were not employed. People with disability who receive income support payments need more assurance that this is the case.

It is the view of the Inquiry that the social security system could better support people with disability to work by providing clearer information and ensuring that the interaction between earnings from employment and income support payments does not create financial disincentives to work.

### (a) Support to transition from income support to employment

The Inquiry heard from people who were concerned that if they did get work and were moved off their income support payment, if they subsequently lost the job they would not be able to get the payment back without having to reapply and would be unable to support themselves. The Disability Support Pension, Newstart Allowance and other income support payments are income tested, meaning that when a person's earnings from employment are over a certain amount, their income support payment will be reduced proportionately.

Disability Support Pension recipients whose earnings from employment mean that they are no longer eligible to receive a payment have the option of suspending their Disability Support Pension for up to two years.<sup>10</sup> An individual whose Disability Support Pension has been suspended can restore their payment without needing to lodge a new claim for the Disability Support Pension.<sup>11</sup> However, the Disability Support Pension can only be suspended where the recipient notifies Centrelink of their change in employment circumstances within 14 days.<sup>12</sup>

The concerns raised with the Inquiry suggest that individuals may not be aware of their entitlement to suspend their Disability Support Pension payment after gaining employment.

The Inquiry heard that this transition was particularly daunting for people with episodic illnesses, who were concerned that if their illness reoccurred and they were unable to work, they would not be entitled to go back on their income support payment. A recent parliamentary inquiry into inhibitors to employment for small business heard similar concerns and recommended that:

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The Australian Government review welfare eligibility rules for people with an episodic illness transitioning from a period out of the workforce into paid employment. The Committee encourages the Australian Government to ensure that people with an episodic illness are not discouraged from entering the workforce for fear of losing their disability or Centrelink pension when they work.<sup>13</sup>

The McClure Report also identified the transition from income support to employment as a key theme of their review of the Australian welfare system, with individuals expressing similar concerns to those heard by the Inquiry:

The complexity of the system leaves some income support recipients believing that any work will jeopardise their benefits. This concern highlights that perceived risks can be as damaging as real risks in determining and influencing how recipients interact with the income support system.<sup>14</sup>

The provision of clearer information to income support recipients is key to supporting people with disability to move from income support to employment.

**Recommendation 31: That Centrelink routinely provide information to individuals notifying them of their rights and obligations in relation to income support payments, particularly in relation to their right to suspend their Disability Support Pension for up to two years and the requirement to notify within 14 days if they do wish to suspend their payment.**

## **(b) Benefits of work**

Another important part of supporting individuals who can work is to ensure that they will be better off when they accept employment — whether part-time or full-time — than they were when they were reliant on their income support payment.

An effective social security system must make clear to recipients the benefits and incentives to work. A 2010 report produced by the OECD noted:

Disability benefit recipients who enter a job generally lose entitlement to part or all of their benefits. How these benefits are phased out can be decisive for whether or not it pays to work.<sup>15</sup>

There are some measures currently in place aimed at ‘phasing out’ benefits for people who obtain employment:

- Disability Support Pension and Newstart recipients are eligible for Working Credit, which reduces the amount of their earnings that are subject to the income test and is intended to provide support for individuals transitioning from income support to work.<sup>16</sup>
- Some income support recipients may qualify for an ‘employment income nil rate period’ which means they retain some of the supplementary benefits of their income support payments (such as the Pensioner Concession Card), however this is limited to six fortnights (three months) and is only available to people who are below age pension age and who are undertaking casual or part-time work.<sup>17</sup>

The loss of concession cards by income support recipients who obtain work was a particular concern. In some, limited, circumstances, a person who obtains work can retain their Pensioner Concession Card or Health Care Card for a certain period, even where they do not meet the income test to receive their income support payment, however this assessment is based on a range of circumstances which may lead to confusion.<sup>18</sup>

The McClure Report also discussed access to concession cards:

Feedback from stakeholders and customers highlighted the importance of concession cards to individuals. Stakeholders raised concerns that income support recipients were reluctant to enter employment out of fear they would lose their concession cards.<sup>19</sup>

The retention of eligibility for concession cards for a significant period of time, for people who return to work or increase their hours was recommended as a feature of the 'Passport to Work' proposed by the McClure Report.

**Recommendation 32: That the Australian Government consider extending the period of eligibility to concession cards for people who obtain work after being in receipt of an income support payment.**

Another concern raised with the Inquiry was that people's income would be less than they were receiving when they were on an income support payment. The OECD report acknowledged that high tax burdens on earnings can limit the financial gains from employment,<sup>20</sup> as did the McClure Report:

A major issue in the design of income support means tests is that payments reduce at the same time as individuals are required to start paying personal income tax.<sup>21</sup>

The Inquiry supports the recommendations made by the McClure Report regarding a review of current taper rates, income banking arrangements and income free areas to ensure that income support recipients obtain a financial benefit from work.<sup>22</sup>

The Inquiry also supports the McClure Report's recommendations around the implementation of a 'Passport to Work' which would provide individuals with clearer information about their entitlements by providing a set of personalised guidelines which outline the financial gains of work.<sup>23</sup>

### **(c) Adequacy of income support payments**

Another issue raised with the Inquiry was the adequacy of income support payments.

The Henry Tax Review in 2010 stated:

The primary purpose of government assistance payments to individuals is to provide a minimum adequate standard of living. Poverty alleviation is a central feature of this purpose, but if poverty has dimensions beyond income then an income support system will not be sufficient to eliminate it. In the absence of measures that address these other dimensions there are limits to what the income support system can achieve. It may in fact entrench poverty if income support creates a barrier to employment.<sup>24</sup>

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Previous inquiries and reviews have considered this issue,<sup>25</sup> with the McClure Report noting that where income support payments do not provide an adequate standard of living, this will impact on the ability of individuals to seek employment.<sup>26</sup>

The Inquiry supports the McClure Report's recommendation that the Australian Government implement regular reviews and adjustments of payment rates, overseen by an expert panel, to ensure that payments are in line with current community living standards.<sup>27</sup>

### 5.3 Young people with disability

The Inquiry heard that young people with disability face specific challenges in seeking employment. Two main concerns were raised:

- the impact of low rates of educational attainment on future employment outcomes of people with disability
- the effectiveness of post-school transition programs and supports.

#### **(a) Educational attainment for people with disability**

Access to education for people with disability in Australia has been the subject of significant academic and policy consideration. Submissions to the Inquiry strongly support the need to improve access to education for people with disability. Educational attainment has a significant and ongoing impact on workforce participation.

In all OECD countries in 2013, individuals with high educational qualifications had both the highest employment rates and the lowest unemployment rates when compared with individuals with lower educational qualifications.<sup>28</sup> In Australia, people with disability have significantly lower rates of education than people without disability:

- In 2012, 36% of individuals with disability aged 15–64 had completed Year 12, compared to 60% of individuals without disability.<sup>29</sup>
- In 2012, 15% of individuals with disability aged 15–64 had completed a bachelor degree or higher compared to 26% of people without disability.<sup>30</sup>

A 2015 Senate inquiry into educational attainment of students with disability noted that under-education leads to unemployment, lower levels of health, social isolation and a lifetime of disadvantage.<sup>31</sup>

The need to address low rates of educational attainment for young people with disability is widely recognised.

- In 2005, the government formulated the Disability Standards for Education with the express aim of ensuring that people with disability are able to access education on the same basis as individuals without disability.<sup>32</sup>
- Learning and skills for people with disability is a key policy priority of the National Disability Strategy.<sup>33</sup>
- The first full collection of the Nationally Consistent Collection of Data on School Students took place in 2015.
- The roll-out of the National Disability Insurance scheme will fund certain education-related supports for students with disability.

However, it is clear that more needs to be done to support people with disability in education. The first report on the implementation of the National Disability Strategy recognised that ‘a good quality inclusive education is important for all students to enable them to be successful learners, confident and creative individuals, and active and informed citizens’.<sup>34</sup>

The introduction of the Disability Standards for Education in 2005 was an important step, however both the 2010 and 2015 reviews of the standards found that there is a need to provide further guidance to educators in applying and interpreting them in practice.

### **(b) Transition from school to work**

The Inquiry heard that another significant concern for young people with disability was the transition from school to work.

Although the Australian Bureau of Statistics does produce data on post-school outcomes,<sup>35</sup> there is a lack of specific data about post-school transitions for people with disability. However, a longitudinal study conducted in 2001 reported that young people with disability experienced substantially greater difficulties in transitioning from school to work than their peers without disability.<sup>36</sup> People with disability were found to be more likely to not enter the labour force at all, more likely to experience long term employment in transitioning from school to work and less likely to make a ‘successful’ transition to employment after leaving school.<sup>37</sup>

A report produced by Children with Disability Australia notes that there is a need for further qualitative and longitudinal Australian research on post school transitions for students with disability in order to inform policy and practice in this area.<sup>38</sup>

**Recommendation 33: That the Australian Government collect and make publicly available national data regarding post-school outcomes for students with disability in order to provide a clearer picture of post-school outcomes.**

In both the 2015 Senate inquiry and a 2015 review conducted of the disability standards for education, stakeholders identified that the transition from school to work continues to be a challenge for young people with disability.<sup>39</sup> The National Disability Strategy also includes as a key policy area ‘improving pathways for students with disability from school to further education, employment and lifelong learning’.<sup>40</sup>

The Federal and state and territory governments do currently provide some measures aimed at assisting students with disability in post-school transition:

- The Commonwealth Department of Education and Training provides funding for the National Disability Coordination Officer (NDCO) Programme. The goals of the NDCO expressly include improving transitions from school to work, tertiary education and training for people with disability. Currently, there are 31 NDCO ‘regions’ located around Australia, according to population density.
- DES support is also available for ‘eligible school leavers’, however this support is currently limited to students with ‘significant disability’. The Inquiry heard that this limitation on access is too restrictive, leaving many students with disability in need of transition support without it.<sup>41</sup>

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- Most states and territories also have their own in-school and post-school programs aimed at assisting with transition.<sup>42</sup> The program the Inquiry heard about most frequently was the NSW-based program Transition to Work. Stakeholders in other states referred to this as the most successful example of a transition to work program. However, evaluations indicate low rates of take-up and low employment outcomes.<sup>43</sup>

There is evidence that paid employment or work experience in school is a predictor of improved post-school outcomes in education, in independent living and in employment for young people with disability.<sup>44</sup> In light of this, and the information provided in submissions and consultations, the Inquiry supports measures to ensure that school students with disability are afforded opportunities to participate in work experience and paid work.

One way this could be achieved would be to remove the current restrictions on DES support available to school students.

**Recommendation 34: That the current restrictions on access to employment services for school leavers be removed to allow all students with disability in their final year of high school (either Year 10 or Year 12) to access employment services support.**

A 2015 report produced by Children with Disability Australia also noted the importance of transition-planning for students with disability.<sup>45</sup> The report found that students had variable experiences of transition-planning in school:

The professional development and training required to assist staff to support students during the transition process was noted as often unattainable or unavailable.<sup>46</sup>

Teaching staff play a crucial role in the transition of students with disability from school to further education or employment.

**Recommendation 35: That the Australian Government allocate funding to enable a collaboration between state and Commonwealth education authorities and relevant agencies to develop guidance materials for teaching staff about supporting students with disability to transition from school to work.**

## 5.4 Australian Disability Enterprises

Individuals and organisations raised concerns with the Inquiry about the adequacy of wages paid to people with disability, in both Australian Disability Enterprises and in 'open employment' through the Supported Wage System.

The issue of wage adequacy has previously been raised in submissions to the Australian Human Rights Commission regarding the Commonwealth's application for an exemption under the Disability Discrimination Act for the Business Services Wage Assessment Tool and in the DSS review of the Disability Employment Framework.

The DSS National Disability Employment Framework Discussion Paper noted that there are differing views on ADEs:

One in support of ADEs as they currently are; and one that recognises the need for supported employment, but believes the current ADE model is segregated and produces poor wage outcomes for people with disability.<sup>47</sup>

ADEs...can be viewed as unfair and inequitable because wage-setting arrangements are controversial.<sup>48</sup>

The Inquiry notes that the Australian Government is currently engaging with stakeholders through the Fair Work Commission to develop a new wage tool for use in supported employment.<sup>49</sup>

Another significant concern raised with the Inquiry in relation to both the Supported Wage System and Australian Disability Enterprises was that individuals are not given sufficient opportunities to transition to open employment or to a full wage. Although there are over 20,500 people with disability employed in ADEs across Australia,<sup>50</sup> in 2014 only 159 ADE employees (0.8%) moved into open employment.<sup>51</sup> The DSS National Disability Employment Framework Discussion Paper also noted that ADE's have been criticised for taking on employees who may benefit from working in open employment with adequate support.<sup>52</sup>

The Discussion Paper has proposed a new system to improve the operation of ADEs, under which ADEs could become businesses that were willing to employ people with disability who received an ongoing support package.<sup>53</sup> They would not be required to be notforprofit and could compete in the open market on the same basis as other businesses. In this way, ADEs could continue to be an option for some job seekers with particular needs, provided sufficient numbers of such job seekers choose to work with these employers to make this business model viable.

Options for ADEs operating in a market-based environment could include:

- focusing on the enterprise side of their business and becoming like any other employer that employs people with disability
- focusing on providing an ongoing support service to other employers
- becoming a training organisation for people with disability and a pathway to open employment funded under the training section of the service catalogue
- moving to a labour hire model where the ADE employs, places and supports employees in other businesses (some ADEs are already moving in this direction).

## 5.5 Self-employment

The issue of self-employment for people with disability was raised on a number of occasions with the Inquiry.

The Inquiry heard that the benefits of self-employment for a person with disability include a sense of independence and autonomy, financial independence, flexibility and the chance to use skills, qualifications and experience. The Inquiry argues that a pathway into self-employment should be simple and accessible. However a number of issues were raised in relation to having to come through the DES system in order to access assistance through the *New Enterprise Incentive Scheme* (NEIS):

My DES Provider tried to deter me from enrolling in the NEIS Program, even though I had the necessary skills and qualifications and had spent many years working in the industry.<sup>54</sup>

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A submission on self-employment outlined a range of administrative and information barriers and stressed that people who approach a NEIS provider wishing to start their own business:

Should not be dependent on *jobactive* or their DES provider deciding whether it is an appropriate activity for them or not. Any decisions about suitability should be left to the NEIS provider who uses a vetting process for this task.<sup>55</sup>

**Recommendation 36: That *New Enterprise Incentive Scheme* providers be enabled to register participants directly without the requirement that the applicant first be referred by a DES Provider or *jobactive*.**

## 5.6 Social enterprises

There is growing interest in social enterprise ‘as a commercially viable model to deliver social impact both as an alternative and complementary model to traditional government-funded service delivery... The emergence of a commercially viable social enterprise sector in Australia is nascent (with a few long-standing pre-existing exceptions) and follows similar more-developed trends internationally and in particular the UK, European and USA markets’.<sup>56</sup>

The Australian government has established the Social Enterprise Development and Investment Funds (SEDIF) to offer finance and support to eligible social enterprises to help them grow their business and increase the impact of their work in their communities.<sup>57</sup> Through SEDIF, the Australian Government has provided \$20 million in non-refundable grants to seed the establishment of three social investment funds.<sup>58</sup>

Social enterprises are generating innovative opportunities and new models for people with disability in a range of areas including employment.

### **Good practice example 5.1: Jigsaw**

Jigsaw is a social enterprise that creates employment pathways for people with disability to access fair, sustainable employment. To achieve this goal, Jigsaw offers outsourced digitisation services that have commercial and social impact for our corporate and government partners. Since opening their doors two years ago, Jigsaw has assisted over 10 businesses transition to a paperless environment, enabling the immediate employment of 10 people with disability paid at award wage rates.

Jigsaw’s model is unique. It is not government funded with all business revenue coming through contractual work from corporate and government partners. Jigsaw believes this approach brings multiple benefits to the business; it ensures Jigsaw’s work is at the highest standard, the price point is competitive and staff continuously improve to meet the demands of clients.

Jigsaw is currently developing transition streams for confident, skilled staff to work in mainstream businesses. All of this will be possible with the help of corporate and government organisations engaging in contractual work with Jigsaw.

### **Good practice example 5.2: Employment of Aboriginal people with disability in Alice Springs**

Based in Central Australia, The Purple House is an Aboriginal community-controlled centre for dialysis patients and their families. Away from their country and family, patients struggle to maintain their quality of life and cultural integrity.<sup>59</sup> Western Desert Nganampa Walytja Palyantjaku Tjutaku Aboriginal Corporation, known as the Western Desert Dialysis Wellbeing Program, manifested out of the need to provide Aboriginal patients with culturally appropriate medical services.<sup>60</sup> Through this initiative, Patients and staff of the Purple House work together to collect the plants to make up bush balms which patients share with each other to help cope with the sadness they experienced in being separated from their country and family.

Developing organically from these simple beginnings the Wellbeing Program has grown into a social enterprise incorporating a range of Bush Balm products and workshops. The program has many objectives including:

- generating employment opportunities and income in remote communities
- preserving and sharing traditional knowledge
- generating income to provide services for dialysis patients
- supporting dialysis patients living away from family and country for treatment by providing bush medicine and social and wellbeing activities.
- sharing the Western Desert Dialysis story.<sup>61</sup>

Social enterprises face a range of issues, however, including ‘ownership, legal form of the social enterprise entity, tax status, not-for-profit status, for profit status, how much trading activity occurs, outside funding reliance, size of the business and organisational financial sustainability’.<sup>62</sup>

The Inquiry suggests that these issues should be addressed in order to enable this sector to grow and provide a range of innovative approaches to providing employment to people with disability.

## **5.7 Disability Employment Services**

A range of issues were raised with the Inquiry regarding government policies aimed at supporting individuals with disability to find and remain in employment. A large number of these concerns related to the operation of the Disability Employment Services (DES). We note that Disability Employment Services are currently under review by the Department of Social Services (DSS). Many of the Inquiry’s findings in relation to DES align with the issues identified by DSS in the course of their review process.<sup>63</sup>

DES and related services represent a significant investment for the Australian Government of around \$1 billion a year in spending.<sup>64</sup> Feedback to the Inquiry suggests that significant changes could improve the effectiveness of DES in increasing employment of people with disability.

Statistics on the outcomes achieved by Disability Employment Services also indicate that improvements are needed. In September 2015:

- 30.7% of job seekers who participated in some form of disability employment assistance in the 12 months to June 2015 were employed; 40.4% were unemployed and 29.0% were not in the labour force<sup>65</sup>

- 
- less than half (40.9%) of participants in receipt of disability employment assistance were recorded as having a ‘positive outcome’<sup>66</sup>
  - over a quarter (27%) of providers were performing at the 1 or 2 star ratings level which is determined by the department to be ‘below average’.<sup>67 68</sup>

Given the expenditure on Disability Employment Services, it is crucial that they are meeting their objectives of increasing employment of people with disability.

### (a) Guiding principles

In this section, the report sets out a number of specific recommendations in relation to the current Disability Employment Services model. However, on the basis of feedback received by the Inquiry, there are also general principles that should underpin any future Disability Employment Services model developed by the Australian Government.

A key concern of numerous contributors to the Inquiry was that their Disability Employment Service providers often did not take individuals’ career aspirations into account when helping them find a job.

A guiding principle of the National Disability Insurance Scheme is that:

People with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives, to the full extent of their capacity.<sup>69</sup>

Further, the National Disability Strategy emphasises the fundamental human right of people with disability to exercise choice and control over their own lives,<sup>70</sup> and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) also recognises the human right to:

...inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons.<sup>71</sup>

Choice and control should equally extend to government-funded employment services for people with disability. This includes not only an individual’s choice of service provider, but to the employment outcomes offered by that service provider.

As noted in a submission from People with Disability Australia, it is an objective of the *Disability Services Act 1986* (Cth) that services should be tailored to meet the individuals needs and goals of the people with disability that use them.<sup>72</sup>

There is also strong evidence that choice and control, as well as being a human right, can produce better outcomes for people with disability in all areas of life, including in employment.<sup>73</sup>

**Recommendation 37: That the Australian Government reforms to the Disability Employment Services framework are based on the principles of choice and control which underpin the National Disability Insurance Scheme.**

## **(b) Current Disability Employment Services system**

On the basis of information provided to the Inquiry in consultations and submissions, this report also sets out some specific recommendations for change to the current DES system which would improve employment outcomes for people with disability.

### *(i) Outcome payment system*

The Inquiry was consistently told that the DES framework places too much emphasis on short term outcomes and that the structure of the outcome payment system, which is based on a 13–26 week outcome payments, can create perverse incentives for providers.

The Star Ratings Methodology allocates a weighting to particular performance measures; 85% of a provider's Star Rating is based on the proportion of candidates who remain in a job placement for 13 and 26 weeks.<sup>74</sup>

The Inquiry heard that pressure to achieve outcomes at 13 then 26 weeks in order to receive payments and favorable star ratings assessment can result in DES providers placing individuals in roles they are not interested in or qualified for.

Individuals expressed that there was a need for providers to ask them about and assist them to achieve their career goals rather than just placing them in any available job.

Stakeholders to the DSS review of the Disability Employment Framework reported similar concerns. Providers and their peak organisations, and to some extent people with disability, spoke about the perverse incentives that arise from the DES outcomes framework and associated star rating performance system. There was a view that the outcome definitions and performance measurement incentivise:

- short-term job placements and do not drive long-term outcomes
- a focus on easy wins
- 'parking' (that is, not providing assistance to) participants who have more barriers and are probably harder to place in a job
- churning many participants through the one job to achieve additional payment and additional performance credits
- splitting jobs between two or more participants for the same reasons.<sup>75</sup>

Under the current model, high priority is placed on entry into a job and outcomes at 13 and 26 weeks, however this does not always translate to longer term employment for people with disability.

### *(ii) Provision of ongoing support in jobs*

The Inquiry heard that while many people with disability need some ongoing support after they find a job, the current model of DES funding creates disincentives for providers to deliver this support.

The DSS Review of the Disability Employment Framework also confirmed the need for ongoing support — both for employers and people with disability — and the need to ensure adequate funding of ongoing support.<sup>76</sup>

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However, individuals told the Inquiry about difficulties in securing support from their DES provider once they had obtained a job, and providers reported that the payments for ongoing support are too low given the time and resources required.

*(iii) Benchmark hours*

Individuals are referred to DES after having had their capacity to work assessed by Centrelink. This assessment also provides them with 'employment benchmark' hours. A participant must be placed in a job by a DES and be working at their benchmark hours in order for the DES provider to receive the Outcome Payment.<sup>77</sup>

The Inquiry heard that this can lead to providers finding candidates a job for the minimum number of hours required under their assessment — even when some jobseekers would like more hours of work.

According to a submission from the Department of Social Services, measures are being introduced to address these concerns:

From 1 January 2016, a new 23-hour employment benchmark will also be introduced for DES participants whose independently assessed capacity for work (within two years) is between 23 and 29 hours per week. This change will require a DES provider to support a person with this work capacity in a job that is at least 23 hours per week in order to be paid a full employment outcome. Currently, DES providers only need to find a job of 15 hours per week to receive an outcome fee for people with a 23-hour benchmark.<sup>78</sup>

Conversely, the Inquiry also heard that because providers are not incentivised to place participants in a job below their benchmark hours, some DES providers feel unable to place people in jobs below their benchmark hours, because if they do, the provider will not qualify for the highest available outcome payment — even where the individual feels the role would provide them with valuable work experience.

*(iv) Star ratings system*

A system which rates disability employment service providers is important for two reasons: it should ensure the accountability of providers and also assist jobseekers to make informed choices when selecting a provider. The Inquiry heard that the Star Ratings are not operating effectively. This was an issue raised with the DSS Review.<sup>79</sup> In addition to incentivising the short-term outcomes discussed above, the feedback to the review was that 'most said they found it confusing, complex and not a true reflection of the quality of providers'.<sup>80</sup>

*(v) Accountability of providers*

The Inquiry heard that Star Ratings are not effective in ensuring the accountability of providers. In 2015, the Harper Review stated that:

In commissioning human services, governments should ensure that commissioned services are contestable and service providers face credible threats of replacement for poor performance.<sup>81</sup>

An OECD report from 2010 also noted the importance of disability employment providers being accountable, particularly where — as is the case in Australia — these services have been contracted out by government to private providers:

A key concern in building a private, for-profit provider market is the quality of services delivered and the need to ensure continuous quality improvement.<sup>82</sup>

*(vi) Provision of information about provider performance*

A fundamental principle of the NDIS is that it will enable people with disability to make informed choices about matters that affect them.<sup>83</sup> The adoption of service approaches that give information, choice and control to people with disability is also a key area for action under the National Disability Strategy.<sup>84</sup>

The Inquiry heard that the Star Ratings are not effective in providing individuals with information about the performance of providers. There is information about the ratings of each provider on the Department of Employment website — however in order to understand what each star rating means, individuals need to go to the DSS Methodology document which goes through what the key performance indicators are in detail.

As the Harper Review states:

For choice to deliver real benefits, consumers not only need proper access to information, but it must also be in the right form for them to assess it, and they must have the capacity to act on it.<sup>85</sup>

With the rollout of the National Disability Insurance Scheme scheduled to take place across Australia in the coming years, consideration is being given to the development of resources to provide consumers with information about services and their performance. One model that could be replicated in the Disability Employment Services context is the kind of tool being developed to provide NDIS clients with more information about service providers.

**Good practice example 5.3: Clickability**

Clickability ([clickability.com.au](http://clickability.com.au)) is an online directory which provides people with information about disability service providers including their contact details and location, funding arrangements and the specific services they provide. It also allows people who have used a service to provide a review and give the provider a rating out of five based on their experience. Clickability aims to give effect to the principles of choice and control underpinning the NDIS by providing consumers with greater information about the services available to them.

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*(vii) Building workforce capacity*

The Inquiry heard that there was a general need for improved workforce capacity among DES providers to achieve long-term, sustainable employment outcomes for individuals with disability.<sup>86</sup>

The main ‘gaps’ in training identified through feedback to the Inquiry:

- disability awareness, working with job seekers with specific disabilities such as mental illness or intellectual disability, and reasonable adjustments
- job matching
- lack of culturally appropriate services for people from CALD backgrounds and Aboriginal and Torres Strait Islander people.

A further theme raised was the gap in provider’s ability to engage with employers and identify available positions.

The submission provided to the Inquiry by the Department of Social Services discusses two training models — Mental Health Capability and Indigenous Cultural Awareness — developed by the government to improve the performance of DES providers.<sup>87</sup>

An appropriately skilled workforce is a fundamental requirement of providing quality service. Changes to the current accountability framework, particularly ensuring that client feedback is taken into consideration, will ensure that DES providers identify and address any gaps in the skills of their staff in relation to: disability and cultural awareness, their ability to match candidates with jobs and their skills in engaging employers.

In addition, the Inquiry would support the development and provision of training for DES staff which addresses the gaps identified and builds the capacity of the workforce to deliver successful employment outcomes.

The new system could also look at funding more DESs which have particular expertise in assisting people from CALD backgrounds and Aboriginal and Torres Strait Islander people.

*(viii) Support for people with a range of skills and abilities*

People with disability have a range of skills and abilities and any new DES framework must recognise that there is no ‘one size fits all’ approach. The Inquiry heard about particular approaches that work well for certain groups of people with disability.

People with intellectual disability have particularly high rates of unemployment when compared with some other groups, however the ‘place and train’ model of employment used by Jobsupport, has had good outcomes.

#### **Good practice example 5.4: Jobsupport**

Jobsupport is a Disability Employment Service established in 1986 which provides employment support to persons with intellectual disabilities. Jobsupport delivers a service which places people into paid jobs in open employment and which has had high rates of success:

In 2011:

- 59% of the people with a moderate intellectual disability who achieved a 26-week open-employment outcome, did so through Jobsupport
- 76% of Jobsupport clients were achieving a 26-week outcome, while the industry average for people with an intellectual disability (excluding Jobsupport) was 28.7%.<sup>88</sup>

Key elements of the Jobsupport program include: job creation or ‘job carving’ for candidates, training of candidates at the work site — the ‘place then train’ model and the provision of regular, ongoing support to candidates once they are in a job.

The Inquiry also heard that people with disability who have high levels of education and training — for example, tertiary qualifications, find that DES providers are not able to provide them with the support they need to obtain employment suited to their skills and qualifications.

#### **Good practice example 5.5: Enabled Employment**

Enabled Employment is a labour hire company which has had success in placing highly skilled people with disability in employment. Enabled Employment links qualified and skilled candidates with disability with employment opportunities through an online portal. Many of the jobs advertised are available as telework opportunities, which provides flexibility for candidates and means that employers are not required to make physical adjustments to their workplaces. All staff at management level at Enabled Employment are people with disability.

The Inquiry supports an approach to the new DES framework which would encourage providers to take into account good practices and knowledge about what works. Within the reformed DES framework, there may also be more capacity for more specialised DESs, as well as more opportunities for providers to network and contribute to greater expertise, support and success in placing people with disability in work.

**Recommendation 38: That the following principles underpin reform of the DES system:**

- **Outcome Payments should be linked to longer-term outcomes (for example, 12 to 18 months in a job rather than three to six months).**
- **Star Ratings should be linked to the achievement of longer-term outcomes to ensure accountability.**
- **Accessible, user friendly information is provided which enables people to make informed choices.**
- **Ongoing support funding should be assessed and linked to the needs of each individual candidate rather than based on set limits.**
- **There should be incentives for providers to place people in positions for more than their minimum benchmark hours — if the individual is willing and able to do so.**
- **The Star Ratings system should be aligned with the National Disability Standards, particularly in relation to measures of client satisfaction.**
- **The provision of training for DES providers in key areas in relation to supporting people with disability to find employment, including: disability awareness, cultural competence, job matching and engagement of employers.**

## 5.8 Employers' engagement with government services

The Inquiry heard from employers who were unaware of the services available to assist them to employ a person with disability. The Inquiry also heard that greater support is needed for small to medium enterprises to employ people with disability.

### **(a) Awareness of services available**

Although there are a number of government funded programs aimed at providing support to employers of people with disability, the Inquiry heard that employers had low levels of awareness of the existence of these supports. In particular, people told the Inquiry that a significant barrier to the successful operation of Disability Employment Services is the low numbers of employers that use them.

Improved employer engagement is a crucial element of strategies aimed at improving the effectiveness of DES. One of the key themes identified by the DSS Review was that:

There needs to be greater promotion and awareness of the available support to assist employees and employers.<sup>89</sup>

A 2012 survey asked employers about their awareness and use of DES.<sup>90</sup> The survey consisted of a random sample of 2904 employers, 52% of whom were aware of the existence of Disability Employment Services.<sup>91</sup>

There were also concern that some employers only employ a person for as long as the wage subsidy lasts and measures should be put in place to prevent this, or that subsidies can be seen to diminish the value of people with disability.<sup>92</sup>

The issue of stigmatisation of people with disability was also reflected in the DES Evaluation Report which noted that:

Many DES providers prefer to use their own organisation's branding to avoid the problem of negative stereotypes of not-for-profit organisations, unemployed people, and disability. Limited use of the DES brand by providers means that employers who receive assistance are not always aware that the service is funded by the DES programme.<sup>93</sup>

It is important that any strategy to engage greater numbers of employers with Disability Employment Services seeks to break down these negative stereotypes and assumptions, as well as promoting awareness of the skills and abilities businesses are missing out on by not employing individuals with disability and of the existence of government supports and programs which provide assistance to employers.

**Recommendation 39: That the Australian Government promote an information program to build employers' awareness of government supports available through Disability Employment Services, JobAccess, the Employee Assistance Fund and the National Disability Recruitment Coordinator.**

### **(b) Support for small and medium enterprises**

Small and medium-sized businesses (SMEs) told the Inquiry that they require tailored support and assistance to ensure that they meet their obligations to employees with disability while continuing to run their business effectively.

Make it simple! I truly believe that people put hiring disabled employees in the 'too hard basket'. Simplify the entire process, from sourcing a candidate, interviewing, inducting, on boarding, performance managing and exiting, for employers so they view it as a part of the normal hiring process, not a liability.<sup>94</sup>

While information and supports are available to employers, targeted resources would improve ease of access and understanding of information.

Direct marketing campaigns for SMEs highlighting the support available, general and industry-specific.<sup>95</sup>

I think a greater focus should be on how to make the average Australian business owner comfortable and confident with the process and requirements of hiring older/disabled candidates, eliminating the perception that there is a minefield of HR and OHS requirements that only complex organisations with a dedicated HR Team can deal with.<sup>96</sup>

One model which could be replicated to provide guidance on disability employment to small business is the extensive network of mobile advisors provided by the Office of the NSW Small Business Commissioner.

### **Good practice example 5.6: Advisers for small business**

The Office of the NSW Small Business Commissioner (OSBC) supports small businesses by providing programs and services tailored to their needs.

As an independent voice for small business within government, the OSBC works closely with a wide range of stakeholders including small business owners, councils, government agencies and industry associations to identify and address the key issues facing various industry sectors.

The OSBC delivers front line services to small businesses seeking information or assistance in dealing with issues threatening their business relationships, providing strategic and procedural advice and delivering informal and face-to-face mediation.

The Small Biz Connect Program is a personalised and highly subsidised business advisory program that provides high quality, targeted small business advice. Small Biz Connect business advisors are available throughout NSW and in 2015 they delivered over 46,000 hours of practical business support to small business owners and operators.

Arabic, Vietnamese, Cantonese, Mandarin and Korean speaking Small Biz Connect business advisors are also on the ground in and around Greater Western Sydney. These advisors support multicultural businesses through face-to-face advice and workshops for individual cultural groups.

The Inquiry also heard on numerous occasions that SME's did not have access to the support services provided by the National Disability Recruitment Coordinator, which is only available to organisations with over 100 employees.<sup>97</sup>

The National Disability Recruitment Coordinator is a government funded free service which supports large employers achieve their disability employments goals.<sup>98</sup> They do this through strategies such as recruitment and employment practice advice, assisting the development of job vacancies for people with disability, advertising with Disability Employment Services program providers, staff training and managing relationships between organisations and service providers.<sup>99</sup>

**Recommendation 40: That the Australian Government amend eligibility requirements for National Disability Recruitment Coordinator (NDRC) support to allow small to medium-sized enterprises to access NDRC support.**

## 5.9 Workers compensation

The Inquiry heard a range of concerns in relation to workers compensation and workplace health and safety.

Many of these concerns related to employer's misconceptions that an older person or person with disability would present a workplace health and safety risk or would be more likely to make a workers compensation claim.

The recommendations outlined in Chapters 3 and 5 about the need for a national campaign to dispel myths and negative stereotypes about older people and people with disability and their ability to work may go some way to overcoming employer's misconceptions about these groups presenting a workplace health and safety risk.

Another, related concern, was that the existence of different workers compensation schemes and workplace health and safety legislation in each Australian jurisdiction was confusing for employers and creates uncertainty when it comes to hiring an older person or person with disability.

There are different rules that apply to mature-aged Australians and those with disabilities in each of these workers compensation... schemes. This of itself, present[s] significant barriers for businesses (particularly smaller to medium-sized businesses) wanting to hire these groups of people, due to sheer red tape involved and uncertainties on how the scheme laws and processes would respond to an emerging risk profile.<sup>100</sup>

In response to this, some submissions argued for a national approach to workers compensation and workplace health and safety laws.<sup>101</sup>

The lack of national consistency in WHS regulations has been the subject of several major reviews and there has been a focus on consistent WHS legislation across Australian jurisdictions since the 1980s.<sup>102</sup> A model Work Health and Safety Act was finalised in 2010 and model regulations and codes of practice are the responsibility of Safe Work Australia.<sup>103</sup>

Recent research by the Institute for Safety Compensation and Recovery Research (ISCRR) has found that the difference in workers compensation scheme arrangements and administration make a significant difference to return to work outcomes for those with workplace injury or illness.<sup>104</sup>

### **Return to work after injury**

The Inquiry heard from people who were discriminated against after returning to work following a period of illness or injury.

The design and administration of workers compensation schemes is important in the context of return to work outcomes. The Institute for Safety, Compensation and Recovery Research has stated:

Unlike some factors affecting claim duration, such as socio-economic status or injury type, policy and practice are highly modifiable. Changes to scheme design and management have the potential to substantially improve RTW outcomes for injured workers in some Australian states and territories.<sup>105</sup>

Research also indicates that early return to work results in the best long term outcomes for many types of injuries and illnesses.<sup>106</sup>

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If the return to work process fails, there can be severe social, personal, emotional and financial costs for the employee.<sup>107</sup> Safe Work Australia's 2013/14 *Return to Work Survey*, an annual survey of employees with a work-related compensation claim, shows that return to work rates in Australia are not improving.<sup>108</sup>

Employers play a significant role in return to work outcomes. The *Return to Work Survey* indicates that positive perceptions of the workplace and employer support has an impact on how quickly an injured employee is likely to return to work<sup>109</sup> and that workers concerned about submitting a workers compensation claim tended to have poorer return to work outcomes.<sup>110</sup>

### **Good practice example 5.7: Workcover NSW**

Workcover NSW has a range of programs to assist with return to work including:

- An incentive payment which increases according to the length of time the injured worker remains employed with a new employer. In addition, the injured workers' wages are not included in the calculation of the new employers' workers compensation premiums for two years and the new employer is protected against further costs associated with the existing injury for up to two years.<sup>111</sup>
- Retraining sponsorships to assist an injured worker to develop new skills and qualifications to keep their job or get a new job. Retraining may involve formal study with TAFE, a university or registered training organisation.<sup>112</sup>
- Equipment and workplace modification program to help an injured worker achieve a safe and durable work return to work.<sup>113</sup>
- Transition to work program provides up to \$5000 to address any immediate or short term barrier or need preventing an injured workers from getting employment.<sup>114</sup>
- A work trial places an injured worker with an employer for a short period when the pre-injury employer is unable to provide suitable employment.<sup>115</sup>
- Workplace rehabilitation providers offer specialist workplace rehabilitation services to help injured workers return to work.<sup>116</sup>

### **Good practice example 5.8: Pernod Ricard Winemakers**

Pernod Ricard Winemakers is a self-insured company employing 546 staff across South Australia and 879 staff nationally. Some of the work is of very physical nature, especially for cellar hands in the wine making process.

For several years, Pernod Ricard Winemakers has worked towards a strategic goal of superior performance in workplace health, safety and injury management, and this has translated into significant reductions in lost-time injuries, increased productivity and a reduction in costs related to workers' compensation claims. Pernod Ricard Winemakers reports its outstanding claim liability reduced by 17.1% from 2012 to 2013 financial years.

### **Good practice example 5.8:** (continued)

Some of the key initiatives and focuses have included:

- On-site physiotherapist: 3 days a week, treats workers who have sustained injury at work. The physiotherapist has a particular understanding of the workplace and duties and also advises managers and performs manual handling assessments across all sites. Supervisors have easy access to the onsite physiotherapist to identify risks early and address them quickly.
- Active Choice: a health and wellbeing program involves key events and activities such as skin cancer and health checks, flu vaccinations, health cooking demonstrations, sporting activities, dancing lessons, volunteering and cyber safety presentations.
- Systems: including daily 'tier meetings' to encourage discussion about health and safety at all levels of the business. At the start of every shift, a 5–10 minute Tier 1 discussion occurs between floor level staff and their supervisor, during which they gather around a white board to discuss any safety incidents or issues, which need to or have been reported using the internal risk and incident management system (ICARUS).
- Consistency in injury management: when an injury occurs it is reported into ICARUS. The Injury management team contact the worker within one day, information is provided quickly and treatment arranged and where appropriate, suitable duties provided. Caring for workers in this way has resulted in less lost time and cost savings in relation to workers compensation and also recruitment.<sup>117</sup>

### **Recommendation 41: That the Australian Government work with state and territory jurisdictions to:**

- **examine best practice injury prevention and return to work policy and practices and embed these in workers compensation schemes**
- **report and make recommendations to relevant governments.**

## 5.10 JobAccess and the Employment Assistance Fund

The Inquiry heard a range of concerns about JobAccess and the Employment Assistance Fund (EAF) from both employers and individuals in the course of consultations and submissions.

A key issue raised was the lack of awareness of these supports among employers. As discussed in Section 5.3, many employers were concerned that the process of obtaining support and implementing workplace adjustments for people with disability would be too difficult and costly. Promotion of government-funded supports available to employers may go some way to alleviating employer's concerns about the cost of implementing reasonable adjustments.

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The Inquiry also heard from individuals about elements of the EAF structure which limit their ability to access adjustments. The Inquiry was advised that EAF support was not available for activities related to job seeking, in particular work experience. The Inquiry heard that work experience and internships can be an important pathway to employment for young people with disability,<sup>118</sup> however a lack of access to reasonable adjustments can prevent access to these placements. The EAF currently provides funding for Auslan Interpreting for job interviews and related activities, however this funding does not extend to job seeking activities undertaken prior to the interview process.<sup>119</sup>

Individuals who require an Auslan interpreter also told the Inquiry that the funding is insufficient. Funding for Auslan interpreting services under the EAF is currently capped at a maximum of \$6,000 for a 21-month period.<sup>120</sup>

A further concern raised by employers related to the requirement to pay for reasonable adjustments themselves and then be reimbursed by the EAF. The Inquiry heard that, particularly for small businesses, the costs of adjustments can seem prohibitive.

**Recommendation 42: That in order to improve access to reasonable workplace adjustments for people with disability, the Australian Government:**

- **expand the Employment Assistance Fund to support work experience and internships, in order to enable greater job readiness for people with disability**
- **increase the funding available through the Employment Assistance Fund for Auslan interpreting and captioning**
- **change the process for obtaining funding for reasonable adjustments so that adjustments are paid for directly by JobAccess.**

## 5.11 Government as a buyer of goods and services

As outlined in Chapter 3, the Australian Government is a major buyer of goods and services. The Inquiry proposes that government consider leveraging this position to influence the supply chain. For example, government could consider requesting that suppliers demonstrate their commitment to, and achievement of, workforce diversity strategies, non-discriminatory approaches and/or recruitment targets. This could play a part in considerations regarding tendering, however it is critical that this is not done in such a way as to disadvantage small and medium enterprises.

The Australian Government is already exercising its buying power to influence and shape the economy, for example, through Supply Nation. The Inquiry recommends that government consider similar strategies to address employment discrimination and lift the labour force participation of older people and people with disability.

**Recommendation 43: That in order to achieve the outcomes of the national workforce strategies to lift the labour force participation of older Australians and Australians with disability that the Australian government consider ways in which it can influence the supply chain, for example, by requesting that suppliers demonstrate their commitment to the implementation and evaluation of:**

- **workforce diversity strategies**
- **non-discriminatory recruitment and retention practices for older workers and workers with disability**
- **setting and reporting on voluntary targets for the employment and retention of older workers and workers with disability.**

## 5.12 Accessible information and communication technology (ICT)

The Inquiry heard a great deal about inaccessible information and communications technologies (ICT) as a major form of employment discrimination. Computer systems, telephone systems, photocopiers and printers which are inaccessible to people with disability are a major impediment to workforce participation.

Article 9 of the Convention on the Rights of Persons with Disability states that in order to enable people with disability to live independently and participate fully in all aspects of life, State Parties should take measures to promote access to ICT for people with disability.<sup>121</sup> Ensuring that people with disability live in accessible and well-designed communities is also a key outcome area of the National Disability Strategy (NDS).<sup>122</sup>

Accessibility in ICT, sometimes called inclusive design, digital inclusion or universal usability focuses on making technology available to and usable by all people, whatever their abilities.

Web Content Accessibility Guidelines (WCAG) are developed through the World Wide Web Consortium, an international community of organisations and the public, as a single shared standard for web content accessibility that meets the needs of individuals, organisations, and governments internationally. WCAG documents explain how to make web content more accessible to people with disability.

In 2010, the Australian Government launched the Web Accessibility National Transition Strategy to guide cross-agency adoption of the WCAG 2.0. But this strategy and subsequent guidance relate only to web accessibility and did not improve access to non-web related ICT.

In February 2016 Standards Australia held a forum on ICT Accessibility attended by key representatives across the government, private and community sectors to discuss pathways toward having an Australian standard for ICT accessibility. Stakeholders suggested that the most expedient and preferred pathway was the adoption of accessibility requirements suitable for public procurement of ICT products and services in Europe (EN 301 549).<sup>123</sup>

Standards Australia is currently undertaking wide consultation with Australian stakeholders and engaging with the European Telecommunications Standards Institute in Australia (ETSI) to consider the possibility of adopting EN 301 549 in Australia.

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Once the standard is adopted, the Department of Finance has indicated to the Inquiry that it will ensure the new standard for ICT Accessibility is included in the Australian Government procurement rules.

**Recommendation 44: Governments actively participate in the discussions with Standards Australia and ensure that government procurement policies mandate the purchase of accessible ICT.**

In line with Article 9 of the United Nations Convention on the Rights of Persons with Disabilities, and Outcome area one of the National Disability Strategy, the Inquiry makes the following recommendations:

**Recommendation 45: That the Australian Government implement service level standards to drive a whole of government approach to accessible ICT procurement and development. These standards should apply to all ICT whether procured externally or developed in-house by an APS agency and should ensure that staff are adequately trained to implement accessible standards.**

**Recommendation 46: That the Australian Government require all new technology products and software used in the Australian Public Service meets accessible design guidelines currently being developed by Standards Australia. In leading the implementation of the standards, it is also recommended that government facilitate an accessible ICT champions group with key employers and industry groups to embed the standards more widely across the Australian ICT landscape.**

## 5.13 Universal design

The report has highlighted many of the access barriers and issues experienced by people with disability in regard to access to the workplace and the provision of reasonable adjustments to accommodate their needs. One approach now being taken by developers and property owners is to design new buildings, or major fit-out or re-design of existing buildings with accessibility in mind.

While the *Disability (Access to Premises – Buildings) Standards 2010* set out the requirements for providing accessible premises, many organisations, as shown in the case study below, are going beyond the standards to create better access for everyone. Taking this approach will often remove physical barriers to a workplace, which can reduce or eliminate the need for adjustments to buildings and premises. This approach of creating better access for all can be adopted by all employers regardless of the size of the organisation and creates better access for all employees, customers and the broader community.

### **Good practice example 5.9: Designing for dignity<sup>124</sup>**

The outcome of creating the ‘best places’ means ‘all people feel equally welcomed, their basic needs are met so that each can work and live with dignity and respect...

Barangaroo South is a 10-year, \$6 billion urban regeneration project on the western shores of Sydney’s CBD being developed by Lendlease. A key aspiration under Lendlease’s Barangaroo South Community Development Strategy is to create a place that promotes inclusivity and equity of access for all.

To achieve this, the Australian Network on Disability (AND) has been collaborating closely with Lendlease to facilitate a shared understanding of where exemplary access and inclusion for people with disability can be realised.

In late 2015, Lendlease, AND and the Westpac Group collaborated to develop Design for Dignity Guidelines, which is a ‘best practice’ principles-based guide, focusing on examples of safe, equitable, inclusive design for commercial office accommodation. The guide depicts examples of real ‘beyond compliance’ design elements, as implemented in the Westpac commercial office fitout tenancy in Tower 2, International Towers Sydney, Barangaroo South. Development of the guidelines also involved consultation with a cross-section of disability community and property professionals in development and design in particular.

This consultation informed the guidelines which form part of the Barangaroo South Accessibility and Inclusion Plan, a strategic framework that outlines the project’s commitment to inclusion of people with disability.

The guide does not seek to replace existing standards. It is intended to guide designers with ‘beyond compliance’ principles and considerations that will make their designs accessible to more people, in a dignified, equitable way.

The Design for Dignity Guidelines are a first step toward this shift, and form a fundamental part of the voluntary commitment to accessibility and inclusion at Barangaroo South.

It is by no means exhaustive. In fact, the objective of the guide is to prompt ‘open-source’ contributions to content from a range of voices across the disability community and property value chain.

It is hoped this resource becomes a comprehensive repository of practical information, tips and guides that contribute to ‘best practice’ or beyond ‘Disability Discrimination Act compliance’ outcomes for everyone, on any Lendlease project, and hopefully, an exemplar guide across the property industry more broadly.

The document is a publicly available resource on the [AND website](#).

Given the interest generated, it was recognised there was merit in developing a series of guidelines focusing on specific property uses. Lendlease and AND are now embarking on another guideline which will focus on retail spaces.

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## 5.14 Government as an employer

Greater responsibility needs to be placed on employers to step up and increase employment of people with disability, particularly the government sector who should be leading by example.<sup>125</sup>

Many people told the Inquiry that government should lead by example in modelling the benefits of a diverse workforce.<sup>126</sup> The Inquiry received a range of suggestions for action that could be taken by the government in this respect. Appendix 8 summarises the information provided to the Inquiry about public service strategies to address employment discrimination.

Some strategies government could implement include:

- Identifying positions — implementing and resourcing affirmative employment measures that identify specific positions for people with disability, actively seek out candidates with disability for those roles, and in some cases support their induction and ongoing work within those positions. An existing example is the Northern Territory's Disability Employment Program, which is centrally funded to facilitate entry level recruitment and employment of people with disability in public service agencies for up to two years.
- Adoption of voluntary targets — the ACT is the only jurisdiction that has adopted an explicit long-term target for the proportion of people with disability in the public sector workforce and has monitoring and reporting initiatives. The ACT is among the better performing jurisdictions in that while it does not boast the highest proportion of staff with disability, it is the only jurisdiction that is showing consistent growth.
- Reporting requirements — individual agencies, and public services broadly, could be required to report regularly on the representation of people with disability within their workforces and any action taken.

A number of people pointed out to the Inquiry that it is important that messaging accompanying these strategies is clear about why such measures are necessary and that they do not detract from the merit principle upon which recruitment and promotion in the public service is based. This is to ensure that there is no 'backlash' against such measures and that people with disability are not perceived as receiving 'special treatment'.

One initiative of note is the Australian Public Service Commission's RecruitAbility scheme. RecruitAbility offers candidates with disability who apply for certain roles within the public service automatic access to the next stage of the selection process — in many cases an interview — provided they meet all the formal selection criteria.

RecruitAbility is modelled on the UK Civil Service Guaranteed Interview Scheme, which applies to all vacancies in the UK Civil Service.<sup>127</sup> In the UK, the program has led to increased employment of people with disability and assisted in helping different agencies become disability confident employers.

Some people told the Inquiry they had concerns with this approach, arguing 'that targeting people with disability with specific supports does not send a good message regarding a candidates' ability'.<sup>128</sup> However, it is important to note that candidates who do not meet all the selection criteria do not progress to the next stage. A recent review of the pilot scheme found that it was a 'good initiative' but 'not widely known about within the APS'.<sup>129</sup>

RecruitAbility is fully implemented across the Australian Public Service on an opt-in basis. This means that individual agencies and recruiting managers can decide whether individual positions should be advertised as part of RecruitAbility. A number of contributors to the Inquiry have proposed that RecruitAbility would be more effective if it was made universally applicable to all public sector vacancies, like the program in the UK.

**Good practice example 5.10: Australian Taxation Office strategies to employ people with disability and older workers**

The Australian Taxation Office (ATO) has a diverse combination of strategies and services for people with disability and older workers. The ATO Diversity and Inclusion Plan 2015–2017 describes the commitment of the ATO to engage, inform and support a diverse workforce including performance outcomes.<sup>130</sup>

The plan commits the ATO to promote itself as an employer that provides a supportive and inclusive workplace for people with disability, implement recruitment and marketing strategies to attract applicants with disability and maintain relationships with public and private sector networks to promote employment opportunities for people with disability.

To achieve this, in March 2015 the ATO appointed SES Disability Champions, including five deputy commissioner and assistant commissioners, to provide support and visibility for disability initiatives within the organisation, facilitate awareness for managers and employees, and ensure the needs of employees with disability are taken into account in organisational planning, design and delivery.

Further support to employees with disability is provided through the Disability Adviser Network — a local point of contact that provides advice and support to people, their managers and colleagues, on issues including flexible work arrangements and workplace adjustments.<sup>131</sup>

The ATO raises awareness of people with disability to their wider workforce by organising events to celebrate and promote the International Day of People with Disability.

In addition to internal workplace policies, the ATO provides information and services to help people with disability meet their tax obligations. This includes publications in accessible formats, video and audio guides for the hearing and sight impaired, as well as shopfront and phone services.<sup>132</sup>

Regarding mature-aged workers, the ATO commits to:

- promoting an age inclusive culture
- positioning the ATO as an ‘ageless employer’
- ensuring the individual needs of employees are respected in regards to stages in their lives and careers.

Similarly, it is intended that SES Diversity Champions will be appointed to support and promote diversity initiatives within the organisation, employee awareness of age discrimination and encourage knowledge transfer through cross-generational mentoring relationships. The champions will support mature-aged workers by exploring ways to prevent career stagnation, develop transition to retirement options for employees, develop flexible work arrangements to retain valued employees and provide support to aged workers to manage caring responsibilities and health related absences.<sup>133</sup>

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Given the important relationship the ATO has with businesses of all sizes around Australia the ATO may wish to consider placing information on these initiatives on its website in order to motivate employers to consider similar strategies.

### **Evaluation of initiatives**

The Inquiry found that many existing strategies and programs aimed at increasing the employment of people with disability within the public service were not accompanied by mechanisms to evaluate their success. Monitoring and evaluation is needed to determine whether or not initiatives are meeting their desired objective of increasing employment of people with disability in public services.

The Inquiry sought information regarding the evaluation or assessment of public service initiatives. Unfortunately such information is in short supply. However, based on the available data, the following initiatives are demonstrating some success:

- The Dandelion project, Department of Human Services — a small but successful program employing people living with Autism Spectrum Disorder for projects that specifically suit their skills.<sup>134</sup>
- The Intellectual Disability Employee Initiative, Department of Defence — 18 roles, centrally funded.
- Disability Employment Program, Northern Territory — a component of the NT EmployAbility strategy, providing wage reimbursement plus on-costs to agencies that employ staff with disability (at level up to AO2 or equivalent). Since its inception in 1994, the DEP has experienced significant success, employing over 100 people.<sup>135</sup>

The NSW public service provides an innovative example of an initiative which has been evaluated and has been shown to be having a positive impact.

#### **Good practice example 5.11: Upholding the Rights of People with Disability in Policy and Project Work**

As part of the NSW Government's commitment to breaking down barriers to the full and equal participation of people with disability in public life, the NSW Department of Family and Community Services contracted the Australian Human Rights Commission to develop a training package for NSW public servants. The training focused primarily on enhancing the capacity of NSW public servants to ensure that mainstream government policies, practices and processes are inclusive to the needs of people with disability. It also encouraged participants to look at internal practices within their respective departments, providing them with awareness training that would enable them to see people with disability as competent, capable, contributing members of the workforce.

The training was piloted and evaluated in early 2015, with the evaluation report revealing a high overall level of satisfaction with the training package. Many participants explained that the training improved their understanding and changed their perspectives of people with disability, positively affecting the way they consider matters of access and inclusion in their day-to-day work.

The NSW Government has since announced that the training will be rolled out more broadly across the public service.

The following case study provides an example of the operation of targets within the United States public service.

**Good practice example 5.12: US federal government five-year target<sup>136</sup>**

In 2010 US President Obama required agencies and federal contractors to hire 100,000 people with disability over five years. He also asked his executive to create model policies for hiring and retaining people with disability.<sup>137</sup> Of more than symbolic significance, progress reports go directly to the President's office.

In addition, in 2014, the US Department of Labor ruled that contractors to the US government must take affirmative action to recruit, hire, promote, and retain people with disability to a 7% target.<sup>138</sup>

These measures have resulted in more people with disability in federal public service employment than at any point in the last three decades,<sup>139</sup> with the highest hiring rate in the last 34 years (20% of recruits in 2014 had a disability).<sup>140</sup> By 2014, 13.6% of its workforce were people with disability.<sup>141</sup>

A range of other strategies were proposed to the Inquiry to improve the recruitment and retention of people with disability in the public service, including:

- the development of disability action plans which include accountability mechanisms<sup>142</sup>
- mandating diversity on selection panels<sup>143</sup>
- ensuring all selection panel interviewers are trained and supported to be 'disability confident' and undertake unconscious bias training<sup>144</sup>
- inviting an external review of recruitment, selection and promotion mechanisms to identify and address discriminatory practices<sup>145</sup>
- nominating a dedicated officer to facilitate the inclusion of staff with disability in workplace and provide ongoing support<sup>146</sup>
- making all positions 'flexible', with the onus on management to justify not allowing flexibility<sup>147</sup>
- identifying a senior executive disability 'champion'<sup>148</sup>
- encouraging and supporting staff to disclose their disability status, for example by making employees aware that this information will be kept confidential
- providing budget incentives for public sector agencies to employ people with disability.

These are all constructive suggestions and the Inquiry urges public service employers to take up some or all of these ideas. As discussed, it would be beneficial for initiatives to improve the recruitment and retention of people with disability to include clear and explicit evaluation and accountability frameworks, including:

- a clear statement of what the initiative is intended to achieve
- measurable changes that would indicate success or failure of the initiative
- a timeframe for implementation
- how progress towards the aims and objectives is to be monitored, evaluated and communicated.

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**Recommendation 47: That in order to increase the number of people with disability recruited and retained in the public services that the APS and state and territory public service commissions:**

- **develop and deliver both sector-wide and agency-specific publicity and/or education campaigns led by champions in each agency which raises the issues and articulates the case for reform and why such measures do not detract from the merit principle**
- **adopt sector-wide and agency-specific targets for proportions of staff with disability recruited and retained, include performance against these targets in performance management systems and report annually to public service commissions and in annual reports**
- **extend RecruitAbility to all positions**
- **provide targeted mandatory long-term training of managers and human resources specialists (including contractors engaged to provide recruitment services) which includes:**
  - » **the benefits of employing people with disability and a diverse workforce**
  - » **debunking common myths (for example, health and safety risks, costs, absenteeism)**
  - » **the nature of disability discrimination in employment**
  - » **availability of support and resources, e.g. for workplace adjustments**
  - » **how and where to obtain information and advice about a range of disabilities and how to have conversations with all staff about what they might need to do their job**
- **investigate the feasibility of implementing a Northern Territory-style Disability Employment Program in other jurisdictions, as one of the more successful programs demonstrating real change over time**
- **require all agencies to resource and facilitate the establishment of networks of staff with disability to identify, raise awareness of, and respond to issues of concern within the workplace for people with disability**
- **determine that positions at all levels be deemed to be 'flexible' unless there are sound documented reasons to prevent it**
- **consider implementing a centrally-resourced program that matches people with disability to vacancies across the public service.**

The following section regarding what employers can do to reduce employment discrimination and lift labour force participation includes ideas and suggestions that are equally relevant to government as an employer.

## 5.15 What employers can do

We need to reset the narrative...we all need systems that support us to be our best at work.<sup>149</sup>

As part of the Inquiry, employers and business and industry peaks and associations were asked what workplace practices, programs or incentives assist in increasing participation of Australians with disability. This section outlines the many ideas for actions that can be taken to address employment discrimination and increase the recruitment and retention of Australians with disability. It also provides examples of good practice from Australia and other countries, which many employers said were needed to demonstrate ‘what works’.

While it is critical to improve the level of awareness and support for employers, managers, recruiters and the community as a whole, it is equally important for individuals to have greater access to support and education so they are more aware of their rights and responsibilities and can articulate their needs.

The starting point for employers are the factors that people told the Inquiry contribute to positive employment outcomes. There are many insights to be gained from people with disability about the factors that contribute to success. These include:

- career support that is individualised, tailored and integrated with other supports to meet the changing needs of a person with disability
- working with employers to identify roles that match the skills and experience of people with disability and accommodate the range of abilities that exist in the community
- non-discriminatory and inclusive recruitment practices, including multiple and accessible recruitment tools and technologies
- equal employment opportunity policies, which may include a statement of diversity and inclusion in the role description of all advertised positions and therefore encourage people with disability to apply for positions
- an affirmative action policy, which involves a commitment to always selecting the candidate that has identified as having a disability when there are two comparable applicants with similar skills, training and experience
- senior management championing inclusion in the workplace and working with people with disability to advance their career development
- disability confident employers who have the knowledge, understanding and capability to employ people with disability
- normalising the employment of people with disability by not employing out of exception or special treatment
- mentoring and one-on-one training between people with disability who have had successful employment outcomes and people with disability looking for work
- commencing employment support for people with disability before and immediately after they leave school to enhance employment outcomes
- transition to work training, including training on interview skills, resume writing, organisation and time management skills, using public transport independently, workplace expectations and on-the-job training through work experience and internships.

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### **(a) Consider a combination of strategies**

The Inquiry heard from many employers of different sizes and from a range of industries and sectors who had various levels of expertise and experience in employing people with disability. While some employers had success stories to share, others were just starting their journey. However, the Inquiry heard that employers who increased employment and retention of people with disability achieved it through the development and implementation of a combination of strategies rather than a single approach.

In deciding what would work best for a particular organisation, employers took a number of factors into consideration including ‘the size and demography of their workforce, the readiness of their management teams to support new initiatives and their commitment to social justice principles’,<sup>150</sup> and industry developments.

Examples of good practice in employing people with disability are highlighted throughout this section.

#### **Good practice example 5.13: Promoting diversity and inclusion at INPEX**

INPEX CORPORATION is a worldwide oil and gas exploration and production company currently involved in more than 70 projects across more than 20 countries.

INPEX recognises the importance and value of creating a workplace which promotes diversity and inclusion. Since the Australian offices of the Company were opened in 1986, INPEX has engaged people from diverse backgrounds, including older people and people with disability.

INPEX aims to continually promote improvement in the diversity of the Company’s workforce and a positive, accepting workplace culture.

#### **Approach to employment of people with disability**

The INPEX workforce includes people with disability and the company recognises the value of this. INPEX actively works to retain existing employees who acquire a disability.

#### **Compliance**

INPEX complies with legislative requirements and has a ‘Discrimination and Harassment Standard’ which outlines some of our collective obligations under the ‘Equal Opportunity Act’.

It is mandatory for all INPEX Australia staff to participate in equal employment opportunity training, this creates both knowledge and awareness around disability inclusion, assisting to maintain a positive, accepting culture.

**Good practice example 5.13:** (continued)

**Modified office environment**

INPEX engage a specialist provider who is skilled in designing offices to meet the various needs of people. INPEX accommodates special equipment and workstation requirements for people who need standing desks, modifications to chairs or special IT equipment.

This assistance has enabled a number of staff to overcome specific physical barriers and has helped them to complete their work in an environment that is supportive of their needs.

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**Mental health**

INPEX provides a confidential and free employee assistance program, with qualified psychologists who can assist employees and their immediate families with counselling or referral to specific services. Each year, INPEX runs wellness programs and mental health awareness and education sessions as a part of this program.

**Illness and injury**

INPEX actively assists employees who fall ill or become injured, irrespective of whether the illness or injury is work-related. The assistance provided includes job redesign as required, income protection insurance, home visits, welfare checks and advice provided by a company doctor, with a dedicated staff member to facilitate this support.

**Case study: Inpex employee 1**

For a number of years, INPEX worked with a disability employment solutions company that assisted us to engage people with various disabilities into suitable work. Five years ago, an employee with a hearing impairment joined the company. She had previously been providing care for a number of family members for over 12 years. The employee was given one-on-one training, as this provided the best learning environment for her to pick up the required skills. The employee took on her work tasks quickly and effectively.

The employee also provided care for her husband who became terminally ill. INPEX gave the employee extended time off to care for her husband before he passed away. She subsequently undertook a gradual return to full time work. Over this six-month period, the employee kept in touch with her colleagues and was supported weekly by the Wellbeing team at INPEX.

### **Good practice example 5.13: (continued)**

#### **Case study: Inpex employee 2**

Three months after joining INPEX, an employee was temporarily disabled and required surgery to both knees at short notice due to a non-work related condition. INPEX gave the employee time off for surgery and recovery. The employee's recovery from surgery took longer than anticipated, and the company provided additional time off and kept in contact with her weekly.

Once the employee was ready to recommence work, the company assisted her with a gradual return to duties that suited her stage of recovery. Initially the company provided facilities to work from home for a few hours a day which then progressed to full days. Once the employee was mobile enough to attend the office, she was assisted with a flexible return to work, with reduced hours when required. The employee's workstation was ergonomically assessed and modified as required; she was also given a parking bay in the building for six months until she regained full mobility.

## **(b) Organisational leadership and strategy**

Commitment needs to be driven from the top. This is one of the key messages the Inquiry heard from individuals and organisations when asked about what workplaces could do to improve employment opportunities for Australians with disability. Leadership at senior levels is critical for setting objectives, increasing awareness and motivating organisations. Importantly, leading by example challenges negative assumptions about people with disability and is a big step towards changing workplace cultures to be more inclusive and diverse.

Leadership commitment can be demonstrated by establishing disability champions, developing and implementing diversity and inclusion plans, setting targets for employment of people with disability, or mandating quotas.

### *(i) Disability champions*

Disability champions can play a key role in articulating the business case for employment of people with disability, increasing awareness amongst other leaders and employees, and ensuring that people with disability are central to the development and delivery of organisational strategies and plans. Some people suggested that having disability champions can be the difference in whether or not an organisation prioritises the employment of people with disability.

In one study employers who were already employing people with disabilities were asked if there was one single factor that would prevent them from continuing to do so. They said, 'if the chief executive officer stopped supporting the idea, that'd be it'. Conversely, for those attempting to introduce diversity employment and build disability confidence, winning support from the chief executive officer was seen to be essential.<sup>151</sup>

The difference between those employers that would successfully take on a person with a disability and those that would not, would be a champion within the organisations that would successfully mount the business case.<sup>152</sup>

Promotion of role models for people with disability and older people within businesses to dispel community stereotypes.<sup>153</sup>

On many occasions, people referred to the Male Champions of Change, established by the former Sex Discrimination Commissioner, Elizabeth Broderick AO.<sup>154</sup> The Male Champions of Change group brings together some of Australia's most influential male CEOs and chairpersons to use their individual and collective influence to raise awareness about gender inequalities within workplaces and drive policies and initiatives to advance women's participation and representation in leadership. Given its success, many people suggested that a similar model be adopted to champion employment of people with disability.

'Brand champions' to advocate in favour of the employment of older persons and persons with a disability. For example, an initiative similar to the 'Male Champions of Change' who lead by example to eliminate discrimination against women in the workplace.<sup>155</sup>

#### **Good practice example 5.14: Department of Employment Disability Champion**

The department's Disability Champion is a Band-2 senior executive and provides important leadership and support to employees with disability. The Disability Champion represents the department externally and provides leadership across the Australian Public Service (APS) by contributing to the APS Disability Champions Network and other related forums. The Disability Champion is deeply committed to the disability sector and uses the role to help improve the outcomes for people with disability by raising awareness of their work and needs as employees of the department.<sup>156</sup>

The *Disability Discrimination Act 1992* (Cth) encourages organisations to develop an Action Plan to eliminate discriminatory practices. The Australian Human Rights Commission has an online register of more than 500 plans submitted to the Commission. The plans have been published online to assist organisations that may be developing an action plan and so that people with disability can see what organisations have made a commitment to employment of people with disability.

#### *(ii) Developing and implementing diversity and inclusion plans*

An effective disability action plan (DAP) articulates the business case for diverse and inclusive workplaces and employment of people with disability, and is directly related to business goals, objectives and strategy.

Needs to tie to business strategy, look at how we build the business case with leaders to build a range of people with a diverse background.<sup>157</sup>

We need more work on the value first...That is, tell the positive story. Not coming at it from a compliance perspective.<sup>158</sup>

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When it comes to a private business taking on a person with disability, you need to show what the rewards and benefits are — community inclusion, passionate and committed employees. Being an inclusive employer might also give you a competitive edge...It's about promoting what people with disability bring to your workplace.<sup>159</sup>

To ensure successful implementation, a DAP needs to be supported by resources for activities such as an audit of the work environment and workplace adjustments, promotion of flexible work policies, supporting managers and employees, disability awareness training, and development of information and educational resources. Importantly, a DAP needs monitoring and accountability measures in order to identify progress and future priority areas.

A survey about disability employment practices and experiences amongst member companies conducted by the Business Council of Australia in 2015 revealed that 90% of respondents identified an overall diversity strategy as the 'main driver of employment strategy for people with disability'.<sup>160</sup>

Disability discrimination action plans can be effective in helping organisations to identify where discriminatory practices exist and make a commitment to eliminating these practices.<sup>161</sup>

If we can create an environment that reflects the community then teams work better, be that gender, race, ability, age. It's going to work better for our organisation. We need to develop this broad sense that diversity will improve performance. Better than just focusing on disability on its own. Leverage the whole of the diversity argument. Look at the existing workforce — it's already more diverse than we realise.<sup>162</sup>

### **Good practice example 5.15: CROWNability — Crown Resorts' Disability Employment Program**

The CROWNability program aims to provide people with disability every opportunity to gain employment at Crown in the diverse range of roles available.<sup>163</sup>

The program's goals are to create employment opportunities for people with disability, to achieve sustainable job outcomes and to be a disability confident organisation. The ultimate goal of the CROWNability program is to find the right job fit and maintain sustainable outcomes. There are five important key elements to achieve this. They are:

- providers
- pre-employment
- recruitment
- post placement support
- community.

The pre-employment and recruitment phase are where people's interests and abilities are matched with appropriate and meaningful roles as well as post placement support.<sup>164</sup>

Through this program, Crown Resorts hope to achieve a target of employing three people with disability per month. Crown has identified that the benefits from these initiatives support their corporate social responsibility endeavours and are positive for branding. Crown has indicated these were considerations in their successful tender for development at the Barangaroo site in Sydney.

### **Good practice example 5.16: ANZ Accessibility and Inclusion Plan**

ANZ's Accessibility and Inclusion Plan target customers, and people and communities in their role as a bank, a major employer, and Australia's largest investor in many countries. The organisation reports on internal measures such as disability disclosure rates, employees engaged with disability, and the perception of diversity and inclusion among those employees with disability at ANZ.

The plan began in 2008. Since then, ANZ has been engaging with key stakeholders and disability community groups to improve accessibility and inclusion for customers and employees, and to help change attitudes toward people with disability in the community. The plan sets objectives, commits to action that will be taken to achieve them, and sets accountability measures to ensure that the plan achieves its desired outcomes.<sup>165</sup>

#### *(iii) Targets and quotas*

Setting a voluntary target to employ people with disability goes beyond developing and implementing a disability action or employment plan. Targets can have the added benefit of 'motivating agencies to change their recruitment practices in a way that favours people with disability'.<sup>166</sup>

Targets are specific measurable objectives, generally set by an organisation at their own discretion, with discrete timeframes in which they are to be achieved. Consequences for not meeting a target may be set and enforced as the organisation sees fit.<sup>167</sup>

Voluntary targets set by individual organisations have the following advantages:

- they can be tailored, monitored and adjusted to suit the employer and environment
- they increase buy-in and likelihood of success by giving employers ownership of their goals
- they are well understood by business as an effective tool to improve performance
- they promote a business-wide approach to employment of people with disability
- they identify talented people with disability that may otherwise be overlooked.<sup>168</sup>

The Inquiry received generally positive views regarding the introduction of voluntary targets set by organisations. In some instances, employers with disability action plans were not able to achieve increased participation until targets were set.

I'm a fan of targets. The cuddly approach doesn't seem to work. .... Employers respond when they have to. Won't like the reporting, but it might save them money so they'll do it.<sup>169</sup>

If there is no implication that someone is watching you, you won't get results. Reporting drives accountability and where we report on things, it's always taken more seriously. When you say 'look at what you should have done and look at what you did do.' How to do it becomes a different challenge, but when it comes to influencing biases, having a target does drive behaviour.<sup>170</sup>

We need to have something tangible to report against and this will be the best way forward to increase employment [of people with disability].<sup>171</sup>

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[With] targets for employment of Aboriginal and Torres Strait Islander people, we have had to be more purposeful, [and] deliberate. We don't meet them yet, but they are visible. From our point of view the targets have been quite instructive.<sup>172</sup>

### **Good practice example 5.17: NSW Department of Justice announces employment targets for people with disability**

In April 2016, the NSW Department of Justice announced that it would introduce targets for employment of people with disability as part of a wider push to reverse the decline in the number of people with disability working in the NSW public service.<sup>173</sup> The percentage of Public Service Commission employees with disability halved from 8.6% in 2012 to 3.8% in 2014.

The Department of Justice, which covers NSW Police, prisons, courts and attorney-general's office, is the first NSW government agency to introduce targets for employment of people with disability.<sup>174</sup>

Disability employment targets were endorsed in the Department's Disability Inclusion Action Plan 2015–2018, alongside a raft of other measures.<sup>175</sup>

In relation to gender targets, according to the Workplace Gender Equality Agency:

Organisations that have been successful in achieving gender targets report more effective talent and succession planning systems, a more capable workforce with the best person being more likely to be selected for jobs, and an enhanced corporate recruitment brand.<sup>176</sup>

It is envisaged that success and positive outcomes from gender targets may be translated to disability employment targets, particularly when targets are supported with other strategies, programs and initiatives to improve employment outcomes for people with disability.

Unlike targets, quotas are usually a mandatory legal requirement. Quotas were suggested to the Inquiry given the lack of improvement in labour force participation rates of people with disability in Australia, and limited success of other strategies to date.

At its simplest, quota legislation requires private and/or public sector employers, who employ a certain minimum number of workers, to ensure that a given proportion of employees consists of designated persons with disabilities. The definition of a worker with disability who counts towards the quota can be broad or narrow.<sup>177</sup>

Like targets, quotas are also specific, time-bound measurable objectives, but are usually set externally by a body with authority to impose them on organisations (for example, Parliament). Establishing quotas usually includes setting penalties for failing to meet them. These are enforced by a body external to an individual company and are non-negotiable by individual organisations.<sup>178</sup>

The Inquiry is aware that some countries including Japan and Germany have mandated quotas in place,<sup>179 180</sup> while the Netherlands may introduce quota levies in 2017 for companies employing more than 25 people if an additional 125,000 jobs are not created for people with disability.<sup>181</sup> Further detail is provided at Appendix 13.

The Inquiry received mixed views about the introduction of quotas from people with disability, employers and the community. Some people expressed the view that mandatory quotas did not send a positive message about employment of people with disability and that doubts could arise as to whether an employee was recruited on merit. Businesses were not enthusiastic about the idea of increased reporting obligations.

### **(c) Information and education**

Education and training are critical for addressing barriers related to a lack of understanding about disability, and limited awareness of employer and employee rights and obligations. Further, education and training can play a key role in addressing negative stereotypes, shifting workplace behaviours and cultures.

According to the Queensland Mental Health Commission and the Anti-Discrimination Commission Queensland:

Businesses with a positive workplace culture are more productive and profitable. Analysis by PwC shows that businesses will on average achieve a positive return on investment of \$2.30 for every \$1 spent on creating a positive workplace culture<sup>182</sup>... To create inclusive workplaces there needs to be investment in programs and tools that demythologise the process of employing people with disability.<sup>183</sup>

Given the low labour-force participation rates of people with disability in Australia, it is unsurprising that many employers and employees have limited experience with working with people with disability. The Inquiry heard that lack of exposure to people with disability in the workplace can maintain negative assumptions and stereotypes.

Many people have fears around employing people with disability, or perceive risks. This can be addressed within an organisation's culture and values, and with appropriate disability awareness and/or unconscious bias training.<sup>184</sup>

Disability awareness training can help to address these barriers and increase an organisation's disability confidence. It can also help to eliminate employer and recruiter concerns, misinformation, and attitudinal barriers in recruitment processes. JobAccess describes a disability-confident organisation as one that puts policies into practice to ensure people with disability are included.<sup>185</sup> Managers and staff in a disability confident organisation understand disability and the importance of employing people with disability to their business. They know what people with disability can do, and have identified ways to address barriers to employment or promotion for people with disability.<sup>186</sup>

Disability awareness training is important for all employees and especially for hiring managers. Awareness and competency-based training, which has been designed specifically to empower employees to confidently and effectively work with people with disability, is valuable in building an inclusive workplace culture. Training needs to be made available to people in particular positions to equip them with knowledge and skills to address attitudinal and practical issues in the workplace. Disability awareness training also empowers managers to be confident in working with their existing employees.<sup>187</sup>

### **Good practice example 5.18: Disability Awareness and Competency Training<sup>188</sup>**

People with Disability Australia Incorporated (PWDA) is a national disability rights and advocacy organisation. PWDA's primary membership is made up of people with disability, organisations primarily constituted by people with disability, and other individuals and organisations committed to the disability rights movement.

PWDA provides and undertakes customised disability rights-related training and education to help meet the needs of organisations across a wide range of disability areas.

For example, the Disability Awareness and Competency training is an introductory course designed to raise the disability competence of staff and of organisations as a whole. The training covers the following topics:

- the diverse nature of disability and an overview of different types of conditions or impairments and how they can impact a person's communication, access and participation in the community
- general principles of appropriate language when referring to, and talking with people with disability including practical exercises in applying appropriate language
- access considerations for people with different types of impairment including physical access and mobility, communication barriers, transport, attitudinal barriers, structural barriers, and financial barriers.

### **Good practice example 5.19: US Microsoft**

Disability etiquette training is offered for employees. This training is beneficial to team members of employees with disabilities to ensure they understand the appropriate disability etiquette when working with the individual and learn tips for maximising communication and understanding between all team members. For example, an employee at headquarters who happens to be deaf conducts deafness awareness training for any team that hires a new employee or intern who is deaf or hard of hearing. Lighthouse for the Blind of Seattle is contracted to provide training to the team that include employees or interns with visual disabilities.<sup>189</sup>

Education and awareness raising initiatives can further help to increase overall workplace knowledge and understanding of disability and promote positive attitudes towards employees with disability. Employers can do this in a number of ways including celebrating events such as International Day of People with Disability, promoting occasions such as Carers Week, Mental Health Week and RUOK? Day, and through sharing positive stories about staff and employees with disability.

**Good practice example 5.20: Raising awareness of inclusive workplaces<sup>190</sup>**

As part of Human Rights Month 2015, the Anti-Discrimination Commission Queensland ran a Fair and Inclusive Workplaces campaign. The campaign ran from 10 November and culminated on International Human Rights Day (10 December).

The Commission developed resources to promote awareness and discussion in the workplace about inclusivity. Each week had a topic and videos, stories, FAQs, and myths about discrimination, sexual harassment, diversity, and inclusive workplaces were shared through a website.

Public and private sector employers were encouraged to participate in the campaign and nominate workplace champions to coordinate the dissemination of information in their workplaces. A workplace champions' guide was prepared for each week of the campaign.

For more information visit: [www.adcq.qld.gov.au/resources/fair-and-inclusive-workplaces](http://www.adcq.qld.gov.au/resources/fair-and-inclusive-workplaces).

**Good practice example 5.21: Campaign for disability employment<sup>191</sup>**

'What can you do?' is a campaign for disability employment in the United States of America funded by the US Department of Labor's Office of Disability Employment Policy (ODEP).

Through its national 'What can YOU do?' public outreach initiative, the Campaign for Disability Employment reinforces the reality that people with disability want to work and that their talents and abilities positively impact businesses both financially and organisationally.

Several unique tools characterize the 'What can YOU do?' initiative, including the campaign's web site, [WhatCanYouDoCampaign.org](http://WhatCanYouDoCampaign.org), which offers users the chance to learn, express their commitment to disability employment efforts and share what they 'can do'.

The site also features tools and tangible ideas for supporting the campaign's goals, such as discussion guides, posters, support badges that users can display on their own web sites and blogs, and ready-to-publish news briefs for publications and social media platforms.

Also featured on the site are video public service announcements that challenge assumptions about people with disability and employment.

The campaign encourages organisations to promote positive employment outcomes for people with disability by using resources available on the website to assist in recruiting, retaining and advancing skilled, qualified employees and by sharing the important message that, 'At work, it's what people CAN do that matters'.

For more information visit: <https://whatcanyoudocampaign.org/>.

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### **Good practice example 5.22: Sharing stories**

Twenty Years: Twenty Stories marked the Disability Discrimination Act's twentieth birthday with twenty stories on film.

The collection of video stories illustrate how the lives of people with disability have changed since the introduction of the federal Disability Discrimination Act. The stories in this project highlight how far Australia has come in recognising and upholding the rights of people with disability, while acknowledging that there is still much more that needs to be done.

More information is available at: [www.humanrights.gov.au/twentystories/index.html](http://www.humanrights.gov.au/twentystories/index.html).

It is essential for employers and employees to become more aware of discriminatory practices and behaviours, and where to go for support and assistance if issues arise in the workplace. The Housing Industry Association:

...submits that there must be a focus on educating employers to ensure they better understand their rights and obligations in relation to the recruitment and ongoing employment of employees with a disability.<sup>192</sup>

Many organisations, including the Australian Human Rights Commission, state and territory anti-discrimination and equal opportunity agencies and the Fair Work Ombudsman provide tailored information and resources for employers, including small business, about their rights and obligations to employees with disability. See Appendix 9 for a list of useful resources on employer rights and obligations.

### **(d) Build on existing programs**

There is no need to reinvent the wheel. Many organisations have had success in other areas of diversity and inclusion such as increasing the participation of women or Indigenous people within their workforce. Rather than developing new programs and initiatives, a cost-effective and less onerous approach could be to build on existing and successful programs or integrate strategies for employment of people with disability and older people into effective initiatives.

### **Good practice example 5.23: Westpac Group expands supports to parents to all employees with caring responsibilities**

37% of Westpac Group employees have caring responsibilities (2014 Westpac Group Diversity & Flexibility Survey). The Carers@Work Program was built on the foundation of Westpac Group's Parents@Work Program, which is provided and run through Parents at Work. The program consists of:

- An information portal accessible to all employees. This provides a one-stop-shop for carers needing information on managing work and caring responsibilities, taking leave, returning to work, managing their careers and their wellbeing.
- Four workshops, run monthly, include: Managing Your Career as a Working Parent or Carer; Preparing for Parental Leave and Staying in Touch; Returning to Work and Reconnecting; and Care & Wellbeing for You and Your Family.
- Personalised one-to-one coaching aimed at senior leaders transitioning to and from parental leave, or during times of challenging caring situations.

### **(e) Access government supports available**

There is a wide range of government services, programs and incentives available to employers of all sizes to assist with employment of people with disability.

Government supports and services have an important role to play in increasing employers' awareness and understanding of disability, including alleviating any concerns and facilitating the employment process. A list of programs, services and assistance is included at Appendix 9 and Appendix 12.

### **(f) Disclosure — a disability-friendly approach**

The Inquiry heard that some individuals have been required to disclose disability, prior injury or illness, or even their full medical history when applying for jobs. Some employers believe that disclosure is necessary in order to manage work health and safety risks and their workers compensation premiums.

However, if a person's disability has no bearing on their capacity to fulfil the inherent requirements of the job, then it is irrelevant to the recruitment process. In the context of all types of disclosure, relevance and necessity to the job is crucial.<sup>193</sup>

#### *(i) Is it discriminatory to ask?*

As discussed in the previous chapter, many employers were unsure about asking employees information about any relevant disability, injury or illness out of concern that they might be discriminating against that employee. Below is some information to assist employers in such situations.

Under the Disability Discrimination Act it is unlawful for an employer to seek information about a person's disability, if the information is requested for the purpose of discriminating against the person.<sup>194</sup> This is the case regardless of whether the person does actually have a disability — the definition of 'disability' contained in the Disability Discrimination Act includes a disability which previously existed but no longer exists, which may exist in the future or which is imputed to a person.<sup>195</sup>

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Discriminatory requests for information can be differentiated from permissible requests by employers to ascertain:

- if a person needs any adjustments to ensure a fair and equitable interview and selection process
- if and how a person's disability may affect their ability to perform the inherent requirements of a role, including the ability to work safely
- any adjustments the person may need to accommodate the disability in the workplace.

Any pre-employment medical assessments should focus on obtaining information about a potential employee's ability to perform the specific role for which he or she is being considered. Employers should clearly set out the job description and provide the medical practitioners performing such assessments with clear information about the inherent requirements of the role.

From the perspective of the job applicant, the Disability Discrimination Act does not specifically require current or prospective employees to disclose a disability to an employer. However, disclosure of a disability could reasonably be expected if an employee or prospective employee is seeking reasonable adjustments to enable them to perform the inherent requirements of the job. In such situations, the level of information disclosed would need to be sufficient for the employer to understand the type of adjustments that are being sought and the reason(s) why these adjustments are required with reference to the disability.

*(ii) How to ask and when to ask*

The Inquiry received a number of suggestions of ways to address the issue of disclosure. The SA Equal Opportunity Commission provides the following advice to employers on its website:

As an employer you can make an informed decision as to whether you need further medical information from an applicant by asking questions like:

- Do you have a pre-existing injury or medical condition/disability that would affect your ability to do this work?
- If so, can you provide details of the injury/disability or medical condition, and any current restrictions it may have on your ability to do this work?
- Are there any ways that we might be able to reasonably accommodate your restrictions that would enable you to do this type of work?<sup>196</sup>

A recurring theme in the Inquiry's consultations and submissions was that employers should focus on asking all employees and prospective employees what they need to do their jobs to the best of their ability. This would involve asking about a person's need for workplace adjustments, rather than asking them to disclose their disability.

This approach does not risk breaching the privacy of people and has the benefit of fostering an inclusive workplace culture by providing all employees with an opportunity to identify adjustments which may help them do their jobs better, whether or not they identify as having disability. In practice, this means asking questions, such as:

- Is there anything you need in order to do your job to the best of your ability, for example accessible technology, physical adjustments to your work station or flexible hours?

### **Good practice example 5.24: Disclosure at Commonwealth Bank Group**

Commonwealth Bank has changed its approach to disclosure in recruitment by introducing a pilot guaranteed interview scheme, RecruitAbility. Under RecruitAbility, all candidates applying for eligible roles within the pilot are asked if they have a disability and if there are any adjustments or support they need to access the recruitment process or to support them in the role if successful. The candidate is not obligated to specify their disability as the focus is on adjustments required, not on the specific disability. Commonwealth Bank's online advertisements include the following text, which emphasises diversity and inclusion in the context of upfront disclosure:

RecruitAbility is a scheme designed to increase accessibility of employment opportunities for candidates with a disability and to support the objectives of our Accessibility and Inclusion Plan.

If you confirm in your application form that you would like to participate in this initiative, have a disability and meet the minimum requirements of the role, a recruiter from Commonwealth Bank will contact you after your application has been submitted to discuss your participation in the RecruitAbility Scheme.<sup>197</sup>

#### *(iii) After an employee discloses disability*

Once employers or potential employers become aware of a person's disability, they should:

- not discriminate against the person because of the disability<sup>198</sup>
- provide reasonable adjustments to accommodate the person's disability<sup>199</sup>
- not harass the person with disability<sup>200</sup>
- take reasonable precautions and exercise due diligence to avoid disability discrimination and harassment in the context of recruitment or employment.<sup>201</sup>

Although an employer does have an obligation to make reasonable adjustments to accommodate a person with disability,<sup>202</sup> it is not against the law to discriminate in recruitment or employment if it can be demonstrated that making the required adjustments or otherwise avoiding the discrimination would cause 'unjustifiable hardship'.<sup>203</sup>

Before deciding that adjustments will create unjustifiable hardship, it is recommended that employers and potential employers consider how the adjustment might be made, estimate the cost and whether any assistance is available to meet the cost, and discuss the matter directly with the person involved.<sup>204</sup>

Employers should consider what questions about disability, previous injuries and medical conditions are required for meeting the inherent requirements of the job and for workplace health and safety obligations. These considerations should be in the context of creating an inclusive workplace culture in which people are well informed and feel comfortable asking for workplace adjustments to enable them to perform their job to the best of their ability.

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## **(g) Recruitment**

The following section addresses many of the recruitment issues raised with the Inquiry and suggests a range of approaches to remove these barriers.

Many employers fully understand the benefits of recruiting people with disability.

We struggle to get the best talent [as] a medium payer. Unless we don't go down this path [increase employment of people with disability], we are [not] choosing from the best...our talent pool is too narrow.<sup>205</sup>

Unnecessarily broad job advertisements or role descriptions can unduly shut out applicants who may be able to do part of a role very well. Similarly selection criteria that are not an inherent requirement of the job can also exclude people with disability. In many cases a simple change or adjustment to the recruitment process or a role description can make a significant difference in improving access for a person with disability.

### *(i) Inherent requirements*

In accordance with the Disability Discrimination Act, employers are required to offer equitable employment opportunities to everyone. This means that if a person with disability can perform the core activities or 'inherent requirements' of a job, then that person should have the same opportunity to do the job as anyone else.

Inherent requirements are those requirements, tasks or skills that are essential to the position. They are those tasks or skills that cannot be allocated elsewhere, are a major part of the job, or have significant consequences if they are not performed.

In position descriptions and job advertisements it is important to focus on what needs to be done, rather than the way things are done. Often outcomes can be achieved in a range of different ways, as illustrated in the following example.

An insurance company is advertising for a Salesperson to cover the Eastern Seaboard region. A job advertisement focusing on the inherent requirements might include: 'extensive travel required'. A job advertisement not focusing on the inherent requirements might include: 'valid driver's licence required'. A driver's licence is not an inherent requirement because a person with disability who does not drive could utilise public transport or taxis (note: government subsidies are available for taxi travel for people with disability in some circumstances).

### *(ii) Selection process*

The central issue is that employers do not anticipate that people with disability might apply for jobs and do not consider whether their recruitment process is accessible.<sup>206</sup>

Increasingly the initial application and selection process for advertised vacancies is an automated process consisting of on-line and/or computer-generated telephone interviews. This means often there is no 'human contact' until well into the selection process. This makes it difficult for some people with disability who may be challenged by inaccessible web-based technologies and where people may need adjustments to enable them to participate in the recruitment and selection process.

Additionally, many large corporations undertaking mass recruitment will use assessment centres and group interviews to assess a candidate's suitability for the job.

The Australian Network on Disability notes that for some people with disability an interview may not be the best way to demonstrate their skills. Some may be nervous about interviews, particularly if they have been unemployed for some time. A person with disability may have the skills to perform the job but not interview well. If this is the case there are alternatives to consider including offering work for a contractual period or considering an alternative means of assessing an applicant's suitability such as a work trial or enabling the person to have a support person attend with them.<sup>207</sup>

### **Case study 5.1**

Chris has a diagnosed mental illness. He lodged a written application for an advertised public service position together with a certificate from a treating psychiatrist stating an inability to participate in any formal interview process.

Upon receiving the application the HR department's initial response was that Chris could not be considered for the role.

A champion within the agency challenged this decision and in the end the human resources department recommended that all applicants for the position be assessed only by their written applications, without the need for a formal interview. In this way, all applicants would be assessed on the same criteria. Chris was found to be the best applicant for the job.<sup>208</sup>

As demonstrated in the case study above, creating access and removing unnecessary barriers in the recruitment process can be a simple and easy solution.

Improving access can be easily achieved by providing a contact person via email and telephone. This enables a person with disability to make contact in a format that is accessible to them and request any support they may need in order to complete the recruitment process.

### **(h) Creating greater awareness and disability confidence**

As the Inquiry heard, often it was unclear to employers and recruiters how their recruitment processes could be indirectly discriminatory or result in people with disability being shut out of the process. This could be partly addressed by providing additional diversity (disability awareness) training for employers and recruiters to eliminate concerns, misinformation, and attitudinal barriers in recruitment processes.

### **Case study 5.2**

Margaret had a highly visible impairment that caused involuntary movements of the body. Margaret had high-level skills and eight years' work experience, yet was unsuccessful in over 60 interviews. It was clear that employers were put off by the visual/physical nature of the impairment, despite the only reasonable adjustment needed being a large screen monitor.<sup>209</sup>

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Several strategies were suggested to the Inquiry to address recruitment bias and move away from 'ideal worker models'. The ideal worker is described as an employee who is available at any time and has an unbroken career record, typically, a male aged 18–50 years old with no caring responsibilities.<sup>210</sup> This includes ensuring diversity within recruitment teams, and educating recruitment partners about inclusiveness and the need to align diversity practices and expectations with those of the employers.

#### **Good practice example 5.25: US Microsoft**

Microsoft in the United States trains recruiters on how to interview people with disability and instructs them to focus on the qualifications of the applicant, not disability. When applying to Microsoft, an applicant can self-identify as a person with disability, thereby alerting the Disability Inclusion Program Manager that an adjustment may be needed. The Disability Inclusion Program Manager helps candidates and employees secure workplace adjustments to best meet the needs of the individual. When an employee is hired, a needs assessment is completed involving the employee, human resources personnel and the manager to determine the adjustment needs.<sup>211</sup>

#### **(i) Targeted recruitment campaigns, traineeships, internships, mentoring**

One of the ways in which workplaces can address negative assumptions and stereotypes while providing employment opportunities for people with disability is through targeted recruitment, traineeships, internships and mentoring.

The best way to tackle stigma is to expose more and more workplaces to people with disability or living with mental illness. The more people that meet and work with people with disability, the more attitudes will change. One way of introducing more people with disability and mental illness to workplaces is through traineeships or structured work experience programs.<sup>212</sup>

Employers that had tried this approach reported positive outcomes and increased understanding and experience in working with people with disability.

One large retail employer partnered with a not-for-profit organisation involved in a range of disability services and supports, to provide an opportunity for a person with disability to work in the organisation for around 10–12 weeks.<sup>213</sup> Participants included people with autism spectrum disorder. Initially, there was reluctance amongst other staff about working with people with disability. However, the employer found that by having a person with disability in the workplace 'barriers started to come down'. Employees also found that fears of being disrupted by working with a person with disability and workplace adjustments were unfounded. The employer said that both participants and staff enjoyed and benefited from the experience.<sup>214</sup>

**Good practice example 5.26: Stepping Into, Australian Network on Disability<sup>215</sup>  
— Paid internship program for university students with disability**

Stepping Into is a paid internship program developed by the Australian Network on Disability (AND) and employers, designed to provide university students with disability the opportunity to gain practical work experience in their field of interest. The program is one of mutual benefit for both employers and the students: employers benefit by building an inclusive workplace culture that values diversity and promotes the employment of people with disability, and students benefit through gaining practical, ‘real-world’ work experience and building a network of contacts.

While the program has no guarantee of employment, it is regarded by participating employers as an effective program that can provide students with disability a ‘step into’ the workforce, and assist them in securing future employment. An independent review of the program found that participating students had significantly higher rates of employment after graduation than students with disability who had not participated.

Organisations that have been involved in this program have reported overwhelmingly positive experiences.<sup>216</sup> The benefits for employers include building a more inclusive workplace culture, developing an understanding of workplace adjustments, gaining experience managing employees with disability and accessing a source of pipeline talent for graduate programs. Student interns gain hands-on experience in a workplace setting, and have the opportunity to showcase their existing talents while learning new skills.

For more information visit: <http://www.and.org.au/pages/stepping-into...-programs.html>.

**Good practice example 5.27: PACE (Positive Action towards Career Engagement) Mentoring, Australian Network on Disability<sup>217</sup>  
— Mentoring program for students and jobseekers with disability**

PACE offers students and jobseekers with disability the opportunity to develop their skills and confidence in a workplace setting, which can assist them in planning their career journey, as well as aiding their personal and professional development.

PACE recognises that job seekers with disability frequently find themselves with little or no work experience, and may not be fully aware of the skills and attributes they can offer an organisation. This can add to the difficulties that job seekers may encounter as they try to enter their chosen career. PACE aims to assist participants to become ‘job-ready’ and lower some of these hurdles.

For more information visit: <http://www.and.org.au/pages/mentoring.html>.

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### **Good practice example 5.28: Accor France**

Accor launched various recruitment and training programs in its local and regional offices. For example, at Accor France, the regional employment managers and the Integrating the Disabled Project Team launched a project called Handicapte.<sup>218</sup> The team organises an information day for disabled students to meet hotel professionals.

Accor collaborated with Jobinlive which is a company specialising in creating video resumes for people with disability at no charge. Job candidates record three-minute video resumes to present themselves, their competencies and experiences. So far, 100 video resumes have been created and 20 candidates have been recruited by Accor France.<sup>219</sup>

### **(j) Guaranteed interview schemes**

A guaranteed interview scheme is usually a positive recruitment program that ensures that candidates with disability who meet the minimum requirements of the role they apply for will be progressed to the first short-listed interview or assessment stage of the recruitment process for that role. The aim is to increase access to employment opportunities for candidates with disability and to remove any obstacles that may have arisen in the recruitment process. The benefits of offering a guaranteed interview scheme include:

- ensuring employers are attracting and recruiting from a broad pool of candidates including people with disability
- removing any possible barriers or bias that may exist in standard recruitment practices and ensuring people with disability who meet the criteria for the role are given the opportunity for interview or to participate in another assessment method depending on their disability
- meaningful feedback — should an applicant not be successful in gaining the role, they have at least had the experience of attending an interview and obtaining feedback on how they can improve for future applications and interviews.

One example is the RecruitAbility scheme which is in place in the Australian Public Service (APS).<sup>220</sup> Its application outside the APS was also suggested and the Inquiry is aware that some organisations in the non-government and private sectors are implementing guaranteed interview schemes including St John of God Health Care and the Commonwealth Bank.

### **Good practice example 5.29: Inclusion in interview — St John of God Health Care**

St John of God Health Care is one of Australia's largest non-government hospital operators and is Australia's largest Catholic hospital operator. It has been operating for 120 years and employs more than 13,500 caregivers across Australia, New Zealand and the wider Asia-Pacific region.

St John of God Health Care is committed to supporting people with disability to gain employment in all areas of their organisation.

They recognise that for many the most significant barrier to accessing meaningful employment opportunities is access to an interview. In partnership with Disability Employment Services (DES) St John of God Health Care has committed to including at least one applicant who meets the inherent requirements and is registered with a DES in the interview stage of any vacant role advertised. This practice now sits within their current Recruitment and Selection Policy for the whole of organisation.

St John of God Health Care encourage people with disability to approach their recruitment process with confidence and clearly indicate in their recruitment practices that the fact that a person has a disability will not be an obstacle to successful employment should they be the preferred candidate.

Since the adoption of this practice in July 2013 St. John of God Health Care have received over 223 applicants through DES, interviewed 128 and successfully appointed 51.

For further information regarding Disability Employment within St. John of God Health Care please visit: [http://www.sjog.org.au/careers/disability\\_employment.aspx](http://www.sjog.org.au/careers/disability_employment.aspx).

### **Case study**

The participant came to Workpower DES in October 2013 with a background as a nursing assistant for several years at a nursing home. He had then lost his employment and has since been unemployed for two years due to his deteriorating mental health-related issues.

After a number of appointments with his consultant it was clear that he wanted to return to a support work based role.

After completing a Certificate IV in Aged Care his employment consultant supported the client with job search, application writing and interview skills. He secured a number of interviews which failed to result in a job offer.

In December of 2014 he applied at St John of God Health Care and through the inclusion in interview policy he secured an interview and was successful.

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## **(k) Workplace adjustments and work health and safety**

The Disability Discrimination Act requires employers to make reasonable adjustments to accommodate a person's disability.<sup>221</sup> Managing workplace health and safety (WHS) risks may also require workplace adjustments for people with disability, depending on the type and severity of disability. The evidence suggests that these kinds of adjustments are far less costly and less complicated than employers may expect.

The 2015 Australian Bureau of Statistics SDAC data shows that 66.6% of people with disability report having schooling or employment restrictions.<sup>222</sup> However, the majority of these restrictions concern the type of job or hours of work and do not relate to safety. Safe Work Australia noted that 'people with disability manage the restriction in the type of job they can perform by the types of work they accept.'<sup>223</sup>

The type of employment restrictions that may have some safety implications are 'the need for the employer to provide special equipment or arrangements, the need for a support person at work and the need for ongoing supervision or assistance'.<sup>224</sup> However Australian Bureau of Statistics data indicates that less than 15% of people with disability reported having either one of these types of employment restrictions.<sup>225</sup>

When workplace adjustments do need to be made, the evidence suggests that the outlay in terms of costs to a business represents money well spent.

The costs associated with workplaces accommodations are often lower than employers expect.<sup>226</sup> Data from the Australian Network on Disability indicates that in relation to the cost/benefit of workplace accommodations for employees with disability, 65% of employers rated the financial effect to be cost neutral and 20% identified an overall financial benefit.<sup>227</sup>

Many workplace modifications funded by the Employment Assistance Fund (EAF) are low cost, with 50% of modifications costing \$1,000 or less, and 90% at \$10,000 or less. Additionally, many workplace accommodations suggested to employers or people with disability involve no cost at all (for example, advice on managing mental health in the workplace, flexible start times or working hours, or telecommuting).

Importantly, such modifications can allow people with disability to get a job, retain a job or progress a career.<sup>228</sup> Sometimes the adjustments are as simple as providing a desk for someone with a hearing impairment which is in a location where they do not have their back to other team members.<sup>229</sup>

Australian and overseas studies have shown that the actual costs of workplace accommodations are quite low.<sup>230</sup> Some of the most common adjustments, and those which can cost an employer very little, include:

- providing a car parking space
- flexible working time or varying hours
- adapted work environment, for example furniture, lighting
- flexible work organisation, for example transferring people to other jobs, rearranging work duties
- transferring people or jobs to other premises
- providing appropriate physical and technological assistance, for example a screen reader for people with vision impairment
- allowing working from home.<sup>231</sup>

Further, 11% of people with disability reported that the cause of their main health condition was ‘working conditions, work or over-work’.<sup>232</sup> This means there is substantial scope for workplace conditions and adjustments to reduce disability through implementing improved work health and safety practices.

### **(l) Making adjustments available to all employees**

A relatively new approach being taken by employers is to introduce a more strategic approach to making workplace adjustments for both existing and new employees.

While traditionally this has been an area focused primarily on the provision of adjustments for employees who identify as having a disability, some organisations are extending their policies to include a centralised ‘workplace adjustment’ process offering solutions including flexible working and more streamlined support for employees who acquire a health condition or injury. The benefit of this approach is that it is available to any employee that has a need for an adjustment.

As demonstrated in the Lloyds Bank case study that follows, employers are recognising that employees work more effectively if their working conditions are adjusted to their needs. The process works by self-referral and employees can seek, and be granted, a workplace adjustment whether or not their needs would be covered by the definition of disability.

#### **Good practice example 5.30: Lloyds Banking<sup>233</sup>**

Lloyds Banking Group (United Kingdom) has adopted a ‘business as usual’ approach to help ensure that its employees with disability can reach their full potential. Lloyds’ ‘disability-smart’ initiatives — including a streamlined reasonable adjustment process and development programs for colleagues with disability — deliver benefits for both employees and the business.

- Lloyds Bank has streamlined its workplace adjustment process and introduced a centralised program to address concerns about delays in the implementation of adjustments.
- A policy on non-physical adjustments such as flexible working or adjusting performance targets was introduced.

A disability-awareness guide has been cascaded throughout the management of the organisation and online disability training completed by 22,000 managers.

The bank also runs a personal and career development program for employees with disability to help them understand and manage their career goals.

Lloyds have recognised that employees work better if their working conditions are adjusted to their needs so they have introduced a centralised workplace adjustment process. The process works by self-referral.

The aim is to integrate the idea of ‘disability’, so that addressing any impairment simply becomes part of the normal business of the bank.

Lloyds argues that by proactively considering the needs of people with disability within the workplace and embracing accessibility, it is able to recruit from the broadest talent pool and to retain that talent should an employee acquire a disability.

### **The business benefits**

Through a re-engineering of workplace adjustment processes, Lloyds have delivered financial savings, productivity benefits, cut administration and assessment costs and improved manager and employee satisfaction.

This approach ensures they are supporting employees and their needs and to optimise their contribution at work, rather than compliance with legislation. This substantively different approach included:

- Appointing a business manager (not HR or occupational health) as process owner to be responsible for the speed, efficiency and continual improvement of the end to end process.
- Centralising funding rather than using line managers' local budgets to pay for adjustments and making costs anonymous so they cannot be traced back to the individual colleague, thus removing any localised financial disincentives to pay for adjustments.
- Empowering staff to self-refer into a centralised process, thus removing the reliance on line manager to initiate the adjustment process.

### **Key benefits and impact/learning**

- in 2012–14 approximately 18,893 staff used the service (approximately 19% of the workforce)
- average assessment and service cost per case decreased by 34%
- average case cost dropped by 53%
- numbers needing formal assessments after initial consultation dropped from 80% to 43% in the first 3 months
- 62% of staff (and 63% of managers) using the service reported a reduction in absence levels
- 85% of line managers using the service reported a significant improvement in performance, while 77% of line managers using the service reported a dramatic improvement in performance
- average case duration down from 3–6 months to 14 days over five years.

### **(m) Training and support**

People with disability told the Inquiry that an inclusive workplace culture and supportive environment would help to prevent experiences of isolation and greatly assist in attracting and retaining employees.

Establishing a disability employee network is one way to support employees with disability, in particular those working within large organisations.

The aims of DENs [Disability Employee Networks] are to encourage and promote opportunities for employees with disability. All employees with disability should be welcome to join DENs as it provides staff with new networks, support from peers and increases understanding of issues for people with disability in the workplace. Collectively, DENs provides a forum for employees with disability to provide consultation on matters that impact upon the recruitment, retention and career development of employees with disability.<sup>234</sup>

An added benefit of employee networks is that they can help to identify workplace issues and drive formal strategies to support people with disability, their carers and families.

Establishing a committee for workplace adjustments has been suggested as another way that employers could assist employees with disability in the workplace. This involves formal forums representing all aspects of the business at a high level that can assess and approve accommodations for employees through a lens of enabling employee productivity versus provision of performance concessions.<sup>235</sup>

### **Good practice example 5.31: Peer support workers**

Peer support workers — people with lived experiences of mental health issues — can be employed to assist and support employees with mental health conditions in the workplace.<sup>236</sup> Peer support workers typically work within multi-disciplinary mental health teams. Research suggests that peer support workers are a crucial element to mental health service teams and are acknowledged as being vital catalysts to individual's mental health recovery.<sup>237</sup>

Paid peer support worker roles offer people with lived experience of mental illness career opportunities while allowing them to enhance mental health services.<sup>238</sup> However peer support workers could also be a valuable addition in other sectors.

Peer worker's lived experiences can be utilised to increase awareness of mental health issues in employment settings.<sup>239</sup> The National Mental Health Consumer and Carer Forum (NMHCC) suggests that peer support worker roles be established within Disability Employment Services arguing that peer support workers would be able to offer insight into the barriers and potential of jobseekers with mental illness, as well as breaking down barriers with potential employers.<sup>240</sup> Clubhouse (a model of psychosocial rehabilitation) has the Place & Train employment model for members (peers) to support people into the workforce and provide the employer with advice and support.<sup>241</sup>

Training is available in mental health peer support work.<sup>242</sup> The submission from the Mental Health Council of Tasmania (MHCT) recommends that the Australian Government create more accessible pathways for people with lived experiences to enter the peer support workforce.<sup>243</sup>

Mentoring can also provide further one-on-one support and guidance to employees with disability. At the same time, mentees can benefit from the employee through increased understanding and experience working with a person with disability.

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### **Good practice example 5.32: Carrefour Belgium**

Carrefour Belgium pairs job-seekers with disability with a self-nominated Carrefour mentor. The mentor guides their mentee through the working day, sharing with them their daily tasks. By engaging people in actual day-to-day work situations, employees learnt that their company was capable of including and providing access to people with disability, and job seekers with disability had the opportunity to gain work experience. Partnering employees and people with disability was an engaging educational tool that provided exposure to the positive impact of working with people with disability.<sup>244</sup>

### **Good practice example 5.33: The Personal Helpers and Mentors Scheme (PHaMs)<sup>245</sup>**

PHaMs provides practical assistance for people aged 16 years and over whose lives are severely affected by mental illness.<sup>246</sup> PHaMs helps participants to overcome social isolation and increase their connections to the community by providing one-on-one support.

PHaMs has services specifically for employment.<sup>247</sup> PHaMs Employment Services focus on assisting people to address nonvocational, or personal issues that are barriers to finding and maintaining employment, training or education. These services work closely with government employment services to ensure that people with severe mental illness are able to use the labour market assistance that is available to them.

PHaMs Employment Services recognise and adopt an integrated approach to employment support. They provide people with mental illness with tailored support they need to achieve long-term employment objectives and participate in the community. The program also works to increase the capacity of other PHaMs providers to better assist people with mental illness who wish to achieve an employment or training outcome.<sup>248</sup>

Supports for people with disability should also include appropriate complaints mechanisms and programs to address discrimination. These structures empower all employees to provide feedback and comfortably raise issues that may affect their experience in the workplace and ability to fulfil their responsibilities. Having robust grievance processes demonstrates that employers are committed to providing appropriate support and care to their employees, and to ensuring positive and productive workplaces.

## (n) Partnerships

The Inquiry heard that many employers have found partnerships to be very useful and effective in increasing knowledge and understanding about disability, sharing experiences and good practice with other employers, and building capacity to improve recruitment and retention of people with disability. In 2015 the Business Council of Australia surveyed members about their disability employment practices and experiences. The survey found that companies nominated opportunities to collaborate, information on good practice, and assistance in building the business case as the main areas in which assistance would be valuable to help them overcome barriers.<sup>249</sup> Further, 85% of respondents thought that an effective strategy for attracting staff with disability involved ‘working with partner organisations to source talent’.<sup>250</sup>

Fortunately, in Australia, there are many opportunities for employers to partner with government agencies, disability and advocacy organisations, and service providers.

### **Good practice example 5.34: Partnership with the National Disability Recruitment Coordinator**

Spotless has partnered with the National Disability Recruitment Coordinator (NDRC) to build understanding and awareness to support people with disability into roles within the organisation. Over the year-long partnership the NDRC works to ensure that Spotless has a clear and inclusive strategy that includes disability awareness training, a fair and equitable recruitment process and access to external support and advisory services to ensure appropriate adjustments are accessible.

### **Good practice example 5.35: Heads Up**

The Mentally Healthy Workplace Alliance was established by the National Mental Health Commission in 2013 to promote a national approach by community, business and government to encourage Australian workplaces to become mentally healthy for the benefit of employees, employers and the whole community. Alliance members include the Australian Chamber of Commerce and Industry (ACCI), Australian Industry Group, the Australian Psychological Society Ltd, beyondblue, the Black Dog Institute, Business Council of Australia, Comcare, COSBOA, Mental Health Australia, Safe Work Australia, SANE, SuperFriend and the University of New South Wales.

Each Alliance member organisation works independently and in collaboration with other members to support Australian workplaces to take active steps to create workplaces that are mentally healthy. Employees and employers from a wide range of industries have used Alliance members’ resources.

### Good practice example 5.35: (continued)

beyondblue's national Heads Up program was developed with the support of the Alliance. Heads Up is an Australian-first initiative, launched in May 2014, which supports Australian businesses and workers to create mentally healthy workplaces. Heads Up aims to highlight the benefits of creating mentally healthy workplaces and to assist individuals and organisations to take action. The Heads Up website ([www.headsup.org.au](http://www.headsup.org.au)) provides a 'one stop shop' of free, simple, and practical information and resources to assist organisations and individuals to manage a broad range of mental health issues. Through the Heads Up website, employers can access a tool to develop a tailored and practical action plan for creating a mentally healthy workplace based on their specific need, as well as a wide range of general and tailored resources designed to help workplaces prevent mental health conditions and to support people with depression, anxiety or at risk of suicide in the workplace. The website is supported by a national marketing campaign and an engagement strategy focusing on both national and state based partnerships with workplace health and safety regulators, industry associations and high profile and influential businesses. Thousands of small, medium and large organisations have accessed beyondblue's national Heads Up program, with over 11,000 registrations and over 5,000 action plans completed. Evaluation of the Heads Up initiative to date has shown that Heads Up is positively shifting beliefs and attitudes in senior leaders and HR managers.

beyondblue has supported a large business within the transport industry in their use of Heads Up and Alliance resources to create a mentally healthy workplace. This business has developed an integrated mental health strategy, established a governance structure to support the implementation of this strategy with both a steering committee and operational working group with representatives from functions across the business, and conducted staff surveys to identify priority areas. They have also made resources available for employees and their families across their multiple sites, and have made Heads Up resources available on mobile devices for their staff to support their wellbeing whilst they are travelling for business. The most significant impact for this organisation has been a reduction in stigma; mental health is now spoken about openly across the business. Staff have embraced the initiative and improvements in staff engagement occurred.

Another organisation using Heads Up is a medium sized business from the health sector, who have appointed a dedicated resource to support the implementation of their strategy. They have provided staff with mental health information packs, established links to external service providers (in addition to their Employee Assistance Program) offering to provide employees with multiple channels to seek support, and have implemented a reward and recognition program to highlight the achievements and contribution of their employees. The outcomes that this business has seen from a relatively low cost initiative have been significant, after only a short amount of time. Outcomes have included a reduction in workers compensation claims, a decrease in cancelled or rejected shifts, and employees referring other staff to join the team because they see it as a great place to work.

For more information, visit [www.headsup.org.au](http://www.headsup.org.au).<sup>251</sup>

### **Good practice example 5.36: Infoxchange Australia in partnership with Social Firms Australia and Alpha Autism**

In 2011, Infoxchange Australia, in partnership with Social Firms Australia and Alpha Autism established a software testing social enterprise firm called TestIT, which leverages the unique talents of people with Asperger's syndrome. Its purpose is to create accessible and durable employment for people facing barriers to work as a result of Asperger's syndrome, while at the same time generating the majority of its income through commercial activity.

Software testing requires long periods of concentration and the ability to recognise flaws in repetitive information. Hiring people with Asperger's syndrome has proven to be a competitive advantage in software testing firms.

IT companies all over the world are picking up on this previously hidden human resource. In 2015, Microsoft announced a pilot program to hire people with autism spectrum disorder. The company sees diversity as a strength in the organisation and many people with autism bring particular skills in retaining information, detailed thinking, and excellence in maths or code.

For more information visit: [www.testit.infoxchange.net.au/about](http://www.testit.infoxchange.net.au/about).<sup>252</sup>

Recognising that employers have varying capacities in increasing employment of people with disability, the concept of a corporate mentor or employer network has been suggested as a potential strategy for sharing knowledge and good practice between industries and counterpart employers. While a relatively new concept in Australia, employer networks have developed in a number of OECD countries as a result of either government initiatives or groups of employers.<sup>253</sup>

For example, one of the main aims of the Business Disability Forum (formerly known as the UK Employers' Forum on Disability) is to collect and share experience. The forum provides practical support to employers by sharing expertise, giving advice, providing training and facilitating networking opportunities. This helps organisations become fully accessible to customers and employees with disability.<sup>254</sup>

Employer networks in the Netherlands and Sweden have been useful in helping employers redeploy workers who are no longer suited to a particular job because of illness or injury to other employers, without the involvement of public authorities.<sup>255</sup> According to the OECD, the benefits of such arrangements include strengthened employer responsibility and willingness to hire workers from other companies in anticipation that they may have to rely on that company to redeploy their own workers.<sup>256</sup> In addition, networks operating at regional levels could potentially stimulate transfer of workers across sectors.<sup>257</sup>

### **Good practice example 5.37: Hospitality Disability Business Network in Perth, WA**

On 1 March 2016, Crown Resorts initiated the first meeting of a Hospitality Disability Business Network in Perth. This meeting commenced a unique and important process of bringing together various employers in the hospitality sector with the aim of improving the employment of people with disability.

The network will also provide support to employers by other employers who are further along their journey to inclusive workforces and can share their experiences and good practices.

Both the CROWNability program and the Hospitality Disability Business Network are positive examples of what private-sector employers can do to improve the inclusion of people with disability in their own workforce, and support like-minded businesses.

### **(o) Monitoring and accountability**

As one employer put it, ‘what gets measured, gets done’.<sup>258</sup> Monitoring and accountability of employment of people with disability is critical to understanding an organisation’s starting position and progress. The first step is to collect and report workforce data, followed by the development of strategies based on findings. Another suggestion made by individuals and employers alike is to incorporate employment of people with disability into managers’ or organisations’ overall key performance indicators (KPIs). Some people referred to gender reporting in Australia as evidence of motivating employers through monitoring and accountability measures.

Gender has a big focus at the moment. This is because there is a compliance element obliging reporting on gender...If businesses are to start tackling disability and age discrimination issues, there needs to be reporting guidelines like those of the Workplace Gender Equality Agency. If there were reporting requirements, those areas would get more focus...We need compliance and reporting — [the] first question is to work out where we are and then what do we need to get to the place we want to be.<sup>259</sup>

If you give large corporates KPIs they will focus on them and start to change attitudes... All companies do have targets on women for example.<sup>260</sup>

Reporting turns the light bulb on for organisations and helps them to understand their workforce.<sup>261</sup>

Self-reporting of diversity of workforces should become a routine element of business reporting made available in the public domain.<sup>262</sup>

## **(p) Procurement and supply chain**

Recent research by the Australian Human Rights Commission, Global Compact Network Australia, and the Australian Centre for Corporate Social Responsibility, found that:

Addressing human rights issues has become more important within Australian businesses' sustainability agendas and businesses are increasingly linking human rights issues to their supply chains.<sup>263</sup>

The Inquiry met with many employers who were committed to 'doing the right thing' in respect of procurement and the supply chain. The above study also found that business focus their human rights efforts where they have direct operational control.<sup>264</sup> Employers thus have the opportunity to increase representation of people with disability in the workforce through their procurement practices and supply chains.

The Inquiry has referred to similar practice in the area of Aboriginal and Torres Strait Islander employment as a potential model for lifting the labour force participation of older people and people with disability.

The Inquiry heard that there are employers who are already leading the way in this area as demonstrated in the following case studies.

### **Good practice example 5.38: National Australia Bank (NAB) Preferred Supplier Service Agreement**

NAB aims to carry out best-practice recruitment procedures including the requirement for a gender mix of short-listed candidates and decision panels for senior roles and a diversity clause in their Preferred Supplier Service Agreement. Since January 2012, NAB's preferred external recruitment agencies are required to demonstrate that they comply with NAB's Diversity and Inclusion Policy, have a written diversity policy or framework, and undertake appropriate diversity training for their people.

### **Good practice example 5.39: Gold Coast City Council tender opportunities for social benefit suppliers**

In 2012, the Gold Coast City Council began offering tender opportunities directly to social benefit suppliers in order to provide employment opportunities for the city's most disadvantaged residents. Council uses a proportion of its annual procurement spend for social benefit.<sup>265</sup> It works with social groups and suppliers to expand opportunities and identify suitable procurement categories for social procurement initiatives.

One such contract is for internal cleaning services for council buildings, including administration centres, libraries, branch offices, councillor offices, aquatic centres, community and youth centres. It involves \$1.4 million per year for four years. Seventy four disadvantaged residents, including people with disability and mental illness, gained employment through this contract. The council has experienced improved levels of service and savings as a result of this initiative.<sup>266</sup>

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## **(q) Recommendations for employers**

The ideas and case studies showcased in this chapter demonstrate a range of ways in which private and public sector employers of all sizes can recruit and retain people with disability and create inclusive workplace cultures and practices. There is no single 'one size fits all' approach and the Inquiry acknowledges the broad range and diversity of large, medium and small businesses, industries and contexts. The following suite of strategies are based on the research and evidence gained by the Inquiry and are offered for consideration by employers. Many of the strategies may lend themselves more readily to larger employers however the Inquiry trusts that small and medium enterprises will find strategies that they can usefully adopt in their context.

### *(i) Leadership commitment*

Leaders should commit to recruiting and retaining people with disability and building inclusive workplace cultures by developing and communicating a strong statement of commitment to action by CEO and leadership. This needs to be supported by a coherent and systemic organisational business strategy which clearly links to business goals, articulates the business case and incorporates the following:

- setting voluntary targets for the recruitment and retention of people with disability based on analysis of workforce and customer data
- developing and implementing practical strategies and supports to achieve targets and articulating them into performance agreements and appraisals
- collecting baseline data on employment/retention of people with disability to raise visibility of issues, tracking and reporting on progress regularly
- monitoring and accountability within the organisation and externally
- networking and employer–employer mentoring
- partnerships with expert or specialist organisations
- working, with or encouraging, the supply chain to recruit and retain workers with disability and adopt inclusive practices
- providing guidance to support disability disclosure in a non-threatening and non-discriminatory manner
- providing accessible ICT across all the organisation's functions and access points
- making it easy to provide workplace adjustments
- facilitating and supporting employee networks to support diversity initiatives
- providing internship/traineeship/apprenticeship, mentoring programs.

### *(ii) Ensure non-discriminatory recruitment and retention practices*

- Review attraction, recruitment and retention processes to ensure non-discriminatory practices, language and accessibility.
- Where recruitment agencies are used, build organisational expectations about diversity, non-discriminatory practice and compliance with legal obligations into contracts.
- Ensure retention practices do not discriminate against people with disability, for example, access to opportunities for promotion, training and professional development.

*(iii) Build workplace flexibility*

Ensure that flexible work practices are ‘mainstream’<sup>267</sup> by making job design and work environments (for example, location and hours) flexible for all (rather than only on request or by exception), as far as the demands of the role allow.

*(iv) Provide targeted education and training in the workplace*

Support employees with disability in the workplace with information about

- their rights and responsibilities, organisational policies, grievance mechanisms
- flexible leave options
- employee driven networks.

Support managers and supervisors in creating and managing diverse teams and flexible workplace by:

- assisting with job redesign, building skills to manage employees flexibly, providing information for managers for example mental health guidelines
- support and training on the nature and impact of discrimination.

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# Chapter 6:

What peak  
bodies and  
professional  
associations  
can do

## Summary

Peak bodies and professional associations<sup>1</sup> can play a significant role in helping their members to address employment discrimination and lifting the labour force participation of older Australians and Australians with disability. This includes providing support to members, developing tailored education and training resources, facilitating partnerships, setting standards and sharing and rewarding good practices.

This chapter considers the role that peak bodies and professional associations can play in addressing employment discrimination against older Australians and Australians with disability.

The Australian Chamber of Commerce and Industry sees industry bodies as having a pivotal role in a number of key areas including helping to connect employers with people willing to work; providing information on training options and funding and incentives available to support employment outcomes; and promoting the business case for employing outside the box in order to shape and challenge perceptions.<sup>2</sup>

The Illawarra Forum recommends that peak business and employee groups collaborate and work together to promote more flexible work environments.<sup>3</sup>

## 6.1 Support members

As mentioned previously, businesses, particularly small and medium enterprises, may have more limited knowledge of the supports and assistance that are available to them and where to find relevant information. Many individuals and organisations suggested that peak bodies and professional associations can play a critical role in supporting members by providing resources such as specialist advice and contacts regarding diversity and inclusion matters in employment, for example:

Governments should establish independent contact officers located within various peak industry bodies across Australia to provide practical advice and assistance to employers around workforce ageing issues. This could include industry-based information products to educate older people of their rights in employment and employers and recruiters of their obligations under anti-discrimination legislation.<sup>4</sup>

National Seniors believes that peak employers and industry groups could promote the active use of age management strategies by businesses across Australia to support the employment of older Australians.<sup>5</sup>

Rather than more legislation, support (including financial support) and education programmes are required. Support through peers such as employer associations has been shown to be the most trusted form of communication.<sup>6</sup>

### **Good practice example 6.1: A single point of contact for employers on disability employment issues**

NSW Business Chamber has recently appointed their first Disability Inclusion Promotion Officer. The officer's role involves providing guidance to businesses on how they can create workplaces that promote inclusion and remove barriers that may prevent people with disability from being able to participate and contribute to their workplaces.

The Disability Inclusion Promotion Officer can help businesses:

- discover meaningful employment opportunities
- determine whether they are eligible to receive funding for employing someone with disability
- assist development of diversity training programs
- identify and remove barriers to services for people with disability
- provide information and services in a range of formats that are accessible to people with disability.

## 6.2 Develop tailored resources

Each industry has its unique opportunities and constraints. Industry-specific research allows industry to understand how to secure and maintain the employment of older Australians and Australians with disability.<sup>7</sup>

Peak bodies and professional associations are best place to understand the concerns and interests of their members and constituents, and to develop customised resources regarding the benefits and strategies for employment of older people and people with disability. Through their members, peak bodies can educate and inform employers and employees about their rights and obligations in the workplace.

In addition, peak bodies are more likely to be aware of the government supports and assistance available to employers and can play a key role in disseminating such opportunities in a variety of ways including seminars, media releases, social media or articles in relevant industry journals.<sup>8</sup>

Particular attention should be given to resources for small and medium organisations and businesses that may be less aware of available programs and initiatives and their obligations.<sup>9</sup>

A number of peak bodies and organisations have developed resources to assist employers and HR practitioners with employing older people and people with disability as listed below:

- Australian Industry Group Investing in Experience toolkit — provides a practical guide to employing and managing mature-age workers. It provides practical help for organisations to assess the demographics of the workforce, to identify and address potential skill and knowledge gaps, and to recruit and retain experienced staff. The kit includes a mature-age employment self-assessment tool, action plan template, recruitment tips, checklists, case studies and practical suggestions to retain older employees. The kit includes information on: flexible working arrangements, superannuation and pensions for mature-age workers, providing a safe workplace, maximising training and development outcomes and removing unlawful age discrimination from recruitment practices. For more information visit: [www.employment.gov.au/investing-experience-employment-charter-and-tool-kit-0](http://www.employment.gov.au/investing-experience-employment-charter-and-tool-kit-0).

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- Australian Chamber of Commerce and Industry Employ Outside the Box resources includes information on recruiting and retaining mature-age workers, people with disability and a diverse workforce more generally [www.acci.asn.au/program/employ-outside-box](http://www.acci.asn.au/program/employ-outside-box).
  - Diversity Council Australia's Get Flexible: Mainstreaming Flexible Work in Australian Business (2012) research sets out clear, practical steps for businesses wanting to make flexible work and careers standard business practice: [www.dca.org.au](http://www.dca.org.au).
  - National Seniors has developed an age management toolkit for employers, which provides a 'one-stop-shop' of comprehensive and practical information for employers, supervisors, managers and HR professionals, to successfully initiate, implement and evaluate effective age management strategies with the aim of recruiting and retaining mature-age staff. The toolkit is designed for individual tailoring according to specific sectors, industries, organisation size, workforce profiles and goals<sup>10</sup> at <http://nationalseniors.com.au/>.

#### **Good practice example 6.2: Workplace Disability Inclusion Assessment Tool for employers<sup>11</sup>**

The US Chamber of Commerce has developed a 'Workplace Disability Inclusion Assessment Tool', a checklist designed to provide companies with a tool to initiate or enhance their disability-friendly corporate practices. The checklist was included in a resource published by the US Chamber which included examples of leading practices on disability inclusion.

### 6.3 Facilitate partnerships

In addition to having access to members and constituents, peak bodies also have access to networks and the potential to facilitate partnerships between businesses and across sectors and industries. Employer networks can help organisations manage and maintain a sustainable workforce and increased cooperation between employers across sectors and industries and may assist the wider dissemination of good practices amongst the employer and business community.

#### **Good practice example 6.3: Connecting employers to jobseekers**

The Australian Chamber of Commerce and Industry (Australian Chamber) has partnered with Campbell Page to assist members and industry in creating direct links between industry needs and the workforce.<sup>12</sup> Through the partnership, Campbell Page has funded a position within the Australian Chamber to work with employers and help connect business to publicly funded employment services and job seekers, including people with disability.<sup>13</sup> The service also helps to identify support available to employers that will assist with ensuring that people are job-ready, and that employer incentives available can be accessed for the best possible outcome which is for people to be in sustainable employment.<sup>14</sup>

For more information visit <http://www.acci.asn.au/our-members>.

## 6.4 Standard setting

Members and constituents look to peak bodies and professional associations in considering industry standards and codes regarding workplace and employment matters. Similarly, peak bodies can play an important role in developing standards for the employment of older people and people with disability and leading by example. Setting high standards can have the effect of positively influencing behaviours, and change in behaviour over time can lead to cultural change. There may also be a role for peak bodies to monitor standards amongst its members.

Peak industry bodies should promote standards of behaviour through discussion, leadership and modelling of behaviour. This may include a communications plan on how to promote employment and equality for people with disabilities within the industry and individual workplaces, such as publishing articles in industry newsletters and journals, publishing examples of good practice case studies of employing people with disabilities in the industry.<sup>15</sup>

Another suggestion for setting standards is the creation of a ‘heart tick’ style accreditation program that acknowledges an organisation’s level of disability competence, or diversity competence more broadly, and recognises them as an employer of choice.<sup>16</sup> Such a system could have varying levels of accreditation attainment based on the size of the business given differences in time and resource constraints.<sup>17</sup>

### **Good practice example 6.4: Accreditation for disability confident employers**

Accreditation is a way to ensure organisations meet a high standard of inclusion in recruitment and workplace practices and a way of signalling to job seekers and the community that an organisation positively encourages the employment of people with disability. An example of an accreditation program is the ‘two ticks’ symbol used in the United Kingdom.<sup>18</sup> The ‘two ticks’ symbol can only be included in job advertisements for organisations that have demonstrated to the JobCentre organisation that they are committed to:

- interview all disabled applicants who meet the minimum criteria for a job vacancy and to consider them on their abilities
- discuss with disabled employees, at any time but at least once a year, what they can both do to make sure they can develop and use their abilities
- make every effort when employees become disabled to make sure they stay in employment
- take action to ensure that all employees develop the appropriate level of disability awareness needed to make these commitments work
- review these commitments every year and assess what has been achieved, plan ways to improve on them and let employees and Jobcentre Plus know about progress and future plans.<sup>19</sup>

This scheme has had mixed success in the UK because there is very limited independent monitoring or governance arrangements to review how employers meet the five commitments.<sup>20</sup> This highlights that a disability confident employer accreditation scheme will only be effective where appropriate resources are dedicated to monitoring and ensuring accredited organisations deliver on their commitments.<sup>21</sup>

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## 6.5 Share and reward good practice

When employers were asked what would help increase employment of older people and people with disability, the Inquiry heard that knowledge exchange and sharing of good practice is a powerful way for employers to understand what works. Through its membership, peak bodies can facilitate the sharing of information and practices through their website, newsletters, social media and other employer forums.

Success stories are really important, what works, where the challenges have been and how those challenges have been addressed.<sup>22</sup>

The Employers' Disability Network Trust was a not-for-profit network in New Zealand of mainly larger employers. Its purpose was to share best practice experience of working with people with disabilities in all areas of business. The Trust was disbanded in 2013 and replaced by Be. Employed.<sup>23</sup> Be. Employed invites employers to learn, share and shift their own employment practices by viewing people with disabilities as a large consumer group, in order to tap into the wealth of opportunity in the access employment market.<sup>24</sup>

A further suggestion was to encourage employers by rewarding organisations that demonstrate commitment and success in employment of older people and people with disability. Such efforts could be recognised through diversity achievement awards.<sup>25</sup> For example, annual industry awards could be expanded to include recognition of employers who have innovative strategies and programs to attract and retain older people and people with disability and are leading their sectors and industries in these areas.

### **Good practice example 6.5: International awards for best employers of people over 50**

In the US the AARP Best Employers for Workers Over 50 program awards businesses and organisations that have implemented new and innovative policies and best practices in talent management.

The Best Employers program recognises that a growing number of US employers are developing progressive policies and practices that are meeting the needs of an ageing workforce. One of the goals of the program is to share the best practices of these award-winning employers with the business community at large and to promote employment opportunities for older workers. The award is given out every two years to allow employers to develop, test and implement effective strategies to attract and retain top talent.

While the program is based in the US there is an international award category which recognises good practices from Australia, Austria, Germany, Japan, Malaysia, the Netherlands, Singapore and the United Kingdom.

Information and details on policies and practices of award winners are posted on the AARP website which acts as an education tool for employers seeking guidance on innovative strategies.<sup>26</sup>

### **Good practice example 6.6: Ability at Work Campaign**

Ability at Work is a campaign in north Queensland established in August 2015 that aims to highlight the many skills, abilities and achievements of people with disability in the workforce. The campaign is also about acknowledging employers and businesses that recognise the positive contributions people with disability bring to their workplace.

The campaign website encourages people to take action by nominating a business that employs a person with disability, supporting businesses that employ people with disability, and spreading the word about the campaign.<sup>27</sup> The campaign also aims to highlight the positive role that business plays in providing meaningful employment to people with disability on social media and via the campaign website. The program is funded through the federal Department of Education.

Building and promoting the business case which clearly articulates the benefits to business, productivity and workforce sustainability.

## 6.6 Recommendations for peak bodies and professional associations

Peak bodies and professional associations have key roles to play in addressing employment discrimination and lifting labour force participation of older people and people with disability. In recognition of this role the Inquiry has recommended in this Report that the Australian Government fund the provision of a network of outreach workers through business chambers or other relevant peak or industry bodies in order to work collaboratively with businesses.

To further support achieving significant change, the Inquiry recommends that peak bodies and professional associations consider the following:

- fostering networks and partnerships to share ideas and experience
- promoting champions and awards programs, showcasing good practice and positive stories
- developing partnerships with employment agencies, educational institutions, skill training programs, and social enterprises to build a skilled workforce
- bringing different industries together to develop strategies to transition people from declining industries to growth industries
- providing information and resources, for example, on how to provide more flexible workplaces, the availability of government-funded programs like the *Restart* wage subsidy and the Employment Assistance Fund
- consider developing industry or professional standards and accreditation systems for workforce diversity. Accreditation would be positioned and promoted as a valued asset by business which allows consumers to make an informed, reliable choice.

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# Chapter 7:

## Federal discrimination laws and the Fair Work Act

## Summary

- Federal discrimination laws and the Fair Work Act provide an important means of preventing and redressing employment discrimination against older people and people with disability. Ensuring that this legislative framework is meeting its intended objectives is essential.
- The Inquiry recommends that further consideration and review of elements of the legislative framework and the interaction between laws is required to ensure effective access to justice for those who have experienced discrimination.

The Terms of Reference for the Inquiry ask the Australian Human Rights Commission to inquire into and make recommendations about Commonwealth laws that should be made or amended in order to address employment discrimination against older Australians and Australians with disability.

This section outlines the range of issues raised with the Inquiry regarding federal discrimination laws and the *Fair Work Act 2009* (Cth) (Fair Work Act) by individuals, industry associations, community legal centres, unions and employers. The federal discrimination laws and the Fair Work Act provide an important means of preventing and redressing discrimination in employment.

Appendix 6 provides an overview of federal discrimination laws, the Fair Work Act and the complaints powers of the Australian Human Rights Commission.

There are four pieces of legislation which are referred to as the federal discrimination laws:

- *Disability Discrimination Act 1992* (Cth) (Disability Discrimination Act)
- *Age Discrimination Act 2004* (Cth) (Age Discrimination Act)
- *Sex Discrimination Act 1984* (Cth) (Sex Discrimination Act)
- *Racial Discrimination Act 1975* (Cth) (Racial Discrimination Act).

This Report deals mainly with the Disability Discrimination Act and the Age Discrimination Act. Each state and territory has their own anti-discrimination legislation,<sup>1</sup> however the Terms of Reference of this Inquiry direct us to examine Commonwealth laws.<sup>2</sup>

The Fair Work Act protects employees from discrimination by prohibiting adverse action because of a person's age, disability or any other protected attribute (such as race or sex).<sup>3</sup>

The issues raised with the Inquiry are complex and interconnected, and there are a range of views to be considered. Many of the concerns identified in submissions and consultations have been considered in previous inquiries and reviews including, for example:

- the Productivity Commission's 2004 Review of the Disability Discrimination Act 1992<sup>4</sup>
- the Senate Standing Committee on Legal and Constitutional Affairs' *Inquiry into the effectiveness of the Sex Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equality in 2008* (2008 SDA Senate Inquiry)<sup>5</sup>
- the Consolidation of Commonwealth Anti-Discrimination Laws<sup>6</sup>
- in the 2012 Post-Implementation Review of the *Fair Work Act 2009* (Cth).<sup>7</sup>

For the purposes of this Report, the Inquiry has focused on elements of the federal discrimination laws and the Fair Work Act identified as impacting on equal participation in employment of older people and people with disability.

## 7.1 Issues

### (i) Underreporting

The concern raised most frequently with the Inquiry in relation to the effectiveness of legal protections was that individuals do not always make a complaint or take other formal action after experiencing discrimination, whether it is to the Australian Human Rights Commission, to the Fair Work Commission or through internal workplace grievance processes.

The Commission's own data reflects this. In the *2015 National Prevalence Survey of Age Discrimination in the Workplace*, over a quarter (27%) of Australians aged 50 years and over indicated that they had experienced some form of age discrimination in the workplace.<sup>8</sup> However, 43% of those who reported experiencing age discrimination did not take any action. Of those that did take action, only 5% discussed the issue with an external organisation and only 14% raised it within their organisation. The most common form of taking action was to leave, or think about leaving, their job (23%) or discussing the experience with family, friends or colleagues (15%).<sup>9</sup>

Complaints about age discrimination make up the smallest percentage of complaints received by the Australian Human Rights Commission — only 6% of all complaints lodged with the Commission in 2014–15 (149 complaints) were made under the Age Discrimination Act.<sup>10</sup>

Complaints under the Disability Discrimination Act, on the other hand, consistently make up the highest percentage of complaints received by the Australian Human Rights Commission each year and in 2014–15, 740 complaints were received making up 31% of all complaints.<sup>11</sup> Despite this, an analysis of information received through consultations and submissions suggests that the number of complaints received under this legislation does not accurately reflect the prevalence of workplace discrimination against people with disability. As previously stated, the number of complaints is only one indicator of the prevalence of discrimination.

Data provided to the Inquiry by the Fair Work Ombudsman (FWO)<sup>12</sup> shows that the number of complaints received by the FWO containing an allegation of discrimination has decreased over the past two years:

- In 2012–2013, 24 complaints about age discrimination were received, compared with nine complaints about age discrimination in 2014–2015.<sup>13</sup>
- In 2012–2013, 47 complaints about disability discrimination were received, compared with 12 complaints in 2014–2015.<sup>14</sup>

In submissions to the Inquiry, respondents were asked whether they had experienced age or disability-related discrimination in employment and if so, whether they took any action. Of the 135 individuals who submitted to the Inquiry and responded positively to this question, only 42 had taken any action in relation to the discrimination experienced.<sup>15</sup> Only 11 reported making a complaint to the Commission or a state and territory anti-discrimination and equal opportunity agency or taking other legal action.<sup>16</sup>

A number of submissions to the Inquiry by organisations reported the results of similar surveys of their members which highlight concerns about underreporting of discrimination. For example:

NSW Nurses and Midwives conducted a survey of 331 members. 101 individuals reported experiencing age discrimination in employment.<sup>17</sup> The survey also asked respondents whether they had taken any action in relation to the age discrimination experienced — only 23 reported that they took action.<sup>18</sup>

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The Shop, Distributive and Allied Employees' Association reported the results of a similar survey. Of 345 respondents, 227 reported experiencing discrimination in employment, however only 73 of those took any action in relation to the discrimination experienced.<sup>19</sup>

A submission from Professionals Australia also included a member survey. Of the 1,671 responses received, 16.6% reported that they had received less favourable treatment on the basis of their age and 13.7% said they had experienced other age-related bias.<sup>20</sup> Of those who experienced discrimination, 54% reported taking no action in response to the discrimination.<sup>21</sup>

A submission from the NSW Public Service Association cites the results of a 2014 employee survey undertaken by the Public Service Commission.<sup>22</sup> Of the 73,550 responses received, 41% of people reported witnessing bullying at work.<sup>23</sup> Only 21% of those made a formal complaint.<sup>24</sup>

YourLifeChoices, a website which provides information to older Australians, also undertook a survey of its members and received 5,474 responses. 27% of respondents reported experiencing workplace discrimination and of those, 28% reported taking action in response to the discrimination experienced.<sup>25</sup>

In relation to age discrimination in employment, Kingsford Legal Centre raised concerns about low numbers of requests for assistance:

Between July 2014 and June 2015, Kingsford Legal Centre provided ten advices and undertook casework for one client who faced age discrimination. These numbers are significantly lower than advices and casework for other types of discrimination. We believe that age discrimination is underrepresented in our data because of the specific difficulties older workers and job seekers face in identifying and reporting this type of discrimination.<sup>26</sup>

The Disability Council NSW raised similar issues in relation to complaints about disability discrimination in employment:

The number of complaints to AHRC will not accurately reflect the extent to which discrimination against people with disability in employment exists. When discrimination does occur, people with disability may be reluctant to report it for fear that it might lead an employer to treat them even more unfavourably. Disappointingly, many people with disability have low expectations about employment that are a direct result of their experiences and the barriers people with disability face to employment.<sup>27</sup>

Taken together, this information indicates that many people in the community who experience discrimination on the basis of their age or disability do not take any action in response. This section will examine the experiences of some individuals in making a complaint and the reasons for underreporting that were raised with the Inquiry.

### *(ii) Access to legal assistance*

Individuals and organisations raised concerns about complainants' access to legal advice and representation.

In terms of lawyers providing advice to people; legal assistance is an increasing problem, legal aid commissions lack funding and as a result have stringent means testing requirements.<sup>28</sup>

A lack of awareness as to rights creates a barrier to accessing justice.<sup>29</sup>

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Legal Aid Queensland stated that discrimination law is ‘confusingly drafted and exists across a bewildering number of legislative instruments in multiple jurisdictions’, creating difficulties for a non-lawyer trying to understand their rights — particularly in terms of deciding which jurisdiction to make a complaint in.<sup>30</sup>

Ai Group put forward similar views about the legislation from the point of view of employers:

The multiplicity of laws (both Federal and State) dealing with discrimination specifically, compounded by the general protections in the *Fair Work Act 2009* (Cth), have resulted in a genuine concern amongst employers about these laws. The complexity of the relationship between these laws is also very daunting for an employer to understand.<sup>31</sup>

A submission from Redfern Legal Centre identifies some of the specific barriers faced by people with disability in accessing the legal system:

Poorly resourced specialist services, a reliance on others to access legal assistance, a lack of access to AUSLAN interpreters and an inability to navigate or access information on websites.<sup>32</sup>

Another issue raised was the disparity between the financial capacity of complainants and employer respondents to engage legal representation.<sup>33</sup> Individuals told the Inquiry:

My employer hired a big legal firm and was ready to fight the discrimination claim.<sup>34</sup>

The businesses are often large corporations with large pockets and the best of legal advice.<sup>35</sup>

I had no legal representation but the employer did.<sup>36</sup>

Submissions from community legal centres and unions raised similar concerns:<sup>37</sup>

The conciliation process can disadvantage the complainant as there is often a power imbalance. This is particularly evident where the respondent is a company or a government agency, and the complainant is unrepresented, often due to a lack of funds and the insufficient resourcing of the legal assistance sector.<sup>38</sup>

### *(iii) Costs of court action*

The Inquiry heard that for matters that cannot be resolved through conciliation, the potential high cost of legal action and fears of adverse costs orders can act as a deterrent to individuals pursuing a complaint of discrimination in court.

Costs awards can be made in both the Federal Court and the Federal Circuit Court.<sup>39</sup> In proceedings under the Fair Work Act, parties generally bear their own costs.<sup>40</sup>

Individuals told the Inquiry about their experiences pursuing legal action:

If an action is taken then the risk of costs in adverse decision are damning. On one hand I understand that costs may act as a disincentive for frivolous and vexatious actions but it excludes a whole group from defending and protecting their rights.<sup>41</sup>

I had no legal representation but the employer did. It was clear the employer would not allow me back to work and a confidential settlement was eventually reached under the threat that if I lost in the Tribunal I would be subject to a costs order.<sup>42</sup>

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In the end, I had no choice but to settle due to...the reality that to continue on to a full hearing of the anti-discrimination complaint would bankrupt me; the fact that the employer had unlimited resources with which to continue.<sup>43</sup>

Similar concerns were expressed by community legal services and other organisations on behalf of their clients and members.<sup>44</sup>

Kingsford Legal Centre characterise employer respondents as having ‘comparatively greater access to legal representation and other resources’<sup>45</sup> and therefore having ‘a significant advantage’<sup>46</sup> over complainants in matters that proceed to Court.

This acts to suppress the ability of applicants to negotiate fairly at conciliation — resulting in settlements at conciliation that do not reflect the seriousness of the discriminatory conduct or the strength of the evidence in the case, largely because of the risks and pressure of litigation in a costs jurisdiction against better-resourced respondents.<sup>47</sup>

#### *(iv) Emotional toll of pursuing a complaint*

The Inquiry heard that discrimination in employment, and even the process of taking action in relation to discrimination, can have a significant emotional toll on individuals.<sup>48</sup>

In consultations and submissions, the Inquiry heard from individuals who described their experiences with the complaint and court processes:

I got worn out by the process.<sup>49</sup>

It’s confusing, daunting.<sup>50</sup>

People are just trying to deal with life, like finding accommodation, having enough money.<sup>51</sup>

The case lasted for almost two and a half years and cost over \$220,000.00 in legal fees...If I had known what I would be put through, I would never have considered taking action... The organisation protected their HR manager and senior executives who still have their highly paid jobs. The financial costs to them are insignificant. I am left to somehow pick up the pieces of my life.<sup>52</sup>

#### *(v) Burden of proving discrimination*

Organisations and individuals raised concerns with the Inquiry about the difficulties of proving that discrimination had occurred.

The Age Discrimination Act and Disability Discrimination Act prohibit both direct and indirect discrimination:

- Direct discrimination happens when a person, or a group of people, is treated less favourably than another person or group because of their background or certain personal characteristics, such as their age or disability.
- Indirect discrimination occurs when there is a rule or policy that is the same for everyone but has an unfair effect on people who share a particular attribute.

The burden of proving direct discrimination in court proceedings rests with the complainant.<sup>53</sup> In complaints of indirect discrimination under the Age Discrimination Act and the Disability Discrimination Act, once the complainant has established that a requirement or condition has the effect of disadvantaging older people or people with disability, the burden of proof shifts to the alleged discriminator to prove that the requirement or condition is reasonable in the circumstances.<sup>54</sup>

The Fair Work Act adopts a reverse onus of proof for discrimination complaints.<sup>55</sup> The Fair Work Act requires an applicant to establish the fact of the alleged conduct, and allege a reason for that conduct. The reason is then presumed to be the reason for the conduct unless the respondent proves otherwise.

A number of individuals discussed the difficulties of proving discrimination with the Inquiry:

I found it hard to prove the age discrimination as often it was subtle...and sounded quite trifling when written on paper.<sup>56</sup>

Several community legal centres and legal aid commissions also raised concerns about proof in discrimination matters, noting that it is particularly difficult for complainants to produce evidence where the discrimination occurred during recruitment.<sup>57</sup>

It is very difficult for the complainant to prove the employer respondent's state of mind without ready access to evidence which is generally held only by the respondent.<sup>58</sup>

Even if our client's evidence about a discriminatory question or comment is accepted, this alone does not prove that they would have been employed if they were younger or did not have a disability.<sup>59</sup>

The Shop, Distributive and Allied Employees' Association and NSW Nurses and Midwives both conducted surveys of their members, the results of which formed the basis for their respective submissions. Both submissions state that their members report not taking action in response to discrimination because they feel it is difficult or impossible to prove that the discrimination occurred.<sup>60</sup>

#### *(vi) The comparator test*

In order to prove direct discrimination in court, the complainant must meet the 'comparator test'. The test requires a comparison to be made between the way in which a person with a protected attribute (such as disability or age) is treated and the way in which a person without that attribute would have been treated in circumstances that are materially the same.<sup>61</sup>

Concerns about the comparator test were raised with the Inquiry by legal aid commissions and community legal centres:

The comparator test is complicated and contentious.<sup>62</sup>

This requirement is restrictive and operates as a significant detriment and barrier to our clients utilising the protection provided by these laws... Forcing applicants to prove that someone else in those circumstances would have been treated better if they didn't have a disability or were younger is artificial and fails to adequately address the cause of the discrimination.<sup>63</sup>

The legal test that requires a comparison of the treatment of someone without the particular characteristic has impacted on the ability of people facing complex forms of discrimination where there is no genuine comparator. Furthermore, the exact characteristics attributed to the comparator (often hypothetical) often determine whether a case can succeed or fail.<sup>64</sup>

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The following case studies provided to the Inquiry highlight some of these concerns about the comparator test:

### **Case study 7.1**

A client who is dismissed because they required six weeks personal leave due to a hospitalisation following an exacerbation of their mental health condition might be compared with an employee who required six weeks unexpected and unauthorised leave unrelated to a disability. In this case the Court is likely to find that the employer would have treated the other employee requiring a long unexpected period of leave without a disability no differently to our client, therefore the dismissal was not discriminatory.<sup>65</sup>

### **Case study 7.2**

Nicholas has a physical and mental disability. His physical disability limits the amount of time he can spend seated at a desk on the computer. After being employed for over seven years, there was a restructure in the organisation that resulted in a substantial increase in the amount of time he had to spend seated at a desk on the computer. Nicholas was no longer able to meet his targets and was experiencing harassment from his manager and other employees. The effect of the changes and harassment led to depression and anxiety, necessitating time off to address his mental health concerns. His employment was terminated. The reason provided by his employers for the termination was the amount of sick leave he was taking. Difficulty arises in Nicholas's matter when applying the comparator test, when comparing him to a person without a disability that could not meet his new targets and then had to take time off work.<sup>66</sup>

#### *(vii) Fear of victimisation following a complaint*

Although the Age Discrimination Act and the Disability Discrimination Act both prohibit 'victimisation' for making a complaint to the Australian Human Rights Commission,<sup>67</sup> the Inquiry heard that for many individuals, fear of negative repercussions still had a significant impact on their decision about whether to pursue formal action in relation to discrimination:

Everyone knows someone who knows someone. If you complain it will come back to bite you... we aren't a big place.<sup>68</sup>

If word got out that I had made a complaint I wouldn't be able to get another role.<sup>69</sup>

I had to agree to resign my position — therefore I have no recent experience and no references. As I am bound by confidentiality, I cannot explain the reasons for this to a prospective employer. Even if I could, I doubt any employer would risk taking on someone who could be seen as 'litigious' as well as having my disability.<sup>70</sup>

I have no confidence in the confidentiality process to say if I lodged a complaint it would be obvious it came from me and the employers can get around the processes so easily and then not refer to age as a barrier and simply say the candidate misunderstood. Going forward you would not even get an interview as you are a trouble-maker.<sup>71</sup>

According to the member survey conducted by the Shop, Distributive and Allied Employees Association, one of the main reasons respondents reported not making a complaint was fear of victimisation.<sup>72</sup>

Victoria Legal Aid's submission raises similar concerns:

Discrimination can also have a lasting impact on a client's reputation in their industry, particularly in regional areas. Our clients often report the difficulty they have in job interviews when they are asked about their previous employment, about why they left the job and why they took some time to find another job.<sup>73</sup>

*(viii) Intersectionality and grounds of discrimination*

Some individuals report experiencing discrimination on the basis of a combination of attributes. This is known as 'intersectional discrimination' — the discrimination suffered when people have multiple attributes which overlap and result in specific disadvantage.<sup>74</sup>

Complainants pursuing court action under federal discrimination laws must prove discrimination in relation to each attribute (age, race, sex or disability) separately. The Inquiry heard that this can create difficulties for complainants in circumstances where the discrimination was based on a combination of protected attributes.<sup>75</sup> According to Kingsford Legal Centre:

Where an individual seeks to claim more than one form of discrimination, they must take action where each ground and each form of discrimination is examined in isolation with a comparator without that characteristic. In the absence of an explicit discriminatory comment about one of these attributes, it can be an impossible task to prove that the discrimination was linked to any one attribute in isolation of the others.<sup>76</sup>

The following case study was provided to the Inquiry as an example of the interaction of intersectional discrimination with the federal discrimination laws:

**Case study 7.3**

An Aboriginal elder from northern NSW was forced to leave his community and move to a large town so that he could access dialysis treatment, which he requires three times a week. Many non-Aboriginal people who live outside his town and who require regular medical treatment are able to use community transport services to take them to the hospital and accordingly are able to remain in their communities. However, the community transport service does not travel to many of the Aboriginal communities, including to the Aboriginal elder's town.

Unable to drive, the elder had no choice but to leave his community. The man is not being discriminated against because of his disability — as community transport is provided to others who require dialysis. Nor is he being discriminated against because of his race, as other Aboriginal people can access community transport when they are healthier and able to walk or drive to another town. It is really the intersection between these two attributes that have led to the discrimination.

In this elder's circumstances, it would not have been possible to show discrimination on the grounds of his disability. It was not a single attribute on which he faced discrimination, but the intersection of his race and disability that led to his unfavourable treatment.<sup>77</sup>

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*(ix) Effectiveness of the anti-discrimination system*

A number of individuals and organisations raised concerns about the overall effectiveness of individual complaint systems in preventing discrimination.

The Inquiry heard from some community legal centres that making a complaint of discrimination does little to achieve the broader systemic change necessary to prevent discrimination from occurring all together.<sup>78</sup>

While for some people with disability the complaints process may allow them to vindicate their experience of discrimination and achieve a specific outcome, it does little to achieve the systemic change required.<sup>79</sup>

Another issue raised was the need for powers to compel employers to comply with the law.<sup>80</sup>

It felt like there was no “watchdog” to call who could arbitrate or make sure the employer was complying with the law in this matter.<sup>81</sup>

My experience has also been that, should you be employed, there is minimal employer commitment to adhering to the legislation. Adherence, in my experience, is usually employee driven and employees need to “fight” for it. This in turn reinforces the perception of there being “problems” associated with employees with disability.<sup>82</sup>

A number of submissions expressed the view that remedies obtained through complaint and court processes were insufficient to redress the harm arising from discrimination. One concern raised was that rarely does litigation or the complaints process result in reinstatement of the complainant.<sup>83</sup>

The intended focus on reinstatement and retention does not bear out in practice with most disputes resulting in compensation outcomes and not reinstatement.<sup>84</sup>

The other element of remedies discussed was the quantum of damages awarded to complainants under federal discrimination laws — which some community legal services submit are:

Very low when compared to the harm suffered<sup>85</sup>

Generally out of step with community expectations.<sup>86</sup>

The effect of this, Victoria Legal Aid submits, is that not only are victims not adequately compensated for the harms suffered, but also that:

Discrimination law is largely invisible to employers, because they do not see any consequences for breaching the law. Even where employers are held to account, in our experience the low financial consequences to employers for discriminatory behaviour is a further disincentive for them to comply with the law.<sup>87</sup>

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## Disability Discrimination Act

Some concerns raised with the Inquiry related specifically to the Disability Discrimination Act; namely the ability of the Minister to formulate disability standards and the definition of disability contained in the Act.

### (i) Disability Standards for Employment

The Disability Discrimination Act provides for the formulation of disability standards in relation to any area in which discrimination is prohibited under the Act.<sup>88</sup> There are Disability Standards for Education, Accessible Public Transport and Access to Premises, however there are no disability standards for employment.

Submissions on this issue presented differing opinions — some organisations expressed the view that Standards would be useful in clarifying employers' obligations under the legislation.<sup>89</sup>

The Physical Disability Council of NSW, however submits that the establishment of Standards:

Introduces further regulation whilst inhibiting creative and innovative strategies.<sup>90</sup>

### (ii) Definition of disability under the Disability Discrimination Act

Some submissions to the Inquiry raised concerns about the definition of disability contained in the Disability Discrimination Act, which defines disability as:

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.<sup>91</sup>

People told the Inquiry:

The DDA provides in section 4 a definition of disability that is inconsistent with the human rights model of disability and defines disability with reference to a perfectly formed body or mind and fails to recognise that disability is often the result of a person with impairments interacting with environmental, attitudinal or institutional barriers.<sup>92</sup>

The way the law is drafted is no longer necessarily aligned with the way people with disabilities see themselves. This presents problems to, in particular, younger workers and workers with some particular disabilities. For example, in order to acquire the protection of the *Anti-Discrimination Act* (Qld) in relation to a request for a workplace adjustment, a person with a disability must align their need with the framework in the Act. This means that they must first identify an 'impairment'.<sup>93</sup>

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## Fair Work Act

The Inquiry also heard concerns which relate specifically to provisions of the Fair Work Act, regarding the rights of older Australians and Australians with disability to request flexible working arrangements and the time limits on making a claim to the Fair Work Commission.

### *(i) Right to request change in working arrangements*

The National Employment Standards provide that employees with a disability or who are aged over 55 years can request a 'change in working arrangements'.<sup>94</sup>

The legislation also states that:

The employer may refuse the request only on reasonable business grounds.<sup>95</sup>

Although the Fair Work Act prohibits employers from contravening the National Employment Standards, there is no right to appeal an employer's refusal of a request for a change in working arrangements.<sup>96</sup>

Numerous organisations expressed concerns that the lack of a right of appeal hinders the effectiveness of this provision.<sup>97</sup>

This severely limits the enforceability of the provision, leaving many employees seeking flexible work with rights on paper only... National Working Women's Centres are aware of numerous cases where workers with legitimate needs for flexible working arrangements have had their request unreasonably denied.<sup>98</sup>

In a survey undertaken by the NSW Public Service Association, responded to by 1,257 of their members, 28% of respondents indicated that they had applied for a flexible working agreement at some point in their career.<sup>99</sup> Around a quarter of those respondents reported that their request had been approved.<sup>100</sup>

One respondent reported being subjected to internal disciplinary action by their immediate supervisor after lodging a grievance.<sup>101</sup>

Two employer bodies, Ai Group and ACCI, also discussed the operation of this provision of the Fair Work Act. Both organisations submit that their members have reported that the 'inflexibilities' inherent in many industrial awards and enterprise agreements inhibit employers from being able to offer flexible working arrangements to older employees and employees with disability.<sup>102</sup> Examples of these 'inflexibilities' include: minimum engagement periods, prescriptive part-time hours, excessive penalty rates.<sup>103</sup>

### *(ii) More time for submission of application to the Fair Work Commission*

Under the Fair Work Act, applicants have 21 days to make either an unfair dismissal application or general protections claim to the Fair Work Commission.<sup>104</sup> A number of organisations raised concerns that this time period is too short, some stating that they often only see clients for the first time after this limitation period has elapsed.<sup>105</sup>

According to the NT Working Women's Centre:

Clients report that often the period of time immediately after a termination of employment is one of; shock, distress, humiliation, depression, managing a sudden financial crisis, urgently seeking new employment and sometimes seeking alternative housing. Additionally many clients are entirely unaware of their rights to a potential unfair dismissal or general protections claim or how to gain the necessary information about their rights at this time. These issues are exacerbated by the additional vulnerability of older workers and workers with disabilities.<sup>106</sup>

Victoria Legal Aid submits that for some clients:

The dismissal may have been related to an illness, or may exacerbate an illness, which means that they are too unwell to pursue their claim for a few weeks' time.<sup>107</sup>

A number of organisations provided examples of situations where their clients were unable to seek legal advice within the 21 day period.

#### **Case study 7.4**

Sarah suffers from a severe form of psychosis and paranoia. She finds it difficult to trust anyone. Coming to Redfern Legal Centre in relation to her employment's termination was traumatic for her and receiving instruction from her was difficult as her paranoia impeded her ability to talk to us. Our communications with Sarah were conducted over a month. By the time she could trust us to fully disclose what had happened we were unable to make an application under general protections because the time limit had already expired.<sup>108</sup>

#### **Case study 7.5**

Susie was a human resources manager in her late 30s at a large mining company. Susie has bi-polar disorder. After completing a year of service, Susie had a depressive episode where she was unable to go to work. Susie was unable to communicate with her employer during this depressive episode. Despite knowing about Susie's disability, when Susie didn't contact her employer, Susie's employer considered that she had abandoned her employment and dismissed her. The termination of her employment made Susie's depressive episode worse and she was unable to get legal advice about her situation for some months. This left her out of time to lodge an unfair dismissal application or a general protections application.<sup>109</sup>

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## 7.2 Conclusions and recommendations

### (a) Federal discrimination laws

Anti-discrimination laws serve to:

Change attitudes about traditionally vulnerable and marginalised groups within society, and challenge barriers to the equal participation of these groups in work, education and other fields of life.<sup>110</sup>

Legislation which prohibits discrimination on the grounds of disability or age plays an important role in influencing attitudes and behaviours in society. Individuals and organisations affirmed the importance of federal discrimination laws in this regard.

Each of the federal discrimination laws also confers specific functions on the Australian Human Rights Commission to undertake activities to promote better understanding of the law within the community.<sup>111</sup>

Another role of the law is to provide remedies to individual complainants who have experienced discrimination on the basis of age, disability or another attribute protected under federal discrimination laws. Many of the issues raised with this Inquiry concern not only the Age Discrimination Act and the Disability Discrimination Act but the federal discrimination laws in general and have been considered in previous submissions and reports prepared by the Commission, such as:

- Submissions to the Productivity Commission review of the Disability Discrimination Act (2004) (2004 Productivity Commission Review)<sup>112</sup>
- Submission to the Senate Legal and Constitutional Affairs Committee on the Inquiry into the Effectiveness of the Sex Discrimination Act 1984 (Cth) in Eliminating Discrimination and Promoting Gender Equality (2008) (2008 SDA Inquiry)<sup>113</sup>
- Submission to the Attorney-General's Department on the Consolidation of Commonwealth Discrimination Laws — Discussion Paper (2011) (Consolidation Discussion Paper)<sup>114</sup>
- Submission to the Senate Legal and Constitutional Affairs Committee on its Inquiry into the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 (Exposure Draft of the Human Rights and Anti-Discrimination Bill)<sup>115</sup>
- *Supporting Working Parents: Pregnancy and Return to Work National Review* (2014) (Pregnancy and Return to Work National Review).<sup>116</sup>

In accordance with the Commission's previous work in this area, this Inquiry recommends an approach to anti-discrimination law that promotes simplicity and consistency and which improves access to justice for individuals.

Previous discussions around the federal discrimination laws have looked at consolidation of the federal discrimination laws as a means of streamlining the current system — this option has not been pursued. For the purposes of this Report, the Inquiry discusses changes which could be taken up either in the context of a future streamlining of the existing legislation should such an approach be pursued, or as amendments to each of the existing federal discrimination laws.

Although submissions to the Inquiry relate to issues faced by older people and people with disability, many of the issues raised pertain to all federal discrimination laws and accordingly the proposals we present consider how access to justice could be improved more broadly.

(i) *Standing*

A significant issue raised in consultations and submissions was the reliance of the complaints system on individuals taking action in relation to discrimination.

The Inquiry heard about the emotional toll of taking formal action as well as their fear of negative consequences if they did make a complaint. Both the Disability Discrimination Act and the Age Discrimination Act contain provisions prohibiting 'victimisation' for making a complaint to the Australian Human Rights Commission,<sup>117</sup> however the Inquiry heard that, in reality, pursuing a complaint can impact upon relationships with co-workers.

Increasing the ability of organisations to make a complaint of discrimination on behalf of an individual or individuals has been proposed to the Inquiry as a means of reducing reliance on individuals to make a complaint.<sup>118</sup>

In their 2004 review of the DDA, the Productivity Commission stated that:

Greater use of representative actions could improve the effectiveness of the complaints process, particularly in achieving systemic change. Organisations making representative complaints can avoid many of the barriers faced by individuals wishing to make a complaint, such as fear of victimisation.<sup>119</sup>

The ability to commence court proceedings under federal discrimination laws is currently more constrained than the ability to bring complaints of unlawful discrimination to the Australian Human Rights Commission:

- The *Australian Human Rights Commission Act 1986* (Cth) (Australian Human Rights Commission Act) allows complaints to be lodged with the Australian Human Rights Commission by a person or trade union *on behalf of* one or more persons aggrieved by an alleged act of unlawful discrimination.<sup>120</sup>
- Standing to commence action in court is limited to a 'person affected' by the unlawful discrimination.<sup>121</sup> 'Affected person' is defined as the person on whose behalf the complaint was lodged.<sup>122</sup>

The Commission has previously recommended consideration be given to simplifying standing requirements under federal discrimination laws in order to provide consistency between who may bring complaints to the Commission and who may commence court proceedings.<sup>123</sup>

Other reports have also recommended that representative bodies be given rights to commence action in the federal courts,<sup>124</sup> while noting that there may be a need to place some limitations on these rights, such as:

That representative bodies be required to establish a demonstrated connection with the subject matter of the dispute before commencing an action or that there must be a justiciable issue identified before an action can be brought.<sup>125</sup>

The Inquiry suggests that there should be further consideration of approaches to standing in federal discrimination law matters which enhance access to justice and effective compliance with the legislation. This might include consideration of:

- representative and public interest bodies being able to bring proceedings only by leave of the court
- criteria to which courts should refer in granting leave, including public interest criteria and the interests of justice.

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**Recommendation 48: That the Australian Government further consider approaches to standing in federal discrimination law matters which provide consistency between who may bring complaints to the Commission and who may commence court proceedings. Any new approach to standing should promote access to justice without imposing undue regulatory burden. In particular, the Commission suggests consideration of provision for initiation of matters by representative organisations and other bodies with a sufficient interest, but only by leave of the court with regard to appropriate criteria.**

*(ii) Addressing systemic discrimination*

The Inquiry heard from some community legal centres that taking action in relation to discrimination does little to achieve the broader systemic change necessary in order to prevent discrimination from occurring altogether.

One of the benefits of Alternate Dispute Resolution processes such as the conciliation process provided by the Australian Human Rights Commission is that it allows for greater flexibility of processes and outcomes when compared with litigation. In many cases, complaints can have a systemic impact in terms of achieving outcomes which go beyond an individual remedy:

In 2014–15, the Commission facilitated around 1,531 conciliation processes; 72% of which were successfully resolved.<sup>126</sup> Around 30% of conciliated complaints in this period included terms of settlement which had benefits not just for the complainant, but other individuals, such as: agreements to introduce anti-discrimination policies and provide anti-discrimination training in workplaces and agreements to undertake modifications to buildings and services to address potential discriminatory factors.<sup>127</sup>

In complaints conciliated by the Australian Human Rights Commission in 2014–15, 74% of surveyed participants indicated that involvement in the complaint process had assisted them to better understand their rights and responsibilities under federal human rights and anti-discrimination law.<sup>128</sup>

Some submissions to the Inquiry suggested that greater systemic change could be achieved through the introduction of positive duties to prevent discrimination or promote equality into federal discrimination laws.<sup>129</sup>

The idea of a positive duty to promote substantive equality or prevent discrimination was considered in the 2008 SDA Inquiry and in the Consolidation Discussion Paper,<sup>130</sup> however the Senate Committee did not include this in its recommendations nor was it included in the Exposure Draft of the Human Rights and Anti-Discrimination Bill.

The Victorian *Equal Opportunity Act 2010* has adopted a positive duty on employers, the recruitment industry and others to eliminate discrimination, harassment and victimisation.<sup>131</sup> The Victorian Equal Opportunity Commission told the Inquiry that:

The positive duty is about being proactive. It means eliminating causes of discrimination that may be part of your systems of work, not just responding to complaints that arise. In the same way occupational health and safety laws require you to take steps to improve your procedures, policies and practices to avoid workplace injuries occurring, the positive duty requires you to do the same to prevent discrimination from occurring.<sup>132</sup>

Another example of the use of a positive duty in anti-discrimination legislation is the public sector equality duty contained in the *Equality Act 2010 (UK)*.<sup>133</sup> Public authorities are required to have ‘due regard’ to the need to eliminate discrimination, harassment and victimisation on the grounds of a protected attribute and the need to advance equality of opportunity for people who share the protected attribute.<sup>134</sup>

A 2013 evaluation of the duty found it was too early to assess its effectiveness of the duty because evidence of the costs and benefits was inconclusive.<sup>135</sup>

**Recommendation 49: That the Australian Government consider the benefits of a positive duty to promote substantive equality or eliminate discrimination being inserted in federal discrimination laws.**

### *(iii) Enforcement powers*

A number of submissions raised concerns that the Australian Human Rights Commission does not have powers to enforce federal discrimination laws.<sup>136</sup>

A capacity for the Commission to conduct hearings and make determinations was originally included in the Disability Discrimination Act, the Sex Discrimination Act and the Racial Discrimination Act. However in 1995, the High Court found that the scheme for registration of the Commission’s decisions in the Federal Court was unconstitutional as its effect was to vest judicial power in an administrative body.<sup>137</sup>

The Disability Discrimination Act also contained a ‘self-start’ power which would allow the Commission to act in the absence of a complaint, but as if a complaint had been received — which involved the Commission making a complaint to itself. This was seen as presenting problems of bias and the provisions were not used in practice.

The self-start power and the capacity for the Commission to conduct hearings and make determinations that could be registered in the Federal Court were removed in 2000.<sup>138</sup>

This issue of vesting the Commission with enforcement powers was subsequently raised in the 2004 Productivity Commission Review, the 2008 SDA Inquiry and in the Consolidation Discussion Paper.<sup>139</sup> However, neither report nor the Exposure Draft of the Human Rights and Anti-Discrimination Bill contained a provision for enforcement of discrimination laws.

The Productivity Commission stated:

The potential conflict of interest between HREOC initiating complaints and conducting conciliations makes it inappropriate to reinstitute HREOC’s power to initiate complaints. The suggestion that HREOC be able to proceed directly to court has some attraction as a means of addressing serious systemic issues. However, while it lessens the potential for a conflict of interest, it does not altogether remove it. Furthermore, it denies the respondent the opportunity for conciliation.<sup>140</sup>

The Commission raised similar concerns in the submission to the Consolidation Discussion Paper.<sup>141</sup>

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It may be that improved provisions to enable action by persons or organisations with a sufficient interest in the matter could address concerns about effective access to justice and compliance with federal discrimination laws, without raising the issue of a conflict between an enforcement role for the Commission and the Commission's role in the impartial investigation and resolution of complaints.

The Inquiry notes that any proposal to provide the Commission with enforcement powers would need to be considered in light of the impact on the resources of the Commission and effectiveness of the Commission's role in the impartial investigation and conciliation of complaints. The Commission does not recommend such a step in this Report.

*(iv) Shifting burden of proof for direct discrimination matters*

The complaint process provided under federal discrimination laws does not require a complainant to prove that discrimination has occurred in order to access conciliation at the Australian Human Rights Commission. However, the complainant does bear the onus of proof in direct discrimination matters that proceed to court.<sup>142</sup>

In submissions to the Inquiry, the issue of the burden of proof was cited by a number of individuals as their reason for not making a complaint of discrimination.

Concerns about the onus of proof have been the subject of academic commentary for many years:<sup>143</sup>

Recognising...that the true basis for a decision, which may manifest conscious or reflect unconscious discrimination, is peculiarly within the knowledge of an employer, an evidential burden should rest on a respondent employer to provide an explanation for that decision.<sup>144</sup>

A number of community legal centres and legal aid commissions made recommendations to the Inquiry regarding the adoption of a shifting onus of proof once the applicant has established a prima facie case of discrimination.<sup>145</sup>

The Disability Discrimination Act, Age Discrimination Act and the Sex Discrimination Act already provide for a shifting burden of proof in indirect discrimination matters, as do some of the state anti-discrimination acts.<sup>146</sup>

A number of overseas jurisdictions also have a shifting burden of proof in place for anti-discrimination matters.<sup>147</sup> The *Equality Act 2010* (UK) provides:

If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.<sup>148</sup>

The shifting burden of proof can be contrasted with the lower threshold an applicant must satisfy under the adverse action provisions of the Fair Work Act 2009. Section 361 of the Fair Work Act requires an applicant to:

- establish the fact of the alleged conduct
- allege a reason for that conduct.<sup>149</sup>

The reason is then presumed to be the reason unless the respondent proves otherwise. Under the Fair Work Act provisions, there is no requirement that the applicant establish a 'prima facie' case that the respondent had a particular reason for the conduct.

In any future streamlining or consolidation of federal discrimination laws, consideration could be given to this matter, however the burden of proof is not the subject of a recommendation of this Report.

(v) *Comparator test*

A number of legal aid commissions and community legal services raised the comparator test as another barrier to complaints being pursued in court.

The comparator test requires a comparison to be made between the way in which a person with a protected attribute (such as disability or age) is treated and the way in which a person without that attribute would have been treated in circumstances that are materially the same.<sup>150</sup>

Again, this issue has been considered in both the 2004 Productivity Commission Review, the 2008 SDA Inquiry and in the Consolidation Discussion Paper:

Significant difficulties have arisen in applying the comparator test...In many cases, there will not be a suitable comparator for the complainant, and courts have therefore relied on identifying a hypothetical comparator, and reconstructing how the discriminator might have treated them. Cases regularly turn on a particular judge's view as to what the material circumstances were, and how the discriminator might have treated a hypothetical person without the protected attribute in those circumstances. Results are unpredictable and have created significant uncertainty.<sup>151</sup>

It was also raised by the NSW Law Reform Commission in their 1999 review of the *Anti-Discrimination Act 1977*:

There is widespread dissatisfaction with the current definition of discrimination in antidiscrimination statutes. The limitations imposed by the need for a comparator give rise to conceptual difficulties as well as problems associated with proof for complainants.<sup>152</sup>

The Commission has previously recommended the use of a 'detriment test' based on the ACT *Discrimination Act 1991* — which is the approach adopted by the Victorian *Equal Opportunity Act 2010*. The *Discrimination Act 1991* (ACT) provides the following test for direct discrimination:

A person discriminates against another person if the person treats or proposes to treat the other person unfavorably because the other person has an attribute referred to in section 7.<sup>153</sup>

This test for discrimination was recommended by the Senate Committee in the 2008 SDA Review and was the approach adopted in the Exposure Draft of the Human Rights and Anti-Discrimination Bill.

**Recommendation 50: That the Australian Government consider amending federal discrimination laws to remove the comparator test in establishing direct discrimination and instead use the detriment test based on the Discrimination Act 1991 (ACT).**

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(vi) *Cost of legal action*

A number of individuals and organisations raised access to legal assistance, the cost of litigation and the risk of adverse costs orders as a significant deterrent to the pursuit of discrimination complaints in the federal courts.

The 2008 SDA Inquiry recommended increasing funding to working women's centres, community legal centres, specialist low cost legal services and Legal Aid to ensure they have the resources to provide advice for sex discrimination and sexual harassment matters.<sup>154</sup>

Similarly in the 2004 Productivity Commission Review, the Productivity Commission found that:

Inadequate funding of [Disability Discrimination Legal Services] could undermine the effectiveness of the Disability Discrimination Act 1992.<sup>155</sup>

The Inquiry support efforts to enable community legal centres, specialist low cost legal services and Legal Aid to provide free legal representation and advice in relation to discrimination.

For complaints under the federal discrimination laws that proceed to court, costs awards can be made in both the Federal Court and the Federal Circuit Court.<sup>156</sup>

The Inquiry heard that the risk of an adverse costs order has been raised as a significant barrier to commencing litigation, even for cases with relative merit.

However, there are also disadvantages to parties bearing their own costs. Even for an applicant with a good case, the prospect of bearing their own costs may still act as a deterrent to pursuing action in court due to the possibility that a large proportion of any damages awarded may need to be used to pay their legal fees.<sup>157</sup>

Complainants who pursue action under the *Equal Opportunity Act 2010 (VIC)* in the Victorian Civil and Administrative Tribunal bear their own costs.<sup>158</sup> Victoria Legal Aid told the Inquiry:

Just as the presumption that costs follow the event discourages meritorious applicants from pursuing their discrimination complaint to hearing due to the significant financial risk, the presumption that the parties bear their own costs discourages meritorious applicants because an award of compensation is extremely unlikely to cover their legal costs. For example in a recent case under Victorian discrimination law<sup>159</sup> the applicant was awarded \$100,000 in compensation for a meritorious claim but incurred approximately \$140,000 worth of legal fees.<sup>160</sup>

This issue was discussed in the 2004 Productivity Commission Review Report, which recommended that parties bear their own costs in the federal courts, subject to certain guidelines.<sup>161</sup> Costs were also considered in the SDA Review<sup>162</sup> and in the Consolidation of Federal Anti-Discrimination Laws.<sup>163</sup> The Exposure Draft of the Human Rights and Anti-Discrimination Bill proposed that parties bear their own costs in proceedings in the federal courts, however the court would retain its discretions to make costs orders if it considered it just to do so.<sup>164</sup> In considering whether there are circumstances that justify making such an order, the Court would have regard to a range of matters including the conduct of the parties, the financial circumstances of the parties and the merits of the matter.

The Commission considers that the approach to costs adopted in the Exposure Draft is more consistent with that in other Australian discrimination law jurisdictions, and facilitates access to justice while providing continuing capacity for courts to make costs orders appropriate to the conduct of the parties and the merits of the matter.

**Recommendation 51: For the small proportion of matters which proceed to the federal courts, the Inquiry recommends that parties bear their own costs of proceedings, with the courts retaining a discretion to make costs orders if it was considered just to do so, having regard to the conduct of the parties and the merits of the matter.**

*(vii) Intersectionality*

Under the federal discrimination laws, complainants who pursue action in court must prove discrimination in relation to each attribute (age, race, sex or disability) separately.<sup>165</sup>

The Inquiry heard that this can create difficulties for individuals who have experienced intersectional discrimination; being discriminated against on the basis of a combination of attributes. In practice, complaints to the Australian Human Rights Commission which allege discrimination on the basis of more than one attribute or a combination of attributes are accepted and treated as a single complaint rather than as a series of complaints on separate grounds.

The Commission has previously expressed the view that the effect of explicitly providing for intersectional coverage in federal discrimination laws would be to make the present position clearer and to avoid unnecessary disputes, rather than creating a new set of obligations.<sup>166</sup>

Comparable overseas jurisdictions have addressed intersectionality in their anti-discrimination and human rights legislation.<sup>167</sup> The *Equality Act 2010* (UK) defines this as ‘combined discrimination’ where:

*A person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics.*<sup>168</sup>

The UK provisions also state that it is not necessary to prove that there was direct discrimination in relation to each of the protected characteristics taken separately.<sup>169</sup>

The Exposure Draft of the Human Rights and Anti-Discrimination Bill proposed that direct discrimination, (including harassment) and indirect discrimination include situations of intersectional discrimination where the discrimination relates to ‘a particular combination of two or more protected attributes’.<sup>170</sup>

**Recommendation 52: That the Australian Government amend federal discrimination laws to apply to discrimination based on a combination of attributes protected under federal discrimination laws.**

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## **(b) Disability Discrimination Act**

The concerns raised with the Inquiry which relate specifically to the operation of the Disability Discrimination Act are considered separately below.

### *(i) Definition of disability*

The Inquiry heard from individuals and organisations concerned about the definition of disability used in the Disability Discrimination Act. That definition aligns with the framework developed by the World Health Organisation: the International Classification of Functioning, Disability and Health,<sup>171</sup> however there are views that the focus of the definition on an individual's limitations are not in line with the overall objectives of the Disability Discrimination Act.

There are conflicting views within the disability community about the use of what is called the 'social model' and 'medical model' definitions of disability.

In their issues paper on Equality, Capacity and Disability in Commonwealth Laws, the Australian Law Reform Commission defined the social and medical models as follows:

The medical model of disability 'uses biomedical explanations which locate disability within the individual in terms of pathology'. The social model describes disability in terms of the interaction between a person's disability and the external world.<sup>172</sup>

One of the benefits of the current definition contained in the Disability Discrimination Act is that it is very broad, which has the advantage of avoiding time and resources being expended on determining whether or not a complainant is covered by the Disability Discrimination Act.

A definition of disability more closely aligned with the social model of disability was considered in the initial drafting of the Disability Discrimination Act, however it was rejected because it risked leaving some instances of disability discrimination outside the coverage of the legislation.<sup>173</sup> However, since the drafting of the Disability Discrimination Act, the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) has come into force.

The UNCRPD provides a definition of disability which does not focus on an individual's limitations, rather the barriers that society constructs for people with disability:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.<sup>174</sup>

The UNCRPD also recognises:

That disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.<sup>175</sup>

**Recommendation 53: That the Australian Government further consider the definition of disability under the Disability Discrimination Act in light of obligations under the United Nations Convention on the Rights of Persons with Disabilities.**

*(ii) Disability Employment Standards*

Some submissions to the Inquiry raised concerns that there are no Disability Standards for Employment. Under the Disability Discrimination Act, the Minister is empowered to make standards for education, employment, land or any of the other areas for which discrimination is prohibited under the Act.<sup>176</sup>

There are disability standards for education, public transport and premises. There are a range of views on the issue of whether standards for employment should be developed — standards can provide clarity, but they also impose more regulation.

The Commission has previously considered this issue in its submissions to the Productivity Commission review of the Disability Discrimination Act.<sup>177</sup> The 2004 Productivity Commission Review found that:

Inquiry participants did not unanimously support standards. Some were concerned about using disability standards to extend the scope of the Act. Some questioned the suitability of standards for some areas, while others suggested extending the ability to formulate standards to all areas covered by the DDA. Others were concerned with procedural issues, such as formulating, monitoring and enforcing standards.<sup>178</sup>

**Recommendation 54: That the Australian Government further consult with individual, employers and peak bodies to consider the merits of developing disability standards for employment.**

**(c) Fair Work Act**

*(i) Request for flexibility*

Section 65 of the Fair Work Act 2009 provides employees with the right to request flexible working arrangements where the employee:

- (a) is the parent or carer of a child who is of school age or younger
- (b) is a carer
- (c) has a disability
- (d) is 55 or older
- (e) is experiencing violence from a member of the employee's family; or
- (f) provides care or support to a member of their immediate family or household, who requires care or support because the member is experiencing violence from the member's family.<sup>179</sup>

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Employees (other than casual employees) must have completed 12 months of continuous service with the employer.<sup>180</sup> Employers may only refuse a request for flexible working arrangements on 'reasonable business grounds' and there is no right for employees to appeal the refusal of a request.<sup>181</sup>

The Inquiry heard that the lack of a right to appeal a request for flexibility under the Fair Work Act can act as a barrier to older people and people with disability obtaining the flexible work arrangements they need to remain in the workforce.<sup>182</sup>

Individuals and organisations were concerned that this provision 'lacks teeth' because employees have no recourse under the Act where they believe an employer's refusal was not on 'reasonable business grounds'.

Data from the 2014 Australian Work and Life Index Report shows that:

- the number of employees making requests for flexible work arrangements had decreased from 22.4% of employees in 2009 to 20.1% of employees in 2014
- 15.1% of those who did not request flexibility reported that they did not request because flexibility is not possible or available in their job.<sup>183</sup>

A panel convened by the Government in 2012 to conduct a post-implementation review report of the Fair Work Act examined the operation of section 65. In relation to the right to appeal, the panel did not recommend the adoption of an appeal mechanism, stating that the 'policy rationale of the provision is to facilitate discussion about flexible working arrangements'.<sup>184</sup>

The panel did, however, recommend an amendment to the Fair Work Act 2009 which would provide that:

An additional requirement that a request [for flexible work arrangements] can only be refused after the employer has held at least one meeting with the employee to discuss the request. The Panel's view is that such a meeting should already form part of considering a right to request in most workplaces; however, we consider that codifying the requirement will ensure a conversation about, and due consideration of, such requests in workplaces not currently meeting this standard.<sup>185</sup>

Another concern raised with the Inquiry in submissions from the Australian Industry Group (Ai Group) and the Australian Chamber of Commerce and Industry (ACCI), which was also heard in consultations, was that 'inflexibilities' such as minimum engagement periods and penalty rates inherent in many industrial awards and enterprise agreements inhibit employers from being able to offer flexible working arrangements to older employees and employees with disability.<sup>186</sup>

Under the Fair Work Act, modern awards and enterprise agreements are required to include a 'flexibility term' allowing employers and employees to agree to individual flexibility agreements.<sup>187</sup>

Similar concerns were raised in submissions to the 2012 post-implementation review of the Fair Work Act:

Some submissions argued that the FW Act impedes flexibility in work patterns and the organisation of work, and thus diminishes productivity. In a variety of ways a number of employer submissions argued that flexibility would be enhanced by a return to individual arrangements between employers and employees which could undercut particular provisions of awards or agreements and be made a condition of employment. In various submissions these proposed arrangements might or might not be subject to a no-disadvantage test in respect of the underlying award agreement.<sup>188</sup>

The Panel rejected these approaches, instead proposing recommendations which would increase the use of individual flexibility arrangements.<sup>189</sup> Data from the 2014 Australian Workplace Relations Study showed that 10.1% of employers had enacted Individual Flexibility Arrangements since 1 July 2012.<sup>190</sup>

The Australian Human Rights Commission has previously recommended that section 65 be amended to include a positive duty on employers to reasonably accommodate requests for flexible working arrangements and to establish a procedural appeals for decisions related to the right to request flexible work arrangements.<sup>191</sup>

**Recommendation 55: That the Fair Work Commission undertake a review of the operation of section 65 in order to assess whether the provision is achieving its intended objectives.**

*(ii) Time to apply*

The Inquiry heard that the 21 day time period for pursuing general protections claims and unfair dismissal claims under the Fair Work Act can be too short for older employees or employees with disability who have experienced discrimination.

Previously, the time limits were 14 days for unfair dismissal claims and 60 days for general protections claims, however both limits were changed to 21 days in 2013.<sup>192</sup> This was in response to the recommendations of the review of the Fair Work Act 2009, in which the panel recommended that the two time limits be aligned:

To prevent employees from applying for FWA to deal with a general protections dispute for out of time or unsuccessful unfair dismissal matters...In considering aligning the time limits the Panel weighed up requests from employers to reduce the time limit for making an application to FWA alleging a breach of s. 365, with the evidence presented by unions in consultations that 14 days would not be enough time in which to assess and advise members on the merits of a general protections dispute. Based on a range of competing factors the Panel recommends the time limits be harmonised at 21 days.<sup>193</sup>

The panel determined that a period of 21 days was an appropriate period 'based on a range of competing factors' raised in the course of the review, including: requests from employers to reduce the time limit and evidence from unions about the need to ensure sufficient time to assess and advise members on the merits of their claim.

The Inquiry is concerned that these time limits may prevent older people and people with disability from making a claim under the Fair Work Act, particularly where they have experienced discrimination on the grounds of disability or age. Under section 366 and 394 of the Fair Work Act, the Fair Work Commission may allow an extension of time to make a general protections or unfair dismissal claim only in 'exceptional circumstances', taking into account a range of circumstances.<sup>194</sup>

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Although the Unfair Dismissal and General Protections Benchbooks — guides to the Fair Work Act prepared by the Fair Work Commission — do provide some information about the kinds of circumstances which will be considered to be ‘exceptional’, further guidance as to the reasons for delay could be included. For example, in the 2014 Supporting Working Parents Review, the Australian Human Rights Commission proposed the following solution to ensure women who had experienced discrimination were not barred from making a claim:

The FWC General Protections Bench Book could clarify under s 366(2): the FWC be allowed to provide a further period for applications (beyond 21 days), where the reason for the delay includes IVF treatment, pregnancy, miscarriage, child birth and early child rearing.<sup>195</sup>

**Recommendation 56: That the Fair Work Commission conduct a review of the 21 day time limit to make a general protections or unfair dismissal claim to assess whether it is meeting its objectives of promoting efficiency and effectiveness while also ensuring access to justice.**

- 1 *Discrimination Act 1991* (ACT); *Anti-Discrimination Act 1977* (NSW); *Anti-Discrimination Act 1996* (NT); *Anti-Discrimination Act 1991* (QLD); *Equal Opportunity Act 1984* (SA); *Anti-Discrimination Act 1998* (TAS); *Equal Opportunity Act 2010* (VIC); *Equal Opportunity Act 1984* (WA).
- 2 Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, Terms of Reference, 5 March 2015. At <https://www.humanrights.gov.au/willing-work-terms-reference-inquiry> (viewed 25 February 2016).
- 3 *Fair Work Act 2009* (Cth), s 351.
- 4 Productivity Commission, *Review of the Disability Discrimination Act 1992*, Report No 30 (30 April 2004).
- 5 Senate Standing Committee on Legal and Constitutional Affairs, *Report on the Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (2008). At [http://www.aph.gov.au/binaries/senate/committee/legcon\\_ctte/sex\\_discrim/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/legcon_ctte/sex_discrim/report/report.pdf) (viewed 29 February 2016).
- 6 Attorney-General's Department, *Consolidation of Commonwealth Anti-Discrimination Laws: Discussion Paper* (2011). At <http://www.ag.gov.au/Consultations/Pages/ConsolidationofCommonwealthanti-discriminationlaws.aspx> (viewed 29 February 2016).
- 7 Australian Government, *Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation (Fair Work review)* 15 June 2012, 98.
- 8 Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015), 19. At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/national-prevalence-survey-age-discrimination-workplace> (viewed 18 February 2016).
- 9 Australian Human Rights Commission, *National prevalence survey of age discrimination in the workplace* (2015), 67. At <https://www.humanrights.gov.au/our-work/age-discrimination/publications/national-prevalence-survey-age-discrimination-workplace> (viewed 18 February 2016).
- 10 Australian Human Rights Commission complaints data, see Appendix 7.
- 11 Australian Human Rights Commission complaints data, see Appendix 7.
- 12 The Fair Work Commission does not collect data on the number of complaints made in relation to age or disability discrimination in employment.
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# Appendices

# Appendix 1: Inquiry Reference Panels

All Inquiry Reference panels were convened by the Hon Susan Ryan AO, Age and Disability Discrimination Commissioner, Australian Human Rights Commission.

## (a) Age and Policy Reference Panel

Name	Title
Professor Rosalind Croucher AM	President, Australian Law Reform Commission
Georgina Williams	Group Executive Engagement, Advocacy and Brand, AustralianSuper
Everald Compton	Former Chair of Per Capita Longevity Forum
Ian Yates AM	Chief Executive Officer, Council of the Ageing, Australia
John Daley	Chief Executive Officer, Grattan Institute
Michael O'Neill	Chief Executive Officer, National Seniors Australia

## (b) Disability and Policy Reference Panel

Name	Title
Matthew Wright	Chief Executive Officer, Australian Federation of Disability Organisations
Emeritus Professor Ron McCallum AO	Chair of the United Nations Committee on the Rights of People with Disability
Frank Quinlan	Chief Executive Officer, Mental Health Australia
Samantha French	Advocacy Projects Manager, People with Disability Australia

## (c) Employer and Business Reference Panel

Name	Title
Alana Matheson	Deputy Director, Workplace Relations, Australian Chamber of Commerce and Industry
Genevieve Vaccaro	Senior Adviser, Workplace Relations Policy, Australian Industry Group
Nicola Street	National Manager, Workplace Relations Policy, Australian Industry Group
Suzanne Colbert	Chief Executive Officer, Australian Network on Disability
Owen Livermore	Group Manager, Employment Policy and Participation (former), Australian Public Service Commission
Karin Fisher	Group Manager, Employment Policy and Group, Australian Public Service Commission
Penny Ngui	Director, Disability Employment Policy, Australian Public Service Commission
Megan Kirchner	Executive Director of Policy, Human Capital, Business Council of Australia

**(d) Healthy Ageing Reference Panel**

<b>Name</b>	<b>Title</b>
Professor Chris Maher	Director, Musculoskeletal Division, The George Institute for Global Health
Professor Christine Jenkins	Head, Respiratory Trials, The George Institute for Global Health
Mr Craig Knox	General Manager, Fitness Australia
Mr David Bryant	Group General Manager, People, Culture and Communications, St. Vincent's Health Australia
Professor Deborah Schofield	Chair and Professor of Health Economics, University of Sydney
Professor Henry Brodaty	Scientia Professor, Centre for Healthy Brain Ageing, University of New South Wales
Professor Jane Latimer	Deputy Director, Musculoskeletal Division, The George Institute for Global Health
Dr Allan Coles	N/A
Ms Jennifer Taylor	CEO, Comcare
Ms Laretta Stace	Former CEO, Fitness Australia
Professor Laurie Brown	National Centre for Social and Economic Modelling, University of Canberra

# Appendix 2: Australian Bureau of Statistics 2015 Survey of Disability, Ageing and Carers, First results data



ABS Submission to the Australian Human Rights Commissions' *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*.

## Discrimination due to disability

### Survey of Disability, Ageing and Carers

The data below presents the first results from the 2015 Survey of Disability, Ageing and Carers (SDAC) conducted throughout Australia between May and December 2015.

This is the eighth comprehensive national household survey conducted by the ABS to measure disability, following similar surveys in 1981, 1988, 1993, 1998, 2003, 2009 and 2012.

The aims of the survey are to:

- measure the prevalence of disability in Australia
- measure the need for support of older people and those with disability
- provide a demographic and socio-economic profile of people with disability, older people and carers compared with the general population
- estimate the number of, and provide information about, people who provide care to people with disability, long-term health conditions and older people.

### Disability Discrimination Module

The 2015 SDAC introduced a new disability discrimination module designed to estimate the prevalence and nature of discrimination because of disability.

Inclusion of the discrimination module was in response to public policy initiatives to ensure people with disability have opportunities to reach their potential through participation in the community and the workforce. This inclusion also improves the SDAC's alignment with the [International Classification of Functioning, Disability and Health](#) (ICF) in understanding the context of environmental factors on the functioning and disability of a person.

The disability discrimination module included four questions to determine whether people with disability aged 15 years and over living in households (excluding those living in establishments):

- had experienced unfair treatment or discrimination in the last 12 months because of their disability, and the source of the unfair treatment or discrimination, and/or
- had avoided situations in the last 12 months because of their disability, and what situations were avoided.

The addition of these questions will also assist Australia to better understand how we are performing against the United Nations' (UN) [Convention on the Rights of Persons with Disabilities](#), “recognizing that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person”.<sup>1</sup>

## Key findings

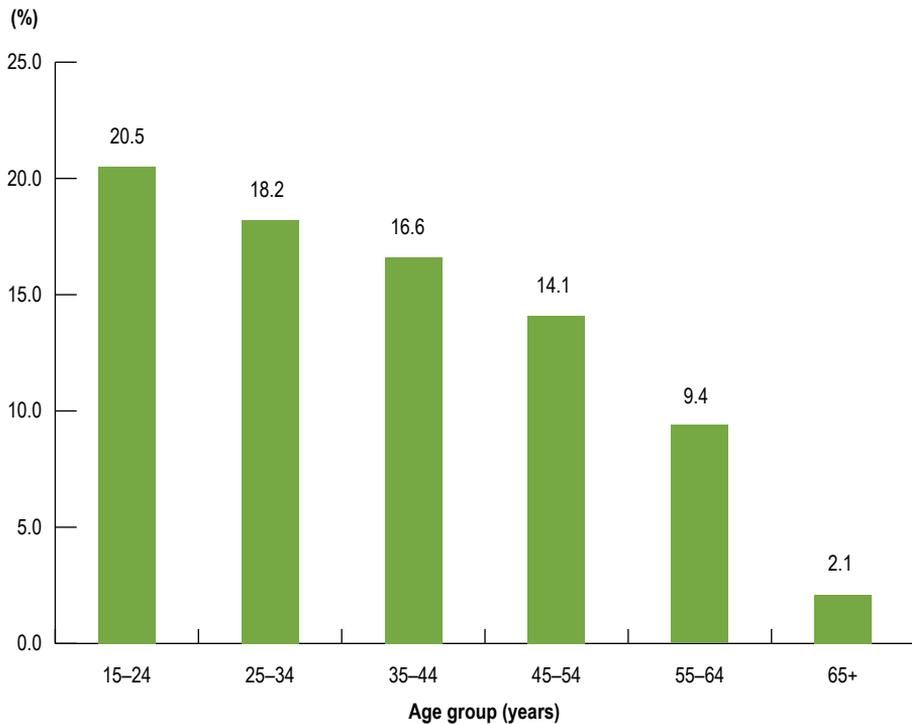
### Prevalence of discrimination

In 2015, almost 4.3 million Australians reported having disability. Of the 3.3 million Australians aged 15 years and over with disability living in households, around one in 12 people (8.6% or 281,100 people) reported that they had experienced discrimination or unfair treatment in the previous 12 months because of their disability. Rates were similar for men (8.3%) and women (8.9%).

Young people with disability (aged 15–24 years) were more likely to report the experience of discrimination, with one in five (20.5%) experiencing discrimination because of their disability. This proportion declined with age, with 2.1% of people aged 65 years and over reporting that they had experienced discrimination because of their disability.

1 United Nations Convention on the Rights of Persons with Disabilities, accessed 24 March, 2016 <http://www.un.org/disabilities/convention/conventionfull.shtml>.

**Chart 1: People aged 15 years and over with disability (a), Proportion who reported experiencing discrimination (b), by age group – 2015**



(a) Living in households.

(b) In the 12 months prior to the survey.

### *Disability status*

In the SDAC, there are four levels of core activity limitations that are determined based on whether a person needs help, has difficulty, or uses aids or equipment with any of the core activities (mobility, self-care and communication). A person's overall level of core activity limitation is determined by their highest level of limitation in these activities.

The four levels of limitation are: profound, severe, moderate and mild.

The severity of a person's disability had some impact on whether people reported the experience of discrimination because of their disability. In 2015, 12.7% of people with a profound or severe core activity limitation reported that they experienced discrimination in the previous 12 months because of their disability. In contrast, 7.6% of those with moderate or mild core activity limitations reported that they experienced discrimination.

Of those people with a schooling or employment restriction, 16.1% reported that they had experienced discrimination in the previous 12 months because of their disability.

### *Disability group*

Disabilities can be broadly grouped depending on whether they relate to functioning of the mind or the senses, or to anatomy or physiology. Each disability group may refer to a single disability or be composed of a number of broadly similar disabilities.

People with certain disabilities were more likely to report that they experienced discrimination because of their disability. In 2015, around one in five people with psychosocial (21.5%) or intellectual (20.7%) disabilities reported that they experienced discrimination. In contrast, less than one in ten people with physical (9.3%) or sensory and speech (6.8%) disabilities reported that they experienced discrimination in the previous 12 months because of their disability.

It is important to note that for those people with multiple disabilities it is not possible to say which disability was associated with the experience of discrimination. The discrimination may have been related to one or a combination of disabilities.

### **Discrimination and labour force participation**

Between the 2012 and 2015 SDAC, the labour force participation rate of Australians aged 15 to 64 years living in households remained steady for those with disability (52.8% and 53.4%, respectively), albeit below those without disability (82.5% and 83.2%, respectively). The rate of unemployment between 2012 and 2015 remained steady for those with disability (9.4% and 10.0%) and those without disability (4.9% and 5.3%).

### *Labour force status*

The proportion of people with disability (aged 15 to 64 years) who reported that they had experienced discrimination varied according to their labour force status. Almost one-third (29.5%) of people with disability who were unemployed reported that they had experienced discrimination because of their disability.

In contrast, around one in 10 people with disability employed full-time (8.8%) and part-time (12.0%) reported that they had experienced discrimination.

Around one in six (15.8%) people with disability who were not in the labour force reported that they had experienced discrimination.

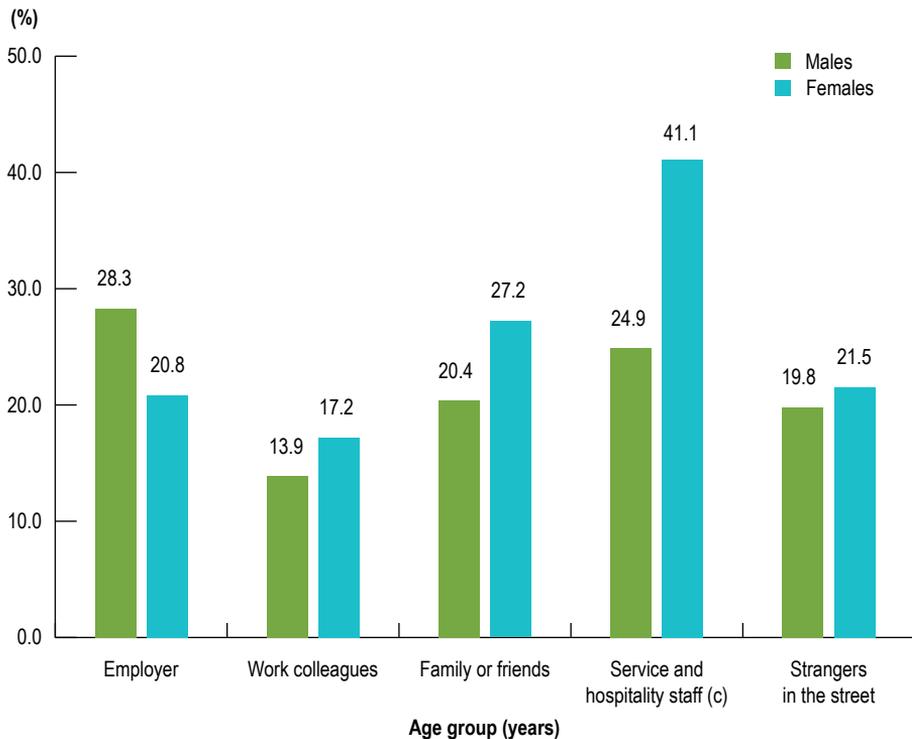
### **Sources of discrimination**

In the 2015 SDAC, those aged 15 years and over living in households who reported that they had experienced discrimination or unfair treatment because of their disability in the 12 months prior to the survey could report discrimination by one or multiple sources.

Of the 125,000 men who reported that they had experienced discrimination because of their disability, around one-quarter reported that the source of the discrimination was an *Employer* (28.3%) or *Service and hospitality staff* (24.9%), followed by *Family or friends* (20.4%) and *Strangers in the street* (19.8%).

In contrast, of the 154,700 women with disability who reported that they had experienced discrimination, two in five (41.1%) reported *Service and hospitality staff* as a source of discrimination, followed by *Family or friends* (27.2%), while just over one in five reported discrimination by an *Employer* (20.8%) or *Strangers in the street* (21.5%).

**Chart 2: People aged 15 years and over with disability (a), Selected reported source of discrimination (b), because of their disability by sex – 2015**



(a) Living in households.

(b) People could report multiple sources of discrimination.

(c) Includes teacher or lecturer; health staff; bus drivers, retail staff or taxi drivers; restaurant or hospitality staff; or sales assistants.

### *Discrimination from an employer*

In 2015, of people with disability aged 15–64 years who had experienced discrimination in the 12 months prior to the survey, almost half of those who were unemployed at the time of the survey (46.9%) reported that a source of the discrimination was an *Employer*.

Similarly, almost half of those employed full-time (46.2%) reported that a source of the discrimination was an employer. Just over one-third (34.6%) of those employed part-time reported that the source of the discrimination was an *Employer*.

### **Avoiding situations because of disability**

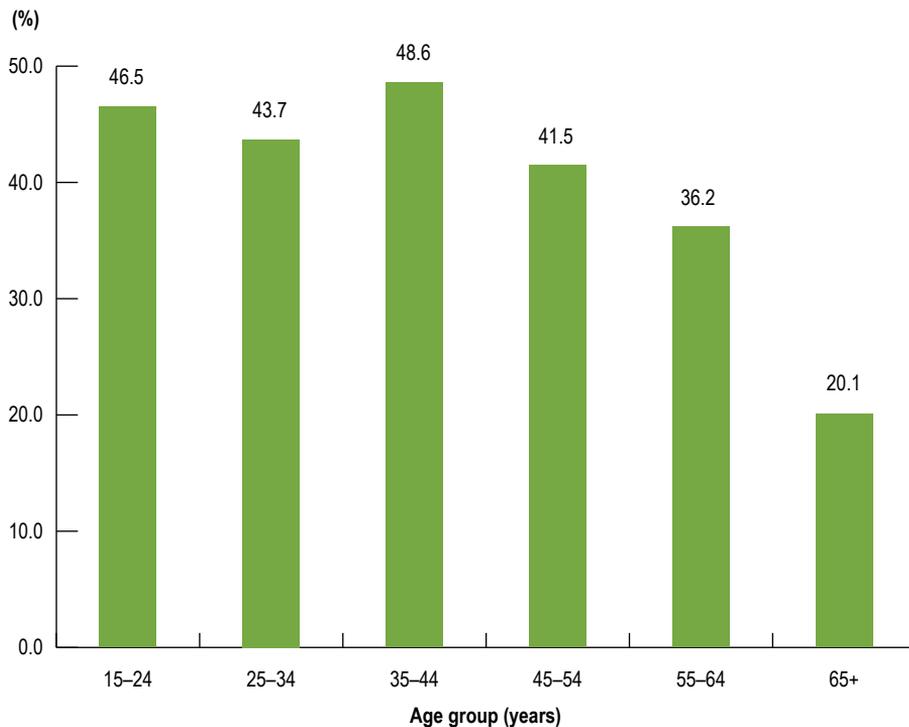
People with disability may avoid certain situations because of their disability. In 2015, over one-third (35.1%) of women and over one-quarter (28.1%) of men aged 15 years and over with disability (living in households) had avoided situations because of their disability in the 12 months prior to the survey.

It is important to note that the avoidance questions were asked of all people with a disability aged 15 years and over (living in households) and not restricted to the cohort that reported discrimination.

Older people with disability were less likely to avoid situations because of their disability than those in younger age groups. One in five (20.1%) people aged 65 years and over with disability living in households reported avoiding situations because of disability.

In contrast, almost half of those aged 15–24 years (46.5%), 25–34 years (43.7%) and 35–44 years (48.6%) said they had avoided situations because of their disability.

**Chart 3: People aged 15 years and over with disability (a), Proportion who had avoided situations because of disability (b), by age group – 2015**



(a) Living in households.

(b) In the 12 months prior to the survey.

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### *Disability status*

The severity of a person's disability had some impact on whether a person avoided situations because of their disability. In 2015, just over half (52.2%) of those with a profound or severe core activity limitation had avoided situations because of their disability in the previous 12 months. In contrast, just over one-quarter (27.2%) of those with a moderate or mild core activity limitation had avoided situations.

Of those people with a schooling or employment restriction, almost half (48.5%) reported that they had avoided situations the previous 12 months because of their disability.

### *Disability group*

People with certain disabilities were more likely to report that they had avoided situations because of their disability. In 2015, around two-thirds (65.3%) of people with a psychosocial disability had avoided situations because of their disability. This was higher than those with an intellectual disability (49.3%) or head injury, stroke or acquired brain injury (46.6%).

Around one-third of those with a physical restriction (35.0%) and one-quarter of those with a sensory or speech limitation (25.2%) had avoided situations the previous 12 months because of their disability.

As with a person's experience of discrimination, for those with multiple disabilities it is not possible to say which disability was associated with their having avoided situations.

### *Labour force status*

The proportion of people with disability (aged 15 to 64 years) who had avoided situations because of their disability varied according to their labour force status. Around half of those who were unemployed (50.9%) or not in the labour force (49.1%) had avoided situations because of their disability.

In contrast, just over one-quarter (28.4%) of people with disability who were employed full-time had avoided situations because of their disability.

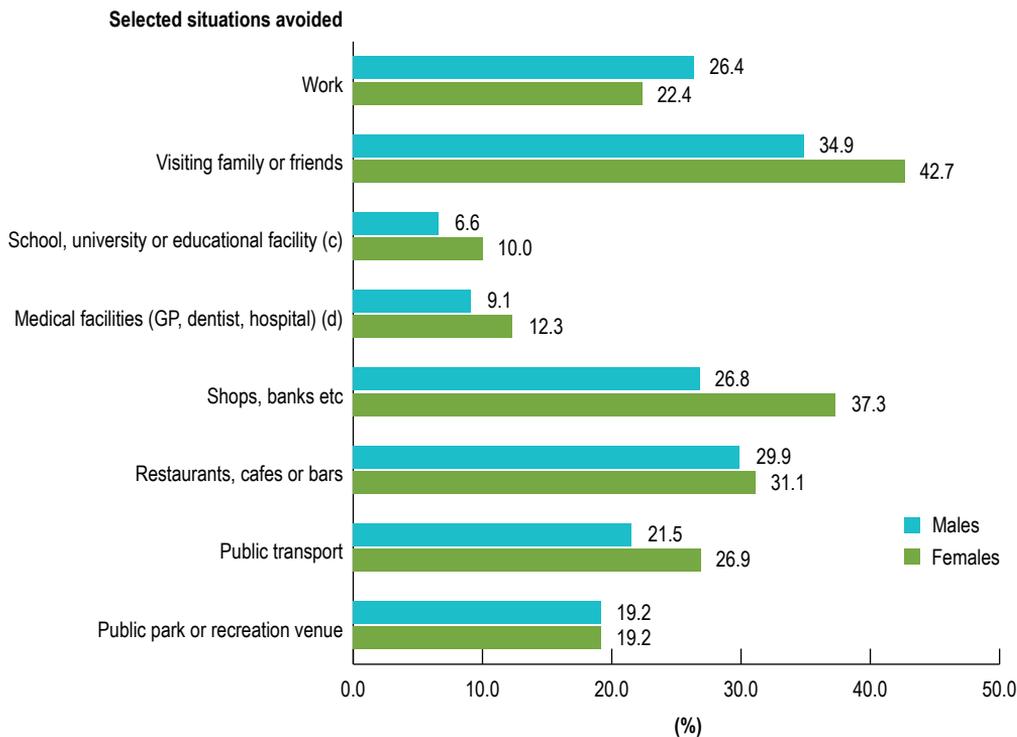
Of those employed part-time, 39.7% had avoided situations because of their disability.

### **Types of situations avoided**

There are a range of situations that people with disability may avoid because of their disability. In the 2015 SDAC, people with disability aged 15 years and over (living in households) could report avoiding one or more situations. The most common situation that was avoided because of disability in the 12 months prior to the survey by both men and women was visiting family or friends (34.9% and 42.7%, respectively).

Over one quarter (26.4%) of men and over one in five women (22.4%) avoided work in the previous 12 months because of their disability.

**Chart 4: People aged 15 years and over with disability (a), Selected types of situations avoided due to disability (b), by sex – 2015**



- (a) Living in households.
- (b) In the 12 months prior to the survey.
- (c) Includes other education facilities such as TAFE.
- (d) Includes GP, dentist, hospital.

*Avoiding work*

The proportion of people with disability aged 15 to 64 years (living in households) who avoided work varied according to their labour force status. Almost half (45.6%) of those who were unemployed at the time of the survey avoided work because of their disability.

Around two in five people who were employed full-time (42.5%) or part-time (37.9%), avoided work because of their disability in the 12 months prior to the survey.

In contrast, around one-quarter (23.6%) of those who were not in the labour force at the time of the survey avoided work because of their disability in the 12 months prior to the survey.

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## Glossary

**Core activities** – Core activities are communication, mobility and self-care.

**Core activity limitation** – Four levels of core activity limitation are determined based on whether a person needs help, has difficulty, or uses aids or equipment with any of the core activities (mobility, self-care and communication). A person's overall level of core activity limitation is determined by their highest level of limitation in these activities.

The four levels of limitation are:

- profound – the person is unable to do, or always needs help with, a core activity task
- severe – the person:
  - » sometimes needs help with a core activity task, and/or
  - » has difficulty understanding or being understood by family or friends, or
  - » can communicate more easily using sign language or other non-spoken forms of communication.
- moderate – the person needs no help, but has difficulty with a core activity task
- mild – the person needs no help and has no difficulty with any of the core activity tasks, but:
  - » uses aids or equipment, or has one or more of the following limitations
  - » cannot easily walk 200 metres
  - » cannot walk up and down stairs without a handrail
  - » cannot easily bend to pick up an object from the floor
  - » cannot use public transport
  - » can use public transport, but needs help or supervision
  - » needs no help or supervision, but has difficulty using public transport.

**Disability** is defined as any limitation, restriction or impairment which restricts everyday activities and has lasted or is likely to last for at least six months.

**Disability Status** – The level of specific limitation or restriction experienced by persons with disability. This is determined by the amount of difficulty experienced, the level of assistance needed from another person, or the use of an aid to undertake a particular core activity and/or to participate in education or employment activities.

For this report, the category **Schooling or employment restrictions** includes those people who have Profound/severe activity limitations and those with Moderate/mild activity limitations if they are also restricted with their schooling or employment.

**Disability Group** – Disabilities can be broadly grouped depending on whether they relate to functioning of the mind or the senses, or to anatomy or physiology. Each disability group may refer to a single disability or be composed of a number of broadly similar disabilities. In the 2015 SDAC, whether a person with disability experienced discrimination varied according to their disability group.

These groups are:

**Sensory**

- loss of sight (not corrected by glasses or contact lenses)
- loss of hearing where communication is restricted, or an aid to assist with, or substitute for, hearing is used
- speech difficulties.

**Intellectual**

- difficulty learning or understanding.

**Physical**

- shortness of breath or breathing difficulties that restrict everyday activities
- blackouts, seizures or loss of consciousness
- chronic or recurrent pain or discomfort that restricts everyday activities
- incomplete use of arms or fingers
- difficulty gripping or holding things
- incomplete use of feet or legs
- restriction in physical activities or in doing physical work
- disfigurement or deformity.

**Psychosocial**

- nervous or emotional condition that restricts everyday activities
- mental illness or condition requiring help or supervision
- memory problems or periods of confusion that restrict everyday activities
- social or behavioural difficulties that restrict everyday activities.

**Head injury, stroke or acquired brain injury**

- head injury, stroke or other acquired brain injury, with long-term effects that restrict everyday activities.

Some people with more than one condition may appear in multiple groups.

**Discrimination** refers to persons who felt they had been unfairly treated or discriminated against due to their disability.

**Labour force status** is a classification of the civilian population aged 15 years and over into full-time employed, part-time employed, unemployed or not in the labour force.

People **employed full-time** are those who usually work 35 hours or more a week (in all jobs), and those who, although usually working less than 35 hours a week, worked 35 hours or more during the reference week.

People **employed part-time** are those who usually work less than 35 hours a week (in all jobs), and either did so during the reference week, or were not at work during the reference week.

**Unemployed** refers to people aged 15 years and over who were not employed during the reference week and had actively looked for work in the four weeks up to the end of the reference week and were available for work during the reference week.

**People not in the labour force** are those who were classified as neither employed nor unemployed during the reference week.

# Appendix 3: Individuals and organisations that participated in consultations or made submissions to the Inquiry

## Consultations

Organisation	Date
5ways Group	24 February 2016
Able Australia	24 September 2015
Aboriginal Workforce Development Centre	25 November 2015
ACON	3 December 2015
ACT Disability, Aged and Carer Advocacy Service	24 February 2016
ACT Territory & Municipal Services	18 November 2015
Alzheimer's Australia	21 October 2015 2 November 2015
Anti-Discrimination Board of NSW	7 September 2015
Anti-Discrimination Commission NT	22 October 2015
ASA Access Consultancy	23 November 2015
ACT Government	6 July 2015
ACT Human Rights Commission	7 July 2015
Advocare Inc.	23 November 2015
AGL Energy	31 July 2015
Albury City Council	3 September 2015
Albury Vital Air Pty Ltd	3 September 2015
Albury Wodonga Health	3 September 2015
Allianz Australia	26 October 2015
ANZ	31 July 2015 24 September 2015
Arrium	15 October 2015
Aspergers Victoria	30 July 2015
Assisted Community Living	10 August 2015
Australian Chamber of Commerce and Industry	16 October 2015 29 October 2015
Australian Communications & Media Authority	7 July 2015
Australian Council of Trade Unions	25 February 2016
Australia Post	19 November 2015
Australian Federation of Disability Organisations	31 July 2015 24 September 2015
Australian Hotels Association	29 October 2015

<b>Organisation</b>	<b>Date</b>
Australian Industry Group	7 September 2015 15 October 2015 29 October 2015
Australian Institute of Superannuation Trustees	7 December 2015
Australian Manufacturing Workers' Union	25 February 2016
Australian National Audit Office	7 July 2015
Australian National University	6 July 2015
Australian Public Service Commission	7 July 2015 18 November 2015
Australian Public Transport Industrial Association	16 October 2015
Australian Services Union NSW	25 August 2015
Australian Taxation Office	7 August 2015 10 August 2015 18 November 2015
Autism NT	22 October 2015
Bankstown City Council	7 August 2015
Barkuma Inc (trading as Personnel Employment)	2 November 2015
Basic Rights Queensland	25 August 2015
BASF Australia Ltd	29 October 2015
Bedford Port Lincoln	3 November 2015
BeyondBlue	30 July 2015 24 February 2016
BINDI Australia Disability Enterprise	21 October 2015
BlueLine Disability Services	29 October 2015
BlueLine Employment	11 November 2015
BoysTown	25 August 2015
Break Thru People Solutions	30 July 2015
Brotherhood of St Laurence	30 July 2015 31 July 2015
Bus Industry Confederation	16 October 2015
Business Council of Australia	31 July 2015
Busy at Work	25 August 2015
Calsun Projects Pty Ltd	7 September 2015
Canberra Institute of Technology	7 July 2015

<b>Organisation</b>	<b>Date</b>
Career Development Association of Australia	30 October 2015
CareSuper	7 December 2015
Carers NSW	27 October 2015
Carers NT	20 October 2015
Carers Victoria	31 July 2015
Carlton & United Breweries	30 October 2015
Carnival Australia	26 October 2015
Chamber of Commerce NT	23 October 2015
Chamber of Commerce and Industry QLD	25 August 2015
Charles Darwin University	22 October 2015
Chamber of Commerce and Industry WA	24 November 2015
Chamber of Minerals and Energy WA	26 November 2015
Children with Disabilities Australia	31 July 2015
Choice Passion Life	25 August 2015
City of Darwin	22 October 2015
City of Fremantle	23 November 2015
City of Greater Dandenong	31 July 2015
City of Greater Geraldton	25 November 2015
City of Stonnington	31 July 2015
City of Sydney	10 August 2015 26 October 2015
Clayton Utz	18 November 2015
Clickability	29 July 2015
Clough Australia	24 November 2015
Coca Cola Amatil	26 October 2015
Cochlear	15 October 2015
Coles Supermarkets Pty Ltd	19 November 2015
Commonwealth Bank Australia	26 October 2015
Community House Port Lincoln Inc	3 November 2015
Compass Group (Australia)	19 November 2015
Construction Forestry Mining Energy Union (CFMEU)	25 February 2015
Corrigan's Produce Farms	24 February 2016
Connect Victoria Park Inc	23 November 2015

<b>Organisation</b>	<b>Date</b>
Consumers of Mental Health WA	23 November 2015
Council on the Ageing	3 December 2015
Council on the Ageing Australian Capital Territory	6 July 2015
Council on the Ageing Queensland	25 August 2015
Council of the Ageing South Australia	2 November 2015
Council of the Ageing Tasmania	10 November 2015
Council on the Ageing Victoria	31 July 2015
Choice Passion Life	25 August 2015
Community and Public Sector Union (CPSU)	25 February 2016
Crown Resorts	24 September 2015
Cummins	29 July 2015 24 September 2015
Custom Fluidpower	7 September 2015
Darebin Council	30 July 2015
Darwin Skills Development Scheme	22 October 2015
Deaf NT	22 October 2015
Department of Child Protection and Family Support WA	23 November 2015
Department of Commerce	23 November 2015
Department of Communications and the Arts	18 November 2015
Department of Communities, Child Safety and Disability Services QLD	25 August 2015
Department of Corrective Services WA	23 November 2015
Department of Education NSW	18 November 2015
Department of Employment	2 November 2015 18 November 2015
Department of Environment	18 November 2015
Department of Family and Community Services	7 August 2015 18 November 2015
Department of Finance	18 November 2015
Department of Foreign Affairs and Trade	18 November 2015
Department of Health	18 November 2015
Department of Health and Human Services	31 July 2015 24 September 2015 10 November 2015
Department of Human Services	10 August 2015

<b>Organisation</b>	<b>Date</b>
Department of Human Services VIC	24 September 2015
Department of Immigration and Border Patrol	18 November 2015
Department of Industry NSW State Training Services	18 November 2015
Department of Infrastructure and Regional Development	18 November 2015
Department of Local Government and Communities WA	23 November 2015
Department of Parliamentary Services	7 July 2015
Department of Prime Minister and Cabinet	7 July 2015 18 November 2015
Department of Social Services	6 July 2015
Department of State Development South Australia	2 November 2015
Department of State Growth Tasmania	11 November 2015
Department of Training and Workforce Development	25 November 2015
Deutsche Bank	26 October 2015
Developmental Disability WA	23 November 2015
Diabetes Queensland	25 August 2015
Disability Advocacy Network Australia	6 July 2015
Disability Council NSW	7 August 2015
Disability Employment Australia	30 July 2015 31 July 2015
Disability Services Commission WA	23 November 2015
Diversity Council Australia	27 October 2015
Dobbyn & Carafa Pty Ltd	31 July 2015
Downer	19 November 2015
Down Syndrome Association NT	22 October 2015
Edith Cowan University	23 November 2015
Education Department WA	23 November 2015
Employers Mutual	18 November 2015
Enabled Employment	7 July 2015
Encompass Community Services	29 July 2015
Epic Assist	10 August 2015
Equal Opportunity Commission SA	2 November 2015
Equal Opportunity Commission WA	23 November 2015
Equal Opportunity in Public Employment	23 November 2015

<b>Organisation</b>	<b>Date</b>
Ethnic Communities Council of Victoria	31 July 2015
Experience Matters	23 November 2015
Ernst and Young	30 October 2015
Federation of Ethnic Communities' Councils of Australia	7 July 2015
First People's Disability Network	27 November 2015
George Weston Foods	15 October 2015
Geoscience Australia	7 July 2015
Greenpeace Australia Pacific	26 October 2015
Guide Dogs	22 October 2015
Guide Dogs Queensland	20 August 2015
Hallis	24 September 2015
Health and Disability Services Complaints Office	23 November 2015
Helping Minds	23 November 2015
HESTA	7 December 2015
House with No Steps	20 November 2015
IBM	31 July 2015
Illawarra Forum	20 November 2015
Injured Support Workers Network	25 February 2016
Inner Sydney Aboriginal Interagency	27 November 2015
Inpex Australia Pty Ltd	24 November 2015
Inplace Recruitment	10 August 2015
inspired2shine	23 November 2015
IP Australia	18 November 2015
James McMahon	23 November 2015
Job Centre Australia	10 August 2015
Joblink Midwest	25 November 2015
Jobs Australia	30 July 2015
Jones Lang LaSalle	26 October 2015
Karingal Kommercial	29 July 2015
Kingsford Legal Centre	10 August 2015
	27 November 2015
Koori Centre, University of Sydney	18 November 2015
KPMG	19 November 2015

<b>Organisation</b>	<b>Date</b>
Lagardere Travel Retail	19 November 2015
Law Council of Australia	6 July 2015
Lendlease	27 November 2015
Life Without Barriers	20 October 2015
Lifestyle Solutions	21 October 2015 23 November 2015
Lloyd's Register	30 October 2015
Macquarie Group	26 October 2015 18 November 2015
Mamre Association	25 August 2015
Matthew Flinders Home Inc	3 November 2015
MaxiTRANS Industries Ltd	29 October 2015
Media Access Australia	18 November 2015
Medibank Private Limited	31 July 2015 24 September 2015
MEGT (Australia) Ltd	24 September 2015
Mental Health at Work	24 February 2016
Mental Health Commission WA	23 November 2015
Mercer	7 December 2015
Metro Parking	15 October 2015
Mid West Academy of Sport	25 November 2015
Midal Cables International	7 September 2015
Midlas Disability Advocacy Service	23 November 2015
Migrant Resource Centre SA	2 November 2015
Ministerial Advisory Council on Disability	23 November 2015
Mission Australia	11 November 2015
MLC Limited (Subsidiary of NAB)	7 December 2015
Monash University	30 July 2015 31 July 2015
Moonee Valley City Council	31 July 2015
Mortlock Clinic	3 November 2015
Multicultural Women's Council of Tasmania	11 November 2015
Multiple Solutions	10 November 2015
Murray Valley Centre Inc.	3 September 2015

<b>Organisation</b>	<b>Date</b>
National Australia Bank	31 July 2015 24 September 2015 30 October 2015
National Disability Insurance Agency	10 November 2015
National Disability Recruitment Coordinator	31 July 2015
National Employment Services Association	30 July 2015
National Library of Australia	18 November 2015
National Museum Australia	18 November 2015
National Relay Services, Outreach	18 November 2015
National Seniors Australia	24 August 2015 20 October 2015 21 October 2015 23 November 2015
National Disability Insurance Scheme	29 July 2015
National Disability Insurance Scheme Tasmania	11 November 2015
National Ethnic Disability Alliance	6 July 2015
National LGBTI Health Alliance	3 December 2015
Northcott	16 October 2015
Nova Employment	7 August 2015
NSW Bar Association	14 October 2015
NSW Business Chamber	10 August 2015 16 October 2015
NSW Department of Industry, Skills and Regional Development	7 August 2015
NSW State Insurance Regulatory Authority	18 November 2015
NSW Nurses and Midwives	25 February 2016
NSW Public Service Association	25 February 2016
NSW Teachers Federation	25 February 2016
OAK Tasmania	25 February 2016 11 November 2015
Older Women's Network	14 October 2015
Office of the Anti-Discrimination Commissioner, Tasmania	11 November 2015
Office of the Commissioner for Public Employment NT	22 October 2015
Officer of Small Business Commissioner	2 November 2015
Optus	19 November 2015

<b>Organisation</b>	<b>Date</b>
Orora Ltd	29 October 2015
Outdoors Inc	24 February 2016
Parramatta City Council	7 August 2015
Paxus Pty Ltd	18 November 2015
People with Disability Australia	20 August 2015
Per Capita	31 July 2015
Perth Zoo	23 November 2015
Pride in Diversity	3 December 2015
Programmed	31 July 2015 24 September 2015
Project Acumen Pty Ltd	7 December 2015
Pricewaterhouse Coopers	18 November 2015
Public Sector Commission WA	23 November 2015
Randstad Australia Pty Ltd	30 October 2015
Rebecca Fraser Consulting	30 October 2015
Recruitment and Consulting Services Association	30 July 2015
Redavidson Group	15 October 2015
Redfern Legal Centre	10 August 2015
Redmondis Australia Pty Ltd	15 October 2015
Renold	29 October 2015
Reserve Bank of Australia	27 October 2015
Retail Council	19 November 2015
Rio Tinto	7 December 2015
Royal Brisbane and Women's Hospital	25 August 2015
RSI and Overuse Injury Association of the ACT	6 July 2015
Queensland Independent Education Union	24 August 2015
Queensland Mental Health Commission	25 August 2015
Safe Work Australia	6 July 2015
Sageco	10 August 2015
Science Partners Pty Ltd	29 July 2015
Seniors Information Service	2 November 2015
SeventeenHundred	10 August 2015
Sharehouse Youth Accommodation Programme	19 August 2015

<b>Organisation</b>	<b>Date</b>
Shop Distributive and Allied Employees' Association	30 July 2015 25 February 2016
Self Advocacy Resource Unit	24 September 2015
Self Help Workplace	10 November 2015
SeniorPreneurs Foundation	29 July 2015
Sirron Holdings	7 September 2015
Social Firms Australia	31 July 2015
Speakout Advocacy	10 November 2015 11 November 2015
Sparke Helmore Lawyers	27 October 2015
Spinal Injuries Australia	19 August 2015
Spotless	31 July 2015
St David's Neighbourhood Centre	25 August 2015
St John of God Health Care	31 July 2015
St Lawrence Community Services	24 September 2015
State Service Management Office (DPAC)	24 September 2015 2 November 2015
State Super Financial Services	26 October 2015
Stockland	26 October 2015
Suncorp Group	26 October 2015
Superfriend	24 February 2016
Sutton Prospecting	24 February 2016
Sydney Children's Hospital Network	10 August 2015 18 November 2015
Sydney Institute of TAFE	26 October 2015
TAFE Queensland North	19 August 2015
Talented People 2	26 October 2015
Tasdeaf	11 November 2015
Tasmanian Parliament	10 November 2015
Telecommunications Industry Ombudsman Ltd	24 September 2015
Telstra	31 July 2015
Telstra Super	7 December 2015
The Aged Rights Service	3 December 2015
The Australian Psychological Society	31 July 2015

<b>Organisation</b>	<b>Date</b>
The Bloomfield Group	7 September 2015
The Society of Saint Hilarion Inc Aged Care	2 November 2015
Two Square Pegs	31 July 2015
Townsville City Council	19 August 2015
Uber	27 October 2015
Unions NSW	25 February 2016
UniSuper	7 December 2015
University of Canberra	6 July 2015
University of South Australia	2 November 2015 7 December 2015
University of Sydney	27 October 2015
University of Wollongong	20 November 2015
UPshift Solutions	23 November 2015
Varley Group	7 September 2015
Victoria Legal Aid	30 July 2015
Victoria Police	24 September 2015
Vision Australia	30 July 2015 24 September 2015 29 October 2015
Vodafone Australia	19 November 2015
Victorian Automobile Chamber of Commerce	29 October 2015
W.A.S Pty Ltd	16 October 2015
WA Deaf Society	23 November 2015
Wanslea Family Services	24 November 2015
Elderberry	30 October 2015
Women's Electoral Lobby	14 October 2015
Westpac	31 July 2015
West Tamar Physio	10 November 2015
Willing Older Workers W.O.W! Inc	30 July 2015
Wirrpanda Foundation	26 November 2015
Woolworths Ltd	18 November 2015
Women with Disabilities Victoria	31 July 2015
Workcover NSW	7 August 2015
Work Focus	10 August 2015

<b>Organisation</b>	<b>Date</b>
Working Women's Centre NT	22 October 2015
Working Women's Centre SA Inc	2 November 2015
Workplace Gender Equality Agency	14 October 2015
Worksafe VIC	29 July 2015
Yarra City Council	31 July 2015
Yooralla	31 July 2015
Zinfra Group	15 October 2015

## Submissions received from individuals

<b>Name</b>	<b>Reference number</b>
Michael Thomas Costello	1
Name Withheld	2
Confidential Submission	3
Confidential Submission	4
David Peter Stewart	5
Name Withheld	6
Katherine A Fowle	7
Dr Sherryl Broderick	8
Susan Joan Fleming	9
Name Withheld	10
Christopher Edward Frethey	11
Name Withheld	12
Clive Rodney Seiffert	13
Name Withheld	14
Name Withheld	15
Alonzo Llewellyn	16
Confidential Submission	17
Margaret Anne Ryan	18
Peter Hayes	19
Owen Thomas	20
Brian Murphy	21

<b>Name</b>	<b>Reference number</b>
Santosh Kumar	22
Anthony Smith	23
Name Withheld	24
Raden Dunbar	25
Roger Rex Griffiths	27
Anthony Ablong	28
Confidential Submission	29
Tom Hadley	30
Michael Ross Venner	31
Jane Margaret Scott	32
Confidential submission	33
Name Withheld	34
Confidential Submission	35
Confidential Submission	37
Name Withheld	39
Marcus Wigan	40
Confidential Submission	41
Name Withheld	42
Russell Cairns	45
Janeien Woollam	47
Debra Mundy	48
Confidential Submission	49
Jane Gersch	50
Name Withheld	51
Confidential Submission	52
Lynne Allison	53
Name Withheld	54
Name Withheld	55
Mia Vitue	56
Confidential Submission	57
Name Withheld	58
Confidential Submission	59
Owen James	60

<b>Name</b>	<b>Reference number</b>
Confidential Submission	61
Confidential Submission	62
Confidential Submission	63
Charles John Hamilton	64
Nicholas Griffin	65
Neil McAllister	66
Confidential Submission	67
John Moxon	68
Name Withheld	69
Confidential Submission	70
Name Withheld	71
Confidential Submission	72
Confidential Submission	73
Name Withheld	74
Confidential Submission	75
Name Withheld	76
Confidential Submission	77
Confidential Submission	78
Mark Whiting	79
Jeanie Adams on behalf of Mark Adams	80
Anthony Philip Holmes	81
Jeffrey Blackwell	82
Name Withheld	83
Name Withheld	84
Confidential Submission	85
Confidential Submission	86
Confidential Submission	87
Confidential Submission	88
Confidential Submission	89
Jean Gordon	90
Name Withheld	91
Confidential Submission	92
Confidential Submission	93

<b>Name</b>	<b>Reference number</b>
Cecylia Chodukiewicz	94
Confidential Submission	95
Confidential Submission	96
Name Withheld	97
Sandra May Barker	98
Confidential Submission	99
Michele Nealon	100
Lakshmi Kamla Wati Swarup	101
Confidential Submission	102
Name Withheld	103
Paul Di Michiel	104
Elizabeth Creagh	105
Sarah Pearce	106
Confidential Submission	108
Geoffrey William Kay	109
Matthew Francis Trezise	110
Viktoria Rother	111
Rachel Peries	112
Confidential Submission	113
Raelene West	114
Name Withheld	115
Name Withheld	116
Angelo Spadaccin	117
David Adams	118
Confidential Submission	121
Jean Walker	123
Associate Professor Pam McGrath	124
Alex Ross McInnes	125
Sarah Pearce	127
John R McGregor	128
Name Withheld	129
Confidential Submission	130
Confidential Submission	131

<b>Name</b>	<b>Reference number</b>
Confidential Submission	132
Max Duval	133
Confidential Submission	134
Name Withheld	135
Confidential Submission	136
Confidential Submission	137
Name Withheld	139
Name Withheld	140
Confidential Submission	141
Name Withheld	142
Margaret Sandra Shanahan	143
Confidential Submission	144
Susanne Lorraine Johnston	145
Confidential Submission	146
Confidential Submission	147
Name Withheld	149
Peter Stanley Smith	150
Confidential Submission	151
Name Withheld	152
Name Withheld	153
Name Withheld	154
Desmond Barry Jamieson	155
Name Withheld	156
Nicole McGregor	157
Name Withheld	158
Mark Keogh	159
Name Withheld	160
Confidential Submission	162
Confidential Submission	164
Name Withheld	165
Christine Ford	167
Carol Ann Worbs	168
Name Withheld	169

<b>Name</b>	<b>Reference number</b>
Confidential Submission	170
Robin Swatland	171
Confidential Submission	173
Chris Medic	174
Helen Hasan	175
Brian Opeskin	176
Confidential Submission	177
Name Withheld	178
Kirk Warren	179
Confidential Submission	183
Confidential Submission	184
Confidential Submission	185
Joanna Maxwell	186
Name Withheld	187
Tabitha Seymour Lloyd	188
Name Withheld	189
Name Withheld	190
Jason Stehn	192
Rosemary Hill	193
Name Withheld	194
Confidential Submission	196
Name Withheld	198
Name Withheld	199
Confidential Submission	200
Confidential Submission	202
Catherine Mary Kohlenberg made on behalf of Hannah Elizabeth Kohlenberg	204
Des Walsh	206
Confidential Submission	207
Eyal Gringart	209
Name Withheld	211
Name Withheld	213
Name Withheld	217
Confidential Submission	218

<b>Name</b>	<b>Reference number</b>
Confidential Submission	221
Anne Zalega	224
Confidential Submission	225
Name Withheld	228
Confidential Submission	229
Quang Nguyen	230
Name Withheld	231
Name Withheld	232
Confidential Submission	233
Steve Horton	238
Graeme David Moorhouse	239
Sandra Mitchell	240
Maureen Kirsch	245
Confidential Submission	246
Sophie Cotsis MLC	250
Confidential Submission	252
Confidential Submission	259
Joan Hughes	263
Jan Barham MLC	267
Confidential Submission	268
Confidential Submission	275
Confidential Submission	278
Name Withheld	282
Name Withheld	284
James Cohen	285
Judith Leeson	287
Peta Dixon	289
Daniel Heffernan	291
Mina Nguyen	292
Confidential Submission	293
Confidential Submission	294
James Patton	296
Catherine Halse	304

<b>Name</b>	<b>Reference number</b>
Name Withheld	305
Wendy Donald	310
Name Withheld	315
Jonathan Georgiou	320
Confidential Submission	328
Phil Lipshut	330
Stephen Hardy	331
Confidential Submission	332
Karla Tighe	335
Name Withheld	338
Name Withheld	342

## Submissions received from organisations

<b>Organisation</b>	<b>Reference number</b>
Deaf Victoria	26
Jeremy David Laird Flanagan	36
Confidential Submission	38
Confidential Submission	44
Martin Wren	46
RSI and Overuse Injury Association of the ACT	107
Australian Public Transport Industrial Association	119
Confidential Submission	120
Confidential Submission	122
2nd Act	126
Australians for Disability and Diversity Employment Inc	138
Hobsons Bay City Council	148
Dementia Alliance International	161
Mental Health at Work	163
Mental Health at Work	166
Confidential Submission	172
DOME Association Inc	180

<b>Organisation</b>	<b>Reference number</b>
Employment Law Centre of Western Australia	181
COTA SA	182
Anti-Discrimination Commission and Queensland Mental Health Commission	191
National Foundation for Australian Women	195
United Voice (NT Branch)	197
Confidential Submission	201
Aspergers Victoria	203
YourLifeChoices	205
Shop Distributive and Allied Employees' Association (SDA)	208
Diversity Council Australia	210
Queensland Advocacy Incorporated	212
Legal Aid Queensland	214
Disability Council NSW	215
Independent Education Union Australia (QLD/NT Branch)	216
Australian Blindness Forum	219
Career Development Association of Australia	220
A.S.A Access Consultancy	222
Hallmark Disability Research Initiative and the Hallmark Ageing Research Initiative, University of Melbourne	223
Multiple Sclerosis Australia	226
COTA Tasmania	227
economic Security4Women	234
Willing Older Workers W.O.W! Inc.	235
Melbourne School of Population and Growth, University of Melbourne	236
Housing Industry Association	237
Professional Masters	241
Australian Public Service Commission	242
Darebin Disability Advisory Committee	243
Acacia Hill School Council	244
Stop Smart Meters	247
Federation of Ethnic Communities' Councils of Australia (FECCA) and National Ethnic Disability Alliance (NEDA)	248
St John of God Health Care	249

<b>Organisation</b>	<b>Reference number</b>
Professionals Australia	251
Basic Rights Queensland	253
Jobs Australia	254
Mental Health Council of Tasmania	255
COTA ACT	256
Brotherhood of St Laurence	257
NT Working Women's Centre	258
Break Thru People Solutions	260
Per Capita	261
Alzheimer's Australia	262
Combined Pensioners and Superannuants	264
Kingsford Legal Centre	265
National Seniors Australia	266
Vision Australia	269
Australian Chamber of Commerce and Industry	270
Victorian Equal Opportunity and Human Rights Commission	271
Cairns Community Legal Centre	272
MS Queensland	273
Information Technology Contract and Recruitment Association	274
National Disability Services	276
CBM Australia	277
Marrickville Legal Centre	279
HIV AIDS Legal Centre	280
Midlas	281
Confidential Submission	283
Australian Lawyers for Human Rights	286
Multicultural Disability Advocacy Association of NSW Inc	288
Carers NSW	290
Disability Employment Australia	295
Blind Citizens Australia	297
Victorian Equal Opportunity and Human Rights Commission	298
Physical Disability Council of NSW	299
Department of Social Services	300

<b>Organisation</b>	<b>Reference number</b>
Ai Group	301
National Stroke Foundation	302
Jobs Australia	303
Children with Disability Australia	306
Insurance Council of Australia	307
Recruitment & Consulting Services Association	308
Charles Darwin University (Northern Institute)	309
Safe Work Australia	311
Western Australia Disability Services Commission	312
NSW Public Service Association	313
Queensland Disability Network	314
National Mental Health Consumer and Carer Forum	316
Illawarra Forum	317
Australian Psychological Society	318
Victoria Legal Aid	319
Suncorp	321
Australian Council of Trade Unions	322
Redfern Legal Centre	323
COTA Australia	324
BeyondBlue	325
NSW Nurses and Midwives Association	326
Confidential Submission	327
Australian Institute of Superannuation	329
Coalition of Solicitors and Law Students	333
NSW Legal Aid	334
Job Support	336
Department of Employment	337
Confidential Submission	339
Tasmanian Anti-Discrimination Commissioner (Age)	340
Law Council of Australia	341
Tasmanian Anti-Discrimination Commission (Disability)	343

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## Surveys included in submissions from organisations

Seven organisations, including membership-based organisations and trade unions, conducted surveys in relation to the Terms of Reference for the Inquiry and provided their results in submissions.

<b>Organisation</b>	<b>Size of membership</b>	<b>No. of survey respondents</b>
NSW Public Service Association	39,000	1,257
Shop Distributive and Allied Employees Association	215,000	340
Your Life Choices	135,000	5,474
NSW Nurses and Midwives Association	1,814	144
Professionals Australia	9,000	1,671
Information Technology Contract & Recruitment Association Ltd	112	21
ASA Access Consultancy	N/A	11
<b>Total survey participants</b>		<b>8918</b>

## Appendix 4: Key Inquiry meetings

<b>Individual/Organisation</b>	<b>Date</b>
Senator the Hon Eric Abetz	5 February 2015
The Hon Joe Hockey MP	2 March 2015 23 April 2015
Senator the Hon Simon Birmingham	2 March 2015
National Disability Insurance Agency	7 April 2015 18 August 2015 1 December 2015
Senator the Hon Marise Payne	21 April 2015
Australian Public Service Commissioner	30 April 2015
Department of Employment	1 May 2015
Australian Bureau of Statistics	18 May 2015
The Hon Sophie Cotsis MLC, NSW Shadow Minister for Ageing and Disability Services	19 May 2015
Institute on Employment and Disability, Cornell University	20 May 2015
Australian Public Service Commission	28 May 2015 25 November 2015
The Hon Luke Hartsuyker MP	28 May 2015
Senator the Hon Claire Moore	10 June 2015
YourLifeChoices	14 July 2015
Pricewaterhouse Coopers	15 July 2015
Workplace Gender Equality Agency	22 July 2015
AustralianSuper	23 July 2015
Retail Council	11 August 2015
The Hon Shayne Neumann MP	17 August 2015
The Hon Jenny Macklin MP	17 August 2015
The Hon Josh Frydenberg MP	17 August 2015
National Disability Recruitment Coordinator	19 August 2015
QLD Anti-Discrimination Commission	24 August 2015

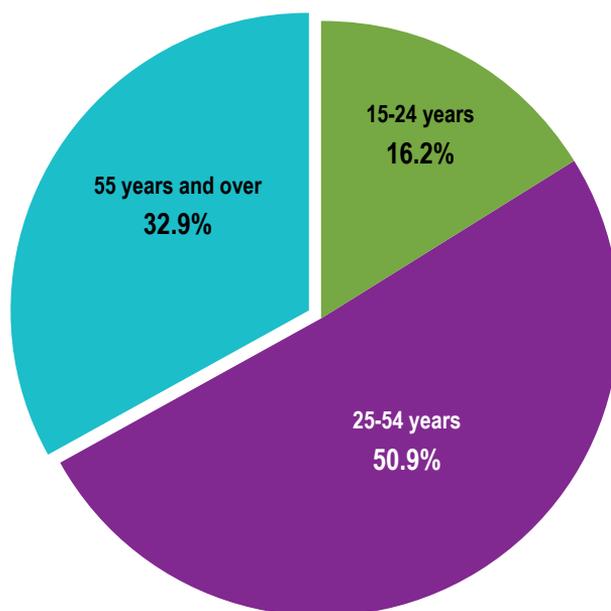
<b>Individual/Organisation</b>	<b>Date</b>
Senator the Hon Jenny McAllister, NSW	16 October 2015
Indigenous Directorate, Telstra	20 October 2015
Centre for Remote Health, Northern Territory	20 October 2015
Tangentyere Employment Service and Tangentyere Aged and Community Care Service	20 October 2015
NSW Business Chamber	5 November 2015
Australian Council of Trade Unions	5 November 2015
Crown Casino Perth	2 December 2015
Commonwealth Bank Australia	15 December 2015
Insurance Council of Australia	19 January 2016
Johnson & Johnson	21 January 2016
NSW Office of Small Business Commissioner	3 February 2016
Senator the Hon George Brandis QC	9 February 2016
Senator the Hon Simon Birmingham	9 February 2016
Senator the Hon Michaelia Cash	9 February 2016
Council of Small Business Australia	10 February 2016
Goldman Sachs	23 February 2016
Beyond Blue	24 February 2016
The Hon Brad Hazzard, Minister for Family and Community Services, Minister for Social Housing	9 March 2016
The Hon John George Ajaka MLC, NSW Minister for Ageing, Minister for Disability Services, Minister for Multiculturalism	9 March 2016
Australian Law Reform Commission	18 March 2016
The Hon Ken Wyatt AM, MP, Assistant Minister for Health and Aged Care	4 March 2016
Construction Forestry Mining and Energy Union	11 April 2016
Australian Small Business and Family Ombudsman	13 April 2016

# Appendix 5: Labour market trends: older Australians<sup>1</sup>

## Demographic profile

As at November 2015, there were 6.4 million mature-age (55 years and over) persons in Australia, comprising 32.9 per cent of the civilian population aged 15 years and over (see Chart 1), up from 26.0 per cent 20 years ago. Over the last five years, the annual average rate of population growth for mature-age persons (2.8 per cent) has outpaced that for all persons aged 15 years and over (1.6 per cent).<sup>2</sup> This is in line with Australia's population ageing and also reflects the final wave of the Baby Boomer generation moving into the mature-age cohort.

**Chart 1: Civilian population shares (%) for selected age cohorts, November 2015**

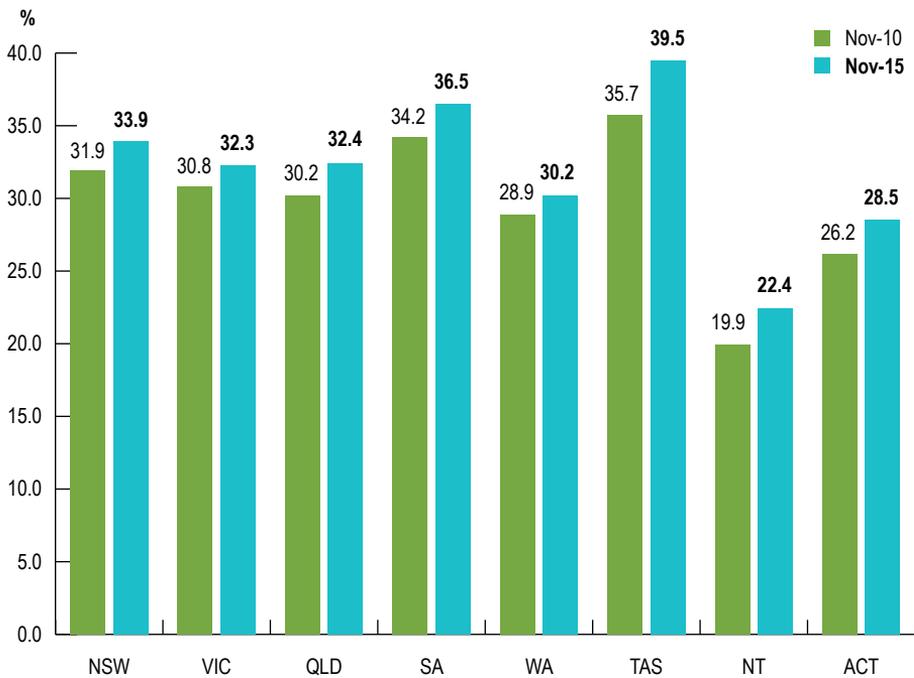


**Source:** Australian Bureau of Statistics, Labour Force, Detailed — Electronic Delivery, November 2015 (Cat. No. 6291.0.55.001), three month averages of original estimates.

The gender composition of the cohort has been broadly unchanged over the last two decades. Of those aged 55 years and over in November 2015, males comprised 47.7 per cent of the cohort (compared with 46.3 per cent in November 1995), while females accounted for 52.3 per cent (compared with 53.7 per cent in November 1995).<sup>3</sup>

As shown in Chart 2, mature-age persons account for at least 30 per cent of the total civilian population aged 15 years and over in the majority of the States and Territories.<sup>4</sup>

**Chart 2: Mature-age civilian population shares by State and Territory, November 2010 and November 2015**



**Source:** Australian Bureau of Statistics, Labour Force, Detailed — Electronic Delivery, November 2015 (Cat. No. 6291.0.55.001), three month averages of original estimates.

With respect to educational attainment levels, mature-age persons tend to have lower attainment levels compared with the broader population. Latest available data for August 2011 show that the proportion of mature-age persons (aged 55–64 years<sup>5</sup>) with a Bachelor degree or higher (19.5 per cent) was below the comparable rate for 15–64 year olds (24.4 per cent). Furthermore, the proportion of those persons aged 55–64 years who have completed Year 12 stood at 40.5 per cent, below the 59.0 per cent recorded for 15–64 year olds.<sup>6</sup>

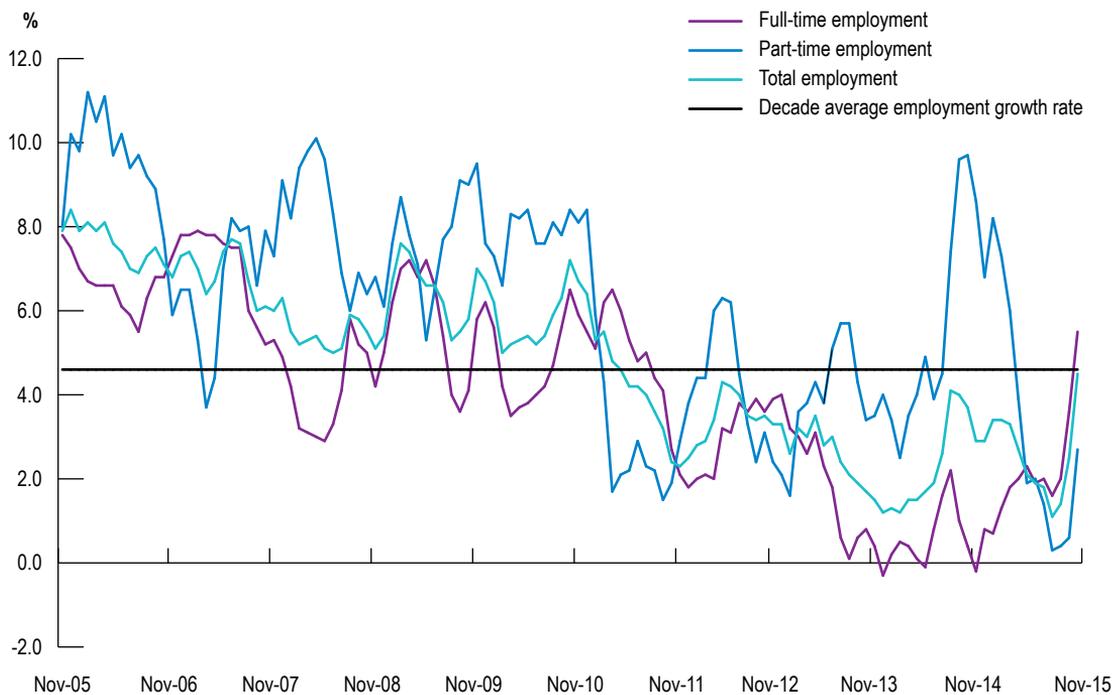
In terms of cultural diversity, in August 2011, a smaller proportion (1.0 per cent) of persons aged 55 years and over identified as Indigenous compared with 2.7 per cent for all persons in Australia, while 21.1 per cent of mature-age persons were born in an Other Than Main English Speaking Country (OTMESC),<sup>7</sup> above the 16.6 per cent recorded for all persons in Australia.<sup>8</sup>

## Labour market conditions

### Employment

Reflecting the improvement in overall labour market conditions, the mature-age labour market has been strong over the last year, with the level of mature-age employment increasing by 93,500 (or 4.5 per cent) over the period to a record high of 2,180,500 in November 2015. The current pace of mature-age employment growth is just below the decade average employment growth rate of 4.6 per cent per annum (see Chart 3).

**Chart 3: Annual mature-age employment change (%), November 2005 to November 2015**



**Source:** Australian Bureau of Statistics, Labour Force, Detailed — Electronic Delivery, November 2015 (Cat. No. 6291.0.55.001), three month averages of original estimates.

The increase in employment over the year to November 2015 has been due, predominantly, to an increase in full-time employment (up by 72,100 or 5.5 per cent) to a record high of 1,380,300, while part-time employment has also risen, by 21,400 (or 2.7 per cent) to 800,200, also a record high.

Since the onset of the Global Financial Crisis (GFC) in September 2008, part-time employment has increased by 242,700 (or 43.5 per cent), while full-time employment has risen by 276,400 (or 25.0 per cent).

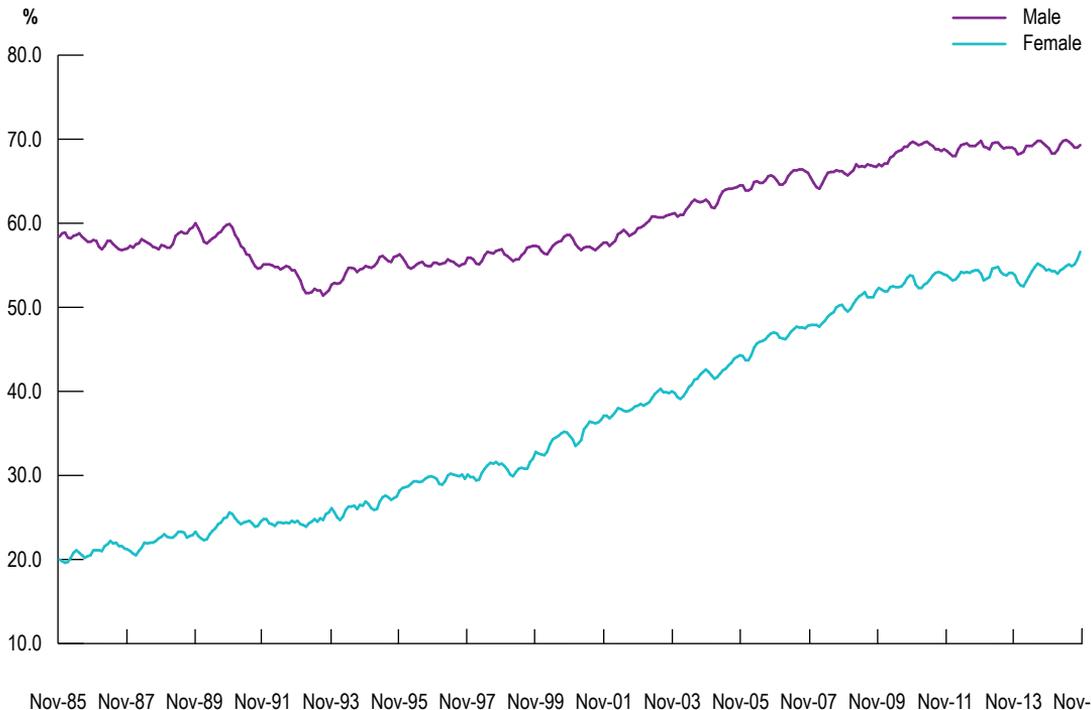
Employment for mature-age females experienced a greater increase over the last year, up by 62,700 (or 7.0 per cent) to a record high of 962,800 in November 2015, while male employment also rose, by 30,800 (or 2.6 per cent) to 1,217,600, also a record high.

### Employment rate

The employment rate (employment as a proportion of the population) for mature-age persons aged 55–64 years<sup>9</sup> has increased substantially over the last two decades, from 42.3 per cent in November 1995 to a record high of 62.8 per cent in November 2015, compared with 72.7 per cent recorded for 15–64 year olds. Over the last year, the employment rate for persons aged 55–64 years has increased by 1.2 percentage points.<sup>10</sup>

The employment rate for mature-age females has risen significantly over the last 20 years, up from 28.2 per cent in November 1995 to a record high of 56.6 per cent in November 2015, although it remains below the 69.3 per cent recorded for mature-age males (see Chart 4).<sup>11</sup>

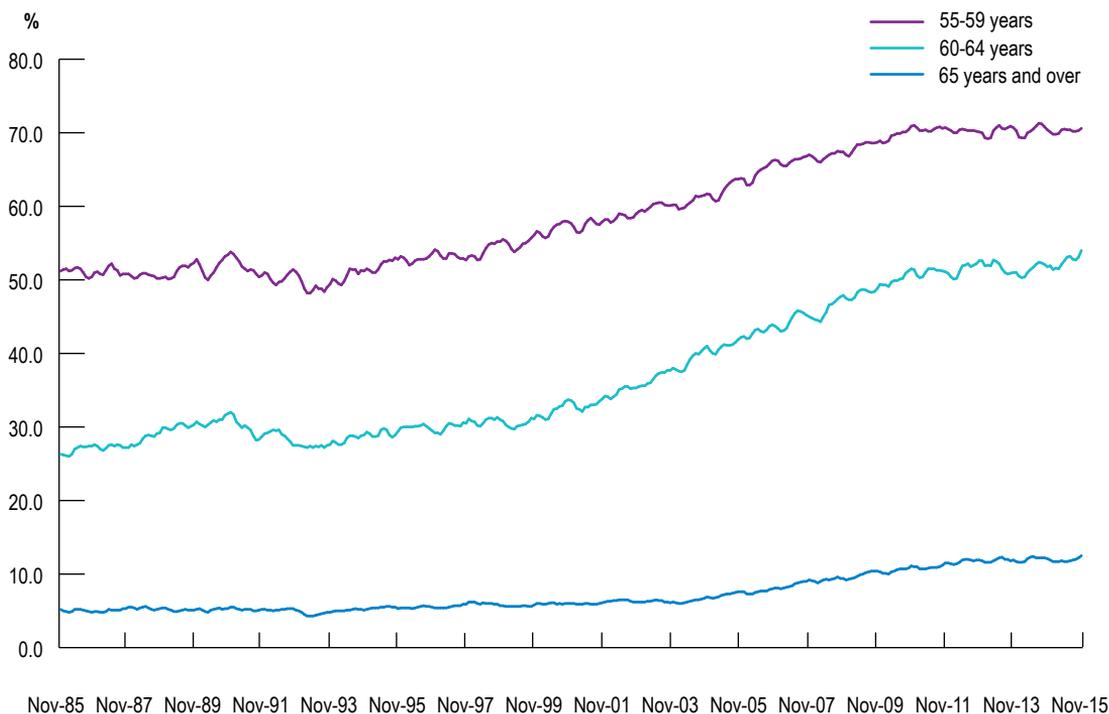
**Chart 4: Mature-age (55–64 years) employment rate by gender, November 1985 to November 2015**



**Source:** Australian Bureau of Statistics, Labour Force, Detailed — Electronic Delivery, November 2015 (Cat. No. 6291.0.55.001), three month averages of original estimates.

A disaggregation within the cohort shows that the employment rate for 55–59 year olds has been consistently higher than that for persons aged 60–64 years (see Chart 5).<sup>12</sup>

**Chart 5: Employment rate by various age cohorts, November 1985 to November 2015**



**Source:** Australian Bureau of Statistics, Labour Force, Detailed — Electronic Delivery, November 2015 (Cat. No. 6291.0.55.001), three month averages of original estimates.

### Underemployment

The level of underemployment for mature-age persons has declined by 4,900 (or 3.6 per cent) over the last year, to 133,600 in November 2015 but remains 64,700 (or 94.0 per cent) above the level recorded in August 2008 prior to the onset of the GFC.<sup>13</sup>

Similarly, the underemployment rate for mature-age persons has fallen by 0.6 percentage points over the last year, to 5.8 per cent in November 2015, although it remains above the 4.1 per cent recorded in August 2008.<sup>14</sup>

### Unemployment

The level of unemployment for those aged 55 years and over has increased by 8,400 (or 11.2 per cent) over the year to stand at 83,900 in November 2015. The rise in unemployment over the last year has been due, entirely, to a rise in the number of mature-age persons looking for full-time work, up by 11,500 (or 21.3 per cent) to 65,300 in November 2015, while those looking for part-time work decreased, by 3,000 (or 13.9 per cent) to 18,600.<sup>15</sup>

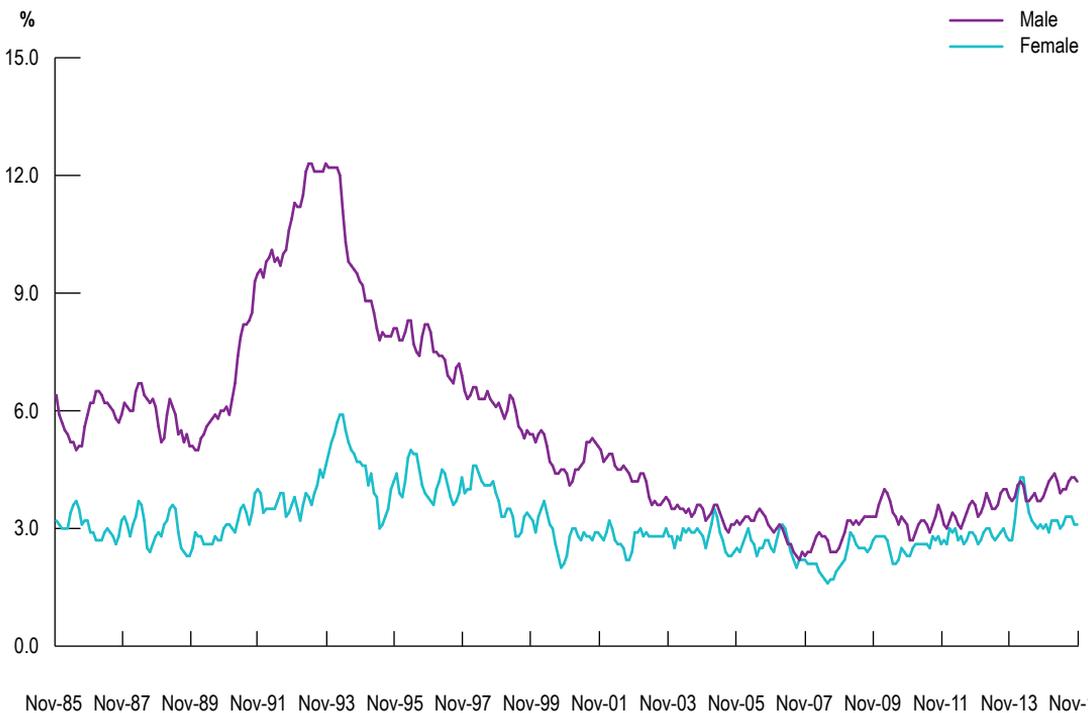
Since the onset of the GFC in September 2008, mature-age unemployment has risen by 48,000 (or 133.7 per cent).<sup>16</sup>

Against this backdrop, the unemployment rate for the mature-age cohort has increased over the year, from 3.5 per cent in November 2014 to 3.7 per cent in November 2015, and is 1.6 percentage points above the rate recorded in September 2008, although it remains well below the 5.8 per cent recorded for all persons.<sup>17</sup>

Over the last 12 months, the level of mature-age male unemployment has risen by 6,200 (or 13.1 per cent), while mature-age female unemployment has also increased, by 2,200 (or 8.0 per cent). Over the same period, the mature-age male unemployment rate has risen by 0.4 percentage points, to 4.2 per cent in November 2015, while the unemployment rate for mature-age females has increased marginally, to 3.1 per cent in November 2015.

It is worth noting that the unemployment rate for mature-age females is 1.3 percentage points below the rate recorded 20 years ago, while the unemployment rate for mature-age males has declined by 3.9 percentage points over the period. As shown in Chart 6 below, mature-age males were hit particularly hard during the early 1990s recession, with the unemployment rate peaking at 12.3 per cent in April 1993.<sup>18</sup>

**Chart 6: Mature-age unemployment rate by gender, November 1985 to November 2015**

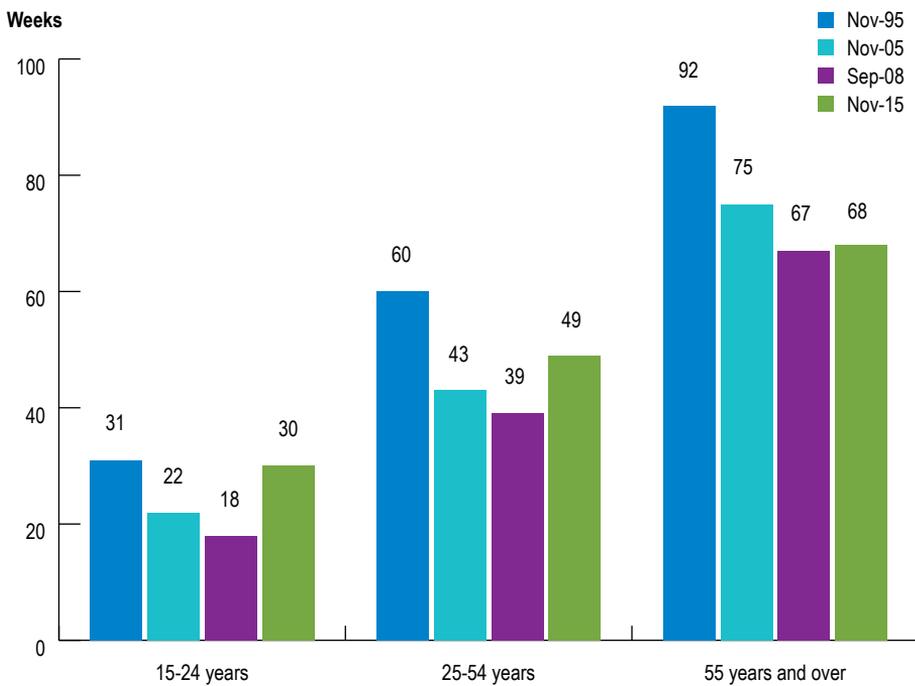


**Source:** Australian Bureau of Statistics, Labour Force, Detailed — Electronic Delivery, November 2015 (Cat. No. 6291.0.55.001), three month averages of original estimates.

### Average duration of unemployment

While mature-age persons have a much lower unemployment rate, older people tend to face much greater difficulty finding subsequent employment upon becoming unemployed, when compared with their younger counterparts. To illustrate, the average duration of unemployment for mature-age persons stood at 68 weeks in November 2015, well above the 30 weeks recorded for 15–24 year olds and 49 weeks for 25–54 year olds (see Chart 7).<sup>19</sup>

**Chart 7: Average duration of unemployment (weeks) by selected age cohorts**

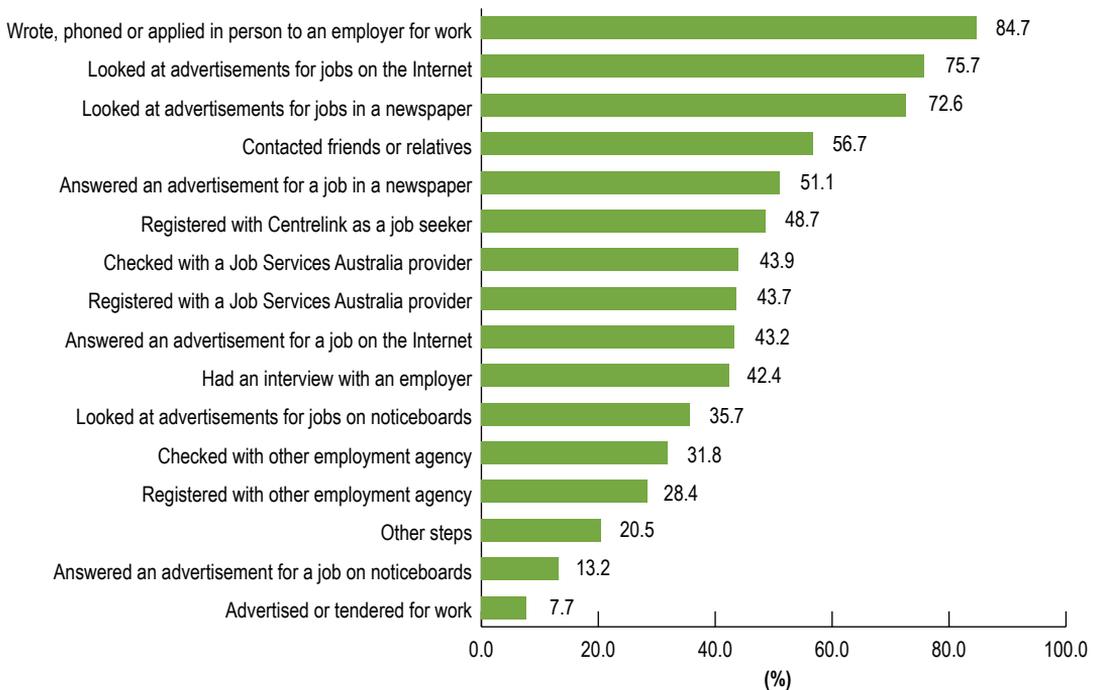


**Source:** Australian Bureau of Statistics, Labour Force, Detailed — Electronic Delivery, November 2015 (Cat. No. 6291.0.55.001), three month averages of original estimates, with the exception of data for those aged 15–24, which are in 12-month average terms.

## Job search experience

The latest available Australian Bureau of Statistics *Job Search Experience* data show that, in February 2014, the most common step<sup>20</sup> taken to find work, undertaken by 84.7 per cent of unemployed persons aged 55 years and over, was 'Wrote, phoned or applied in person to an employer for work', while 75.7 per cent 'Looked at advertisements for jobs on the Internet' and 72.6 per cent 'Looked at advertisements for jobs in a newspaper' (see Chart 8).<sup>21</sup>

**Chart 8: All steps taken by unemployed mature-age persons to find work, February 2014**

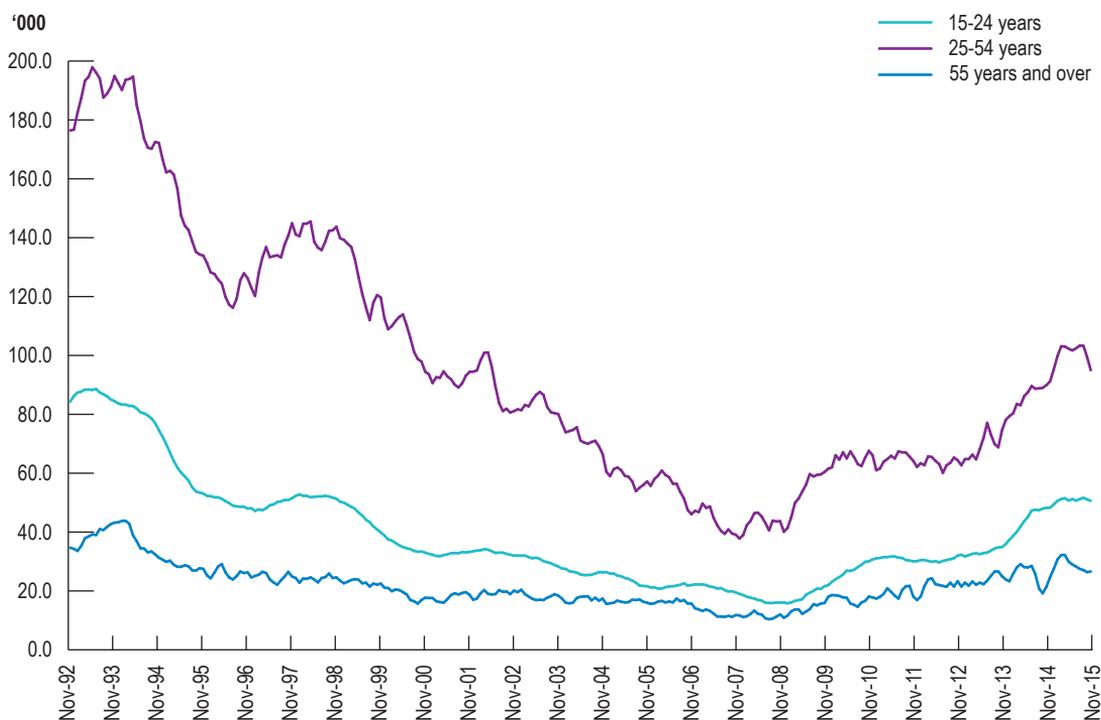


**Source:** Australian Bureau of Statistics, Persons Not in the Labour Force, Unemployed Workers and Job Search Experience, Australia, February 2014 (Cat No. 6220.0) Note: more than one response can be provided, therefore, components do not sum to total.

### Long-term unemployment

In line with the significant increase in long-term unemployment (LTU) for all persons since the onset of the GFC in September 2008, LTU for the mature-age cohort has increased considerably, up by 15,900 (or 149.7 per cent) over the period, to stand at 26,600 in November 2015 (see Chart 9). Over the last year, mature-age LTU has risen by 5,200 (or 24.2 per cent).<sup>22</sup>

**Chart 9: Level of LTU ('000) by selected age cohorts, November 1992 to November 2015**



**Source:** Australian Bureau of Statistics, Labour Force, Detailed — Electronic Delivery, November 2015 (Cat. No. 6291.0.55.001), three month averages of original estimates, with the exception of data for those aged 15–24, which are in 12-month average terms.

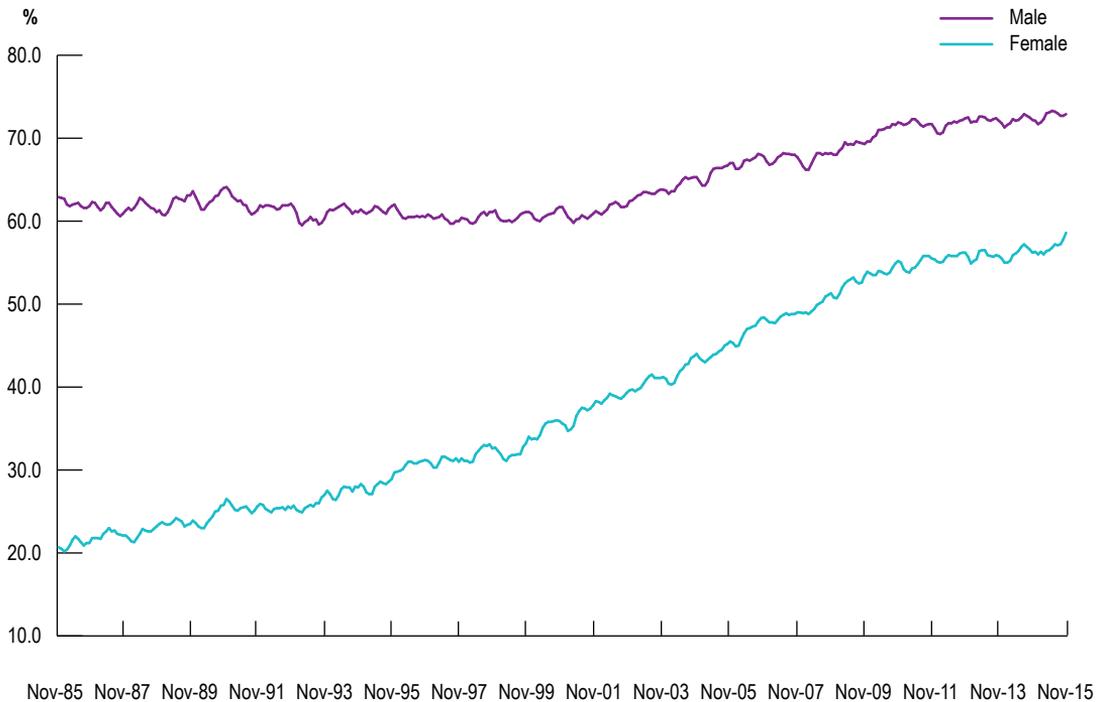
The rise in mature-age LTU, coinciding with the increase in the average duration of unemployment, is of particular concern, given that people who have been unemployed for a significant length of time, on average, face greater difficulty finding subsequent work due to skill depreciation, the discouraged worker effect and marginalisation from the labour market (as there is often ‘scarring’ effect, whereby employer perceptions of a long-term unemployed person’s suitability for a job are negatively influenced by their time out of the labour force).

## Participation

Over the last two decades, the participation rate for 55–64 year olds<sup>23</sup> has increased significantly, from 45.9 per cent in November 1995 to a record high of 65.6 per cent in November 2015. The mature-age participation rate has risen by 6.1 percentage points since September 2008 and is 1.6 percentage points above the rate recorded a year ago.<sup>24</sup>

The participation rate for mature-age females has risen considerably over the last 20 years, up by 28.9 percentage points to a record high of 58.6 per cent in November 2015. Over the same period, the mature-age male participation rate also increased, from 62.0 per cent in September 1995 to 72.9 per cent in November 2015 (see Chart 10), although it remains below the peak of 74.3 per cent recorded at the beginning of the series in April 1978.<sup>25</sup>

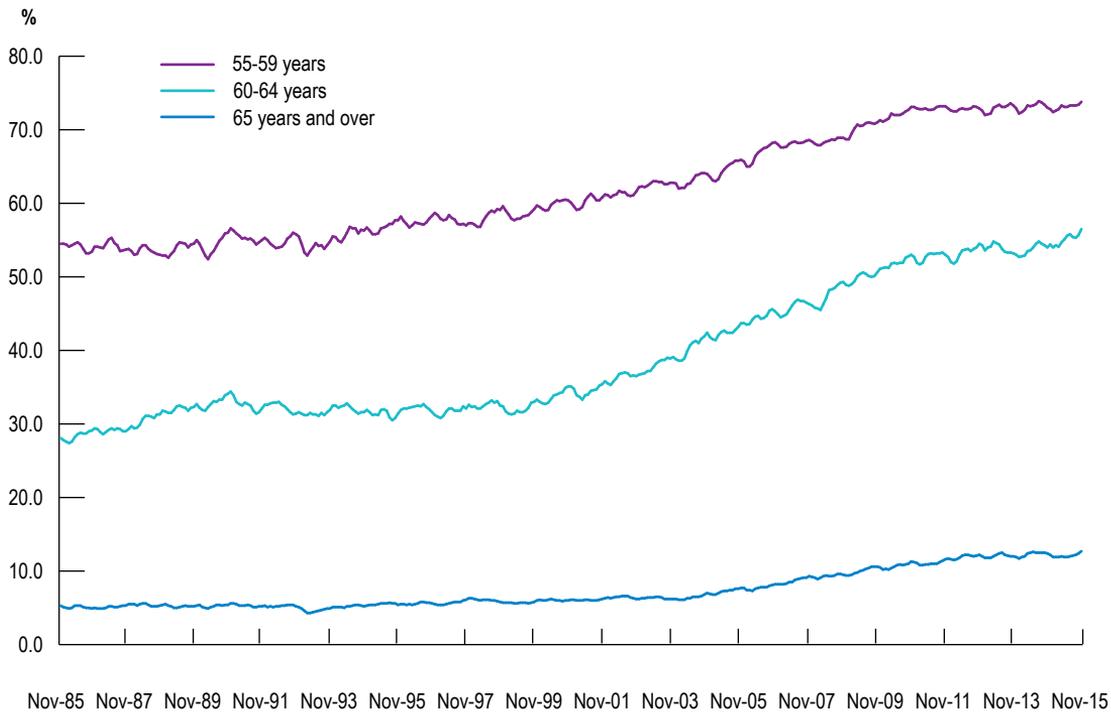
**Chart 10: Mature-age (55–64 years) participation rate by gender, November 1985 to November 2015**



**Source:** Australian Bureau of Statistics, Labour Force, Detailed — Electronic Delivery, November 2015 (Cat. No. 6291.0.55.001), three month averages of original estimates.

It is not surprising that, when disaggregating the cohort, data show that the participation rate for 55–59 year olds has been consistently higher than that for persons aged 60–64 years (see Chart 11). While the participation rate for both age groups have risen significantly over the last 20 years, the increase has been more pronounced for 60–64 year olds, up by 24.5 percentage points since November 1995 to a record high of 56.5 per cent in November 2015, compared with a rise of 15.6 percentage points to 73.8 per cent for those aged 55–59 years. It is also worth noting that while the participation rate for those aged 65 years and over remains low, it has increased from 5.5 per cent in November 1995 to 12.7 per cent in November 2015.<sup>26</sup>

**Chart 11: Participation rate by various age cohorts, November 1985 to November 2015**



**Source:** Australian Bureau of Statistics, Labour Force, Detailed — Electronic Delivery, November 2015 (Cat. No. 6291.0.55.001), three month averages of original estimates.

Looking ahead, according to the *2015 Intergenerational Report — Australia in 2055*, the participation rate for persons aged 15 years and over is projected to be 64.9 per cent in 2024–25, before declining to 62.4 per cent in 2054–55, a level last seen following the early 1990s recession.

The fall in the overall participation rate is expected to be due, primarily, to the changing age structure of the population, with fewer people in the age groups where participation is highest (15 to 64 years) and more people in the age cohorts where participation begins to decline (people aged over 65). Treasury projections also suggest that by 2054–55, there will be just 2.7 persons aged between 15 and 64 years for every person aged 65 years and over, down from 4.5 people in 2014–15, and 7.3 in 1974–75.

As a result, even though participation rates across most age cohorts will rise by 2054–55, the overall participation rate is nonetheless expected to fall substantially over the period.

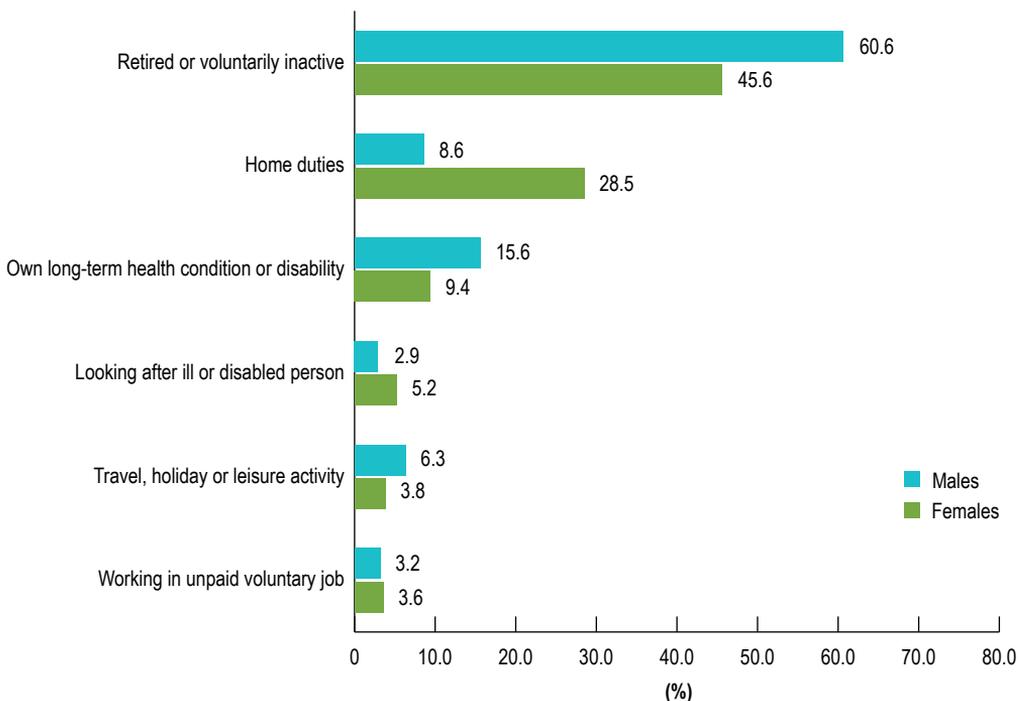
The labour force participation rate for persons aged 65 years and over is expected to rise from 12.9 per cent in 2014–15 to 17.3 per cent in 2054–55, with some of this increase driven by the rise in the Age Pension eligibility age, which will gradually increase to 70 years by 2035. Older people may also continue to extend their labour force participation as a result of the improvements that have led to longer life expectancy and the rise of less physically demanding work, due to new technologies.

### Persons not in the labour force

The Australian Bureau of Statistics *Persons Not In the Labour Force, Underemployed Workers and Job Search Experience* publication provides an overview of the number of people not in the labour force and those with *marginal attachment*<sup>27</sup> to the labour force, including discouraged job seekers. As at February 2014 (latest available data), just 6.1 per cent of persons aged 55 and over who were not in the labour force were considered marginally attached (compared with 16.2 per cent for all ages).<sup>28</sup>

The main activity undertaken by mature-age persons who were not in the labour force was ‘Retired or voluntarily inactive’ (52.1 per cent), followed by ‘Home duties’ (19.9 per cent) and ‘Own long-term health condition or disability’ (12.1 per cent).<sup>29</sup>

**Chart 12: Selected main activity when not in the labour force, 55 years and over, February 2014**

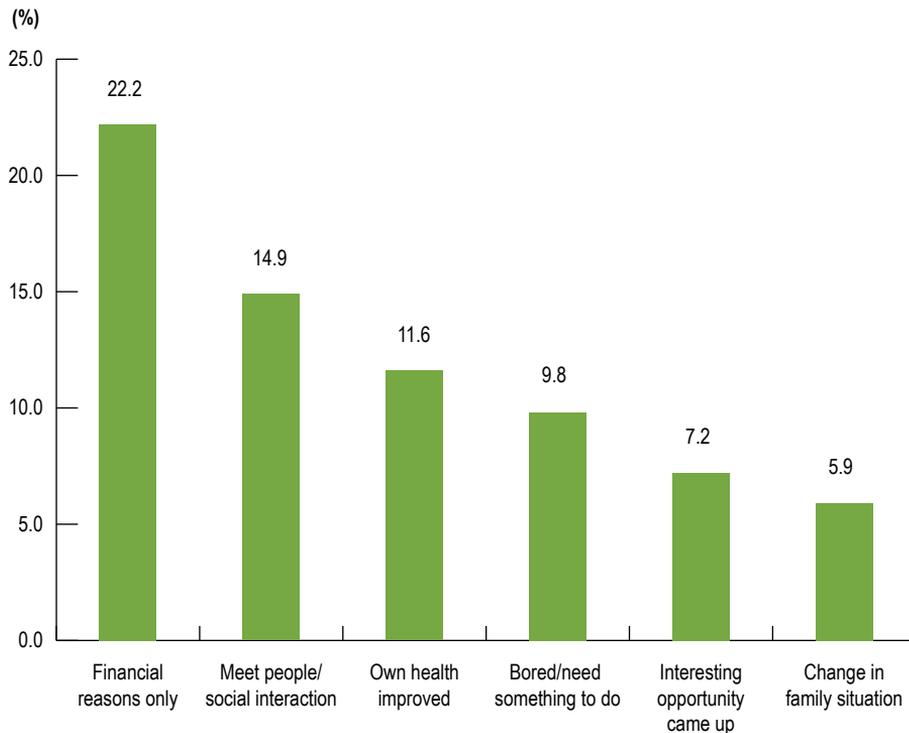


**Source:** Australian Bureau of Statistics, *Persons Not in the Labour Force, Unemployed Workers and Job Search Experience*, Australia, February 2014 (Cat No. 6220.0).

### Barriers to mature-age participation

Data from the Australian Bureau of Statistics *Barriers and Incentives to Labour Force Participation* publication suggest that some 55–75 year olds who were not employed were prepared to return to work under certain circumstances. As at June 2013 (latest available data), the main reason that 55–75 year olds would return to work was ‘Financial reasons only’ (22.2 per cent), followed by ‘Meet people/ social interaction’ (14.9 per cent) and ‘Own health improved’ (11.6 per cent) (see Chart 13). Perhaps unsurprisingly, 55–75 year olds were less willing to relocate for work (3.1 per cent) than the average for all persons aged 18–75 (10.7 per cent).<sup>30</sup>

**Chart 13: Selected main reason would return to work, persons aged 55–75 who were not employed, June 2013**



**Source:** Australian Bureau of Statistics, *Barriers and Incentives to Labour Force Participation*, Australia, July 2012 to June 2013 (Cat. No. 6239.0).

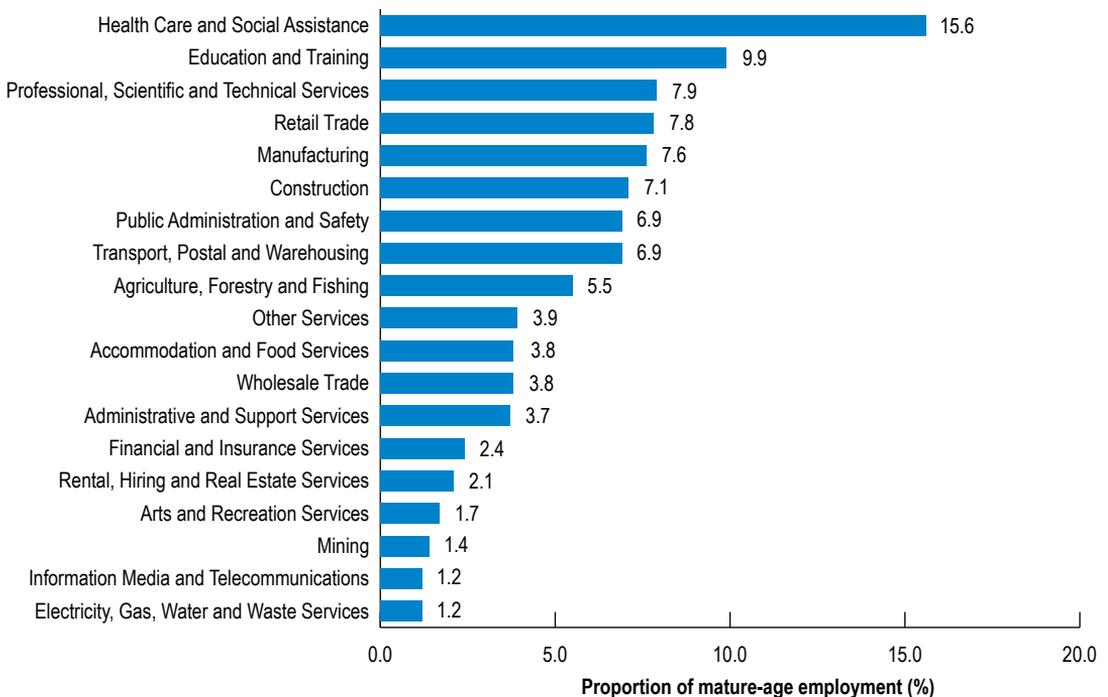
## Retirement intentions

The Australian Bureau of Statistics *Retirement and Retirement Intentions* publication shows that, as at June 2015, 55.4 per cent of persons aged 55 years and over were retired from the labour force. There was considerable variation within the cohort. For instance, persons aged 70 and over (85.6 per cent) were much more likely to be retired than 55–59 year olds (18.1 per cent). As at June 2015, 77.3 per cent of employed persons aged 55 and over intend to retire from the labour force, while 10.0 per cent never intend to retire.<sup>31</sup>

## Industry

In the November quarter 2015, Health Care and Social Assistance was the largest employing industry for mature-age persons, accounting for 15.6 per cent (or 333,000 persons) of mature-age employment (see Chart 14). Other large employing industries for mature-age persons included Education and Training (9.9 per cent or 211,000 persons), Professional, Scientific and Technical Services (7.9 per cent or 168,400 persons) and Retail Trade (7.8 per cent or 166,200 persons).<sup>32</sup>

**Chart 14: Employment by industry for mature-age persons, November quarter 2015**



**Source:** Australian Bureau of Statistics, Labour Force, Detailed, Quarterly, November 2015 (Cat. No. 6291.0.55.003).

Reflecting the significant increase in mature-age employment since the GFC, mature-age employment has increased in 18 of the 19 industries from the August quarter 2008 to the November quarter 2015. The largest increase was recorded in Health Care and Social Assistance (up by 132,800 or 66.3 per cent), followed by Professional, Scientific and Technical Services (up by 61,100 or 56.9 per cent) and Public Administration and Safety (up by 53,100 or 56.3 per cent).<sup>33</sup>

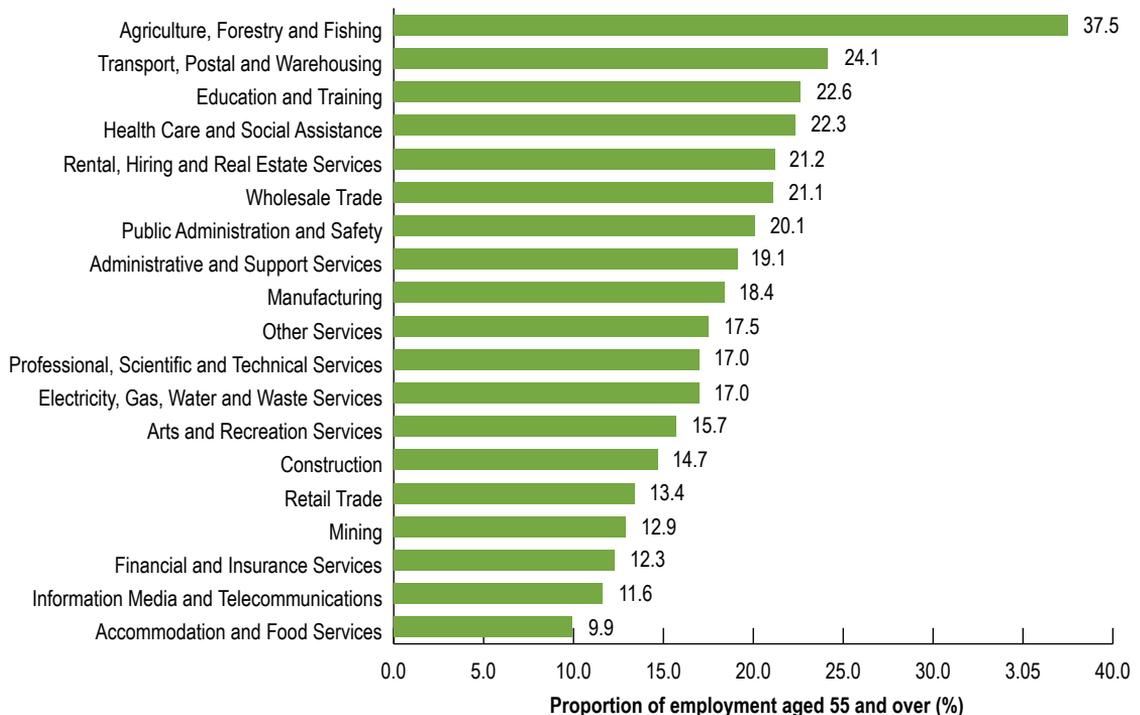
The strong increase in mature-age employment by industry needs to be viewed in the context of the ageing population, however, with workers ‘taking their jobs with them’ as they move into the older age group.

Agriculture, Forestry and Fishing was the only industry to record a decline in mature-age employment since the GFC, with the level of employment falling by 4,600 (or 3.8 per cent).<sup>34</sup>

Agriculture, Forestry and Fishing recorded the largest proportion of mature-age workers, with 37.5 per cent of persons employed in the industry aged 55 and over in the November quarter 2015 (see Chart 15), followed by Transport, Postal and Warehousing (24.1 per cent) and Education and Training (22.6 per cent).<sup>35</sup>

On the other hand, just 9.9 per cent of persons employed in Accommodation and Food Services were aged 55 and over in the November quarter 2015, while Information Media and Telecommunications (11.6 per cent) and Financial and Insurance Services (12.3 per cent) also recorded a low proportion of mature-age workers.<sup>36</sup>

**Chart 15: Proportion of employment by industry that is mature-age, September 2008 to November quarter 2015**

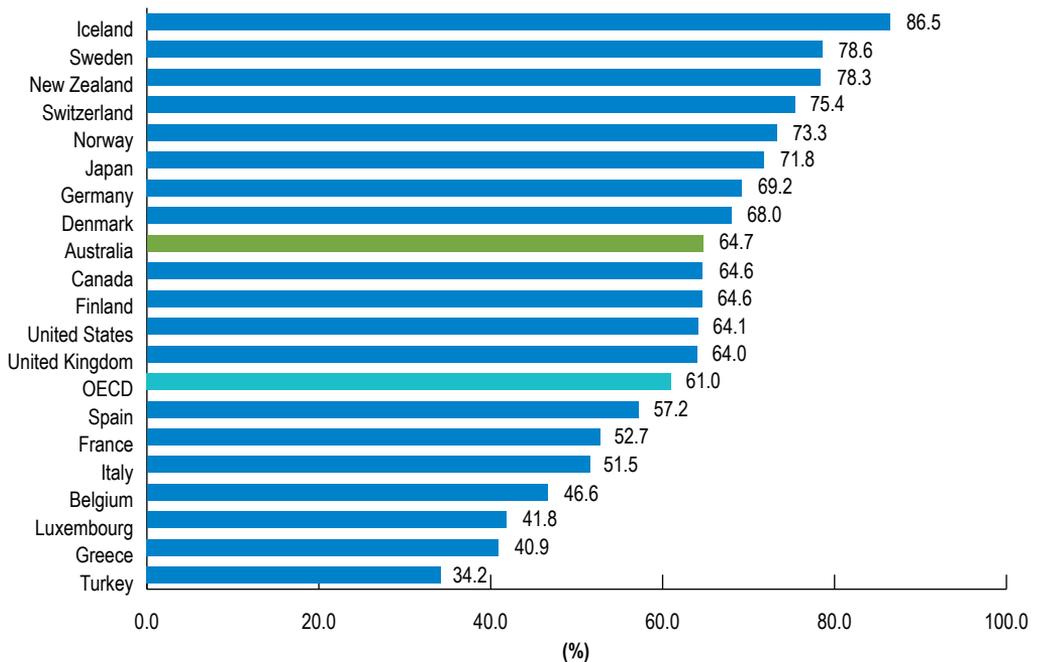


**Source:** Australian Bureau of Statistics, Labour Force, Detailed, Quarterly, November 2015 (Cat. No. 6291.0.55.003).

## International comparison

With respect to international comparisons, Australia's participation rate for 55–64 year olds stood at 64.7 per cent<sup>37</sup> in the second quarter of 2015 (latest available OECD data). While this is above the mature-age participation rate recorded for the United Kingdom (64.0 per cent), the United States (64.1 per cent) and the OECD average (61.0 per cent), the Australian mature-age participation rate remains lower than the 78.3 per cent recorded in New Zealand and Japan (71.8 per cent) (see Chart 16).<sup>38</sup>

**Chart 16: Mature-age (55–64 years) participation rates, selected OECD countries, second quarter 2015**



**Source:** OECD (2015), OECD.Stat Activity Rates. Available at <http://stats.oecd.org/> (accessed on 22 December 2015).

- 1 The material in this appendix is informed by Department of Employment analysis of Australian Bureau of Statistics data.
- 2 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 3 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 4 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 5 55-64 years has been used to enable a valid comparison with the working age (15-64 years) population.
- 6 Australian Bureau of Statistics, 2011 *Census of Population and Housing*. At <http://www.abs.gov.au/websitedbs/censushome.nsf/home/Census?opendocument&ref=topBar> (viewed 28 April 2016).
- 7 Other Than Main English Speaking Countries (OTMESC) refers to all countries except Australia, United Kingdom, Republic of Ireland, New Zealand, Canada, United States of America and South Africa.
- 8 Australian Bureau of Statistics, 2011 *Census of Population and Housing*. At <http://www.abs.gov.au/websitedbs/censushome.nsf/home/Census?opendocument&ref=topBar> (viewed 28 April 2016).
- 9 Only persons aged 55-64 years are counted when calculating the employment rate for mature age persons, due to the distorting effect of the low participation rates of those aged 65 years and over, many of whom have retired.
- 10 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 11 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 12 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 13 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 14 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 15 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 16 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 17 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 18 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 19 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 20 These figures refer to all of the steps undertaken by someone to find work. It is possible, therefore, for a person to have contacted prospective employers, in addition to both looking at newspaper advertisements and answering a newspaper advertisement for a job.
- 21 Note: more than one response can be provided, therefore, components do not sum to total. Australian Bureau of Statistics, 2014, *Persons Not in the Labour Force, Unemployed Workers and Job Search Experience, February 2014*, cat. no. 6220.0. At <http://www.abs.gov.au/AUSSTATS%5Cabs@.nsf/0/BBB46A2E9C441282CA257DF40079A913?Opendocument> (viewed 28 April 2016).
- 22 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 23 Only persons aged 55-64 years are counted when calculating the participation rate for mature age persons, due to the distorting effect of the low participation rates of those aged 65 years and over, many of whom have retired.

- 24 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 25 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 26 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 27 A person is said to be marginally attached to the labour force if they wanted to work and were either (a) actively seeking work but unable to start work immediately; or (b) not actively looking for work but available to start within four weeks.
- 28 Australian Bureau of Statistics, 2014, *Persons Not in the Labour Force, Unemployed Workers and Job Search Experience, February 2014*, cat. no. 6220.0. At <http://www.abs.gov.au/AUSSTATS/5Cabs@.nsf/0/BBB46A2E9C441282CA257DF40079A913?Opendocument> (viewed 28 April 2016).
- 29 Australian Bureau of Statistics, 2014, *Persons Not in the Labour Force, Unemployed Workers and Job Search Experience, February 2014*, cat. no. 6220.0. At <http://www.abs.gov.au/AUSSTATS/5Cabs@.nsf/0/BBB46A2E9C441282CA257DF40079A913?Opendocument> (viewed 28 April 2016).
- 30 Australian Bureau of Statistics, 2013, *Barriers and Incentives to Labour Force Participation, July 2012 to June 2013*, cat. no. 6239.0. At <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/6239.0Media%20Release1July%202012%20to%20June%202013?opendocument&tabname=Summary&prodno=6239.0&issue=July%202012%20to%20June%202013&num=&view> (viewed 28 April 2016).
- 31 Australian Bureau of Statistics, 2015, *Retirement and Retirement Intentions – July 2014 to June 2015*, 'Table 5.1: Persons aged 45 years and over who have retired from the labour force, Selected reasons for ceasing job – By age of retirement', data cube: Excel spreadsheet, cat. no. 6238.0. At <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/6238.0Main%20Features3July%202014%20to%20June%202015?opendocument&tabname=Summary&prodno=6238.0&issue=July%202014%20to%20June%202015&num=&view> (viewed 26 April 2016).
- 32 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 33 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 34 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 35 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 36 Australian Bureau of Statistics, 2015, *Labour Force, Detailed – Electronic Delivery, November 2015*, cat. no. 6291.0.55.001. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/1D694808E42534D3CA257F40000EB2C1?opendocument> (viewed 28 April 2016).
- 37 Please note that the Australian mature age participation rate (of 64.7 per cent) in this paragraph and Chart 16 is sourced from the OECD to enable valid international comparisons be made. As such, this figure will differ from the Australian Bureau of Statistics mature age participation rate (of 65.6 per cent) in November 2015.
- 38 OECD (2015), OECD.Stat Activity Rates. Available at <http://stats.oecd.org/> (accessed on 22 December 2015).

# Appendix 6: International human rights obligations, federal discrimination laws and the Fair Work Act

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The right to work is more than the right to earn money, though that is important. The United Nations Committee on Economic, Social and Cultural Rights has said the right to work ‘forms an inseparable and inherent part of human dignity’ and is essential for realising other human rights.<sup>1</sup>

Australia has an obligation to implement the international human rights standards set out in any conventions it has ratified. These obligations can include implementing domestic legislation which accords with those obligations or other measures to improve workforce participation of older Australians and Australians with disability.

The right to work is a fundamental human right which is protected for everyone.

## (a) Older Australians

The rights of older persons are protected by a number of key international human rights treaties.<sup>2</sup> However, there is no specific United Nations convention on the rights of older persons.<sup>3</sup>

Some of the key rights protected under international human rights law are:

- The right to work.<sup>4</sup>
- The right to just and favourable conditions of work, including equal pay and conditions for equal work, safe and healthy work conditions, and equal opportunities for promotion in the workplace.<sup>5</sup>
- The right to an adequate standard of living and to enjoyment of the highest attainable standard of physical and mental health.<sup>6</sup>
- The right to enjoy all other rights without discrimination.<sup>7</sup>

The United Nations Principles for Older Persons (1991) does not have the legal status of a convention but addresses the employment rights of older persons directly.<sup>8</sup> For example, the principles state that older persons should:

- have the opportunity to work or have access to income-generating opportunities<sup>9</sup>
- be able to participate in determining when and at what pace their withdrawal from the labour force takes place<sup>10</sup>
- remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations<sup>11</sup>
- be able to pursue opportunities for the full development of their potential.<sup>12</sup>

## (b) Australians with disability

The *Convention on the Rights of Persons with Disabilities* (CRPD) sets out the rights of people with disability generally and in respect of employment.<sup>13</sup> In particular, article 27 of the CRPD protects the right to work for people with disability. This includes:

- The right to work on an equal basis to others.
- The right to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions.
- The right to effective access to general technical and vocational training.

The CRPD also protects the following rights:

- The right to live independently and participate fully in all aspects of life, including equal access to transport, information and communication technologies and other facilities and services.<sup>14</sup>
- The right to live in the community, with choices equal to others, and to full inclusion and participation in the community.<sup>15</sup>
- The right to the greatest possible independence through personal mobility<sup>16</sup>
- The right to an adequate standard of living.<sup>17</sup>

Persons with disability are protected by the other core international human rights treaties, which protect the right to work, the right to just and favourable conditions of work, the right to equal opportunities for promotion in the workplace and the right to enjoy all other rights without discrimination.<sup>18</sup>

The Declaration on the Rights of Indigenous Peoples also specifically addresses the social and economic rights of Indigenous people with disability, including the right to non-discrimination in employment.<sup>19</sup>

### (c) Domestic legal framework

The key federal laws that protect older Australians and Australians with disability from workplace discrimination in Australia are: the *Age Discrimination Act 2004* (Age Discrimination Act), the *Disability Discrimination Act 1992* (Disability Discrimination Act) and the *Fair Work Act 2009* (Cth).

All states and territories also have anti-discrimination laws that prohibit discrimination on the grounds of disability and age.

#### (i) *Age Discrimination Act 2004* (Cth)

The Age Discrimination Act makes it unlawful to discriminate against a person unfairly because of their age.

Discrimination includes direct and indirect discrimination.<sup>20</sup>

**Direct discrimination** involves treating a person less favourably than a person of a different age in the same or similar circumstances.

**Indirect discrimination** occurs when there is a rule or policy that is the same for everyone but has an unfair effect on people of a particular age.

The Age Discrimination Act protects people in a range of different areas of public life, including: employment, the provision of goods and services, education, accommodation, access to premises, disposal of land and the administration of Commonwealth laws and programs.<sup>21</sup>

In the workplace, the Age Discrimination Act covers situations where a person has been: refused employment; given less favourable terms or conditions of employment; denied opportunities for promotion, transfer, training or other benefits; dismissed; or subjected to any other detriment on the basis of the person's age.<sup>22</sup>

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### *Exemptions*

Like other anti-discrimination laws, the Age Discrimination Act says that in some circumstances treating someone less favourably because of their age is not unlawful. For example, it is not unlawful to refuse to employ a person or dismiss a person from employment if the person is unable to carry out the inherent requirements of the particular job because of their age.<sup>23</sup> There are also a number of other exemptions in the Age Discrimination Act.<sup>24</sup>

### *(ii) Disability Discrimination Act 1992 (Cth)*

The Disability Discrimination Act makes it against the law to discriminate against someone on the basis of their disability.

Discrimination includes direct and indirect discrimination.<sup>25</sup>

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**Direct discrimination** involves treating a person with disability less favourably than a person without disability in the same or similar circumstances.

**Indirect discrimination** occurs when there is a rule or policy that is the same for everyone but has an unfair effect on people with a particular disability.

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The Disability Discrimination Act protects people with disability from discrimination in many areas of public life: employment, education, access to premises, provision of goods and services, accommodation, buying land, activities of clubs and associations, sports and the administration of Commonwealth Government laws and programs.<sup>26</sup>

It is unlawful for an employer to discriminate on the ground of a person's disability:

- in offering employment, including the processes of determining who should be offered employment
- in the terms or conditions of employment
- by denying or limiting opportunities for promotion, transfer or training, or to other benefits associated with employment
- by dismissing the employee; or
- by subjecting the employee to any other detriment.<sup>27</sup>

Employers have an obligation to provide 'reasonable adjustments' to allow people with disability equal participation or equal performance at work.<sup>28</sup> A reasonable adjustment is a necessary or appropriate modification or adjustment made to ensure or enable equal participation. It could be something like an adjustment to work hours, training or workplace equipment. An adjustment will not be reasonable if it imposes an 'unjustifiable hardship' on the employer.<sup>29</sup>

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### *Exemptions*

Like the Age Discrimination Act, the Disability Discrimination Act says that in some circumstances treating someone less favourably because of their disability is not unlawful. For example, under the Disability Discrimination Act, it is not unlawful to refuse to employ, or promote or dismiss a person on the basis of their disability if they are unable to carry out the essential or 'inherent' requirements of the job, even with reasonable adjustments.<sup>30</sup> There are also a number of other exemptions to the Disability Discrimination Act.<sup>31</sup>

#### *(iii) Fair Work Act 2009 (Cth)*

The Fair Work Act provides that an employer must not take adverse action against an employee or prospective employee because of their age or disability (or any other protected attribute, such as race, sex).<sup>32</sup> Adverse action includes such things as dismissing an employee, altering an employee's position to their detriment or refusing to employ a prospective employee.<sup>33</sup>

The Fair Work Act covers discrimination occurring: to someone applying for a job as an employee; to a new employee who has not started work; or to an employee at any time during employment.

Under the National Employment Standards set out in the Act, employees with a disability or who are aged over 55 years can request a 'change in working arrangements'.<sup>34</sup> An employer may refuse such a request 'only on reasonable business grounds'.<sup>35</sup>

### **(d) Procedural framework for complaints under federal discrimination laws and under the Fair Work Act**

There are different procedures for making a complaint under the Age Discrimination Act and Disability Discrimination Act, and the Fair Work Act. Court proceedings under each statute may be commenced in the Federal Circuit of Australia or the Federal Court of Australia.<sup>36</sup>

Provisions of the Age Discrimination Act, Disability Discrimination Act and Fair Work Act prevent applications in relation to discriminatory conduct being made under those Acts if a complaint raising the same subject matter is already being considered under a state or territory discrimination law.<sup>37</sup>

#### *(i) Age Discrimination Act and Disability Discrimination Act*

Under the Age Discrimination Act and Disability Discrimination Act a person must, in the first instance, lodge a written complaint with the Australian Human Rights Commission. The President of the Commission is required to inquire into and attempt to resolve complaints by conciliation, subject to powers to terminate a complaint where, for example, a complaint is considered to be lacking in substance or another more appropriate remedy is available.<sup>38</sup> There is no strict time frame for a complaint to be made to the Commission, however the President has discretion not to inquire, or not to continue to inquire, into a complaint where the alleged act occurred more than 12 months prior to the complaint being made.

Remedies that can be achieved through the Commission's conciliation process are very broad and may include: apologies, financial compensation, reinstatement, and agreements for employers to introduce training or changes to policies to prevent discrimination in the workplace.<sup>39</sup>

If a complaint is not resolved through the conciliation process, or is terminated for some other reason, the complainant may commence court proceedings however they must do so within 60 days of the complaint being terminated.<sup>40</sup>

Complaint procedures under state and territory anti-discrimination legislation are broadly similar, except in Victoria, where there is no requirement to lodge the complaint at the *Victorian Equal Opportunity and Human Rights Commission* before proceeding to the Victorian Civil and Administrative Tribunal.<sup>41</sup>

#### (ii) Fair Work Act

The action that can be taken under the Fair Work Act by an employee who experiences discrimination depends on the nature of the 'adverse action' by their employer.

Where the employee has been dismissed from their job, they may be able to make:

- a general protections dismissal application to the Fair Work Commission under the Fair Work Act's adverse action provisions;<sup>42</sup> or
- an unfair dismissal application to the Fair Work Commission under the unfair dismissal provisions of the Fair Work Act.<sup>43</sup>

In situations which do not involve dismissal, an employee who experiences discrimination can still make a general protections application under the adverse action provisions of the Fair Work Act.<sup>44</sup>

Applicants have 21 days from the date of the dismissal or adverse action to make an unfair dismissal application or general protections claim to the Fair Work Commission.<sup>45</sup>

General protections,<sup>46</sup> general protections dismissal<sup>47</sup> and unfair dismissal applications<sup>48</sup> to the Fair Work Commission are all dealt with initially by way of a mediation/conciliation conference. If a matter cannot be settled at a conference, the Fair Work Commission issues a certificate to that effect and the employee is able to commence court proceedings within 14 days.

The Fair Work Ombudsman is a statutory office established by the Fair Work Act. It has a range of functions which include:

- monitoring compliance with the Fair Work Act<sup>49</sup>
- providing advice to employers and employees in relation to workplace relations and practices<sup>50</sup>
- commencing proceedings in court or making applications to the Fair Work Commission to enforce the Fair Work Act<sup>51</sup>
- representing employees or outworkers who are party to proceedings in a court or to a matter before the Fair Work Commission, if the Fair Work Ombudsman considers the action will promote compliance with the Fair Work Act.<sup>52</sup>

Employees whose complaints are pursued by the Fair Work Ombudsman do not incur any financial costs.

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*(iii) Costs under the Age Discrimination Act, Disability Discrimination Act and the Fair Work Act*

There is no cost for an employee to lodge a complaint with the Australian Human Rights Commission for investigation and conciliation. This is the same for similar bodies in the states or territories.

Where a matter proceeds to court under the Age Discrimination Act or Disability Discrimination Act, there is a small fee for lodging the application and the normal practice is for the Court to make an order in line with the principle that 'costs follow the event' — that is, the unsuccessful party is to pay the legal costs of the other party.<sup>53</sup> The Federal Court and Federal Circuit Court may issue a determination specify the maximum costs payable between parties.<sup>54</sup> These provisions have been successfully used by complainants in discrimination matters.<sup>55</sup> In contrast, in most state and territory jurisdictions, a default 'each party bears their own costs' rule exists in relation to discrimination applications.<sup>56</sup>

There is no cost to lodge a complaint with the Fair Work Ombudsman. There is a lodgement fee to file an application for certain matters with the Fair Work Commission, including general protections and unfair dismissal disputes.

In relation to claims under the Fair Work Act which proceed to court, each party bears their own costs except in specified circumstances.<sup>57</sup>

- 1 Committee on Economic, Social and Cultural Rights, General Comment No. 18, *Article 6: the equal right of men and women to the enjoyment of all economic, social and cultural rights* (Thirty-fifth session, 2006), U.N. Doc. E/C.12/GC/18 (2006), para 1.
- 2 Including: *United Nations International Covenant on Civil and Political Rights*, 1966, articles 2 and 25(c); *United Nations International Covenant on Economic, Social and Cultural Rights*, 1966, articles 2, 6, and 7. See also, the *United Nations Convention on the Elimination of All forms of Discrimination against Women*, 1979 articles 2 and 11; and International Labour Organization, *Discrimination (Employment and Occupation) Convention*, 1958 (ILO 111), article 1. ILO111 does not specifically include age as a ground for discrimination but provides for possible additions to the list of grounds. The International Labour Organization, *Older Workers Recommendation*, 1980 (No.162) directly addresses older workers (but is not a convention).
- 3 See, for example, *Draft UN Declaration on the Rights of Older Persons*, prepared by the Allard K. Lowenstein International Human Rights Clinic, Yale Law School, with the International Longevity Center (3 June 2008). At [http://www.globalaging.org/agingwatch/convention/modelconventions/ilc\\_draft\\_convention.pdf](http://www.globalaging.org/agingwatch/convention/modelconventions/ilc_draft_convention.pdf) (viewed 5 April 2015). There is, however, a body of 'soft' law guiding the treatment of older women and men, including the United Nations Principles for Older Persons (1991) and the Madrid International Plan of Action on Ageing (2002).
- 4 *United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR)*, Article 6.
- 5 *United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR)*, Article 7.
- 6 *United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR)*, Articles 11 and 12.
- 7 *United Nations International Covenant on Civil and Political Rights*, Article 2 and *United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR)*, Article 2.
- 8 United Nations Principles for Older Persons, adopted by the United Nations General Assembly in 1991, A/RES/46/91 (1991).
- 9 United Nations Principles for Older Persons, adopted by the United Nations General Assembly in 1991, A/RES/46/91 (1991), Principle 2.
- 10 United Nations Principles for Older Persons, adopted by the United Nations General Assembly in 1991, A/RES/46/91 (1991), Principle 3.
- 11 United Nations Principles for Older Persons, adopted by the United Nations General Assembly in 1991, A/RES/46/91 (1991), Principle 7.
- 12 United Nations Principles for Older Persons, adopted by the United Nations General Assembly in 1991, A/RES/46/91 (1991), Principle 15.
- 13 *United Nations Convention on the Rights of Persons with Disabilities*, 2007.
- 14 *United Nations Convention on the Rights of Persons with Disabilities*, 2007, article 9.
- 15 *United Nations Convention on the Rights of Persons with Disabilities*, 2007, article 19.
- 16 *United Nations Convention on the Rights of Persons with Disabilities*, 2007, article 20.
- 17 *United Nations Convention on the Rights of Persons with Disabilities*, 2007, article 28.
- 18 See *United Nations International Covenant on Civil and Political Rights*, 1966, articles 2 and 25(c); *United Nations International Covenant on Economic, Social and Cultural Rights*, 1966, articles 2, 6, and 7. See also, the *United Nations Convention on the Elimination of All Forms of Discrimination against Women*, 1979, articles 2 and 11; and the *Convention concerning Discrimination in Respect of Employment and Occupation*, 1958 (ILO111), article 1.
- 19 *United Nations Declaration on the Rights of Indigenous Peoples*, 2007, article 21.
- 20 *Age Discrimination Act 2004* (Cth), sections 14 and 15.
- 21 *Age Discrimination Act 2004* (Cth), Part 4, Divisions 2 and 3.
- 22 *Age Discrimination Act 2004* (Cth), section 18.
- 23 *Age Discrimination Act 2004* (Cth), sections 18(4), 19(3), 20(2), 21(4), 24(2).
- 24 The Australian Human Rights Commission can grant temporary exemptions from some parts of the ADA: section 44. Other exemptions to the ADA include: things done in compliance with Commonwealth laws; things done in compliance with state and territory laws; certain health and employment programmes; youth wages or direct compliance with industrial agreements and awards: Part 4, Division 4.
- 25 *Disability Discrimination Act 1992* (Cth), sections 5 and 6.
- 26 *Disability Discrimination Act 1992* (Cth), Part 2, Divisions 1 and 2.
- 27 *Disability Discrimination Act 1992* (Cth), section 15.
- 28 *Disability Discrimination Act 1992* (Cth), sections 5(2) and 6(2).
- 29 *Disability Discrimination Act 1992* (Cth), section 4(1).
- 30 *Disability Discrimination Act 1992* (Cth), section 21A(1).
- 31 The Australian Human Rights Commission can grant temporary exemptions from the operation of certain provisions of the Act: section 55. Other exemptions to the DDA relate to: annuities, insurance and superannuation (section 46(1)), the Defence Force (section 53(1)), compliance with a prescribed law (section 47(2)), and special measures (section 45).
- 32 *Fair Work Act 2009* (Cth), s 351.
- 33 *Fair Work Act 2009* (Cth), s 342.
- 34 *Fair Work Act 2009* (Cth) s 65.
- 35 *Fair Work Act 2009* (Cth) s 65(5).
- 36 *Age Discrimination Act 2004* (Cth) s 12(4); *Disability Discrimination Act 1992* (Cth) s 13(4); *Fair Work Act* (Cth) s 725 and 732. Employees must also make further choices about which proceedings to take under the FWA.
- 37 *Fair Work Act 2009* (Cth) ss 725 and 732; *Disability Discrimination Act 1992* (Cth), s 13(4); *Age Discrimination Act 2004* (Cth), s 12(4).

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- 38 *Australian Human Rights Commission Act 1986* (Cth) s 46PH.
- 39 It is noted that complaints made to the Australian Human Rights Commission have a high rate of successful resolution through voluntary conciliation. For example, in 2014-2015, the Commission facilitated 1,531 conciliation processes, 72% of which were successfully resolved. (Australian Human Rights Commission, Annual Report 2014-2015).
- 40 *Australian Human Rights Commission Act 1986* (Cth) s 46PO.
- 41 *Equal Opportunity Act* (VIC), s 122.
- 42 *Fair Work Act 2009* (Cth), s 365.
- 43 *Fair Work Act 2009* (Cth), s 394.
- 44 *Fair Work Act 2009* (Cth), s 372.
- 45 *Fair Work Act 2009* (Cth), ss 366,394.
- 46 *Fair Work Act 2009* (Cth), s 374.
- 47 *Fair Work Act 2009* (Cth), s 368.
- 48 *Fair Work Act 2009* (Cth), s 398.
- 49 *Fair Work Act 2009* (Cth), s 682(1)(b).
- 50 *Fair Work Act 2009* (Cth), s 682(1)(a)(ii).
- 51 *Fair Work Act 2009* (Cth), s 682(d).
- 52 *Fair Work Act 2009* (Cth), s 682(f).
- 53 Neil Rees, Simon Rice and Dominique Allen, *Australian Anti-Discrimination Law* (The Federation Press, 2<sup>nd</sup> ed., 2014) 848.
- 54 *Federal Court Rules 2011*, Rule 40.51 and *Federal Circuit Court Rules*, 2001 Rule 21.03.
- 55 *Haraksin v Murrays Australia Ltd* [2010] FCA 1133.
- 56 A Stewart, *Stewart's Guide to Employment Law* (4<sup>th</sup> ed., 2013) 283.
- 57 *Fair Work Act 2009* (Cth) s 570.

# Appendix 7: Age Discrimination enquiries and complaints data

Enquiries and complaints data collected by the Australian Human Rights Commission, state and territory anti-discrimination and equal opportunity agencies, as well as the Fair Work Ombudsman provides an important source of information relevant to the prevalence of age discrimination in employment.

This section collates enquiries and complaints data provided to the Inquiry by each of these agencies for the 2012–13, 2013–14 and 2014–15 financial years. It presents data, where available, related to the area and outcome of the complaint along with characteristics of the complainant and respondent.

Along with the agencies listed in this section, data was also sought from the Fair Work Commission and Anti-Discrimination Board NSW. Both agencies advised the Inquiry that data related to age discrimination is not systematically collected and so could not be provided.

As the Inquiry is focused on discrimination against older people, data was sought on enquiries and complaints lodged by people over 45 years of age, where this was available. For the purposes of comparison across agencies the area of 'employment' was defined to include paid employment; recruitment; employment agencies; contract workers; discriminatory requests for information relating to employment; and advertising relating to employment. Counting methods for each category were also stipulated. Where data has been provided under different parameters it is noted in the relevant section.

Note that due to rounding not all total percentages will equal exactly 100%.

## Australian Human Rights Commission

This section collates data on all enquiries and complaints received by the Commission relating to age discrimination over the period of 2012–15. It also shows enquiries and complaints relating to age discrimination in the area of employment over the same period.

Enquiries data provided relates to people of all ages, while complaints data only relates to complaints received from people aged 45 years and over.

### (a) Enquiries and complaints data

**Table 1: Enquires received relating to age discrimination (all ages)\***

<b>Enquires relating to age discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Enquiries received about age discrimination	980	1106	1102
Enquiries received about age discrimination in area of employment	586	515	681
Percentage of enquiries received about age discrimination in the area of employment	59.8%	46.6%	61.8%

\*Enquiries are defined as contacts (written or other form) that are not accepted as complaints. Each contact is counted as one enquiry.

**Table 2: Complaints received relating to age discrimination from people aged 45 years and over\*\***

<b>Complaints related to age discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Complaints received about age discrimination	116	132	110
Complaints received about age discrimination in area of employment	75	93	78
Percentage of complaints received about age discrimination in the area of employment	64.7%	70.5%	70.9%

\*\*Complaints are counted by complainant. One complaint may have multiple grounds and areas.

**Table 3: Stage of employment complaint relates to (for complaints relating to age discrimination in employment from people aged 45 years and over)\*\*\***

<b>Stage of employment</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
While looking for employment	36	44.4%	38	34.9%	28	30.1%
During employment	24	29.6%	49	44.9%	37	39.8%
End of employment/Termination	21	25.9%	22	20.2%	28	30.1%
Total	81	100%	109	100%	93	100%

\*\*\*One complaint may relate to more than one stage of employment.

**Table 4: Outcomes of complaints finalised in period (for complaints relating to age discrimination in employment from people aged 45 years and over)^**

<b>Outcome of complaints</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
Conciliated	38	46.3%	38	46.9%	27	42.2%
Terminated – No reasonable prospect of conciliation	18	22.0%	17	21.0%	17	26.6%
Terminated/Dismissed – other grounds such as lacking in substance	7	8.5%	4	4.9%	2	3.1%
Withdrawn	17	20.7%	16	19.8%	13	20.3%
Deemed does not wish to pursue/ Lost contact	2	2.4%	6	7.4%	5	7.8%
Total	82	100%	81	100%	64	100%

^Only one outcome is recorded for each complaint.

**(b) Characteristics of complainant (for complaints relating to age discrimination in employment from people aged 45 years and over)****Table 5: Gender of complainant**

<b>Gender</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Female	22	39	26
Male	53	54	52
X (Indeterminate/intersex/unspecified)	0	0	0
Total	75	93	78

**Table 6: Whether complainant identifies as Aboriginal or Torres Strait Islander**

<b>Aboriginal or Torres Strait Islander descent</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
No	60	63	48
Yes – Aboriginal	2	2	0
Yes – Torres Strait Islander	0	0	0
Yes – Both	0	1	0
Unknown	13	27	30
Total	75	93	78

**Table 7: Whether complainant identifies as having a disability**

<b>Disability</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Yes	15	20	15
No	55	67	50
Unknown	5	6	13
Total	75	93	78

**Table 8: Age group of complainant**

Age group	2012–13	%	2013–14	%	2014–15	%
45–54	10	13.3%	24	25.8%	21	26.9%
55–64	48	64.0%	50	53.8%	42	53.8%
65–74	16	21.3%	17	18.3%	13	16.7%
75+	1	1.3%	2	2.2%	2	2.6%
Total	75	100%	93	100%	78	100%

**(c) Characteristics of respondent (for complaints relating to age discrimination in employment from people aged 45 years and over)**

**Table 9: Respondent industry type**

Industry group	2012–13	2013–14	2014–15
Accommodation and Food Services	3	6	6
Administrative and Support Services	3	0	10
Agriculture, Forestry and Fishing	0	0	1
Arts and Recreation Services	4	4	3
Construction	0	4	3
Education and Training	6	11	6
Electricity, Gas, Water and Waste Services	3	1	4
Financial and Insurance Services	4	2	2
Health Care and Social Assistance	10	13	7
Information Media and Telecommunications	2	2	3
Manufacturing	2	6	2
Mining	0	2	6
Private household	0	0	1
Professional, Scientific and Technical Services	4	12	3
Public Administration and Safety	20	17	9
Rental, Hiring and Real Estate Services	0	3	1
Retail Trade	5	6	5
Transport, Postal and Warehousing	2	4	4
Wholesale Trade	3	0	1
Individual	4	0	1
Total	75	93	78

**Table 10: Respondent organisation size**

Size of organisation	2012–13	2013–14	2014–15
Less than 5	4	0	2
5 to 19	4	5	0
20 to 99	28	20	23
100 to 499	14	20	20
500 and over	25	30	33
Unknown	0	18	0
Total	75	93	78

## Australian Capital Territory Human Rights Commission

This section collates data on enquiries and complaints received by the Australian Capital Territory Human Rights Commission relating to age discrimination over the period of 2012–15. It also shows enquiries and complaints relating to age discrimination in the area of employment over the same period.

Enquiries data provided relates to people of all ages, while complaints data only relates to complaints received from people aged 45 years and over.

### (a) Enquiries and complaints data

**Table 11: Enquires received relating to age discrimination (all ages)\***

Enquiries relating to age discrimination	2012–13	2013–14	2014–15
Enquiries received about age discrimination	11	5	6
Enquiries received about age discrimination in area of employment	3	2	1
Percentage of enquiries received about age discrimination in the area of employment	27.3%	40.0%	16.7%

\*Enquiries are defined as contacts (written or other form) that are not accepted as complaints. Each contact is counted as one enquiry.

**Table 12: Complaints received relating to age discrimination from people aged 45 years and over\*\***

<b>Complaints related to age discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Complaints received about age discrimination	9	14	6
Complaints received about age discrimination in area of employment	0	5	0
Percentage of complaints received about age discrimination in the area of employment	–	35.7%	–

\*\*Complaints are counted by complainant. One complaint may have multiple grounds and areas.

**Table 13: Outcomes of complaints finalised in period (for complaints relating to age discrimination in employment from people aged 45 years and over)^**

<b>Outcome of complaints</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
Conciliated	0	–	0	–	0	–
Terminated – No reasonable prospect of conciliation/Referred to tribunal	1	50.0%	2	50.0%	0	–
Terminated/Dismissed – other grounds such as no substance	1	50.0%	2	50.0%	0	–
Withdrawn	0	–	0	–	0	–
Deemed does not wish to pursue/Lost contact	0	–	0	–	0	–
<b>Total</b>	<b>2</b>	<b>100%</b>	<b>4</b>	<b>100%</b>	<b>0</b>	<b>–</b>

^Only one outcome is recorded for each complaint.

### **(b) Characteristics of complainant (for complaints relating to age discrimination in employment from people aged 45 years and over)**

**Table 14: Gender of complainant**

<b>Gender</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Female	0	0	0
Male	0	5	0
X (Indeterminate/intersex/unspecified)	0	0	0
<b>Total</b>	<b>0</b>	<b>5</b>	<b>0</b>

## Anti-Discrimination Board of New South Wales

Data Not Available.

## Northern Territory Anti-Discrimination Commission

This section collates data on enquiries and complaints received by the Northern Territory Anti-Discrimination Commission relating to age discrimination over the period of 2012–15. It also shows enquiries and complaints relating to age discrimination in the area of employment over the same period.

Enquiries data provided relates to people of all ages, while complaints data only relates to complaints received from people aged 45 years and over.

### (a) Enquiries and complaints data

**Table 15: Enquires received relating to age discrimination (all ages)\***

Enquiries relating to age discrimination	2012–13	2013–14	2014–15
Enquiries received about age discrimination	4	1	1
Enquiries received about age discrimination in area of employment	0	1	0
Percentage of enquiries received about age discrimination in the area of employment	–	50.0%	–

\*Enquiries are defined as contacts (written or other form) that are not accepted as complaints. Each contact is counted as one enquiry.

**Table 16: Complaints received relating to age discrimination from people aged 45 years and over\*\***

Complaints related to age discrimination	2012–13	2013–14	2014–15
Complaints received about age discrimination	Not reported	Not reported	20
Complaints received about age discrimination in area of employment	Not reported	Not reported	6
Percentage of complaints received about age discrimination in the area of employment	–	–	30.0%

\*\*Complaints are counted by complainant. One complaint may have multiple grounds and areas.

**(b) Characteristics of complainant (for complaints relating to age discrimination in employment from people aged 45 years and over)**

**Table 17: Gender of complainant**

<b>Gender</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Female	–	–	5
Male	–	–	1
X (Indeterminate/intersex/unspecified)	–	–	0
Total	–	–	6

**Table 18: Whether complainant identifies as having a disability**

<b>Disability</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Yes	–	–	1
No	–	–	5
Total	–	–	6

**Table 19: Whether complainant identifies as Aboriginal or Torres Strait Islander**

<b>Aboriginal or Torres Strait Islander descent</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Aboriginal	–	–	0
Torres Strait Islander	–	–	0
Both	–	–	2
No	–	–	4
Total	–	–	6

## Queensland Anti-Discrimination Commission

This section collates data on enquiries and complaints received by the Queensland Anti-Discrimination Commission relating to age discrimination over the period of 2012–15. It also shows enquiries and complaints relating to age discrimination in the area of employment over the same period. Both enquiries and complaints data relate to people aged 45 years and over.

### (a) Enquiries and complaints data

**Table 20: Enquires received relating to age discrimination from people aged 45 years and over\***

<b>Enquiries relating to age discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Enquiries received about age discrimination	102	91	81
Enquiries received about age discrimination in area of employment	72	60	56
Percentage of enquiries received about age discrimination in the area of employment	70.6%	65.9%	69.1%

\*Enquiries are defined as contacts (written or other form) that are not accepted as complaints. Each contact is counted as one enquiry.

**Table 21: Complaints received relating to age discrimination from people aged 45 years and over\*\***

<b>Complaints related to age discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Complaints received about age discrimination	39	33	46
Complaints received about age discrimination in area of employment	21	24	33
Percentage of complaints received about age discrimination in the area of employment	53.8%	72.7%	71.7%

\*\*Complaints are counted by complainant. One complaint may have multiple grounds and areas.

**Table 22: Ratio of complaints to enquiries relating to age discrimination in employment from people aged 45 years and over**

<b>Ratio of complaints to enquiries</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Enquiries received about age discrimination in area of employment	72	60	56
Complaints received about age discrimination in area of employment	21	24	33
Ratio of complaints to enquiries	1:3.4	1:2.5	1:1.7
Percentage of complaints to enquiries	29.2%	40.0%	58.9%

**Table 23: Outcomes of complaints finalised in period (for complaints relating to age discrimination in employment from people aged 45 years and over)^**

<b>Outcome of complaints</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
Conciliated	9	42.9%	11	45.8%	10	34.5%
Terminated – No reasonable prospect of conciliation/Referred to tribunal	3	14.3%	0	–	7	24.1%
Terminated/Dismissed – other grounds such as no substance	7	33.3%	13	54.2%	9	31.0%
Withdrawn	2	9.5%	0	–	3	10.3%
Deemed does not wish to pursue/Lost contact	0	–	0	–	0	–
<b>Total</b>	<b>21</b>	<b>100%</b>	<b>24</b>	<b>100%</b>	<b>29</b>	<b>100%</b>

^Only one outcome is recorded for each complaint.

**(b) Characteristics of complainant (for complaints relating to age discrimination in employment from people aged 45 years and over)**

**Table 24: Gender of complainant**

<b>Gender</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Female	1	1	12
Male	4	4	12
X (Indeterminate/intersex/unspecified)	0	0	0
Unknown	16	19	9
<b>Total</b>	<b>21</b>	<b>24</b>	<b>33</b>

**Table 25: Whether complainant identifies Aboriginal or Torres Strait Islander**

<b>Aboriginal or Torres Strait Islander descent</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Aboriginal	0	0	1
Torres Strait Islander	0	0	0
Both	0	0	1
No	3	5	22
Unknown	18	19	9
<b>Total</b>	<b>21</b>	<b>24</b>	<b>33</b>

**Table 26: Age group of complainant**

Age group	2012–13	%	2013–14	%	2014–15	%
45–54	0	–	0	–	8	24.2%
55–64	4	19.0%	2	8.3%	12	36.4%
65–74	1	4.8%	3	12.5%	4	12.1%
75+	16	76.2%	19	79.2%	9	27.3%
Total	21	100%	24	100%	33	100%

## Equal Opportunity Commission of South Australia

This section collates data on enquiries and complaints received by the Equal Opportunity Commission of South Australia (SAEOC) relating to age discrimination over the period of 2012–15. It also shows enquiries and complaints relating to age discrimination in the area of employment over the same period.

As age categories used by the SAEOC differ, the provided data relates to enquiries and complaints by complainants aged 40 years and over, rather than 45 years and over.

### (a) Enquiries and complaints data

**Table 27: Enquires received relating to age discrimination from people aged 40 years and over\***

Enquiries relating to age discrimination	2012–13	2013–14	2014–15
Enquiries received about age discrimination	62	71	59
Enquiries received about age discrimination in area of employment	34	40	33
Percentage of enquiries received about age discrimination in the area of employment	54.8%	56.3%	55.9%

\*Enquiries are defined as contacts (written or other form) that are not accepted as complaints. Each contact is counted as one enquiry.

**Table 28: Complaints received relating to age discrimination from people aged 40 years and over\*\***

Complaints related to age discrimination	2012–13	2013–14	2014–15
Complaints received about age discrimination	12	15	16
Complaints received about age discrimination in area of employment	5	7	11
Percentage of complaints received about age discrimination in the area of employment	41.7%	46.7%	68.8%

\*\*Complaints are counted by complainant. One complaint may have multiple grounds and areas.

**Table 29: Ratio of complaints to enquiries related to age discrimination in employment**

<b>Ratio of complaints to enquiries</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Enquiries received about age discrimination in area of employment	34	40	33
Complaints received about age discrimination in area of employment	5	7	11
Ratio of complaints to enquiries	1:6.8	1:5.7	1:3
Percentage of complaints to enquiries	14.7%	17.5%	33.3%

**Table 30: Stage of employment complaint relates to (for complaints relating to age discrimination in employment from people aged 40 years and over)\*\*\***

<b>Stage at which discrimination occurred</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
While looking for employment	3	60.0%	4	50.0%	6	50.0%
During employment	2	40.0%	4	50.0%	3	25.0%
End of employment/Termination	0	–	0	–	3	25.0%
Total	5	100%	8	100%	12	100%

\*\*\*One complaint may relate to more than one stage of employment.

**Table 31: Outcomes of complaints finalised in period (for complaints relating to age discrimination in employment from people aged 40 years and over)^**

<b>Outcome of complaints</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
Conciliated	3	33.3%	4	40.0%	1	16.7%
Terminated – No reasonable prospect of conciliation/Referred to tribunal	2	22.2%	0	–	1	16.7%
Terminated/Dismissed – other grounds such as no substance	2	22.2%	1	10.0%	3	50.0%
Withdrawn	2	22.2%	5	50.0%	1	16.7%
Deemed does not wish to pursue/Lost contact	0	–	0	–	0	–
Total	9	100%	10	100%	6	100%

^Only one outcome is recorded for each complaint.

**(b) Characteristics of complainant (for complaints relating to age discrimination in employment from people aged 40 years and over)****Table 32: Gender of complainant**

Gender	2012–13	2013–14	2014–15
Female	3	2	3
Male	2	5	8
X (Indeterminate/intersex/unspecified)	0	0	0
Total	5	7	11

**Table 33: Age group of complainant**

Type of Age	2012–13	%	2013–14	%	2014–15	%
40–49	2	40.0%	1	14.3%	1	9.1%
50–59	0	–	2	28.6%	5	45.5%
60–69	3	60.0%	3	42.9%	4	36.4%
70 and over	0	–	1	14.3%	0	–
Unknown	0	–	0	–	1	9.1%
Total	5	100%	7	100%	11	100%

**(c) Characteristics of respondent (for complaints relating to age discrimination in employment from people aged 40 years and over)****Table 34: Complaints received by respondent industry type**

Industry group	2012–13	2013–14	2014–15
Accommodation and Food Services	0	2	–
Education and Training	1	2	0
Electricity, Gas, Water and Waste Services	0	0	3
Financial and Insurance Services	1	0	0
Health Care and Social Assistance	1	1	0
Information Media and Telecommunications	0	1	0
Public Administration and Safety	0	1	1

Industry group	2012–13	2013–14	2014–15
Retail Trade	0	0	1
Transport, Postal and Warehousing	0	0	2
Unknown	2	0	4
Total	5	7	11

**Table 35: Complaints received by respondent organisation size**

Size of organisation	2012–13	2013–14	2014–15
1 to 19	0	1	0
20 to 99	1	1	4
100 and over	2	5	2
Unknown	2	0	5
Total	5	7	11

## Victorian Equal Opportunity & Human Rights Commission

This section collates data on enquiries and complaints received by the Victorian Equal Opportunity and Human Rights Commission relating to age discrimination over the period of 2013–15. It also shows enquiries and complaints relating to age discrimination in the area of employment over the same period.

Enquiries data provided relates to people of all ages, while complaints data only relates to complaints received from people aged 45 years and over.

### (a) Enquiries and complaints data

**Table 36: Enquires received relating to age discrimination (all ages)\***

Enquiries relating to age discrimination	2012–13	2013–14	2014–15
Enquiries received about age discrimination	426	461	500
Enquiries received about age discrimination in area of employment	–	171	200
Percentage of enquiries received about age discrimination in the area of employment	–	37.1%	40.0%

\*Enquiries are defined as contacts (written or other form) that are not accepted as complaints. Each contact is counted as one enquiry.

**Table 37: Complaints received relating to age discrimination from people aged 45 years and over\*\***

<b>Complaints related to age discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Complaints received about age discrimination	–	26	62
Complaints received about age discrimination in area of employment	–	25	49
Percentage of complaints received about age discrimination in the area of employment	–	96.2%	79.0%

\*\*Complaints are counted by complainant. One complaint may have multiple grounds and areas.

**Table 38: Outcomes of complaints finalised in period (for complaints relating to age discrimination in employment from people aged 45 years and over)^**

<b>Outcome of complaints</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
Resolved	–	–	4	50.0%	6	30.0%
Not resolved	–	–	3	37.5%	2	10.0%
Withdrawn	–	–	1	12.5%	11	55.0%
Declined	–	–	0	–	1	5.0%
Total	–	–	8	100%	20	100%

^Only one outcome is recorded for each complaint.

**(b) Characteristics of complainant (for complaints relating to age discrimination in employment from people aged 45 years and over)****Table 39: Gender of complainant**

<b>Gender</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Female	–	16	34
Male	–	9	15
X (Indeterminate/intersex/unspecified)	–	0	0
Total	–	25	49

**Table 40: Age group of complainant**

Age group	2012–13	%	2013–14	%	2014–15	%
40–49	–	–	9	36.0%	10	20.4%
50–59	–	–	9	36.0%	27	55.1%
60–69	–	–	7	28.0%	9	18.4%
70–79	–	–	0	–	3	6.1%
Total	–	–	25	100%	49	100%

## Equal Opportunity Commission Western Australia

This section collates data on complaints received by the Equal Opportunity Commission Western Australia (EOCWA) relating to age discrimination over the period of 2012–15. It also shows complaints relating to age discrimination in the area of employment over the same period.

As age categories used by the EOCWA differ, the provided data relates to complaints by complainants aged 40 years and over, rather than 45 years and over.

### (a) Complaints data

**Table 41: Complaints received relating to age discrimination from people aged 40 years and over\*\***

Complaints related to age discrimination	2012–13	2013–14	2014–15
Complaints received about age discrimination	22	24	30
Complaints received about age discrimination in area of employment	17	19	17
Percentage of complaints received about age discrimination in the area of employment	77.3%	79.2%	56.7%

\*\*Complaints are counted by complainant. One complaint may have multiple grounds and areas.

**Table 42: Outcomes of complaints finalised in period (for complaints relating to age discrimination in employment from people aged 40 years and over)^**

<b>Outcome of complaints</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
Conciliated	4	21.1%	2	9.5%	5	26.3%
Terminated – No reasonable prospect of conciliation/Referred to tribunal EOC code – Referred to Sat – Commissioner referred S93(1)	1	5.3%	0	–	0	–
Terminated/Dismissed – other grounds such as no substance	5	26.3%	8	38.1%	4	21.1%
Withdrawn	7	36.8%	10	47.6%	8	42.1%
Deemed does not wish to pursue/Lost contact	2	10.5%	1	4.8%	2	10.5%
EOC code – Dismissed S89(1) – Complainant referred to Sat S90	0	–	0	–	0	–
<b>Total</b>	<b>19</b>	<b>100%</b>	<b>21</b>	<b>100%</b>	<b>19</b>	<b>100%</b>

^Only one outcome is recorded for each complaint.

### **(b) Characteristics of complainant (for complaints relating to age discrimination in employment from people aged 40 years and over)**

**Table 43: Gender of complainant**

<b>Gender</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Female	6	7	10
Male	11	12	7
X (Indeterminate/intersex/unspecified)	0	0	0
<b>Total</b>	<b>17</b>	<b>19</b>	<b>17</b>

**Table 44: Whether complainant identifies as having a disability**

<b>Disability</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Yes	4	3	2
No	12	16	15
Unknown	1	0	0
<b>Total</b>	<b>17</b>	<b>19</b>	<b>17</b>

**Table 45: Whether complainant identifies as Aboriginal or Torres Strait Islander**

<b>Aboriginal or Torres Strait Islander descent</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Aboriginal	0	1	0
Torres Strait Islander	0	0	0
Both	0	0	0
No	17	18	17
Total	17	19	17

**(c) Characteristics of respondent (for complaints relating to age discrimination in employment from people aged 40 years and over)****Table 46: Complaints received by respondent industry type**

<b>Industry group</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Mining	3	1	1
Manufacturing	1	0	0
Electricity, Gas, Water and Waste Services	0	2	2
Construction	1	0	0
Retail Trade	1	1	1
Accommodation and Food Services	0	0	2
Transport, Postal and Warehousing	1	0	0
Financial and Insurance Services	1	0	0
Rental, Hiring and Real Estate Services	0	3	1
Professional, Scientific and Technical Services	0	1	1
Administrative and Support Services	2	3	2
Public Administration and Safety	3	1	0
Education and Training	0	1	3
Health Care and Social Assistance	1	4	3
Arts and Recreation Services	1	1	1
Other services	2	0	0
Unknown	0	1	0
Total	17	19	17

**Table 47: Complaints received by respondent organisation size**

Size of organisation	2012–13	2013–14	2014–15
1 to 19	0	0	1
20 to 99	7	4	1
100 to 499	1	2	2
500 and over	6	10	6
Unknown	3	3	7
Total	17	19	17

## Tasmanian Anti-Discrimination Commission

This section collates data on enquiries and complaints received by the Tasmanian Anti-Discrimination Commission (TADC) relating to age discrimination over the period of 2012–15. It also shows enquiries and complaints relating to age discrimination in the area of employment over the same period.

Enquiries data provided relates to people of all ages. For complaints data as age categories used by the TADC differ, the provided data relates to complaints by complainants aged 40 years and over, rather than 45 years and over.

### (a) Enquiries and complaints data

**Table 48: Enquires received relating to age discrimination (all ages)\***

Enquiries relating to age discrimination	2012–13	2013–14	2014–15
Enquiries received about age discrimination	40	40	65
Enquiries received about age discrimination in area of employment	20	20	31
Percentage of enquiries received about age discrimination in the area of employment	50.0%	50.0%	47.7%

\*Enquiries are defined as contacts (written or other form) that are not accepted as complaints. Each contact is counted as one enquiry.

**Table 49: Complaints received relating to age discrimination from people aged 40 years and over\*\***

<b>Complaints related to age discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Complaints received about age discrimination	12	17	16
Complaints received about age discrimination in area of employment	9	6	7
Percentage of complaints received about age discrimination in the area of employment	75.0%	35.3%	43.8%

\*\*Complaints are counted by complainant. One complaint may have multiple grounds and areas.

**Table 50: Stage of employment complaint relates to (for complaints relating to age discrimination in employment from people aged 40 years and over)\*\*\***

<b>Stage at which discrimination occurred</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
While looking for employment	2	18.2%	2	25.0%	0	–
During employment	6	54.5%	3	37.5%	5	71.4%
End of employment/Termination	3	27.3%	3	37.5%	2	28.6%
Total	11	100%	8	100%	7	100%

\*\*\*One complaint may relate to more than one stage of employment.

**Table 51: Outcomes of complaints finalised in period (for complaints relating to age discrimination in employment from people aged 40 years and over)^**

<b>Outcome of complaints</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
Conciliated	4	50.0%	3	42.9%	6	75.0%
Terminated – No reasonable prospect of conciliation/Referred to tribunal	0	–	1	14.3%	1	12.5%
Terminated/Dismissed – other grounds such as no substance	3	37.5%	3	42.9%	1	12.5%
Withdrawn	1	12.5%	0	–	0	–
Total	8	100%	7	100%	8	100%

^Only one outcome is recorded for each complaint.

## Fair Work Ombudsman

This section collates data on complaints received by Fair Work Ombudsman relating to age discrimination over the period of 2012–15.

### (a) Complaints data (for complaints relating to age discrimination in employment from people aged 45 years and over)

**Table 52: Complaints received relating to age discrimination from people aged 45 years and over<sup>^^</sup>**

Complaints related to discrimination	2012–13	2013–14	2014–15
All complaints received about discrimination	229	198	113
Complaints received about age discrimination	24	12	9
Percentage of complaints received about age discrimination	10.5%	6.1%	7.9%

<sup>^^</sup>All complaints received with an allegation of 'Discrimination – age' then filtered to include only unique complainants.

**Table 53: Stage of employment complaint relates to (for complaints relating to age discrimination in employment from people aged 45 years and over)<sup>\*\*\*</sup>**

Stage at which discrimination occurred	2012–13	%	2013–14	%	2014–15	%
While looking for employment	2	8.3%	2	16.7%	2	22.2%
During employment	15	62.5%	6	50.0%	4	44.4%
End of employment/Termination	4	16.7%	4	33.3%	3	33.3%
Unknown	3	12.5%	–	–	–	–
Total	24	100%	12	100%	9	100%

<sup>\*\*\*</sup>One complaint may relate to more than one stage of employment.

**Table 54: Outcomes of complaints finalised in period (for complaints relating to age discrimination in employment from people aged 45 years and over)^**

<b>Outcome of complaints</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
Withdrawn	2	8.7%	1	8.3%	1	10.0%
Resolved via assisted voluntary resolution or mediation or 'Early assisted resolution'	0	–	0	–	2	20.0%
Resolved via litigation	0	–	0	–	1	10.0%
Resolved via enforceable undertaking	0	–	0	–	0	–
Not sustained – includes 'Investigation not completed: No further action', 'Investigation completed: No further action', 'Not FWO matter', 'No prima facie contravention'	21	91.3%	11	91.7%	6	60.0%
<b>Total</b>	<b>23</b>	<b>100%</b>	<b>12</b>	<b>100%</b>	<b>10</b>	<b>100%</b>

^Only one outcome is recorded for each complaint.

**(b) Characteristics of complainant (for complaints relating to age discrimination in employment from people aged 45 years and over)**

**Table 55: Gender of complainant**

<b>Gender</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Female	9	8	2
Male	13	4	7
Unknown	2	0	0
<b>Total</b>	<b>24</b>	<b>12</b>	<b>9</b>

**Table 56: Age group of complainant**

Age group	2012–13	%	2013–14	%	2014–15	%
45–54	8	33.3%	2	16.7%	2	22.2%
55–64	12	50.0%	7	58.3%	4	44.4%
65–74	4	16.7%	3	25.0%	0	–
75+	0	–	0	–	1	11.1%
Unknown	0	–	0	–	2	22.2%
Total	24	100%	12	100%	9	100%

**(c) Characteristics of respondent (for complaints relating to age discrimination in employment from people aged 45 years and over)****Table 57: Complaints received by respondent industry type**

Industry group	2012–13	2013–14	2014–15
Mining	1	0	0
Manufacturing	2	1	2
Construction	0	1	1
Wholesale Trade	3	0	0
Retail Trade	2	2	0
Accommodation and Food Services	2	3	1
Transport, Postal and Warehousing	1	0	1
Financial and Insurance Services	1	1	2
Professional, Scientific and Technical Services	1	1	0
Administrative and Support Services	2	1	0
Public Administration and Safety	1	0	1
Education and Training	1	0	0
Health Care and Social Assistance	2	1	0
Arts and Recreation Services	1	0	0
Other Services (including hairdressing)	1	0	0
Unknown	3	1	1
Total	24	12	9

# Appendix 8: Older Australians and Australians with disability in the public service workforces

The Inquiry asked the Commonwealth, and all state and territory public service commissions to provide a broad range of data to assist the work of the Inquiry. This included the number of employees aged 45 years and over, and the number of people with disability employed, as well as information on any relevant recruitment or retention initiatives.<sup>1</sup>

The agencies provided data of variable breadth and depth limited by the nature of their responsibilities for overseeing public service employment, and collection and compilation of related data.

The data published here reflects only that which is directly relied on or referred to in the analysis included in this Report and which can be published without compromising confidentiality.

**Table 1 – Size of the public sector workforce**

**Table 1 – Size of the public sector workforce – number employed and as a percentage of all employed persons in the jurisdiction**

Jurisdiction	No of employees as at 2013	% of jurisdiction 2013 <sup>a</sup>	No of employees as at 2014	% of jurisdiction 2014 <sup>a</sup>	No of employees as at 2015	% of jurisdiction 2015 <sup>a</sup>
Commonwealth (APSC) <sup>b</sup>	163,521	1.3	152,606	1.2	152,430	1.2
Australian Capital Territory <sup>c</sup>	21,243	5.6	21,481	5.6	21,927	5.4
New South Wales	398,834	11	395,894	10.9	394,046	10.6
Northern Territory	21,734	15.7	21,719	16.0	20,119	15.1
Queensland	227,836	9.9	235,336	10.1	245,112	10.4
South Australia	104,262	12.9	103,087	12.8	104,070	12.9
Tasmania <sup>d</sup>	27,751	11.1	28,101	11.1	27,379	10.7
Victoria <sup>e</sup>	262,240	9.1	265,187	9.2	277,670	9.4
Western Australia	138,863	10.0	137,944	9.8	138,307	9.6
<b>Total</b>	<b>1,366,284</b>	<b>11.3</b>	<b>1,361,355</b>	<b>11.1</b>	<b>1,378,212</b>	<b>11.6</b>

a Based on labour force figures for the Commonwealth, Northern Territory, Western Australian and Tasmania sourced from ABS: 6291.0.55.001 Labour Force, Australia, Detailed; other data provided by relevant public service commissions.

b Includes agencies that employ staff under the Public Service Act 1999; excludes entities such as AFP, CSIRO and ABC. Percentage figures represent proportions of the whole Australian workforce.

c ACT government advises that this figure 'includes only about half of the 'smaller public sector agencies'.

d Includes employees covered by the Tasmanian State Service Act 2000 – Agencies and Authorities under Schedule 1 of the Act; does not include non-government organisations, government business enterprises, parliamentary and ministerial employees, police or other public sector entities.

e Source: Victorian Public Sector Commission Annual workforce data collection and Australian Bureau of Statistics, Labour Force, Australia, Detailed – Electronic Delivery, 'Table 2 – Victoria Total Employed persons', data cube: Excel spreadsheet, cat. no. 6291.0.55.001.

Note: Public service employees includes all staff employed and paid in the last pay period of June 2015.

## Table 2 – Older Australians

Table 2 summarises data provided by agencies responsible for public service employment regarding employees 45 years of age and over.

**Table 2: Numbers of public service employees 45 years of age and over as a percentage of all public service employees, by jurisdiction**

	Year	Total Public Service	Total 45–54 years	Proportion of workforce 45–54 years (%)	Total 55–64 years	Proportion of workforce 55–64 years (%)	Total 65+ years	Proportion of workforce 65+ years (%)	Total 45+ years	Proportion of workforce 45+ years (%)
<b>Commonwealth (Australian Public Service)</b>	2013	163,521	46,349	28.3	24,181	14.8	2,847	1.7	73,377	44.9
	2014	152,606	43,913	28.8	22,604	14.8	4,115	2.7	70,632	46.3
	2015	152,430	43,442	28.5	23,182	15.2	2,786	1.8	69,410	45.5
<b>Australian Capital Territory</b>	2013	21,243	5376	25.3	3,586	16.9	549	2.6	9,511	44.8
	2014	21,481	5418	25.2	3,707	17.3	513	2.4	9,638	44.9
	2015	21,927	5469	24.9	3,811	17.4	554	2.5	9,834	44.8
<b>New South Wales</b>	2013	398,834	107,100	26.9	81,600	20.5	12,600	3.2	201,300	50.5
	2014	395,894	104,500	26.4	82,300	20.8	13,400	3.4	200,200	50.6
	2015	394,046	102,700	26.1	82,200	20.9	13,800	3.5	198,700	50.4
<b>Northern Territory</b>	2013	21,734	Not available							
	2014	21,719								
	2015	20,119								
<b>Queensland</b>	2013	227,836	64,422	28.8	39,604	17.4	5,315	2.3	109,341	48.0
	2014	235,336	65,802	28.5	41,791	17.8	5,821	2.5	113,414	48.2
	2015	245,112	67,733	25.3	43,590	17.8	6,345	2.6	117,668	48.0
<b>South Australia</b>	2013	104,262	28,604	25.2	22,868	21.9	2752	2.6	54,224	52.0
	2014	103,087	27,743	24.9	22,830	22.1	Of 2,941	2.9	53,514	51.9
	2015	104,070	27,523	26.9	23,275	22.4	3194	3.1	53,992	51.9

	Year	Total Public Service	Total 45–54 years	Proportion of workforce 45–54 years (%)	Total 55–64 years	Proportion of workforce 55–64 years (%)	Total 65+ years	Proportion of workforce 65+ years (%)	Total 45+ years	Proportion of workforce 45+ years (%)
Tasmania	2013	27,751	9,078	26.4	6,213	22.4	629	2.3	15,920	57.4
	2014	28,101	9,000	26.2	6,467	23.0	725	2.6	16,192	57.6
	2015	27,379	8,633	31.5	6,408	23.4	708	2.6	15,749	57.5
Victoria	2013	262,240	69,451	26.5	47,890	18.3	6,221	2.4	123,562	47.1
	2014	265,187	68,301	25.8	49,065	18.5	6,659	2.5	124,025	46.8
	2015	277,670	68,095	24.5	50,675	18.3	7,201	2.6	125,971	45.4
Western Australia	2013	138,863	37,632	25.3	29,022	20.9	1,430	3.8	68,084	50.0
	2014	137,944	37,245	25.2	29,382	21.3	1,564	4.2	68,191	50.7
	2015	138,307	37,069	24.9	29,640	21.4	5,733	4.1	72,442	52.4
Total public sector workforce	2013	1,366,284	368,012	26.9	254,964	18.7	32,343	2.4	655,319	48.7
	2014	1,361,355	361,922	26.4	258,146	19.0	35,738	2.6	655,806	48.9
	2015	1,378,212	360,464	26.2	261,881	19.0	39,721	2.9	662,066	48.3
Total Australian labour force <sup>a</sup>	2013	12,119,700	2,551,000	21.0	1,674,200	13.8	413,700	3.4	4,638,900	38.3
	2014	12,280,400	2,558,300	20.8	1,750,400	14.3	422,300	3.4	4,731,000	38.5
	2015	12,526,700	2,601,100	20.8	1,786,100	14.3	425,600	3.4	4,812,800	38.4
Total Australian population	2015			13.2		11.5		15.1		

a Figures derived from ABS: 6291.0.55.001 Labour Force, Australia.

### Table 3 – Age profile of public services comparison

Table 3 compares the 2015 age profile of the territory, state and Commonwealth public services with that of the broader Australian workforce and the Australian population.

**Table 3: Proportions of public service employees (excluding Northern Territory) 45 years of age and over compared with the Australian labour force and the Australian population (%)**

	45–54 years	55–64 years	65+ years	Total 45+ years
Total public sector workforce	26.2	19.0	2.9	48.3
Total Australian labour force <sup>a</sup>	20.8	14.3	3.4	38.4
Total Australian population	13.1	11.5	15	39.6

a Figures derived from ABS: 6291.0.55.001 Labour Force, Australia.

### Table 4 – Age of public servants at recruitment

		Less than 45 years	45 years or older
<b>Queensland</b>	% of people recruited	76.3	23.7
	As a proportion of workforce	52.0	48.0
<b>South Australia</b>	% of people recruited	86.0	14.0
	As a proportion of workforce	48.0	51.9
<b>Tasmania</b>	% of people recruited	79.6	20.4
	As a proportion of workforce	42.5	57.5
<b>Victoria</b>	% of people recruited	82.9	17.1
	As a proportion of workforce	54.6	45.4
<b>Western Australia</b>	% of people recruited	73.1	26.9
	As a proportion of workforce	47.6	52.4
<b>All available jurisdictions</b>	% of people recruited	82.9	17.1
	As a proportion of workforce	51.3	48.7

## Table 5 – Strategies or programs to recruit and/or retain older employees in the public service

Table 5 summarises the information received regarding recruitment and retention strategies for older Australians in the public service.

<b>Commonwealth</b>	Not available
<b>Australian Capital Territory</b>	<p>While the ACT Public Service Respect, Equity and Diversity Framework (RED Framework) aims for equal employment opportunities for all applicants and employees, no employment strategy is currently in place specifically regarding older employees.</p> <p>However there are a range of measures in individual agencies, for example: succession planning; flexible working arrangements when requested as operational requirements permit; seminars on retirement planning; Retired Teachers Casual Relief Card, providing a streamlined eligibility process for recently retired teachers to register for casual relief work; internal publicity about age retention activities and approaches; monitoring of participation in training and development activities by age group; Mature-age Worker Focus Group and an Age Management Forum for Managers; development of a Mentoring Framework; development of flexible working resources for managers; review of Culture Survey qualitative data to identify reasons mature-aged workers chose to stay with department.</p>
<b>New South Wales</b>	Not available
<b>Northern Territory</b>	Retirement Intentions Audit to identify retirement intentions and inform possible retention, succession and recruitment plans. A 'Transition to Retirement Policy' is in development.
<b>Queensland</b>	Transition to retirement programs, shifting workers to less physically demanding roles as they develop conditions that impact them physically, flexible work practices to support a range of diverse workforce needs and aspirations.
<b>South Australia</b>	South Australia's Strategic Plan contains targets for improving the participation of older South Australians and South Australians with Disability in the workforce. The relevant target is: Target 48: Ageing workforce participation: Increase the proportion of older South Australians who are engaged in the workforce by 10 percentage points by 2020 (baseline: 2010). Note that this target is not specific to public service employment.
<b>Tasmania</b>	Not available
<b>Victoria</b>	Not available
<b>Western Australia</b>	Not available

**Table 6 – Australians with disability in the public service**  
**Table 6: Proportions of public service employees who identify as having a disability (all ages)**

		Total no of employees with disability	% of all public service employees with disability	Number of public service employees aged 45–54 with disability	% of public service employees 45–54 years of age with disability	Number of public service employees aged 55–64 with disability	% of public service employees 55–64 years of age with disability	Number of public service employees aged 65+ with disability	% of public service employees 65+ years of age with disability
<b>Commonwealth</b>	2013	5051	3.3	1896	4.1	1063	4.4	126	4.4
	2014	5125	3.4	1820	4.1	1058	4.7	109	2.6
	2015	5012	3.3	1817	4.2	1120	4.8	128	4.6
<b>Australian Capital Territory</b>	2013	411	1.9	96	1.8	86	2.4	15	2.7
	2014	451	2.1	113	2.1	95	2.6	12	2.3
	2015	463	2.2	111	2.0	100	2.6	13	2.3
<b>New South Wales</b>	2013	13,449	3.4	4352	4.1	4394	5.4	730	5.8
	2014	11,830	3.0	3749	3.6	3939	4.8	692	5.2
	2015	11,116	2.8	3454	3.4	3707	4.5	704	5.1
<b>Northern Territory<sup>a</sup></b>	2013	215	5						
	2014	232	4						
	2015	201	4						
<b>Queensland</b>	2013	8633	3.6	2763	Not available	2297	Not available	354	Not available
	2014	7720	3.2	2520		2185		388	
	2015		Not available			Not available		Not available	
<b>South Australia</b>	2013								
	2014	1277	1.2	357	Not available	434	Not available	50	Not available
	2015	1335	1.3	360		460		56	
<b>Tasmania<sup>b</sup></b>	2013	1581	5.7						
	2014	1742	6.2						
	2015	876	3.2						

		<b>Total no of employees with disability</b>	<b>% of all public service employees with disability</b>	<b>Number of public service employees aged 45–54 with disability</b>	<b>% of public service employees 45–54 years of age with disability</b>	<b>Number of public service employees aged 55–64 with disability</b>	<b>% of public service employees 55–64 years of age with disability</b>	<b>Number of public service employees aged 65+ with disability</b>	<b>% of public service employees 65+ years of age with disability</b>
<b>Victoria</b>		Not available							
	<b>2013</b>	2061	2.6	592	2.6	550	3.1	103	3.6
<b>Western Australia<sup>c</sup></b>	<b>2014</b>	1953	2.3	563	2.4	546	2.9	102	3.1
	<b>2015</b>	1873	2.1	534	2.2	559	2.8	104	2.9

- a The Northern Territory data is drawn from the Northern Territory Public Service People Matter employee surveys, which are voluntary and anonymous. The most recent data available for each year has been used as the surveys ran in 2009, 2011 and 2014.
- b The Tasmanian data is drawn from employee surveys, in which it is voluntary to identify across a number of different diversity characteristics. It is not a requirement under the Tasmanian State Service Act 2000 for employees or officers to identify as having a disability.
- c The Western Australian data is based on responses to the WA public sector equity and diversity survey. The decrease in representation in 2014 coincides with an increase in responses to the survey.

## Table 7 – Strategies or programs to recruit and/or retain employees with disability in the public service

Table 7 summarises the information received regarding recruitment and retention strategies for people with disability in the public services.

Jurisdiction	Strategies or programs to recruit and/or retain employees with disability	Evaluation
<b>Commonwealth</b>	<p>As One strategy, includes education, support network, promotion of measures.</p> <p>Provisions in the Australian Public Service (APS) outlined in the Commissioner’s Directions 2013, including:</p> <p>2.16 Affirmative measure — intellectual disability allowing vacancies to be open only to persons with intellectual disability.</p> <p>2.17A Affirmative measure — RecruitAbility Scheme, which streamlines application process for people with disability.</p>	<p>February 2015 Review formally concluded that while activities were worthwhile, more could be done to promote initiatives more widely across the APS.</p>
<b>Australian Capital Territory</b>	<p>The ACT Public Service Respect, Equity and Diversity Framework (RED Framework) aims for equal employment opportunities for all, and includes the ACTPS Employment Strategy for People with Disability, which includes a target for 2018–19 (3.4% or 655 employees with disability), coordination, staff development, improving accessibility, policy/information/research initiatives, such as a reasonable adjustments policy and monitoring and reporting initiatives and promotion of flexible working arrangements.</p> <p>An Inclusions Aboriginal and Torres Strait Islander Traineeship is being piloted for application to people with disability.</p> <p>Support and education materials for managers (developed with Australian Network on Disability).</p>	<p>Recent review of the RED Framework found it ‘...has enabled the ACT Public Sector to identify and act upon unacceptable workplace behaviour...’</p>

Jurisdiction	Strategies or programs to recruit and/or retain employees with disability	Evaluation
<b>New South Wales</b>	<p>EmployABILITY, a targeted, sector-wide approach to employing, developing and retaining staff with disability, 2010–13.</p> <p>Disability Employment Advisory Committee (DEAC) established to advise on next steps arising from Disabling the Barriers, which reviewed the employment situation of people with disability in the NSW public sector.</p> <p>Living Well — A strategic (mental health) plan including actions that support recruitment and retention of people with mental illness using existing programs and advice to NSW agencies.</p> <p>NSW Disability Inclusion Plan 2015 has four focus areas, with one of them being ‘Supporting access to meaningful employment’. Action items 3.1 and 3.3 of the plan refer to increasing workforce diversity through workforce planning and creating supportive and strategic networks dedicated to improving the attraction, retention and career development of people with disability.</p>	<p>The ‘Disabling the Barriers’ report, following the EmployABILITY strategy, identified continuing barriers to employment and career progression for people with disability. It did not evaluate the strategy but did observe that: ‘Despite the release of EmployABILITY in 2011... there has been a further decline in reported representation levels across the NSW government sector’. An evaluation process for the NSW Disability Inclusion Plan is in development.</p>
<b>Northern Territory</b>	<p>EmployAbility strategy for the employment of people with disability in the NT Public Sector, includes the Disability Employment Program which is a centrally-funded 2-year program. It imposes a budget levy on all public service agencies in the jurisdiction based on their number of full time equivalent positions (FTE). These funds then form a centralised budget that participating agencies can access to fund entry level positions for people with disability for two years. A range of training, support, promotional and reporting activities are provided.</p> <p>Participating agencies are provided with the full salary plus on-costs in exchange for real work experience and professional development for the individual. The benefits of the program include the development opportunity for individuals with disability as well as those staff within the agency who gain experience working with people of varying abilities.</p>	<p>No formal evaluation but since its inception the DEP has employed over 100 people.</p>
<b>Queensland</b>	<p>Queensland Disability Plan 2014–2019 requires agencies to develop and implement policies, tools and resources for recruitment and selection of people with disability.</p> <p>Inclusion Champions of Change (group of Directors-General — initial focus is on gender, but also committed to advancing inclusion and diversity more generally).</p>	<p>Evaluation of the Queensland Public Sector inclusion and diversity strategy 2015–2020 is to be via annual reporting to the Leadership Board and an evaluation at the end of the 5 years.</p>

Jurisdiction	Strategies or programs to recruit and/or retain employees with disability	Evaluation
South Australia	<p>South Australia's Strategic Plan's Target 50: People with disability aims to increase by 10% the employment of people with disability in South Australia by 2020 [note that this is not specific to public service employment]</p> <p>Cross-government 90 Day Change Project — Increasing Public Sector Employment of People with a Disability. Led by the Commissioner for Equal Opportunity.</p>	Not available
Tasmania	<p>Executive directions generally require agency heads to ensure discrimination free and equal opportunity work environment.</p>	Not available
Victoria	<p>In the Victorian public sector, employer powers and responsibilities reside solely with the public sector body heads. Each agency head is responsible for ensuring that equal opportunity employment is provided within their organisation. No sector-wide data is available.</p> <p>2013 publication of 'Recruiting people with disability – getting recruitment right'.</p> <p>Paid internships for university students with disability at the Department of Human Services.</p>	Not available
Western Australia	<p>Disability Employment Strategy 2013–2015.</p> <p>Disability Employment Strategy 2016–19 is in development and is intended to be launched before 30 June 2016.</p>	<p>The Disability Employment Strategy 2013–2015 concluded in June 2015. Both the (PSC) Commissioner and the Director of Equal Opportunity in Public Employment agree that there is more work to be done around diversity in public employment.</p>

- 1 Except where indicated otherwise, the data and information in this Appendix was provided by the relevant territory, state and Commonwealth public service agencies: the Australian Capital Territory Office of the Commissioner for Public Administration; the Australian Public Service Commission; the New South Wales Public Service Commission; the Northern Territory Office of the Commissioner for Public Employment; the Queensland Public Service Commission; the South Australian Office for the Public Sector; the Tasmanian State Service Management Office; the Victorian Public Sector Commission; and the Western Australia Public Sector Commission.

# Appendix 9: Resources for employers

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## Australian Human Rights Commission resources

- Guide for Business on developing Disability Action Plans: <https://humanrights.gov.au/disability-discrimination-act-action-plans-guide-business>.
- National Information Services provides information and referral for employers, individuals, and organisations about a range of human rights and discrimination issues. The service is free and confidential: [www.humanrights.gov.au/complaints/contact-national-information-service](http://www.humanrights.gov.au/complaints/contact-national-information-service).
- Good practice, good business factsheets: [www.humanrights.gov.au/employers/good-practice-good-business-factsheets](http://www.humanrights.gov.au/employers/good-practice-good-business-factsheets).
- Business and Human Rights Network — a voluntary informal forum for information exchange and discussion on human rights and business: [www.humanrights.gov.au/employers/join-network](http://www.humanrights.gov.au/employers/join-network).
- A Practical Guide for Managers on how to appropriately support workers with mental illness: [www.humanrights.gov.au/our-work/disability-rights/publications/2010-workers-mental-illness-practical-guide-managers](http://www.humanrights.gov.au/our-work/disability-rights/publications/2010-workers-mental-illness-practical-guide-managers).

## Other guidelines and resources

- Guidelines for managers and supervisors: [www.antidiscrimination.justice.nsw.gov.au/Pages/adb1\\_publications/adb1\\_guidelines/adb1\\_managers.aspx](http://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1_publications/adb1_guidelines/adb1_managers.aspx).
- Providing workplace adjustments in employment: <http://www.humanrightscommission.vic.gov.au/index.php/employer-responsibilities/reasonable-adjustments-in-employment>.
- Guideline for the *Recruitment Industry and Employers: Complying with the Equal Opportunity Act 2010 in Recruitment* in 2014. This guideline provides guidance to employers in meeting their obligations under the Victorian *Equal Opportunity Act 2010*, including reasonable adjustments that may be made in recruitment and employment and positive steps that employers can take in preventing discrimination:<sup>1</sup> [www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/eoa-practice-guidelines/item/download/6708\\_be302def5975e28f93535eb51a58e79c](http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/eoa-practice-guidelines/item/download/6708_be302def5975e28f93535eb51a58e79c).
- Australian Apprenticeships Incentives Programme: <http://www.australianapprenticeships.gov.au/publications/summary-australian-government-australian-apprenticeships-incentives-programme>.
- Corporate Champions Programme: [www.employment.gov.au/corporate-champions](http://www.employment.gov.au/corporate-champions).
- Investing in Experience Employment Charter and Toolkit — Practical guide and principles to help employers recruit and retain mature-age staff: [www.employment.gov.au/investing-experience-employment-charter-and-tool-kit-0](http://www.employment.gov.au/investing-experience-employment-charter-and-tool-kit-0).
- Australian Small Business Commissioner: [www.asbc.gov.au/](http://www.asbc.gov.au/).
- Australian Small Business and Family Enterprise Ombudsman [www.asbfeo.gov.au](http://www.asbfeo.gov.au).

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- Australian Small Business Advisory Service (ASBAS) Programme aims to improve the capacity of established not-for-profit small business advisory service providers to deliver low cost small business advisory and information services to small businesses: <http://www.business.gov.au/grants-and-assistance/australian-small-business-advisory-services/Pages/default.aspx>.
  - Australian Chamber of Commerce and Industry's Employ Outside the Box is a series of publications to encourage businesses to diversify their workforce: <https://www.acci.asn.au/program/employ-outside-box>.

### **Wage subsidies**

- The Department of Employment offers wage subsidies to businesses to help employers expand their business and employ new staff: <https://www.employment.gov.au/wage-subsidies>.
- Restart [www.employment.gov.au/restart](http://www.employment.gov.au/restart).
- Long Term Unemployed and Indigenous Wage Subsidy <https://www.employment.gov.au/long-term-unemployed-and-indigenous-wage-subsidy>.
- Youth Wage Subsidy <https://www.employment.gov.au/youth-wage-subsidy>.
- Parents Wage Subsidy <http://www.employment.gov.au/parents-wage-subsidy>.

# Appendix 10: Disability Discrimination enquiries and complaints data

Enquiries and complaints data collected by the Australian Human Rights Commission, state and territory anti-discrimination and equal opportunity agencies, as well as the Fair Work Ombudsman provides an important source of information relevant to the prevalence of disability discrimination in employment.

This section collates enquiries and complaints data provided to the Inquiry by each of these agencies for the 2012–13, 2013–14 and 2014–15 financial years. It presents data, where available, related to the area and outcome of the complaint along with characteristics of the complainant and respondent.

Along with agencies listed in this section, data was also sought from the Fair Work Commission, who advised the Inquiry that data related to disability discrimination is not systematically collected and so could not be provided.

For the purposes of comparison across agencies, complaints and enquiries data was sought for 'disability discrimination' which was defined to include grounds such as disability; possible future disability; infectious disease; impairment; and disability harassment. The area of 'employment' was defined to include paid employment; recruitment; employment agencies; contract workers; discriminatory requests for information relating to employment; and advertising relating to employment. Counting methods for each category were also stipulated. Where data has been provided under different parameters it is noted in the relevant section.

Note that due to rounding not all total percentages will equal exactly 100%.

## Australian Human Rights Commission

This section collates data on enquiries and complaints received by the Commission relating to disability discrimination over the period of 2012–15. It also shows enquiries and complaints relating to disability discrimination in the area of employment over the same period.

### (a) Enquiries and complaints data

**Table 1: Enquires received relating to disability discrimination\***

Enquires relating to disability discrimination	2012–13	2013–14	2014–15
Enquiries received about disability discrimination	4025	4236	3529
Enquiries received about disability discrimination in area of employment	1516	1330	1249
Percentage of enquiries received about disability discrimination in the area of employment	37.7%	31.4%	35.4%

\*Enquiries are defined as contacts (written or other form) that are not accepted as complaints. Each contact is counted as one enquiry.

**Table 2: Complaints received relating to disability discrimination\*\***

<b>Complaints relating to disability discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Complaints received about disability discrimination	805	811	742
Complaints received about disability discrimination in area of employment	360	339	304
Percentage of complaints received about disability discrimination in the area of employment	44.7%	41.8%	41.0%

\*\*Complaints are counted by complainant. One complaint may have multiple grounds and areas.

**Table 3: Ratio of complaints to enquiries relating to disability discrimination in employment**

<b>Ratio of complaints to enquiries</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Enquiries received about disability discrimination in area of employment	1516	1330	1249
Complaints received about disability discrimination in area of employment	360	339	304
Ratio of complaints to enquiries	1:4.2	1:3.9	1:4.1
Percentage of complaints to enquiries	23.7%	25.5%	24.3%

**Table 4: Stage of employment complaint relates to (for complaints relating to disability discrimination in employment)\*\*\***

<b>Stage of employment</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
While looking for employment	46	10.4%	44	11.3%	40	10.6%
During employment	266	60.2%	239	61.1%	206	54.6%
End of employment/Termination	130	29.4%	108	27.6%	131	34.7%
Total	442	100%	391	100%	377	100%

\*\*\*One complaint may relate to more than one stage of employment.

**Table 5: Outcomes of complaints finalised in period (for complaints relating to disability discrimination in employment)^**

<b>Outcome of complaints</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
Conciliated	160	38.5%	156	48.0%	138	45.2%
Terminated – No reasonable prospect of conciliation	133	32.0%	80	24.6%	83	27.2%
Terminated/Dismissed – other grounds such as no substance	37	8.9%	17	5.2%	18	5.9%
Withdrawn	59	14.2%	55	16.9%	42	13.8%
Deemed does not wish to pursue/Lost contact	27	6.5%	17	5.2%	24	7.9%
<b>Total</b>	<b>416</b>	<b>100%</b>	<b>325</b>	<b>100%</b>	<b>305</b>	<b>100%</b>

^Only one outcome is recorded for each complaint.

**(b) Characteristics of complainant (for complaints relating to disability discrimination in employment)****Table 6: Gender of complainant**

<b>Gender</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Female	174	179	172
Male	184	159	132
X (Indeterminate/intersex/unspecified)	2	1	0
<b>Total</b>	<b>360</b>	<b>339</b>	<b>304</b>

**Table 7: Whether complainant identifies as Aboriginal or Torres Strait Islander**

<b>Aboriginal or Torres Strait Islander descent</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Aboriginal	8	8	4
Torres Strait Islander	0	0	0
Both	0	0	0
No	239	203	144
Unknown	113	128	156
<b>Total</b>	<b>360</b>	<b>339</b>	<b>304</b>

**Table 8: Type of disability of complainant<sup>^^</sup>**

<b>Type of Disability</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Physical disability	97	84	76
A mobility aid is used (e.g. walking frame/wheelchair)	4	8	10
Physical disfigurement	7	2	1
Presence in the body of organisms causing disease – HIV/AIDS	5	2	3
Presence in the body of organisms causing disease – other	2	8	0
Mental Health/Psychosocial disability	107	105	125
Neurological disability (e.g. epilepsy)	19	21	10
Intellectual disability	3	4	2
Learning disability	6	6	5
Sensory disability – hearing impaired	6	5	8
Sensory disability – deaf	3	2	3
Sensory disability – vision impaired	10	17	10
Sensory disability – blind	1	3	6
Work related injury	43	45	34
Medical condition (e.g. diabetes)	119	72	75
Unknown	8	19	18
<b>Total</b>	<b>440</b>	<b>403</b>	<b>386</b>

<sup>^^</sup>One complainant may have multiple disabilities recorded.

### (c) Characteristics of respondent (for complaints relating to disability discrimination in employment)

**Table 9: Respondent industry type**

<b>Industry group</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Accommodation and Food Services	18	6	7
Administrative and Support Services	13	12	16
Agriculture, Forestry and Fishing	0	3	0
Arts and Recreation Services	6	9	4
Construction	4	4	4
Education and Training	19	30	31

<b>Industry group</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Electricity, Gas, Water and Waste Services	5	4	4
Financial and Insurance Services	22	11	19
Health Care and Social Assistance	44	57	58
Information Media and Telecommunications	13	7	4
Manufacturing	15	5	11
Mining	8	8	8
Professional, Scientific and Technical Services	18	18	18
Public Administration and Safety	90	80	66
Rental, Hiring and Real Estate Services	7	3	2
Retail Trade	26	30	32
Transport, Postal and Warehousing	17	15	17
Wholesale Trade	19	12	3
Unknown	16	25	0
<b>Total</b>	<b>360</b>	<b>339</b>	<b>304</b>

**Table 10: Respondent organisation size**

<b>Size of organisation</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Less than 5	0	0	1
5 to 19	11	16	7
20 to 99	24	52	41
100 to 499	29	49	44
500 and over	107	113	114
Unknown	189	109	97
<b>Total</b>	<b>360</b>	<b>339</b>	<b>304</b>

## Australian Capital Territory Human Rights Commission

This section collates data on enquiries and complaints received by the Australian Capital Territory Human Rights Commission relating to disability discrimination over the period of 2012–15. It also shows enquiries and complaints relating to disability discrimination in the area of employment over the same period.

### (a) Enquiries and complaints data

**Table 11: Enquires received relating to disability discrimination\***

<b>Enquiries relating to disability discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Enquiries received about disability discrimination	94	113	79
Enquiries received about disability discrimination in area of employment	27	29	20
Percentage of enquiries received about disability discrimination in the area of employment	28.7%	25.7%	25.3%

\*Enquiries are defined as contacts (written or other form) that are not accepted as complaints. Each contact is counted as one enquiry.

**Table 12: Complaints received relating to disability discrimination\*\***

<b>Complaints relating to disability discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Complaints received about disability discrimination	40	65	58
Complaints received about disability discrimination in area of employment	8	9	6
Percentage of complaints received about disability discrimination in the area of employment	20.0%	13.8%	10.3 %

\*\*Complaints are counted by complainant. One complaint may have multiple grounds and areas.

**Table 13: Ratio of Complaints to Enquiries relating to disability discrimination in employment**

Ratio of complaints to enquiries	2012–13	2013–14	2014–15
Enquiries received about disability discrimination in area of employment	27	29	20
Complaints received about disability discrimination in area of employment	8	9	6
Ratio of complaints to enquiries	1:3.4	1:3.2	1:3.3
Percentage of complaints to enquiries	29.6%	31.0%	30.0%

**Table 14: Stage of employment complaint relates to (for complaints relating to disability discrimination in employment)\*\*\***

Stage of employment	2012–13	%	2013–14	%	2014–15	%
While looking for employment	3	33.3%	2	16.7%	1	16.7%
During employment	5	55.6%	7	58.3%	3	50.0%
End of employment/Termination	1	11.1%	3	25.0%	2	33.3%
Total	9	100%	12	100%	6	100%

\*\*\*One complaint may relate to more than one stage of employment.

**Table 15: Outcomes of complaints finalised in period (for complaints relating to disability discrimination in employment)^**

Outcome of complaints	2012–13	%	2013–14	%	2014–15	%
Conciliated	11	73.3%	17	85.0%	4	30.8%
Terminated – No reasonable prospect of conciliation/Referred to tribunal	3	20.0%	3	15.0%	8	61.5%
Terminated/Dismissed – other grounds such as no substance	0	–	0	–	0	–
Withdrawn	1	6.7%	0	–	1	7.7%
Deemed does not wish to pursue/Lost contact	0	–	0	–	0	–
Total	15	100%	20	100%	13	100%

^Only one outcome is recorded for each complaint.

**(b) Characteristics of complainant (for complaints relating to disability discrimination in employment)**

**Table 16: Gender of complainant**

<b>Gender</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Female	4	4	2
Male	4	5	4
X (Indeterminate/intersex/unspecified)	0	0	0
<b>Total</b>	<b>8</b>	<b>9</b>	<b>6</b>

**Table 17: Whether complainant identifies as Aboriginal or Torres Strait Islander**

<b>Aboriginal or Torres Strait Islander descent</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Aboriginal	2	1	0
Torres Strait Islander	0	0	0
Both	0	0	0
No	0	0	0
Unknown	6	8	6
<b>Total</b>	<b>8</b>	<b>9</b>	<b>6</b>

**Table 18: Type of disability of complainant<sup>^^^</sup>**

<b>Type of Disability</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Physical disability	1	1	1
Physical disfigurement	1	0	0
Presence in the body of organisms causing disease – other	0	1	0
Mental Health/Psychosocial disability	3	3	3
Intellectual disability	0	0	2
Learning disability	0	1	0
Sensory disability – hearing impaired	1	1	0
Sensory disability – vision impaired	1	0	0

Type of Disability	2012–13	2013–14	2014–15
Work related injury	1	1	0
Medical condition (e.g. diabetes)	1	1	0
Unknown	6	4	3
Total	15	13	9

\*\*\*One complainant may have multiple disabilities recorded.

## Anti-Discrimination Board of New South Wales

This section collates data on enquiries and complaints received by the Anti-Discrimination Board of NSW relating to disability discrimination over the period of 2012–15. It also shows enquiries and complaints relating to disability discrimination in the area of employment over the same period.

### (a) Enquiries and complaints data

**Table 19: Enquires received relating to disability discrimination\***

Enquiries relating to disability discrimination	2012–13	2013–14	2014–15
Enquiries received about disability discrimination	1125	1008	901
Enquiries received about disability discrimination in area of employment	555	442	376
Percentage of enquiries received about disability discrimination in the area of employment	49.3%	43.8%	41.7%

\*Enquiries are defined as contacts (written or other form) that are not accepted as complaints. Each contact is counted as one enquiry.

**Table 20: Complaints received relating to disability discrimination\*\***

Complaints relating to disability discrimination	2012–13	2013–14	2014–15
Complaints received about disability discrimination	274	332	276
Complaints received about disability discrimination in area of employment	126	148	115
Percentage of complaints received about disability discrimination in the area of employment	46.0%	44.6%	41.7%

\*\*Complaints are counted by complainant. One complaint may have multiple grounds and areas.

**Table 21: Ratio of Complaints to Enquiries relating to disability discrimination in employment**

Ratio of complaints to enquiries	2012–13	2013–14	2014–15
Enquiries received about disability discrimination in area of employment	555	442	376
Complaints received about disability discrimination in area of employment	126	148	115
Ratio of complaints to enquiries	1:4.4	1:2.9	1:3.3
Percentage of complaints to enquiries	22.7%	33.5%	30.6%

**Table 22: Stage of employment complaint relates to (for complaints relating to disability discrimination in employment)\*\*\***

Stage of employment	2012–13	%	2013–14	%	2014–15	%
While looking for employment	22	17.5%	15	10.1%	24	20.9%
During employment	78	61.9%	98	66.2%	64	55.7%
End of employment/Termination	26	20.6%	35	23.6%	27	23.5%
Total	126	100%	148	100%	115	100%

\*\*\*One complaint may relate to more than one stage of employment.

**Table 23: Outcomes of complaints finalised in period (for complaints relating to disability discrimination in employment)^**

Outcome of complaints	2012–13	%	2013–14	%	2014–15	%
Conciliated	35	29.7%	49	39.5%	61	40.1%
Terminated – No reasonable prospect of conciliation/Referred to tribunal	21	17.8%	30	24.2%	30	19.7%
Terminated/Dismissed – other grounds such as no substance	14	11.9%	15	12.1%	19	12.5%
Withdrawn	36	30.5%	17	13.7%	29	19.1%
Deemed does not wish to pursue/Lost contact	12	10.2%	13	10.5%	13	8.6%
Total	118	100%	124	100%	152	100%

^Only one outcome is recorded for each complaint.

**(b) Characteristics of complainant (for complaints relating to disability discrimination in employment)****Table 24: Gender of complainant**

<b>Gender</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Female	55	75	58
Male	70	72	57
X (Indeterminate/intersex/unspecified)	1	1	0
Total	126	148	115

**Table 25: Type of disability of complainant<sup>\*\*\*</sup>**

<b>Type of Disability</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Physical disability	59	45	29
A mobility aid is used (e.g. walking frame/wheelchair)	5	3	2
Presence in the body of organisms causing disease – HIV/AIDS	1	2	2
Presence in the body of organisms causing disease – other	11	18	5
Mental Health/Psychosocial disability	24	41	55
Neurological disability (e.g. epilepsy)	4	8	6
Intellectual disability	0	1	2
Learning disability	5	6	5
Sensory disability – hearing impaired	3	5	1
Sensory disability – deaf	1	1	2
Sensory disability – vision impaired	3	2	0
Unknown	10	16	6
Total	126	148	115

<sup>\*\*\*</sup>One complainant may have multiple disabilities recorded.

**(c) Characteristics of respondent (for complaints relating to disability discrimination in employment)**

**Table 26: Respondent industry type**

<b>Industry group</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Accommodation and Food Services	1	5	1
Agriculture, Forestry and Fishing	4	8	3
Arts and Recreation Services	3	2	0
Construction	1	0	1
Education and Training	2	2	0
Electricity, Gas, Water and Waste Services	9	7	6
Financial and Insurance Services	5	5	3
Health Care and Social Assistance	3	7	9
Information Media and Telecommunications	1	1	1
Manufacturing	1	1	4
Mining	3	1	2
Private household	3	7	8
Professional, Scientific and Technical Services	6	5	5
Public Administration and Safety	29	23	22
Rental, Hiring and Real Estate Services	8	11	8
Retail Trade	26	41	31
Transport, Postal and Warehousing	3	6	1
Unknown	18	16	10
<b>Total</b>	<b>126</b>	<b>148</b>	<b>115</b>

## Northern Territory Anti-Discrimination Commission

This section collates data on enquiries and complaints received by the Northern Territory Anti-Discrimination Commission relating to disability discrimination over the period of 2012–15. It also shows enquiries and complaints relating to disability discrimination in the area of employment over the same period.

### (a) Enquiries and complaints data

**Table 27: Enquires received relating to disability discrimination\***

Enquiries relating to disability discrimination	2012–13	2013–14	2014–15
Enquiries received about disability discrimination	35	35	16
Enquiries received about disability discrimination in area of employment	18	17	7
Percentage of enquiries received about disability discrimination in the area of employment	51.4%	48.6%	43.8%

\*Enquiries are defined as contacts (written or other form) that are not accepted as complaints. Each contact is counted as one enquiry.

**Table 28: Complaints received relating to disability discrimination\*\***

Complaints relating to disability discrimination	2012–13	2013–14	2014–15
Complaints received about disability discrimination	Not reported	Not reported	33
Complaints received about disability discrimination in area of employment	Not reported	Not reported	15
Percentage of complaints received about disability discrimination in the area of employment	Not reported	Not reported	45.5%

\*\*Complaints are counted by complainant. One complaint may have multiple grounds and areas.

**Table 29: Ratio of Complaints to Enquiries relating to disability discrimination in employment**

Ratio of complaints to enquiries	2012–13	2013–14	2014–15
Enquiries received about disability discrimination in area of employment	18	17	7
Complaints received about disability discrimination in area of employment	Not reported	Not reported	15
Ratio of complaints to enquiries	–	–	2.1:1
Percentage of complaints to enquiries	–	–	214.3%

## (b) Characteristics of complainant (for complaints relating to disability discrimination in employment)

**Table 30: Gender of complainant**

Gender	2012–13	2013–14	2014–15
Female	Not reported	Not reported	8
Male	Not reported	Not reported	7
X (Indeterminate/intersex/unspecified)	Not reported	Not reported	0
Total	–	–	15

**Table 31: Whether complainant identifies as Aboriginal or Torres Strait Islander**

Aboriginal or Torres Strait Islander descent	2012–13	2013–14	2014–15
Aboriginal	Not reported	Not reported	0
Torres Strait Islander	Not reported	Not reported	0
Both	Not reported	Not reported	3
No	Not reported	Not reported	12
Unknown	Not reported	Not reported	0
Total	–	–	15

## Queensland Anti-Discrimination Commission

This section collates data on enquiries and complaints received by the Queensland Anti-Discrimination Commission relating to disability discrimination over the period of 2012–15. It also shows enquiries and complaints relating to disability discrimination in the area of employment over the same period.

### (a) Enquiries and complaints data

**Table 32: Enquires received relating to disability discrimination\***

Enquiries relating to disability discrimination	2012–13	2013–14	2014–15
Enquiries received about disability discrimination	648	689	665
Enquiries received about disability discrimination in area of employment	359	360	340
Percentage of enquiries received about disability discrimination in the area of employment	55.4%	52.2%	51.1%

\*Enquiries are defined as contacts (written or other form) that are not accepted as complaints. Each contact is counted as one enquiry.

**Table 33: Complaints received relating to disability discrimination\*\***

<b>Complaints relating to disability discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Complaints received about disability discrimination	263	237	251
Complaints received about disability discrimination in area of employment	149	122	130
Percentage of complaints received about disability discrimination in the area of employment	56.7%	51.5%	51.8%

\*\*Complaints are counted by complainant. One complaint may have multiple grounds and areas.

**Table 34: Ratio of complaints to enquiries relating to disability discrimination in employment**

<b>Ratio of complaints to enquiries</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Enquiries received about disability discrimination in area of employment	359	360	340
Complaints received about disability discrimination in area of employment	149	122	130
Ratio of complaints to enquiries	1:2.4	1:2.9	1:2.6
Percentage of complaints to enquiries	41.5%	33.9%	38.2%

**Table 35: Outcomes of complaints finalised in period (for complaints relating to disability discrimination in employment)\*\*\***

<b>Outcome of complaints</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
Conciliated	69	46.9%	57	47.5%	51	43.2%
Terminated – No reasonable prospect of conciliation/Referred to tribunal	31	21.1%	20	16.7%	35	29.7%
Terminated/Dismissed – other grounds such as no substance	32	21.8%	31	25.8%	25	21.2%
Withdrawn	13	8.8%	10	8.3%	7	5.9%
Deemed does not wish to pursue/Lost contact	2	1.4%	2	1.7%	0	–
<b>Total</b>	<b>147</b>	<b>100%</b>	<b>120</b>	<b>100%</b>	<b>118</b>	<b>100%</b>

\*\*\*One complaint may relate to more than one stage of employment.

**(b) Characteristics of complainant (for complaints relating to disability discrimination in employment)**

**Table 36: Gender of complainant**

<b>Gender</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Female	5	13	50
Male	9	12	44
X (Indeterminate/intersex/unspecified)	0	0	0
Unknown	135	97	36
<b>Total</b>	<b>149</b>	<b>122</b>	<b>130</b>

**Table 37: Whether complainant identifies Aboriginal or Torres Strait Islander**

<b>Aboriginal or Torres Strait Islander descent</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Aboriginal	0	1	2
Torres Strait Islander	0	1	0
Both	0	0	0
No	12	22	86
Unknown	137	98	42
<b>Total</b>	<b>149</b>	<b>122</b>	<b>130</b>

## Equal Opportunity Commission of South Australia

This section collates data on enquiries and complaints received by the Equal Opportunity Commission of South Australia relating to disability discrimination over the period of 2012–15. It also shows enquiries and complaints relating to disability discrimination in the area of employment over the same period.

### (a) Enquiries and complaints data

**Table 38: Enquires received relating to disability discrimination\***

<b>Enquiries relating to disability discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Enquiries received about disability discrimination	402	358	301
Enquiries received about disability discrimination in area of employment	180	141	124
Percentage of enquiries received about disability discrimination in the area of employment	44.8%	39.4%	41.2%

\*Enquiries are defined as contacts (written or other form) that are not accepted as complaints. Each contact is counted as one enquiry.

**Table 39: Complaints received relating to disability discrimination\*\***

<b>Complaints relating to disability discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Complaints received about disability discrimination	101	75	77
Complaints received about disability discrimination in area of employment	42	33	31
Percentage of complaints received about disability discrimination in the area of employment	41.6%	44.0%	40.3%

\*\*Complaints are counted by complainant. One complaint may have multiple grounds and areas.

**Table 40: Ratio of Complaints to Enquiries relating to disability discrimination in employment**

<b>Ratio of complaints to enquiries</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Enquiries received about disability discrimination in area of employment	180	141	124
Complaints received about disability discrimination in area of employment	42	33	31
Ratio of complaints to enquiries	1:4.3	1:4.3	1:4
Percentage of complaints to enquiries	23.3%	23.4%	25.0%

**Table 41: Stage of employment complaint relates to (for complaints relating to disability discrimination in employment)\*\*\***

<b>Stage of employment</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
While looking for employment	5	10.0%	11	27.5%	4	10.3%
During employment	29	58.0%	19	47.5%	27	69.2%
End of employment/Termination	16	32.0%	10	25.0%	8	20.5%
Total	50	100%	40	100%	39	100%

\*\*\*One complaint may relate to more than one stage of employment.

**Table 42: Outcomes of complaints finalised in period (for complaints relating to disability discrimination in employment)^**

<b>Outcome of complaints</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
Conciliated	17	37.0%	12	34.3%	9	36.0%
Terminated – No reasonable prospect of conciliation/Referred to tribunal	6	13.0%	9	25.7%	5	20.0%
Terminated/Dismissed – other grounds such as no substance	11	23.9%	7	20.0%	0	–
Withdrawn	10	21.7%	6	17.1%	10	40.0%
Deemed does not wish to pursue/Lost contact	2	4.3%	1	2.9%	1	4.0%
Total	46	100%	35	100%	25	100%

^Only one outcome is recorded for each complaint.

**(b) Characteristics of complainant (for complaints relating to disability discrimination in employment)****Table 43: Gender of complainant**

<b>Gender</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Female	15	14	13
Male	27	19	18
X (Indeterminate/intersex/unspecified)	0	0	0
Total	42	33	31

**Table 44: Whether complainant identifies as Aboriginal or Torres Strait Islander**

<b>Aboriginal or Torres Strait Islander descent</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Aboriginal or Torres Strait Islander	4	1	0
No	33	29	29
Unknown	5	3	2
Total	42	33	31

**Table 45: Type of disability of complainant<sup>^^</sup>**

<b>Type of Disability</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Physical disability	18	16	11
A mobility aid is used (e.g. walking frame/wheelchair)	2	2	0
Physical disfigurement	3	0	1
Mental Health/Psychosocial disability	12	9	12
Neurological disability (e.g. epilepsy)	1	2	1
Intellectual disability	1	0	0
Learning disability	0	1	1
Sensory disability – hearing impaired	3	0	0
Sensory disability – deaf	0	1	0
Sensory disability – vision impaired	1	1	0
Work related injury	11	6	11

<b>Type of Disability</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Medical condition (e.g. diabetes)	8	6	6
Unknown	1	0	1
<b>Total</b>	<b>61</b>	<b>44</b>	<b>44</b>

\*\*\*One complainant may have multiple disabilities recorded.

### **(c) Characteristics of respondent (for complaints relating to disability discrimination in employment)**

**Table 46: Respondent industry type**

<b>Industry group</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Accommodation and Food Services	1	2	3
Administrative and Support Services	2	1	1
Agriculture, Forestry and Fishing	1	2	1
Arts and Recreation Services	1	0	0
Construction	2	0	0
Education and Training	6	0	1
Electricity, Gas, Water and Waste Services	2	0	2
Financial and Insurance Services	1	1	0
Health Care and Social Assistance	6	10	5
Information Media and Telecommunications	2	0	1
Manufacturing	2	0	2
Mining	1	0	0
Public Administration and Safety	2	7	10
Rental, Hiring and Real Estate Services	1	0	0
Retail Trade	2	1	1
Transport, Postal and Warehousing	5	3	1
Other Services	3	6	1
Unknown	2	0	2
<b>Total</b>	<b>42</b>	<b>33</b>	<b>31</b>

**Table 47: Respondent organisation size**

Size of organisation	2012–13	2013–14	2014–15
1 to 19	3	1	1
20 to 99	5	10	3
100 and over	19	22	26
Unknown	15	0	1
Total	42	33	31

## Victorian Equal Opportunity & Human Rights Commission

This section collates data on enquiries and complaints received by the Victorian Equal Opportunity and Human Rights Commission relating to disability discrimination over the period of 2012–15. It also shows enquiries and complaints relating to disability discrimination in the area of employment over the same period.

The complaints data provided by this agency is counted by respondent, rather than complainant. This differs from the counting method stipulated. As there may be more than one respondent for each complaint, the number of complaints will be higher in comparison with figures for other jurisdictions and therefore not directly comparable.

### (a) Enquiries and complaints data

**Table 48: Enquires received relating to disability discrimination\***

Enquiries relating to disability discrimination	2012–13	2013–14	2014–15
Enquiries received about disability discrimination	2190	2082	2178
Enquiries received about disability discrimination in area of employment	Not reported	645	609
Percentage of enquiries received about disability discrimination in the area of employment	–	31.0%	28.0%

\*Enquiries are defined as contacts (written or other form) that are not accepted as complaints. Each contact is counted as one enquiry.

**Table 49: Complaints received relating to disability discrimination#**

<b>Complaints relating to disability discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Complaints received about disability discrimination	749	686	752
Complaints received about disability discrimination in area of employment	344	340	355
Percentage of complaints received about disability discrimination in the area of employment	45.9%	49.6%	47.2%

#Complaints have been counted by number of claims of disability discrimination in employment by respondent.

**Table 50: Outcomes of complaints finalised in period (for complaints relating to disability discrimination in employment)^**

<b>Outcome of complaints</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
Conciliated	52	35.6%	87	38.3%	55	41.4%
Terminated – No reasonable prospect of conciliation/Referred to tribunal	25	17.1%	51	22.5%	26	19.5%
Terminated/Dismissed – other grounds such as no substance	33	22.6%	42	18.5%	27	20.3%
Withdrawn	15	10.3%	23	10.1%	11	8.3%
Deemed does not wish to pursue/Lost contact	21	14.4%	24	10.6%	14	10.5%
<b>Total</b>	<b>146</b>	<b>100%</b>	<b>227</b>	<b>100%</b>	<b>133</b>	<b>100%</b>

^Only one outcome is recorded for each complaint.

**(b) Characteristics of complainant (for complaints relating to disability discrimination in employment)****Table 51: Gender of complainant**

<b>Gender</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Female	102	101	88
Male	135	75	71
X (Indeterminate/intersex/unspecified)	0	0	0
<b>Total</b>	<b>237</b>	<b>176</b>	<b>159</b>

## Equal Opportunity Commission Western Australia

This section collates data on enquiries and complaints received by the Equal Opportunity Commission Western Australia relating to disability discrimination over the period of 2012–15. It also shows enquiries and complaints relating to disability discrimination in the area of employment over the same period.

### (a) Enquiries and complaints data

**Table 52: Enquires received relating to disability discrimination\***

<b>Enquiries relating to disability discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Enquiries received about disability discrimination	455	432	392
Enquiries received about disability discrimination in area of employment	264	247	199
Percentage of enquiries received about disability discrimination in the area of employment	58.0%	57.2%	50.8%

\*Enquiries are defined as contacts (written or other form) that are not accepted as complaints. Each contact is counted as one enquiry.

**Table 53: Complaints received relating to disability discrimination\*\***

<b>Complaints relating to disability discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Complaints received about disability discrimination	156	109	112
Complaints received about disability discrimination in area of employment	71	57	59
Percentage of complaints received about disability discrimination in the area of employment	45.5%	52.3%	52.7%

\*\*Complaints are counted by complainant. One complaint may have multiple grounds and areas.

**Table 54: Ratio of Complaints to Enquiries relating to disability discrimination in employment**

<b>Ratio of complaints to enquiries</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Enquiries received about disability discrimination in area of employment	264	247	199
Complaints received about disability discrimination in area of employment	71	57	59
Ratio of complaints to enquiries	1:3.7	1:4.3	1:3.4
Percentage of complaints to enquiries	26.9%	23.1%	29.6%

**Table 55: Outcomes of complaints finalised in period (for complaints relating to disability discrimination in employment)^**

<b>Outcome of complaints</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
Conciliated	21	29.2%	17	27.0%	22	35.5%
Terminated – No reasonable prospect of conciliation/Referred to tribunal EOC code – Referred to Sat – Commissioner referred S93(1)	9	12.5%	5	7.9%	2	3.2%
Terminated/Dismissed – other grounds such as no substance	9	12.5%	9	14.3%	7	11.3%
Withdrawn	18	25.0%	15	23.8%	22	35.5%
Deemed does not wish to pursue/Lost contact	9	12.5%	14	22.2%	3	4.8%
EOC code – Dismissed S89(1) – Complainant referred to Sat S90	6	8.3%	3	4.8%	6	9.7%
<b>Total</b>	<b>72</b>	<b>100%</b>	<b>63</b>	<b>100%</b>	<b>62</b>	<b>100%</b>

^Only one outcome is recorded for each complaint.

**(b) Characteristics of complainant (for complaints relating to disability discrimination in employment)**

**Table 56: Gender of complainant**

<b>Gender</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Female	40	22	30
Male	31	35	29
<b>Total</b>	<b>71</b>	<b>57</b>	<b>59</b>

**Table 57: Whether complainant identifies as Aboriginal or Torres Strait Islander**

<b>Aboriginal or Torres Strait Islander descent</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Aboriginal	6	6	2
Torres Strait Islander	0	0	0
Both	0	0	0
No	60	43	49
Unknown	5	8	8
<b>Total</b>	<b>71</b>	<b>57</b>	<b>59</b>

**(c) Characteristics of respondent (for complaints relating to disability discrimination in employment)****Table 58: Respondent industry type**

<b>Industry group</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Accommodation and Food Services	3	2	1
Administrative and Support Services	6	5	5
Agriculture, Forestry and Fishing	0	0	2
Arts and Recreation Services	3	1	2
Construction	2	3	3
Education and Training	3	5	4
Electricity, Gas, Water and Waste Services	2	1	1
Financial and Insurance Services	0	1	1
Health Care and Social Assistance	23	7	14
Information Media and Telecommunications	0	0	3
Manufacturing	0	2	1
Mining	8	7	7
Professional, Scientific and Technical Services	0	2	0
Public Administration and Safety	6	8	8
Rental, Hiring and Real Estate Services	0	2	0
Retail Trade	6	5	5
Transport, Postal and Warehousing	3	5	0
Wholesale Trade	4	0	0
Other Services	2	1	2
<b>Total</b>	<b>71</b>	<b>57</b>	<b>59</b>

**Table 59: Respondent organisation size**

<b>Size of organisation</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
1 to 19	0	4	2
20 to 99	12	8	6
100 to 499	8	11	6
500 and over	31	27	32
Unknown	20	7	13
<b>Total</b>	<b>71</b>	<b>57</b>	<b>59</b>

## Tasmanian Anti-Discrimination Commission

This section collates data on enquiries and complaints received by the Tasmanian Anti-Discrimination Commission relating to disability discrimination over the period of 2012–15. It also shows enquiries and complaints relating to disability discrimination in the area of employment over the same period.

### (a) Enquiries and complaints data

**Table 60: Enquires received relating to disability discrimination\***

<b>Enquiries relating to disability discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Enquiries received about disability discrimination	184	235	228
Enquiries received about disability discrimination in area of employment	63	75	61
Percentage of enquiries received about disability discrimination in the area of employment	34.2%	31.9%	26.8%

\*Enquiries are defined as contacts (written or other form) that are not accepted as complaints. Each contact is counted as one enquiry.

**Table 61: Complaints received relating to disability discrimination\*\***

<b>Complaints relating to disability discrimination</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Complaints received about disability discrimination	72	90	72
Complaints received about disability discrimination in area of employment	27	32	28
Percentage of complaints received about disability discrimination in the area of employment	37.5%	35.6%	38.9%

\*\*Complaints are counted by complainant. One complaint may have multiple grounds and areas.

**Table 62: Ratio of Complaints to Enquiries relating to disability discrimination in employment**

<b>Ratio of complaints to enquiries</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Enquiries received about disability discrimination in area of employment	63	75	61
Complaints received about disability discrimination in area of employment	27	32	28
Ratio of complaints to enquiries	1:2.3	1:2.3	1:2.2
Percentage of complaints to enquiries	42.9%	42.7%	45.9%

**Table 63: Stage of employment complaint relates to (for complaints relating to disability discrimination in employment)\*\*\***

Stage of employment	2012–13	%	2013–14	%	2014–15	%
While looking for employment	4	10.8%	10	30.3%	3	8.1%
During employment	20	54.1%	18	54.5%	23	62.2%
End of employment/Termination	13	35.1%	5	15.2%	11	29.7%
Total	37	100%	33	100%	37	100%

\*\*\*One complaint may relate to more than one stage of employment.

**Table 64: Outcomes of complaints finalised in period (for complaints relating to disability discrimination in employment)^**

Outcome of complaints	2012–13	%	2013–14	%	2014–15	%
Conciliated	9	47.4%	14	42.4%	17	35.4%
Terminated – No reasonable prospect of conciliation/Referred to tribunal	3	15.8%	10	30.3%	6	12.5%
Terminated/Dismissed – other grounds such as no substance	5	26.3%	7	21.2%	24	50.0%
Withdrawn	2	10.5%	2	6.1%	1	2.1%
Total	19	100%	33	100%	48	100%

^Only one outcome is recorded for each complaint.

## Fair Work Ombudsman

This section collates data on complaints received by Fair Work Ombudsman relating to disability discrimination over the period of 2012–15.

### (b) Enquiries and complaints data

**Table 65: Complaints received relating to disability discrimination<sup>^^</sup>**

Complaints relating to discrimination	2012–13	2013–14	2014–15
All complaints received about discrimination	229	198	113
Complaints received about disability discrimination	47	35	12
Percentage of complaints received about disability discrimination	20.5%	17.7%	10.6%

<sup>^^</sup>All complaints received with an allegation of 'Discrimination – disability' then filtered to include only unique complainants.

**Table 66: Stage of employment complaint relates to (for complaints relating to disability discrimination in employment)<sup>\*\*\*</sup>**

Stage of employment	2012–13	%	2013–14	%	2014–15	%
While looking for employment	2	4.3%	2	5.7%	3	25.0%
During employment	31	66.0%	30	85.7%	6	50.0%
End of employment/Termination	14	29.8%	3	8.6%	2	16.7%
Unknown	0	–	0	–	1	8.3%
Total	47	100%	35	100%	12	100%

<sup>\*\*\*</sup>One complaint may relate to more than one stage of employment.

**Table 67: Outcomes of complaints finalised in period (for complaints relating to disability discrimination in employment)<sup>^</sup>**

Outcome of complaints	2012–13	%	2013–14	%	2014–15	%
Withdrawn	3	7.0%	5	15.2%	1	9.1%
Resolved via assisted voluntary resolution or mediation or 'Early assisted resolution'	1	2.3%	1	3.0%	1	9.1%
Resolved via litigation	1	2.3%	1	3.0%	0	–
Resolved via enforceable undertaking	1	2.3%	0	–	0	–

<b>Outcome of complaints</b>	<b>2012–13</b>	<b>%</b>	<b>2013–14</b>	<b>%</b>	<b>2014–15</b>	<b>%</b>
Not sustained – includes ‘Investigation not completed: No further action’, ‘Investigation completed: No further action’, ‘Not FWO matter’, ‘No prima facie contravention’	37	86.0%	26	78.8%	9	81.8%
<b>Total</b>	<b>43</b>	<b>100%</b>	<b>33</b>	<b>100%</b>	<b>11</b>	<b>100%</b>

\*Only one outcome is recorded for each complaint.

### (c) Characteristics of complainant (for complaints relating to disability discrimination in employment)

**Table 68: Gender of complainant**

<b>Gender</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Female	22	16	6
Male	18	18	6
X (Indeterminate/intersex/unspecified)	0	0	0
Unknown	7	1	0
<b>Total</b>	<b>47</b>	<b>35</b>	<b>12</b>

**Table 69: Type of disability of complainant<sup>^^</sup>**

<b>Type of Disability</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Physical disability	1	5	1
Mental Health/Psychosocial	9	5	6
Intellectual disability	0	2	1
Learning disability	2	0	0
Sensory disability – deaf	1	1	1
Sensory disability – blind	0	1	0
Work related injury	8	3	0
Medical condition (e.g. diabetes)	16	10	1
Unknown	10	8	2
<b>Total</b>	<b>47</b>	<b>35</b>	<b>12</b>

<sup>^^</sup>One complainant may have multiple disabilities recorded.

**(d) Characteristics of respondent (for complaints relating to disability discrimination in employment)**

**Table 70: Complaints received by respondent industry type**

<b>Industry group</b>	<b>2012–13</b>	<b>2013–14</b>	<b>2014–15</b>
Accommodation and Food Services	2	1	1
Administrative and Support Services	5	2	0
Agriculture, Forestry and Fishing	0	1	0
Arts and Recreation Services	1	0	1
Construction	2	2	0
Education and Training	2	5	0
Financial and Insurance Services	3	2	1
Health Care and Social Assistance	7	4	1
Manufacturing	3	1	0
Mining	4	2	0
Professional, Scientific and Technical Services	1	4	1
Public Administration and Safety	3	2	1
Rental, Hiring and Real Estate Services	2	1	0
Retail Trade	1	1	2
Transport, Postal and Warehousing	2	3	1
Wholesale Trade	3	2	1
Other Services	2	2	0
Unknown	4	0	2
<b>Total</b>	<b>47</b>	<b>35</b>	<b>12</b>

# Appendix 11: Social security system

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The Australian social security system is currently made up of around 20 income support payments and around 55 supplementary payments.<sup>1</sup> The main payments for the purposes of this Inquiry are:

- Disability Support Pension
- Age Pension
- Newstart Allowance.

Some people in receipt of an income support payment receive a Health Care Card<sup>2</sup> or a Pensioner Concession Card,<sup>3</sup> both of which entitle them to discounts on some medications and other services.

A number of reviews of the Australian social security and tax systems have examined the interaction between welfare payments and employment.<sup>4</sup>

## **(a) Eligibility for income support payments**

The eligibility requirements for income support payments are set out in the *Social Security Act 1991* (Cth) (the Social Security Act) and in the *Guide to Social Security Law*.<sup>5</sup>

### *(i) Disability Support Pension*

In order to qualify for the Disability Support Pension, a person must have:

- a physical, intellectual or psychiatric impairment<sup>6</sup>
- a continuing inability to work 15 hours or more per week.<sup>7</sup>

The person's impairment must also be assessed against the 'Impairment Tables'<sup>8</sup> as being of at least 20 points.<sup>9</sup>

There are some other circumstances in which a person may be eligible for the Disability Support Pension:

- a person who participates in the supported wage system is also eligible for the Disability Support Pension<sup>10</sup>
- a person who is permanently blind is automatically qualified for the Disability Support Pension and is not required to demonstrate continuing inability to work.<sup>11</sup>

### *(ii) Age Pension*

In order to qualify for Age Pension, a person must reach age pension age.<sup>12</sup> Usually, a person must also have '10 years qualifying Australian residence'.<sup>13</sup> This is defined as either one continuous period of 10 years, or multiple periods – one of which must have been at least 5 years.<sup>14</sup>

The qualifying age for the Age Pension is gradually increasing, and will reach 67 years by 2023.<sup>15</sup>

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*(iii) Newstart Allowance*

Newstart Allowance is a payment provided to people who are unemployed and seeking work. It is only available to people aged between 22 and age pension age.<sup>16</sup>

Some people with disability receive a Newstart Allowance rather than the Disability Support Pension – the requirements are that they have a ‘physical, intellectual or psychiatric impairment’ and are unable, due to their disability, to work 30 hours or more per week.<sup>17</sup>

**(a) Participation requirements**

Individuals in receipt of a pension, such as the Disability Support Pension and the Age Pension, are generally not required to seek paid work as a condition of their pension. They also receive a higher level of payment because they are not able or expected to work, and are likely to be reliant on income support for longer periods of time.<sup>18</sup>

There are no participation requirements for the Age Pension. However, amendments to the *Social Security Act 1991* (Cth) now require Disability Support Pension recipients under age 35 and who are assessed as being capable of working for at least eight hours per week to engage in certain ‘participation’ activities in order to remain eligible for the pension.<sup>19</sup>

Individuals in receipt of allowances – like the Newstart Allowance – are usually required to meet the ‘activity test’ as a condition of their payment.<sup>20</sup> This means that they must show themselves to be actively seeking and willing to undertake work by undertaking activities such as: obtaining support from an employment service provider, demonstrating that they are actively job seeking and attending approved education or training courses.<sup>21</sup>

**(b) Income and assets tests**

There are two separate tests – the income tests and assets test – used to determine a person’s rate of payment on income support. The rate of payment is calculated under both tests and the test that results in a lower payment rate is the one used.<sup>22</sup>

Disability Support Pension and Newstart recipients are eligible for Working Credit, which reduces the amount of their earnings that are subject to the income test and is intended to provide support for individuals transitioning from income support to work.<sup>23</sup> The Department of Social Service’s *Guide to Social Security Law* provides the following definition of Working Credit:

Working Credit encourages workforce age income support recipients to take up full-time, substantial part-time or irregular casual work by allowing them to keep more of their income support payments while working. It allows recipients to build up a working credit balance at times when they have little or no income, which they can use to reduce the amount of later earnings that are counted under the income test.<sup>24</sup>

Some income support recipients may also qualify for an ‘employment income nil rate period’ which means they retain some of the supplementary benefits of their income support payments (such as the Pensioner Concession Card) after obtaining work, however this is limited to six fortnights (three months) and is only available to people who are below age pension age who are undertaking casual or part-time work.<sup>25</sup>

- 1 Department of Social Services, *A New System for Better Employment and Social Outcomes: Report of the Reference Group on Welfare Reform to the Minister for Social Services* (2015), 48.
- 2 *Social Security Act 1991*, s 1061ZK.
- 3 *Social Security Act 1991*, s 1061ZA.
- 4 Department of Social Services, *A New System for Better Employment and Social Outcomes: Report of the Reference Group on Welfare Reform to the Minister for Social Services* (2015); Australian Government, *Australia's Future Tax System Review* (2009). At <http://taxreview.treasury.gov.au/> (viewed 11 April 2016); Senate Education, Employment and Workplace Relations Committee, Parliament of Australia, *The adequacy of the allowance payment system for jobseekers and others, the appropriateness of the allowance payment system as a support into work and the impact of the changing nature of the job market* (November 2012); Department of Families, Housing Community Services and Indigenous Affairs, *Pension Review Report* (the Harmer Report) (27 February 2009).
- 5 Department of Social Services, *Guide to Social Security Law*. At <http://guides.dss.gov.au/guide-social-security-law> (viewed 15 April 2016).
- 6 *Social Security Act 1991* (Cth), s91(1)(a).
- 7 *Social Security Act 1991* (Cth), s91(1)(c)(i).
- 8 *Social Security (Tables for the Assessment of Work-Related Impairment for Disability Support Pension) Determination 2011* (Cth).
- 9 *Social Security Act 1991* (Cth), s94(1)(b).
- 10 *Social Security Act 1991* (Cth), s94(c)(ii).
- 11 *Social Security Act 1991* (Cth), s95.
- 12 *Social Security Act 1991* (Cth), s43.
- 13 *Social Security Act 1991* (Cth), s43(1)(a).
- 14 *Social Security Act 1991* (Cth), s7(5).
- 15 *Social Security Act 1991* (Cth), s23(5A), (5B), (5C), (5D).
- 16 *Social Security Act 1991* (Cth), s593.
- 17 *Social Security Act 1991* (Cth), s16B.
- 18 The Treasury, *Australia's Future Tax System: Final Report* (2010), 496.
- 19 *Social Security Act 1991* (Cth), s94(d)(a).
- 20 *Social Security Act 1991* (Cth), s593(b)(i).
- 21 Department of Social Services, *Guide to Social Security Law* (version 1.220), 21 March 2016, 3.2.8.10. At <http://guides.dss.gov.au/guide-social-security-law> (viewed 19 April 2016).
- 22 Department of Social Services, *Guide to Social Security Law* (version 1.220), 21 March 2016, [4]. At <http://guides.dss.gov.au/guide-social-security-law> (viewed 19 April 2016).
- 23 *Social Security Act 1991* (Cth), s1073D.
- 24 Department of Social Services, *Guide to Social Security Law* (version 1.220), 21 March 2016, [3.1.11]. At <http://guides.dss.gov.au/guide-social-security-law> (viewed 19 April 2016).
- 25 Department of Social Services, *Guide to Social Security Law*, [3.1.12]. At <http://guides.dss.gov.au/guide-social-security-law> (viewed 15 April 2016).

# Appendix 12: Government services for employment for people with disability

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The major Government disability employment initiatives are the Disability Employment Services (DES) and Australian Disability Enterprises (ADEs). These programs are managed by the Department of Social Services (DSS) and also interact with other Government services such as the social security system and the National Disability Insurance Scheme (NDIS).

Disability Employment Services are contracted by the Australian Government to provide support to people with disability to find and remain in employment.

Australian Disability Enterprises provide what is known as supported employment to people with disability who require additional support in a job.

A number of other schemes for employment of people with disability exist in addition to DES and ADEs:

- The Employment Assistance Fund provides funding for workplace modifications for people with disability who are in employment or looking for work.
- Jobs in Jeopardy is assistance provided by DES provider for people 'who are at risk of losing their employment due to the impact of their injury, disability or health condition'.<sup>1</sup>
- jobactive is the name for employment services provided by the Australian Government for individuals who are not accessing DES services.
- Under the terms of their contract with the Government,<sup>2</sup> DES providers are able to pay wage subsidies to employers who employ people through the DES system; this is known as the Wage Subsidy Scheme. A separate scheme called Restart provides wage subsidies for employers of older workers – including those with disability – and is managed by the Department of Employment.
- The Personal Helpers and Mentors service (PHaMs) is managed by DSS in conjunction with the NDIS and provides assistance to people aged 16 years and over who have mental illness. Employment is not the specific goal of the program, however it is one of the aims along with reducing social isolation and supporting recovery of people with mental illness.<sup>3</sup>
- JobAccess is a website and free telephone information and advice service for employers and people with disability. It provides advice on topics such as reasonable adjustments, how to support an employee with mental illness and how employers can access government-funded support for employees with disability.
- The New Enterprise Incentive Scheme (NEIS) assists eligible participants to start and run their own small business, by providing accredited small business training, business advice, and mentoring for up to 52 weeks and income support for up to 39 weeks. Eligible DES participants can access NEIS while concurrently receiving assistance in the DES program. Where required, providers will continue providing ongoing support to the participant after completing NEIS.
- The Supported Wage System allows employers to pay a productivity based wage to people whose work productivity is reduced because of disability.
- The National Disability Recruitment Coordinator works with employers with over 100 staff to increase their employment of people with disability.
- The Disabled Australian Apprentice Wage Support Program makes payments to employers who employ an apprentice with disability who may otherwise have difficulty obtaining an approved apprenticeship due to their disability.

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## Disability Employment Services

Disability Employment Services (DES) provide support to people with disability to find and remain in employment by undertaking a range of activities, such as: assisting with job seeking, preparing for interviews or resume writing, advice on further education and training and providing support to a candidate once they are in a job.

Disability Employment Service providers can offer two kinds of support:

1. Disability Management Service: provides assistance to people with disability who are not expected to need regular, long-term support in the workplace to find employment.
2. Employment Support Service: provides support to people who require regular long-term ongoing support in the workplace.

### **(a) Legal and policy framework for Disability Employment Services**

The *Disability Services Act 1986* (Cth) sets out the broad legislative framework for the Australian Government's delivery of services for people with disability, including Disability Employment Services. Assisting people with disability to achieve employment opportunities is stated as one of the objects of the Act.<sup>4</sup>

The Act permits the Minister to determine standards for disability services, including for Disability Employment Services.<sup>5</sup> Rather than a set of individual standards specific to employment service providers, the Australian Government has produced a set of National Standards for Disability Services that must be adhered to by all disability service providers.<sup>6</sup>

The Standards were released in December 2013 and cover six areas: rights, participation and inclusion, individual outcomes, feedback and complaints, service access and service management.

DES services are procured by the Government through a tender process and are required to be certified against the National Standards for Disability Services. Providers then enter into a Deed of Agreement with the Department which sets out payment rates and the performance criteria that they are required to meet.

### **(b) Payments to providers**

Disability Employment Service providers are paid by the Department of Social Services in accordance with the Deed of Agreement between the provider and the Department, which sets out the schedule of payments.<sup>7</sup>

The most significant payments for providers are Outcome Payments, which are paid once a candidate they have placed has been in a job for 13 weeks and again at 26 weeks.<sup>8</sup>

Providers are also paid for providing ongoing support to participants, if this is necessary for them to remain in the job. Participants can be placed at one of two levels of ongoing support, both of which have a set amount of funding.<sup>9</sup>

### (c) DES provider's performance

The Deed of Agreement also sets out three Key Performance Indicators for DES providers.<sup>10</sup>

These are assessed against two frameworks – the DES Star Ratings Methodology Advice (KPI 1 and 2) and the Disability Employment Services Quality Framework Advice (KPI 3). There is also an Employment Services Code of Practice<sup>11</sup> and a DES Service Guarantee.<sup>12</sup>

DES providers are obliged to report to DSS on their performance against the Star Ratings Methodology, which measures their efficiency and effectiveness mainly in relation to the number of 13 and 26 week outcomes achieved.<sup>13</sup> The Star Ratings Methodology allocates a weighting to particular performance measures; for example 35% of a provider's Star Rating is based on the proportion of candidates who remain in a job placement for 13 weeks,<sup>14</sup> after accounting for actual and expected performance.

Performance Measure <sup>15</sup>	DMS Weighting	ESS Weighting
<b>Job Placements</b>		
Proportion of participants who are placed into employment	5%	5%
<b>13 Week Outcomes</b>	35%	30%
<b>26 Week Outcomes</b>	50%	40%
<b>52 Week Sustainability Indicator/Job in Jeopardy (JiJ)</b>		
Proportion of anchors for employment that convert into a 52 Week Sustainability Indicator and the proportion of Job in Jeopardy anchors which convert to a JiJ outcome	10%	10%
<b>Ongoing Support (2013 definition)</b>		
Proportion of Ongoing Support participants who remain in employment or exit ongoing support as an Independent Worker and have their employment verified	–	15%

### (d) Eligibility for DES support

Individuals in receipt of the Disability Support Pension, Youth Allowance or Newstart Allowance may be eligible for DES support.<sup>16</sup> The main pathway to DES support is by referral from Centrelink after undertaking an Employment Services Assessment (ESAt) or Job Capacity Assessment (JCA).

An ESAt provides a comprehensive work capacity assessment for people with disability and/or other potentially serious barriers to work. ESAts recommend the most appropriate employment service assistance and support interventions based on an assessment of the job seeker's barriers to finding and maintaining employment; and work capacity in hour bandwidths. JCAs provide a similar level of assessment for employment programmes, but are primarily used to inform Disability Support Pension claim decisions.<sup>17</sup>

DES providers can also support students with disability who are in their final year of secondary school to find employment where they are defined as having a 'significant disability'.<sup>18</sup>

## Australian Disability Enterprises

Australian Disability Enterprises provide supported employment to people with disability.

The Department of Social Services describes Australian Disability Enterprises as 'not-for-profit businesses that provide supported employment for people with moderate to severe disability who face barriers to working in the open employment labour market.'<sup>19</sup>

In 2015, there were 186 Australian Disability Enterprises providing supported employment to over 20,500 people with disability across Australia.<sup>20</sup>

Individuals working for an Australian Disability Enterprise are covered by the Supported Employment Services Award 2010, which provides for the payment of a 'pro-rata wage' to those employees, based on an assessment of their productivity in the job.<sup>21</sup>

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- 3 Department of Social Services, *National Disability Insurance Scheme Programme: NDIS Transition – Personal Helpers and Mentors Operational Guidelines 2015-16* (July 2015) 7. At [https://www.dss.gov.au/sites/default/files/documents/07\\_2015/phams\\_operational\\_guidelines\\_2015-16\\_july\\_2015.pdf](https://www.dss.gov.au/sites/default/files/documents/07_2015/phams_operational_guidelines_2015-16_july_2015.pdf) (viewed 22 January 2015).
- 4 *Disability Services Act 1986*, s3(1)(f).
- 5 *Disability Services Act 1987*, s5A(1)(b).
- 6 Department of Social Services, *National Standards for Disability Services*, December 2013. At [https://www.dss.gov.au/sites/default/files/documents/12\\_2013/nsds\\_web.pdf](https://www.dss.gov.au/sites/default/files/documents/12_2013/nsds_web.pdf) (viewed 22 January 2016).
- 7 Department of Social Services, Disability Employment Services Deed (sample) (1 July 2015), Section 5M: Fees and ancillary payments. At [https://www.dss.gov.au/sites/default/files/documents/12\\_2015/disability\\_employment\\_services\\_deed.pdf](https://www.dss.gov.au/sites/default/files/documents/12_2015/disability_employment_services_deed.pdf) (viewed 22 January 2016).
- 8 Department of Social Services, Disability Employment Services Deed (sample) (1 July 2015), clause 123: Outcome Fees. At [https://www.dss.gov.au/sites/default/files/documents/12\\_2015/disability\\_employment\\_services\\_deed.pdf](https://www.dss.gov.au/sites/default/files/documents/12_2015/disability_employment_services_deed.pdf) (viewed 22 January 2016).
- 9 Department of Social Services, *National Disability Employment Framework – Discussion Paper* (September 2015), 34. At <https://engage.dss.gov.au/disability-employment-framework/consultation-report/> (viewed 11 March 2016).
- 10 Department of Social Services, Disability Employment Services Deed (sample) (1 July 2015), cl 133.2. At [https://www.dss.gov.au/sites/default/files/documents/12\\_2015/disability\\_employment\\_services\\_deed.pdf](https://www.dss.gov.au/sites/default/files/documents/12_2015/disability_employment_services_deed.pdf) (viewed 22 January 2016).
- 11 Australian Government, *Employment Services Code of Practice*. At [https://docs.employment.gov.au/system/files/doc/other/employment\\_services\\_code\\_of\\_practice\\_0.pdf](https://docs.employment.gov.au/system/files/doc/other/employment_services_code_of_practice_0.pdf) (viewed 22 January 2016).
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- 18 Department of Social Services, *DES Eligible School Leavers Guidelines – v3.3* (12 September 2015). At [https://www.dss.gov.au/sites/default/files/documents/08\\_2015/des-eligible-school-leavers-guidelines\\_0.docx](https://www.dss.gov.au/sites/default/files/documents/08_2015/des-eligible-school-leavers-guidelines_0.docx) (viewed 29 January 2016).
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- 21 *Supported Employment Services Award 2010*, cl 14.4.

# Appendix 13: International examples of quotas for employing people with disability

Country	Quota	Conditions
Austria	4%	Applies to all people with disability between the ages of 15–64, irrespective of the cause of their disability. All public and private sector employers with more than 24 employees are subject to the quota. <sup>1</sup>
China	1.5%	Applies to all public and private employers. <sup>2</sup>
France	6%	Applies to companies having a total workforce of 20 employees or more. <sup>3</sup>
Germany	5%	Applies to public and private employers with a workforce of at least 20 employees. Employers who do not meet their quota obligation are obliged to pay a fixed compensatory levy for every unfilled quota place. <sup>4</sup>
India	3%	Applies to all categories of government jobs. <sup>5</sup>
Italy	7%	Applies to public and private employers with 50 or more workers, but with a sliding scale of one place for 15–35 employees or two places for 36–50 employees. Sanctions were introduced to enforce the quota. <sup>6</sup>
Japan	1.6%–2%	Japan's quota scheme varies according to the sector of employment: <ul style="list-style-type: none"> <li>• Private sector (with 63+ employees) 1.6%</li> <li>• Semi government 1.9%</li> <li>• Public Sector Clerical 2%</li> <li>• Non-clerical 1.95%</li> </ul> Certain occupations such as massage and acupuncture have quotas as high as 70% for people with visual impairment. <sup>7</sup>
Spain	2%	Applies to all public and private organisations with a workforce of 50 employees or over. <sup>8</sup>

## Appendix 13: Endnotes

- 1 iGlobalLaw, 'The World and Disability: Quotas or No Quotas?' (11 December, 2013). At <http://www.igloballaw.com/the-world-and-disability-quotas-or-no-quotas/> (viewed 17 March 2016).
- 2 ILO, 'Facts on People with Disabilities in China' (2010).
- 3 iGlobalLaw, 'The World and Disability: Quotas or No Quotas?' (11 December, 2013). At <http://www.igloballaw.com/the-world-and-disability-quotas-or-no-quotas/> (viewed 17 March 2016).
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- 5 DNIS, 'Employment of Disabled People in India' (2009).
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- 7 NDA, 'Statutory targets on employment of people with disabilities in the public sector'. At [http://www.inis.gov.ie/website/nda/cntngmtnew.nsf/0/84AA79B029E870AE8025729D0046CAED/\\$File/people\\_with\\_disabilities\\_in\\_public\\_sector\\_04.htm](http://www.inis.gov.ie/website/nda/cntngmtnew.nsf/0/84AA79B029E870AE8025729D0046CAED/$File/people_with_disabilities_in_public_sector_04.htm) (viewed 17 March 2016).
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