Disability Council NSW

Submission to

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

30 November 2015

Locked Bag 4028, Ashfield NSW 2131
Ph: (02) 8879 9100
www.disabilitycouncil.nsw.gov.au
Email: disabilitycouncil@facs.nsw.gov.au

Contents

Disability Council NSW

The Disability Council NSW (Council) was established under the *Community Welfare Act 1987* (NSW), and was re-constituted under the *Disability Inclusion Act 2014* (NSW) on 3 December 2014. Council's main responsibilities under the Act are to:

- Monitor the implementation of Government policy;
- Advise the Minister on emerging issues relating to people with disability, and about the content and implementation of the NSW State Disability Inclusion Plan and Disability Inclusion Action Plans;
- Advise public authorities about the content and implementation of Disability Inclusion Action Plans;
- Promote the inclusion of people with disability in the community and promote community awareness of matters concerning the interests of people with disability and their families;
- Consult with similar councils and bodies, and people with disability; and
- Conduct research about matters relating to people with disability.

The Council consists of a diverse group of 8 to 14 members (currently 10 members). Each member is appointed for up to four years by the Governor of NSW on the recommendation of the Minister for Disability Services. Members are selected to be on Council because:

- They have lived experience of disability.
- They have particular expertise on disability issues.
- They want to improve the lives of people with disability.

Council is funded by the NSW Government through the NSW Department of Family and Community Services (FACS) and is supported by a secretariat team within FACS.

Executive Summary

People with disability can, and aspire to, actively participate in employment and in the community. For people with disability, enjoyment of the right to employment on an equal basis with others is about more than just the wage. Employment provides a sense of meaning, inclusion, purpose, self-empowerment and identity and is a pathway to positive self-esteem, wellbeing and engagement in community life.

Disappointingly, our experience reveals that people with disability do not enjoy the right to employment free from discrimination to the same extent as other Australians. For too long, the employment of people with disability has been exceptionalised, not normalised. The unemployment and under-employment of people with disability continues to be justified by a false assumption that poor employment outcomes are an unavoidable consequence of physical and mental impairments. The Australian workforce does not anticipate nor reflect the diversity in ability, skills and experience inherent in the community.

There is an important distinction between work and employment that underpins the recommendations this submission makes about how to improve employment outcomes for people with disability. Employment means a job a person with disability chooses in the open labour market with real career development opportunities that pays a real wage. Thirteen or twenty-six weeks of work in any available job, or work in an Australian Disability Enterprise (ADE) at the rate of $2.36 an hour is not the same as being employed in a position that matches a person's skills, supports upskilling and training and provides career development opportunities. It is clear that people with disability face a 'glass ceiling' and do not enjoy the same opportunities and choices in employment as other Australians. Lack of choice in employment opportunities is itself a form of discrimination.

This submission firstly outlines the significant challenges that exist in providing insights into employment discrimination, both because employers and people with disability may not recognise discrimination, and because people with disability do not disclose their disability for fear of bias, discrimination and marginalisation. It secondly outlines the systemic, complex and intertwining barriers to employment that many people with disability experience, and proposes solutions to overcome each of these barriers. It then evaluates the current legal framework for protecting people with disability from employment discrimination and makes recommendations on how this could be amended to better protect people with disability from employment discrimination. It finally suggests factors that may contribute to positive employment outcomes for people with disability, referring to best-practice examples and strategies that have assisted people with disability to gain and retain employment.

A co-ordinated approach to address the issue of employment discrimination against people with disability is required – an approach that includes changes to the welfare system, disability employment service system, education system and legal framework for protecting people with disability from employment discrimination. Council hopes that as a result of this inquiry and the proposed National Disability Employment Framework, the workforce will reflect the diversity inherent in the population, and more people with disability will be supported to gain and retain meaningful employment of their choice that allows them to fulfil their goals and aspirations and participate equally in all aspects of society.

List of Recommendations

Recommendation 1: Undertake further research into the employment experiences of people with disability to build the available data and evidence on the extent to which people with disability experience discrimination, and the extent to which people with disability of different gender, age, cultural background, linguistic background and type of disability experience discrimination.

Recommendation 2: Provide funding and resources to organisations to help them deliver disability awareness training for all staff in their workplace and establish disability employee networks that are internally and externally promoted.

Recommendation 3: Initiate an ongoing public awareness campaign to demonstrate the benefits of employing people with disability and address common misconceptions and negative stereotypes about people with disability in the workforce.

Recommendation 4: Provide practical support to employers to build disability confidence in their recruitment, employment and employee retention practices, possibly through expansion of the role of the National Disability Recruitment Coordinator.

Recommendation 5: Develop and appropriately resource a program similar to the "two ticks" symbol scheme in the United Kingdom to allow accreditation of organisations as disability confident and inclusive employers.

Recommendation 6: Provide incentives to organisations to become disability confident and inclusive accredited employers and employ people with disability, including tax concessions and credits.

Recommendation 7: Consider introducing a mandatory requirement for all public sector employers to adopt affirmative action policies that commit to giving people with disability priority in the recruitment process, and support all employers to adopt affirmative action policies.

Recommendation 8: Provide resources and support to employers, specifically public sector employers, to implement a guaranteed interview scheme similar to the United Kingdom Civil Service Guaranteed Interview Scheme and the Australian Public Service RecruitAbility Scheme to ensure people with disability who opt into the scheme and meet the minimum requirements of the role have the opportunity to compete in further stages of the recruitment process (usually an interview).

Recommendation 9: Facilitate greater access to vocational education and training for people with disability that supports their employment goals.

Recommendation 10: Support and engage people with disability at school to participate in work experience and employment and implement quality transition to work programs for people with disability throughout Australia.

Recommendation 11: Provide resources and necessary supports to engage young people with disability from Culturally and Linguistically diverse and Aboriginal and Torres Strait Islander backgrounds in work experience and transition to work.

Recommendation 12: Establish a formal mentoring program to connect people with disability who have retained employment with people with disability looking for work, and to link people with disability from diverse backgrounds looking for work with people from diverse backgrounds successfully engaged in employment.

Recommendation 13: Commit to progressively phasing out ADEs and redirect funding and resources for ADEs into comprehensive support for people currently employed by ADEs to transition into open employment.

Recommendation 14: Provide all people with disability life-long career planning and career support that is responsive to an individual's changing needs and aspirations.

Recommendation 15: Expand the operation of the Employment Assistance Fund (EAF) so it covers more modifications in more circumstances (including voluntary work and internships), streamline the process for applying for support under the EAF and establish a "one-stop-shop" central information point for EAF assessors, employers and people with disability to find out what modifications are available to make workplaces more accessible.

Recommendation 16: Individualise funding of the mobility allowance so the allowance is more flexible and covers the significant costs of getting to and from work that people with disability bear.

Recommendation 17: Provide tax incentives and concessions to encourage businesses to make their workplace more accessible and accommodating of the different needs of people with disability.

Recommendation 18: Introduce tax concessions for people with disability engaged in employment that recognise and provide some compensation for the additional costs that people with disability may incur throughout their lifetime.

Recommendation 19: Amend the eligibility requirements for the pensioner concession card so all people with disability, including those who may be ineligible for the Disability Support Pension because of their employment, have access to the concessions and discounts the pensioner concession card offers.

Recommendation 20: Guarantee automatic access to the disability support pension for at least the first six months after a person with disability transitions from income support into the workforce.

Recommendation 21: Implement, support and appropriately resource more initiatives to place people with disability in open employment where there are greater prospects of higher wages.

Recommendation 22: Incorporate the elements of the Personal Helpers and Mentors Scheme (PHaMs) that have led to positive employment outcomes for people with mental illness – including adopting an individualised, integrated approach, providing assistance with identifying and obtaining relevant labour market supports and focusing on long-term employment – into broader schemes that assist people with all types of disability to obtain and retain employment.

Recommendation 23: Support the proposed Disability Employment Framework with education, information and advocacy for people with disability and robust safeguards for maintaining quality and certainty of funding in the market-based environment.

Recommendation 24: Ensure that assessment and eligibility processes for people with disability seeking to access disability employment services do not disadvantage people with disability who will not be eligible for the NDIS.

Recommendation 25: Fund training for disability employment service providers to build cultural competency and ensure that services have the requisite skills and knowledge to identify and provide the supports people from Culturally and Linguistically diverse and Aboriginal and Torres Strait Islander backgrounds need to obtain and retain employment.

Recommendation 26: Ensure that any scheme for individualised career planning for people with disability acknowledges and takes into account the cultural and linguistic needs of the individual that may impact on employment.

Recommendation 27: Amend the Disability Discrimination Act to allow a single complaint to be made simultaneously under the DDA and other relevant anti-discrimination legislation where discrimination occurs on the basis of multiple forms of disadvantage. (E.g. disability AND ethnicity or gender)

Recommendation 28: Develop and implement Disability Standards for Employment that provide more detail on rights and responsibilities about equal access and opportunity for people with a disability in employment.

Recommendation 29: Amend the *Disability Discrimination Act* to remove the defence of unjustifiable hardship.

Recommendation 30: Amend the *Disability Discrimination Act* to broaden the comparator test that applies to instances of direct discrimination.

Recommendation 31: Initiate a public awareness campaign to encourage organisations to develop Disability Discrimination Action Plans and make these a mandatory requirement of becoming accredited as a disability confident and inclusive employer.

Recommendation 32: Amend the relevant legislation to make the jurisdictions of the Federal Circuit Court and Federal Court to hear discrimination cases no-costs jurisdictions.

Introduction

Council welcomes the opportunity to make a submission to the Willing to Work: National Inquiry into Employment Discrimination against Older Australians and Australians with Disability.

It is imperative that Australia's laws, policies and practices uphold and protect the fundamental human right of all people to work free from discrimination and on an equal basis with others. It makes good economic and social sense to support all Australians, including people with disability, to gain and retain meaningful employment. However, most significantly, for people with disability upholding and protecting the right to employment free from discrimination is a means of empowerment, social inclusion and belonging and contributes to positive self-esteem and well-being.

Disappointingly, our experience reveals that people with disability do not enjoy the right to employment free from discrimination to the same extent as other Australians. People with disability face a number of systemic, complex and intertwining barriers to employment. Current policies, practices, programs and incentives that assist people with disability to participate in employment are inadequate and do not provide the support people with disability need to overcome the multitude of barriers to employment they face. For people with disability from Culturally and Linguistically Diverse (CALD) and Aboriginal and Torres Strait Islander backgrounds, there are additional challenges in gaining and retaining employment that are reflected in the poor employment outcomes for people with disability from these groups.

In Council's view, the current legal framework does not adequately protect people with disability from employment discrimination. The legal framework needs to be more than just a deterrent to discrimination and a last resort for people with disability. It must provide an effective mechanism for people with disability to seek redress and must be complemented by policies and practices that proactively work to break down barriers and change employer's attitudes to inclusion rather than just compliance.

The poor experiences and outcomes for people with disability in employment make it clear what needs to change and how the barriers to employment can be overcome. People with disability, especially people from CALD or Aboriginal and Torres Strait Islander backgrounds, require additional individualised support to build confidence and capacity, as well as assistance to address a range of barriers impacting employment. The factors that contribute to positive employment outcomes for people with disability as well as examples of good practice are considered in this submission.

Council is eagerly anticipating the improvement to employment outcomes for people with disability that the new National Disability Employment Framework expects to deliver. People with disability can, and aspire to, actively participate in employment and in the community. Council hopes that as a result of this inquiry and the National Disability Employment Framework, the workforce will reflect the diversity inherent in the population, and more people with disability will be supported to gain and retain meaningful employment of their choice that allows them to fulfil their goals and aspirations and participate equally in all aspects of society.

Challenges in providing insights into employment Discrimination against people with disability

Discrimination against people with disability may occur in various aspects of the employment relationship, including:

- recruitment and selection;
- determining or altering an employee's classification, pay rate, employee benefits or job design;
- rostering, including access to overtime and penalty shifts;
- access to resources, training and development;
- infrastructure and workplace accessibility including physical buildings, equipment and IT infrastructure;
- workplace culture;
- comparative workload and work complexity issues;
- transfer, demotion and promotion;
- performance criteria and employee targets;
- termination of employment, including dismissal, constructive dismissal and retrenchment or redundancy.[1]

It is difficult to measure and provide data on the extent to which people with disability experience discrimination in each of the above aspects of employment. This is both because employers and people with disability may not recognise discrimination, and because people with disability do not disclose their disability for fear of bias, discrimination and marginalisation.

Recognising discrimination

In many cases, employers may not believe themselves to be discriminating against people with disability in their recruitment, selection and/or performance criteria. Similarly, people with disability may believe discrimination to exist where it does not, or not realise when discrimination exists. Perceptions of the experience of discrimination do not always match the actual experience of discrimination.[2]

Workplace conditions are 'designed around the behaviour patterns and attributes of the historically dominant group in public life,'[3] and as a result, the expectations in recruitment, performance, management and reward are not recognised as

---

[1] Fair Work Ombudsman, *Fair Work Ombudsman Discrimination Policy Guidance Note* (21 December 2012) available at: https://www.fairwork.gov.au/fwoguidancenotes/GN-6-FWO-Discrimination-Policy.rtf.

[2] Hahn, M., & Wilkins, R. *Perceived discrimination in Australia: Its correlates and consequences*. Melbourne Institute Working Paper No.9/13, Melbourne Institute of Applied Economic and Social Research, The University of Melbourne (2013) available at: https://www.melbourneinstitute.com/downloads/hilda/Bibliography/Working_Discussion_Research_Papers/2013/Hahn_etal_Perceived_job_discrimination.pdf.

[3] Hunter, R. Indirect Discrimination in the Workplace (Federation Press, 1992).

discriminatory against people with disability because they are assumed to be neutral measurements of performance.[4]

Further, it is difficult to delineate when discrimination occurs especially in recruitment and selection because employers may consciously or unconsciously act on bias and assume a person with disability is the inferior candidate or will need more support and costly adjustments to do their job. An employer will be unlikely to admit that they didn't choose the candidate with disability because of their disability, and a person with disability will have to go through a long process of lodging a complaint with AHRC if they want to prove they didn't get the job because of discrimination.

For these reasons, it is likely that there are many instances of discrimination against people with disability in aspects of employment that exist but are not recognised or reported by either employers or people with disability.

Fear of disclosing disability

The number of people with disability engaged in employment is not an accurate measure of employment discrimination against people with disability because people with disability are often reluctant to identify as a person with disability. People with disability may choose not to disclose their disability because of fear of bias, prejudice, and discrimination, fear that they will be treated differently and fear that they will be denied employment opportunities.[5]

An example that highlights this fear is the difference between the official number of people that declare disability in the NSW public sector and the number of people that identify as having a disability when responding to an anonymous survey. According to the 2015 NSW Public Sector Workforce profile, 2.9% of employees in the NSW Public sector have a declared disability.[6] However, according to the "People Matter" employee survey – an anonymous survey for all NSW public sector employees – 7% of employees in the NSW public sector have a declared disability.[7] This disparity confirms that many people with disability choose not to declare disability, and as a result is difficult to provide insights into disability discrimination in employment.

There is clearly a gap in data around discrimination against people with disability in employment created by fear of reporting, lack of mechanisms for external reporting and lack of research and engagement with people with disability about their experiences. There is also a gap in data about discrimination in employment against

---

[4] Rice,S, *It Just Doesn't ADD Up: ADHD/ADD, the Workplace and Discrimination* (2010) Melbourne University Law Review Vol. 12 (34) (2) available at: http://www.austlii.edu.au/au/journals/MelbULawRw/2010/12.html#fn8

[5] Mungovan, A & Quigley, F, *Choosing your path. Disclosure: It's a personal decision* (2009) University of Western Sydney and University of Ballarat, available at: http://pubsites.uws.edu.au/ndco/disclosure/pdfs/disclosure.pdf

[6] Public Service Commission NSW, *Workforce Profile Report June 2015* (2015) available at: http://www.psc.nsw.gov.au/reports---data/workforce-profile

[7] Public Service Commission NSW, *People Matter Employee Survey 2014* (2014) available at: http://www.psc.nsw.gov.au/reports---data/state-of-the-sector/people-matter-employee-survey/people-matter-employee-survey-2014

people with disability faced by different groups of people. This includes data about discrimination in employment against people with disability by gender, age, cultural background, linguistic background and type of disability. The current data does not provide an accurate picture of multiple disadvantage where living with a disability is just one of the factors which may impact employment discrimination.

Recommendation 1: Undertake further research into the employment experiences of people with disability to build the available data and evidence on the extent to which people with disability experience discrimination, and the extent to which people with disability of different gender, age, cultural background, linguistic background and type of disability experience discrimination.

Barriers to employment for people with disability and solutions to overcome these barriers

Many people with disability are able to and willing to work but face attitudinal, physical and structural barriers that prevent their employment. As discussed above, there is an essential distinction between work and employment, and while some people with disability may have work, they may face additional barriers to meaningful employment that provides long-term opportunities for further up skilling, training and career development.

Examples of some of the most significant barriers to employment, as well as a detailed example of the barriers that exist in a specific sector – the NSW Government sector- are provided below to illustrate Council's view that people with disability face many barriers to employment that are discriminatory and affect their ability to obtain and retain employment. Possible solutions to overcome these barriers, drawn from best-practice examples, are also outlined below.

<u>Discriminatory attitudes, behaviours and workplace policies and procedures</u>

Council's experience is that employers do not go looking for people with disability to employ. Perceptions, misconceptions and discrimination prevent people with disability from engaging in the workforce equally or more than environmental and logistical factors. Employer attitudes, lack of understanding and awareness of supports and services available to assist, and lack of exposure to disability often compound the issues people with disability have in obtaining and retaining employment.

Many employers have low levels of awareness, understanding and expectations of employing people with disability.[8] Employers have significant misconceptions about what disability is, the impacts it might have on the work environment and the workplace accommodations that might be required to enable employment of people with disability. Although research has proved concerns relating to employment of people with disability about risk to workplace safety, excess sick leave use, costly workplace modification and potential discrimination or industrial relations law issues are unfounded,[9] employers still widely hold these concerns. These attitudes undermine the effectiveness of the legal framework that aims to protect people with disability from discrimination and employment, and while these persist it is unlikely that employment outcomes for people with disability will improve.

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,

---

[8] Australian Human Resources Institute*, Recruiting people with disability: an employer perspective* (2011) available at:
https://disabilityemployment.org.au/static/items/disability_employment_report_web.pdf
[9] Graffam, J. et all, *Employer benefits and costs of employing a person with a disability* (2002) Journal of vocational rehabilitation Vol. 17 (4).

and as a result employers often consciously or unconsciously choose the candidate without disability as they assume that candidates with disability will result in costs, changes and adjustments. The lack of comprehensive information and training for employers on workplace obligations, rights and resources about employing people with disability means employers often do not have the confidence or incentive to employ people with disability.

In the workplace, policies such as the lack of flexibility to work part-time, work from home or work varied hours can also present a barrier to employment. Once employed, people with disability often have negative experiences where employers do not have a high level of understanding of disability and their obligations to support people with disability in the workplace. Mobility or other needs can make it more difficult for people with disability to get to and be at work during certain times, however, these difficulties can easily be overcome by employers allowing greater flexibility in work hours. 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. These attitudes can prevent inclusiveness in the workplace that lead to negative employment experiences and outcomes for people with disability.

Negative attitudes may also exist within the workplace from colleagues who may not understand or be flexible and responsive to the needs of people with disability. Participation in the workforce is not always followed by feelings of social inclusion. 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.

Until these attitudes change, people with disability engaged in employment are likely to continue to feel excluded and disconnected from their workplace and marginalised by other employees. It takes time, education and experience with people with disability to change these attitudes and create an environment of inclusion. This needs to be supported by government investment in resources to support organisations to change attitudes, including funding for training programs and awareness campaigns as well as incentives like tax concessions for businesses that are committed to increasing diversity and actively breaking down barriers to employment for people with disability.

Council recommends that the following strategies be implemented to overcome these discriminatory attitudes and behaviours:

Disability awareness training: 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.

Disability employee networks (DENs): The aims of DENs 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.

The extent to which an organisation commits to development and resourcing of DENs reflects how much that organisation respects the contribution of people with disability to an inclusive workplace. One way to ensure success of DENs is to embed commitment to DENs within an employee's performance agreement. This recognition of the resources required to complete tasks arising from DENS is a valuable way to ensure that action is implemented in the workplace, as employees are accountable internally for their involvement. The presence of a DEN has a hugely significant role internationally within an organisation but is also vital externally in promoting inclusiveness within the organisation to potential applicants. An organisation's DEN should be visibly promoted on the external internet site, in addition to internal promotion.

Public awareness campaign to address misconceptions about employing people with disability: A public awareness campaign featuring positive stories about employment from the perspectives of both employers and people with disability may assist in breaking down some of the negative discriminatory attitudes and behaviours that exist towards people with disability in employment. By highlighting success stories and the supports that are available to employers to ensure they have the knowledge, understanding and capability to employ people with disability, this campaign may encourage more employers to adopt more inclusive recruitment and employment practices. This campaign should be targeted at employers through channels such as industry groups, chambers of commerce and business associations.

Individual, practical support for employers to help build disability confidence: Different businesses have different needs and as a result there is a need for individual, practical support to help employers identify ways to make their recruitment and workplace practices more inclusive. One way to do this would be through expanding the current role of National Disability Recruitment Co-ordinator (NDRC), an Australian government service that partners with large Australian employers to build disability knowledge and confidence, and to help businesses break down barriers to employment for people with disability. At present this service only works with employers over 100 people. Since the vast majority of employers that use Disability Employment Services are small,[10] the role of the NDRC should be expanded to work with businesses of all sizes. This support should be tailored to the needs of the business and include assistance in identifying and overcoming barriers to employment of people with disability, including assistance in developing and implementing reasonable adjustments.

---

[10] Australian Human Resources Institute, *Recruiting people with disability: an employer perspective* (2011) available at:
https://disabilityemployment.org.au/static/items/disability_employment_report_web.pdf

A program to facilitate accreditation of organisations as 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.[11] 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[12]

In the UK, the scheme has had mixed success because there is very limited independent monitoring or governance arrangements to review how employers meet the five commitments they are expected to uphold.[13] This highlights that a disability confident employer accreditation scheme will only be effective where appropriate resources are dedicated to monitoring the practices of accredited organisations and ensuring they deliver on their commitments.

Incentives to encourage organisations to become disability confident employers: Some organisations may be reluctant to commit to the process of disability confident accreditation due to perceived cost or concerns about compliance. To overcome this, further incentives (outside the incentives of appealing to a more diverse pool of candidates and benefitting from a more diverse workplace) including company tax concessions or tax discounts should be offered.

In NSW, the Payroll Tax Rebate Scheme (Disability Employment) provided employers who have a payroll tax liability a rebate of up to $4,000 for employing a person with disability who completed the NSW Transition to Work program.[14] $2,000

---

[11] United Kingdom Government, *Recruitment and Disabled People* (2015) available at: https://www.gov.uk/recruitment-disabled-people/encouraging-applications

[12] United Kingdom Government, *Recruitment and Disabled People* (2015) available at: https://www.gov.uk/recruitment-disabled-people/encouraging-applications

[13] Hogue, K., Bacon, N. and Parr, D. *Employer disability practice in Britain: assessing the impact of the Positive About Disabled People 'Two Ticks' symbol* (2014) Work Employment & Society Vol. 28 (3).

[14] Office of State Revenue NSW, *Payroll Tax Rebate Scheme – Disability Employment* (2014) available at: http://www.osr.nsw.gov.au/sites/default/files/file_manager/ofs_pt8.pdf

was paid after three months of employment, and another $2,000 after six months.[15] This scheme has now been repealed, but its success provides a useful model for future tax incentive schemes to encourage employers to engage people with disability in employment.

In the United States, there are a number of tax concessions and discounts available to employers who commit to making their workplaces more accessible and employing more people with disability. The Work Opportunity Credit provides eligible employers with a tax credit up to 40 percent of the first $6,000 of first-year wages of a new employee if the employee is part of a "targeted group."[16] The credit is available to the employer once the employee has worked for at least 120 hours or 90 days.[17]

Tax incentives like the examples above may be used to increase the number of organisations seeking accreditation as disability confident employers and ensure more organisations commit to more inclusive recruitment and workplace practices.

Recommendation 2: Provide funding and resources to organisations to help them deliver disability awareness training for all staff in their workplace and establish disability employee networks that are internally and externally promoted

Recommendation 3: Initiate an ongoing public awareness campaign to demonstrate the benefits of employing people with disability and address common misconceptions and negative stereotypes about people with disability in the workforce

Recommendation 4: Provide practical support to employers to build disability confidence in their recruitment, employment and employee retention practices, possibly through expansion of the role of the National Disability Recruitment Coordinator

Recommendation 5: Develop and appropriately resource a program similar to the "two ticks" symbol scheme in the United Kingdom to allow accreditation of organisations as disability confident and inclusive employers

Recommendation 6: Provide incentives to organisations to become disability confident and inclusive accredited employers and employ people with disability, including tax concessions and credits

---

[15] Office of State Revenue NSW, *Payroll Tax Rebate Scheme – Disability Employment* (2014) available at: http://www.osr.nsw.gov.au/sites/default/files/file_manager/ofs_pt8.pdf
[16] United States Internal Revenue Service, *Tax Benefits for Businesses Who Have Employees with Disabilities* (2015) available at: https://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Tax-Benefits-for-Businesses-Who-Have-Employees-with-Disabilities
[17] United States Internal Revenue Service, *Tax Benefits for Businesses Who Have Employees with Disabilities* (2015) available at: https://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Tax-Benefits-for-Businesses-Who-Have-Employees-with-Disabilities

Recruitment practices

Many people with disability may 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.

For example, in the NSW Government Sector, all role descriptions are only provided in PDF format which is not always compatible with screen reader software and consequently may be inaccessible to people with vision impairment. Similarly, for some positions applications are only accepted by online form and these forms are not always compatible with screen reading software or accessible to all people with disability. Some positions also require applicants to complete online or psychometric testing before the interview stage, which is not always available in accessible formats and can unfairly disadvantage people with disability. These requirements limit the opportunities people with disability have to compete in the recruitment process and progress to an interview and employment.

Although altering these requirements would appear to be relatively simple as an employer only needs to provide alternate application formats and ways to submit applications, 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. The responsibility falls on the person with disability looking for a job to inform their employer that their application is not accessible, and as a consequence they will have to disclose their disability. Until employers have the requisite awareness, information and understanding to adopt inclusive recruitment practices that anticipate applications from people with disability, recruitment practices will continue to be a form of discrimination against people with disability.

More inclusive recruitment practices may result from some of the recommendations above to address discriminatory attitudes, behaviours and workplace policies and procedures. However, Council is of the view that a more widespread commitment to affirmative action policies, particularly in the public sector, may assist people with disability to progress through the recruitment process and increase the number of people with disability engaged in employment. An affirmative action policy generally involves a commitment to give priority in hiring to people from designated groups, which could include people with disability. This means that where there are two applicants that meet the selection criteria and have comparable skills, experience and capabilities, the employer will give priority to the person with disability and offer them the job. Council recommends that the Australian Government consider introducing a mandatory requirement for all public sector employers to adopt affirmative action policies that give priority to people with disability in the recruitment process, and support all employers to adopt affirmative action policies.

Council is also of the view that a guaranteed interview scheme which progresses people with disability who meet the minimum requirements of the job to the interview stage is one of the most effective, targeted ways to overcome the barriers that recruitment practices pose to employment of people with disability. Examples of such schemes that should be considered for wider application are:

The Australian Public Service RecruitAbility Scheme: The APS Commission implemented the RecruitAbility Scheme (RecruitAbility) on 1 January 2015 to better

support the recruitment of people with disability in the APS and also to develop a workforce within the APS that is representative of the community which it serves.

Applicants with disability who elect to opt in to the scheme and meet the minimum requirements of the job are advanced to a further stage in the selection process (usually an interview). RecruitAbility may be applied to all APS vacancies, including Senior Executive Service positions and is not limited to jobs requiring knowledge or understanding of disability. Agency heads are encouraged but not required to consider a person for a vacancy in accordance with the RecruitAbility scheme. If a vacancy has been notified under RecruitAbility, the consideration of a person for engagement or promotion must be completed using the merit principle.

Under RecruitAbility, the applicant information packs include the following statement:

> *"The [insert agency name] is committed to supporting the employment and career development of people with disability. Our participation in the APS RecruitAbility scheme means we will progress an applicant with disability to a further stage in the recruitment process, where they opt into the scheme and meet the minimum requirements for the vacancy.*"

The definition of a current disability in RecruitAbility is based on the Australian Bureau of Statistics definition used in Disability, Ageing and Carers: Summary of Findings 2003.[18] The declaration is not checked at any stage, unless there are concerns regarding fraud.

The APS scheme was trialled with selected agencies within the APS and was adopted from 1 January 2015. Anecdotally, Council has been advised that this scheme has been successfully implemented and has been effective in building the confidence of people with disability in pursuing employment.

The UK Civil Service Guaranteed Interview Scheme: The UK Civil Service Guaranteed Interview Scheme provides a mechanism for applicants who identify as having a disability to progress to the next stage of the recruitment process, namely an interview, if their written application satisfies the minimum criteria for the role. The Scheme is available for people with disability and applies to all vacancies within the UK Civil Service.

In order to apply under the Scheme, applicants are required to complete a declaration and submit it with their application. The declaration requires the applicant to declare:

> *"I consider myself to have a disability as defined above [under the Disability Discrimination Act 1995] and I would like to apply under the Guaranteed Interview Scheme. I required the following special arrangements to be made for me to be able to attend an interview."*

---

[18] Australian Public Service Commission, *RecruitAbility* (2015) available at:
http://www.apsc.gov.au/priorities/disability/recruitability

The minimum criteria means the essential competencies as outlined in the advertisement for the position. In order to proceed, the applicant must provide evidence in the application form which demonstrates that they generally meet the required standard for each competence, as well as any of the qualifications, skills or experience defined as essential.

The UK Civil Service adopts the definition of person with disability from the *Disability Discrimination Act 1995* (UK) for the Scheme. A person with disability is defined as someone who has a physical or mental impairment which has a substantial and adverse long-term effect on his or her ability to carry out normal day-to-day activities. Whilst the scheme does not require evidence of disability, any false declaration of disability will invalidate any offer of employment with the UK Civil Service.

As this scheme applies to all vacancies in the UK Civil Service, it has led to increased employment of people with disability and assisted in helping different agencies become disability confident employers.

Recommendation 7: Consider introducing a mandatory requirement for all public sector employers to adopt affirmative action policies that commit to giving people with disability priority in the recruitment process, and support all employers to adopt affirmative action policies.

Recommendation 8: Provide resources and support to employers, specifically public sector employers, to implement a guaranteed interview scheme similar to the United Kingdom Civil Service Guaranteed Interview Scheme and the Australian Public Service RecruitAbility Scheme to ensure people with disability who opt into the scheme and meet the minimum requirements of the role have the opportunity to compete in further stages of the recruitment process (usually an interview).

Lack of education, skills, training and experience

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. Young people with disability leaving school may also find it difficult to obtain employment without support and training to equip them with the skills they need to undertake further study or obtain employment in an industry they are interested in. The 2012 Disability, Ageing and Carers survey revealed that only 36% of people aged 15-64 with reported disability had completed year 12 compared to 60% of people without disability, and 15% of people aged 15-64 with disability had completed a bachelor degree or higher compared to 26% of people without disability.[19]

---

[19] Australian Bureau of Statistics, *Disability Ageing and Carers Australia: Summary of Findings* (2012) available at: http://www.abs.gov.au/ausstats/abs@.nsf/mf/4430.0

These low levels of educational attainment limit employment opportunities and are the beginning of a difficult cycle where people with disability are unable to gain employment because of their lack of education and are subsequently unable to gain the skills and experience they need to obtain meaningful employment and develop their career. This highlights just how essential education, skills, training and experience are in employment and how significant a barrier they can be to employment for people with disability. It also highlights how poor employment outcomes for people with disability is a problem that is caused in part by and needs to be resolved by other systems and sectors, including the education system.

One of the causes of lack of further education, skills and training beyond school is the lack of engagement with people with disability while at school about employment. The prevalence of misconceptions and low expectations that exist about employment prospects of people with disability mean that unless students are sufficiently engaged at school to think about employment, undertake work experience and consider transition to work programs or further training, they are unlikely to smoothly transition from school into a path to employment. This is particularly an issue for people with disability from CALD backgrounds, as evidenced by the comparatively low rates of people with disability from CALD backgrounds engaged in transition to work programs and employment. In NSW, only 5% of people involved in Transition to Work programs are from CALD backgrounds,[20] which does not correspond with the number of people with disability from CALD backgrounds who leave school each year in NSW.

There is clearly a need for greater opportunities for people with disability to obtain the education, qualification and training they need to access a wide range of jobs. However, placing people with disability in any education or training courses available or unpaid internships does not solve the problem unless these provide a real pathway to meaningful employment.

Council recommends the following solutions to overcome the barrier that lack of education, skills, training and experience present to meaningful employment for people with disability:

Improved access to relevant education and training programs: Education and training programs only enable meaningful employment when they are relevant to an individual's employment goals. Greater funding and supports to undertake a wide range of education and training programs that are relevant to individual needs and goals should be provided to improve levels of education, skills and training and consequently employment outcomes for people with disability.

Ensuring a smooth transition from school to work or education: People with disability need to be supported and engaged when still at school to think about future employment goals and participate in work experience. Research has shown that it is critical for young people with disability to receive support to participate in the

---

[20] Ageing, Disability and Home Care NSW, *From Protection to Productivity An Evaluation of the Transition to Work Program* (2009) available at: https://www.adhc.nsw.gov.au/__data/assets/file/0020/240374/Evaluation_of_the_Transition_to_Work_Program_Report.pdf

workforce as early as possible as this helps to drive effective long-term employment outcomes.[21] The NSW transition to work model has consistently achieved positive employment outcomes for school leavers with disability[22] and provides a model that could be implemented more widely throughout Australia. Council endorses an approach that provides intensive, pre-employment support to improve the work readiness of young people and to help them into work or education. However, it is important to ensure consistency in the quality of transition to work programs since positive outcomes will only result where transition to work providers are skilled and have strong local links with employers and networks.

Council also recommends that specific resources be devoted to engaging people with disability from CALD and Aboriginal and Torres Strait Islander backgrounds to undertake work experience at school and participate in transition to work programs. For people from CALD and Aboriginal and Torres Strait Islander backgrounds, early exposure to work and a focus on the ability and capacity of people with disability to obtain meaningful employment can help overcome negative views on the employment prospects of people with disability.

Mentoring from people with disability who have retained employment: Linking people with disability looking for work with mentors who have a disability and have retained employment in their chosen field can encourage positive views about employment prospects. It also allows for sharing of knowledge about what works and creates positive employment outcomes for people with disability. Mentors with disability who are successful in employment provide an invaluable source of advice, support and knowledge that may assist people with disability looking for work and improve their willingness to acquire any further education, skills and training they need to obtain and retain employment. Mentoring programs should also link people with disability from CALD or Aboriginal and Torres Strait Islander backgrounds looking to enter the workforce with people from the same background who are successfully employed. Such a program may be a good way to change perceptions about people with disability in employment.

Recommendation 9: Facilitate greater access to vocational education and training for people with disability that supports their employment goals

Recommendation 10: Support and engage people with disability at school to participate in work experience and employment and implement quality transition to work programs for people with disability throughout Australia

Recommendation 11: Provide resources and necessary supports to engage young people with disability from Culturally and Linguistically diverse and

---

[21] Deloitte Access Economics, *The economic benefits of increasing employment for people with disability* (2011) available at:
http://www.and.org.au/data/Conference/DAE_Report_8May.pdf
22 Ageing, Disability and Home Care NSW, *From Protection to Productivity*
 An Evaluation of the Transition to Work Program (2009) available at:
https://www.adhc.nsw.gov.au/__data/assets/file/0020/240374/Evaluation_of_the_Transition_to_Work_Program_Report.pdf

Aboriginal and Torres Strait Islander backgrounds in work experience and transition to work.

Recommendation 12: Establish a formal mentoring program to connect people with disability who have retained employment with people with disability looking for work, and to link people with disability from diverse backgrounds looking for work with people from diverse backgrounds successfully engaged in employment.

Reliance on Australian Disability Enterprises

There are currently inadequate supports to help people with high support needs into open employment. This means that there is a reliance on ADEs to cater to more than 20,000 people with disability. [23] While ADEs remain open and provide work opportunities for people with disability, there will be less incentive to develop innovative ways to support people with disability to find mainstream employment. This is in breach of Australia's obligations under the UNCRPD, that clearly maintains people with disability have the right to employment "on an equal basis with others"[24] to situate people with disability alongside the rest of the population, not in enterprises sheltered or excluded from the public.

Disappointingly, ADEs are not a legitimate pathway to open employment. While there may be social benefits for people with disability who are employed by ADEs, the majority of these people do not receive equal pay for work of equal value, or have access to the same industrial protections as workers without disability doing the same job at the same statutory pay grade. In ADEs, people with disability are segregated from others in the community and denied the opportunities they would have in open employment to develop connections with people of all abilities and backgrounds in the community.

Council maintains that the continued existence of ADEs prevents the open employment of people with disability in meaningful work that pays a real wage. 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.

In Council's view, work in an ADE is just 'work,' not employment. Employment means a job a person with disability chooses in the open labour market with real career development opportunities that pays a real wage, the opposite of what ADEs provide. People with disability employed in ADEs miss out on the sense of inclusion and

---

[23] Australian Disability Enterprises, *What are ADEs?* (2015) available at: http://www.ade.org.au/what-are-ades.
[24] *United Nations Convention on the Rights of Persons with Disabilities* (2008) available at http://www.refworld.org/docid/45f973632.html.

participation in the community and better career development and economic opportunities that may result from mainstream employment.

The reliance on ADEs for people with disability deemed too difficult to place in open employment can be overcome by investing more resources into providing the individualised, integrated supports people with disability need to gain and retain open employment. Coupled with a firm commitment to progressively winding down ADEs, this may ensure real opportunities for open employment are created and sustained.

Recommendation 13: Commit to progressively phasing out ADEs and redirect funding and resources for ADEs into comprehensive support for people currently employed by ADEs to transition into open employment

---

Lack of career development opportunities

Finding employment is not the only barrier to employment for people with disability. 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.

In council's view, there is a 'glass ceiling' for people with disability that is evident from the low representation of people with disability in executive positions. People with disability are less likely to receive skills training and professional development opportunities than people without disability and are often passed over for promotion or higher duties. In particular, employees with impairments often receive less support and guidance from managers about career advancement and will have limited job rotation or progression opportunities.[25] An example of this is where people with vision impairment are unable to perform management roles because HR and payments software are not compatible with screen reader technology. This is a form of discrimination that prevents the people with disability from enjoying the same opportunities for meaningful employment, skill development and career advancement as people without disability.

Additionally, there is a significant problem presented by the fact that people with disability are often engaged as volunteers without any prospect of that volunteer work leading to paid employment. Many people without disability are easily able to use volunteer work as a pathway to employment, but the transition is not as easy for people with disability. People with disability are often expected to contribute their time and effort for long periods of time without ever being paid, and are less likely to obtain paid work from their volunteer work. This lack of opportunity for career development from volunteer work is a hidden form of discrimination, and contributes to poorer employment outcomes for people with disability.

---

[25] Perry, E.. et al., *An exploration of access and treatment discrimination and job satisfaction among college graduates with and without physical disabilities* Journal of Human Relations Vol. 52(7).

Some of the recommendations above to address discriminatory attitudes, behaviours and workplace policies and procedures may contribute to improving career development opportunities for people with disability. In particular, an accreditation scheme for disability confident and inclusive employers that incorporates a commitment by accredited organisations to ensure career development opportunities and progression may improve outcomes where accredited organisations deliver on this commitment. However, more specifically, Council recommends that there be support for people with disability in employment that continues throughout a person's life course. There must be regular engagement with people with disability after they have been matched with jobs and increased opportunities for people with disability to change jobs as their needs and aspirations change. The disability employment service system must anticipate that some people with disability will need ongoing support throughout their lifetime to retain employment and progress their career.

> **Recommendation 14: Provide all people with disability life-long career planning and career support that is responsive to an individual's changing needs and aspirations.**

Physical and communication barriers

People with disability often face significant challenges when entering the workforce because transport, technology and office environments are not always accessible and it can be expensive to get to and from work. These physical and communication barriers are a disincentive to employment for people with disability and are not always easy to remove because the problems of inaccessible transport, technology and building design are systemic.

For people with disability with mobility issues, a lack of accessible car parking at work and/or inaccessible public transport can make it very costly to get to work. The current amounts for the Mobility Allowance in NSW are inadequate for people with disability living in both metropolitan and regional areas. Even with an allowance for the State Government supported Taxi Transport Subsidy Scheme, the standard rate of $91.80 a fortnight and the higher rate of $128.40 (as at 1 January 2015) do not provide sufficient support for people with disability to travel to work or vocational training.

For people employed by ADEs, the cost of getting to and from work is likely to be more than what that person would make in a day due to low wages. As the mobility allowance is not individualised, it does not take into account people's true mobility needs and is often insufficient to get people with disability to and from work. Consequently, the cost of transport to and from work acts as a disincentive to employment. The economic benefits of employment can easily be outweighed by the additional costs of getting to and from work, or arranging supports to come before or after work so a person can be at work when business hours start and end.

Many physical workplaces are not accessible to people with disability because they have not been designed to consider the needs of wheelchair users and other people with mobility, vision or hearing impairment. If a workplace is not accessible, it is likely the considerations of cost and inconvenience in making modifications will factor into an employer's willingness to employ people with disability. Similarly, if a person requires assistive technology or equipment to enable them to do their job, employers

may be less willing to employ that person because they fear the cost or impact it may have on productivity. People who are deaf that require Auslan interpreters face particularly significant communication barriers to employment as employers may very reluctant to fund Auslan interpreters for interviews and work on a daily basis. As a result, people who are deaf will often be overlooked for mainstream employment because of the perceived inconvenience and cost of providing an Auslan interpreter.

Once employed, people with disability may face additional barriers as they are often excluded from workplace dialogue because of communication barriers and this hinders their sense of inclusion and participation in the workplace. People with vision impairment, in particular, are likely to be excluded from workplace dialogue as it is not standard practice to provide written documents in alternate formats at meetings and conferences. People with hearing impairment may miss many important workplace conversations or will be unable to participate in meetings where an Auslan interpreter is not provided. These communication barriers are exacerbated in the case of people from CALD backgrounds, who may not be able to participate in important work safety inductions without the assistance of an interpreter.

Although the Employment Assistance Fund (EAF) is available to provide financial assistance to purchase products and services that enable the employment of people with disability, Council notes that many employers and job-seekers with disability are unaware of its existence or find the process of gaining supports unnecessarily long and complex.

While people with a period of employment of less than 13 weeks or with a position of employment that may not be continuous may be eligible for EAF assistance, applications in such circumstances are considered on a case by case basis. The EAF guidelines also do not allow funding for modifications required to participate in voluntary work or activities. This prevents people with disability from engaging in internships or voluntary work that may help them to increase their employability and job prospects. Many employers are not clear about what the EAF does and does not provide because there is no central information point that provides clear advice and assistance to employers on how to access the EAF and what it can help with.

Some EAF assessors also lack knowledge of disability and its diversity, meaning that consideration of specific modifications is almost always based on recommendations of the person with disability. This arrangement is acceptable if the person knows what equipment might assist their particular situation, but is of little value when neither the person with disability or the assessor is able to advise on a particular modification.

The result of these factors is that the EAF is not maximising its ability to provide workplace equipment, modifications and services that people with disability need, and thus physical and communication barriers continue to hinder the employment for people with disability.

It is clear that both people with disability and employers will require both financial support and access to relevant information about what tools and supports are available to make the workplace more accessible to help them overcome the many physical and communication barriers that exist. Some solutions that Council recommends to ensure this occurs include:

Expansion, improvement and promotion of the EAF: The EAF is a commendable way to help overcome physical and communication barriers as it provides employers with the financial support they need to make their workplaces more accessible. However, more resources must be committed to the EAF to expand the operation of the fund so it covers modifications in more circumstances. Expanded modifications might include the provision of hours of interpreting for people with disability from CALD backgrounds so they are able to participate in workplace health and safety inductions and training. Expanded circumstances should include voluntary work and internships so people with disability can increase their employability and paid work prospects by gaining relevant experience. More resources should also be committed to the EAF to ensure it operates more efficiently so that people with disability are not waiting to commence employment because their employers are stuck in a long and complex process of obtaining funding for supports from the EAF.

These changes must also be complemented by the establishment of a one-stop-shop website and central information point on workplace modifications to help EAF assessors and employers and people with disability know what is available and how to access it. This resource must also be widely promoted to increase visibility of the EAF and address the misconception that employing people with disability is too costly because of the modifications that may be required to the workplace.

A more flexible mobility allowance: The mobility allowance should be individualised to take into account the different mobility needs of different people. Providing greater flexibility in the mobility allowance may ensure people with disability can afford to get to or from work and thus obtain and retain employment.

Tax incentives and concessions to encourage businesses to make their workplace more accessible: Offering tax incentives and concessions to businesses may increase their willingness to make their workplaces more accessible and encourage them to prepare their workplace in anticipation that they will employ people with disability. In the United States, the Architectural Barrier Removal Tax Deduction encourages businesses of any size to remove architectural and transportation barriers to the mobility of persons with disabilities and the elderly.[26] Businesses may claim a deduction of up to $15,000 a year for qualified expenses.[27] Such concessions could apply to infrastructure like hearing loops, mobility ramps and accessible parking and would help to overcome the barrier of the cost of making workplaces accessible, particularly for small businesses.

> **Recommendation 15: Expand the operation of the Employment Assistance Fund (EAF) so it covers more modifications in more circumstances (including voluntary work and internships), streamline the process for applying for**

---

[26] United States Internal Revenue Service, *Tax Benefits for Businesses Who Have Employees with Disabilities* (2015) available at: https://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Tax-Benefits-for-Businesses-Who-Have-Employees-with-Disabilities.
[27] United States Internal Revenue Service, *Tax Benefits for Businesses Who Have Employees with Disabilities* (2015) available at: https://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Tax-Benefits-for-Businesses-Who-Have-Employees-with-Disabilities.

support under the EAF and establish a "one-stop-shop" central information point for EAF assessors, employers and people with disability to find out what modifications are available to make workplaces more accessible.

Recommendation 16: Individualise funding of the mobility allowance so the allowance is more flexible and covers the significant costs of getting to and from work that people with disability bear.

Recommendation 17: Provide tax incentives and concessions to encourage businesses to make their workplace more accessible and accommodating of the different needs of people with disability

The cost of disability

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.

Under the current system, after two years people with disability who transition from the Disability Support Pension into employment lose access to the discounts on medications, transport and other services that their pension card provides.[28] 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 the 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.[29]

Further, people with disability are often left to bear the additional costs that they may incur as a result of their disability, including specialists, medication, interventions, supports and other things they may need that are not covered by the welfare system. These costs are simply not experienced to the same extent by people without disability and are very difficult for people earning low incomes to meet. Despite this, there are currently no tax concessions or income subsidies that exist which acknowledge the ongoing additional costs people with disability may incur as a consequence of their disability.

Council recommends that the Australian government introduce tax concessions for people with disability that recognise and compensate for the additional cost of disability that people with disability incur throughout their lifetime. Council also recommends that the eligibility requirements for the pensioner concession card be

---

[28] Australian Government Department of Human Services, *Pensioner Concession Card* (2015) available at:
http://www.humanservices.gov.au/customer/services/centrelink/pensioner-concession-card
[29] Australian Bureau of Statistics, *Disability and work, Australian Social Trends* (2012) available at:
http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features40March+Quarter+2012

amended so that people with disability engaged in employment who are ineligible to receive the Disability Support Pension still have access to the concessions and discounts the pensioner concession card offers.

In addition to this, Council recommends that welfare arrangements be made more flexible and responsive to the different needs and financial position of people with disability who enter the workforce. 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. Council recommends that people with disability should continue to have access to the disability support pension for at least six months when transitioning into the workforce as this may provide a buffer to ensure a smoother transition from income support to a wage. However, this will only be effective where complemented by initiatives recommended above to move people out of ADEs and away from the low wages supported employment offers and into open employment where there a greater prospects of higher wages.

Recommendation 18: Introduce tax concessions for people with disability engaged in employment that recognise and provide some compensation for the additional costs that people with disability may incur throughout their lifetime.

Recommendation 19: Amend the eligibility requirements for the pensioner concession card so all people with disability, including those who may be ineligible for the Disability Support Pension because of their employment, have access to the concessions and discounts the pensioner concession card offers.

Recommendation 20: Guarantee automatic access to the disability support pension for at least the first six months after a person with disability transitions from income support into the workforce.

Recommendation 21: Implement, support and appropriately resource more initiatives to place people with disability in open employment where there are greater prospects of higher wages.

Ineffectiveness of the current Disability Employment Services System

The current disability employment service system does not provide the support people with disability need to obtain and retain meaningful employment of their choice. Many people with disability who currently report positive employment experiences owe it to their or their advocate's hard work in creating employment opportunities, not to the effectiveness of disability employment services.

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. People with disability supported by the current system find themselves being assisted into low-skilled, short-term jobs instead of being helped to build viable careers. Disability Employment Services often seek out employment in ADEs, without considering alternate forms of employment that a person may be interested in pursuing. Training courses and/or pre-employment programs that are recommended often do not lead to work, and as a result people who seek assistance from Disability

Employment these often find them to be an end rather than a means to a more fulfilling life in the community. 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.

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.

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. Currently only seven per cent of employees with a mental health problem access job support under government and employer-funded Employee Assistance Programs.[30] Those that do access programs find that they do not receive the support they need because the supports people with mental illness need are very different to those people with disability may require. Additionally, many people with mental illness who previously worked as professionals in accounting or law find that disability employment services do not have the connections in these sectors or knowledge of what people with mental illness need to return to work in these sectors.

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.[31] 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.

---

[30] Mental Health Commission, *A Contributing Life: the 2012 National Report Card on Mental Health and Suicide Prevention* (2012) available at: http://www.mentalhealthcommission.gov.au/media/39292/NMHC_ReportCard_2012_05_Work_and_employment.pdf

[31] Disability Employment Australia, *Real Work, Real Pay and Real Careers* (2013) available at: http://disabilityemployment.org.au/news/item/1355/

In Council's view, many problems with the current Disability Employment Services system can be overcome by adopting a more individualised, integrated approach to assisting people with disability obtain and retain meaningful employment. An example of such an approach is the **Personal Helpers and Mentors Scheme (PHaMs).** PHaMs provides practical assistance for people aged 16 years and over whose lives are severely affected by mental illness.[32] PHaMs helps participants to overcome social isolation and increase their connections to the community by providing one-on-one support to help participants in their recovery journey and assists them to find other support services they may need.

PHaMs has services specifically for employment. PHaMs Employment Services focus on assisting people to address non-vocational, 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.

Council has been advised that the PHaMs employment program has delivered positive outcomes for people with mental illness because it recognises and adopts an integrated approach to employment support. It provides people with mental illness with the tailored support they need to achieve long-term employment objectives and participate in the community. The elements which make the PHaMs so successful – individual support that takes an integrated approach, assistance with identifying and obtaining relevant types of labour market supports and a focus on long-term employment objectives – should be incorporated more widely into programs to assist people with all types of disability to obtain and retain employment.

The proposed Disability Employment Framework: Council notes that a new Disability Employment Framework has been developed and is currently undergoing consultation and review.[33] The new framework proposes an individual based funding approach that gives the individual choice and control, and the support they need throughout their life course to obtain and retain employment. The proposed framework is likely to overcome many of the above barriers to employment posed by the current disability employment service system. However, to ensure that these barriers are eliminated, Council believes that the new framework of individual based funding needs to be supported by education, information and advocacy and robust safeguards for maintaining quality and certainty of funding in the market-based environment. Further, the individualised funding approach for employment supports should not be limited to people with disability eligible for the NDIS. There needs to be continuing employment support for people who will not be eligible for the NDIS to ensure all people with disability are supported to gain and retain employment of their choice.

---

[32] Department of Social Services, *Personal Helpers and Mentors Scheme* (2015) available at: https://www.dss.gov.au/our-responsibilities/mental-health/programs-services/personal-helpers-and-mentors-phams
[33] Department of Social Services, *Disability Employment Framework Round Two Discussion Paper* (2015) available at: https://engage.dss.gov.au/disability-employment-framework-2/disability-employment-framework-discussion-paper/

> **Recommendation 22: Incorporate the elements of the Personal Helpers and Mentors Scheme (PHaMs) that have led to positive employment outcomes for people with mental illness – including adopting an individualised, integrated approach, providing assistance with identifying and obtaining relevant labour market supports and focusing on long-term employment – into broader schemes that assist people with all types of disability to obtain and retain employment.**
>
> **Recommendation 23: Support the proposed Disability Employment Framework with education, information and advocacy for people with disability and robust safeguards for maintaining quality and certainty of funding in the market-based environment.**
>
> **Recommendation 24: Ensure that assessment and eligibility processes for people with disability seeking to access disability employment services do not disadvantage people with disability who will not be eligible for the NDIS.**

Additional barriers faced by groups of people with disability

Many people with disability face distinct and additional challenges to gaining and retaining employment because of their cultural background, gender or sexual orientation. The barriers described above are often exacerbated in the case of people from CALD backgrounds, Aboriginal and Torres Strait Islander backgrounds, lesbian, gay, bisexual, trans, and/or intersex (LGBTI) people and women and consequently these groups may face multiple overlapping forms of discrimination in employment. The negative impacts of the problems of the current disability employment service system are felt most acutely by these groups and consequently employment outcomes may be poorer compared to the rest of the disability population.

People with disability from Culturally and Linguistically Diverse Backgrounds: In particular, people with disability from CALD backgrounds may experience poorer employment outcomes because of a lack of understanding by disability employment services and employers of the cultural and linguistic barriers that can compound the many barriers to employment people with disability face. Approximately one in four people with disability are from CALD backgrounds.[34] This presents a clear case for recognising and implementing strategies to overcome the additional barriers people with disability from CALD backgrounds face to improve overall employment outcomes for people with disability.

For some people from CALD backgrounds, negative perceptions about employment or service providers, low expectations and a lack of culturally and linguistically relevant information present a barrier to how actively a person with disability will be able to participate in education, employment and the community. For example, families of children with disability from CALD backgrounds may be unable to access information about employment support programs and may be hesitant to engage with

---

[34]Federation of Ethnic Communities' Councils of Australia (FECCA), *Engaging people with disability in the multicultural sector: barriers to accessing services and employment* (2014) available at: http://www.fecca.org.au/images/ Documents/disability%20survey%20report.pdf

service providers because of language barriers. Without specific, targeted and culturally and linguistically relevant supports that engage people from CALD backgrounds and their families and link them to vocational training and employment, people with disability from CALD backgrounds are likely to continue to experience poorer employment outcomes

When people with disability from CALD backgrounds do attempt to enter the disability employment service system, they are unlikely to receive the support they need to gain and retain employment because disability service providers are not always aware of the cultural or linguistic barriers to employment that may exist. For example, a job requiring an employee to touch certain animal products or wear a particular uniform may not be an appropriate job to place a person with disability from a CALD background in, and service providers do not always understand or know how to best resolve these situations.

Language may present an additional barrier to obtaining and retaining employment especially where there is no ongoing language assistance or access to interpreters when working with disability employment services and in employment. Employers may also have their own prejudices and misconceptions about people from CALD backgrounds that disability employment services may not have the skills, understanding or resources to work with employers to overcome these and find suitable placements for people with CALD backgrounds. People with disability from CALD backgrounds may also have qualifications from foreign countries that are not recognised in Australia and thus will require additional supports to reskill or retrain in order to obtain employment.

Clearly, cultural and linguistic barriers present different barriers to different individuals with disability, and the current system does not anticipate nor work to overcome these barriers.

People with disability from Aboriginal and Torres Strait Islander Backgrounds:
People with disability from Aboriginal and Torres Strait Islander backgrounds will also face additional barriers to employment as a result of the many forms of disadvantage that they experience. People with disability from Aboriginal and Torres Strait Islander backgrounds often have lower levels of education, poorer health and wellbeing outcomes, higher rates of disability, are subject to endemic racism and have poorer access to employment opportunities because of geographic location.

Disability employment services are simply not equipped with the scope to overcome the barriers these forms of disadvantage create and as a result people with disability from Aboriginal and Torres Strait Islander backgrounds often find themselves without work or in low-paid, unskilled employment. 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.

For people with disability from CALD or Aboriginal and Torres Strait Islander backgrounds, there are clearly additional needs and barriers that need to be addressed in finding and supporting to obtain employment. Disability Employment

Service providers must first understand the specific needs people from CALD and Aboriginal and Torres Strait Islander backgrounds and anticipate that people from these backgrounds may require additional supports to help them transition into and retain employment. Council recommends that all disability employment service providers be trained on the specific barriers people with disability from CALD and Aboriginal and Torres Strait Islander backgrounds may face and how to overcome them when supporting them to gain and retain employment. This training should be funded by the Australian government and delivered by organisations or persons with sufficient experience in cultural competency. Training should be focused on equipping disability employment service providers with the requisite skills and knowledge to determine and provide the supports people from CALD or Aboriginal and Torres Strait Islander backgrounds need to obtain and retain meaningful employment. Training should also equip disability employment service providers with the requisite skills and knowledge to work with employers to break down misconceptions and negative stereotypes about people with disability from these backgrounds.

Recommendation 25: Fund training for disability employment service providers to build cultural competency and ensure that services have the requisite skills and knowledge to identify and provide the supports people from Culturally and Linguistically diverse and Aboriginal and Torres Strait Islander backgrounds need to obtain and retain employment.

Recommendation 26: Ensure that any scheme for individualised career planning for people with disability acknowledges and takes into account the cultural and linguistic needs of the individual that may impact on employment.

Example of barriers in context - Barriers to employment of people with disability in the NSW Government Sector

Many employees with disability still face barriers to employment and career progression in the NSW government sector. The NSW government sector workforce has recorded a significant downward trend in the reported representation of people with disability, significantly in younger age cohorts.

Recruitment in the NSW government sector workforce is a crucial part of the employment process and currently presents a number of barriers to employment for people with disability.

Format of role descriptions

All role descriptions and documents outlining agency specific information and general information about applying for a job with the NSW Public Service are provided in PDF format only. PDF format is not often the preferred format as it is not fully compatible with accessible software programs which are available for people with vision impairment. By only providing documents in PDF format, the NSW Government excludes potential applicants from applying.

Types of assessment

The frequent use of psychometric testing as a capability assessment acts as a barrier to the employment of people with disability in the NSW Government sector. The

Government *Sector Employment Act 2013* (NSW) (the GSE Act), specifies merit based selection provisions for recruitment. Part 3 of the *Government Sector Employment Rules 2014* (NSW) (the GSE Rules) outlines a structure for merit based selection for employment, which requires the use of comparative assessment and suitability assessments.

Comparative assessment is the process of assessing an application against the pre-established standards for the role as well as any other applicants and is used to assess applications for ongoing employment; transfer or secondment of an employee from anther agency or the conversion to ongoing employment from temporary or term employment. Comparative assessment includes:

- screening for essential requirements of the role (such as qualifications)
- reviewing the application and resume
- a minimum of three capability-based assessments, one of which is an interview, and
- referee checks.

A suitability assessment is the process of assessing an individual against the pre-established standards for a role (and not against other persons) and is less onerous than a comparative assessment. A suitability assessment includes

- screening for essential requirements (such as qualifications)
- review of a resume
- a minimum of two capability-based assessments, one of which is an interview and a referee check against the pre-established standards for a role (and not against other persons).

One of the capability based assessments that must be used is an interview. Other common capability based assessments that agencies may choose to use to assess applicants against the required capabilities include:

- Personality Questionnaires
- Cognitive Ability Tests (e.g. Numerical, Verbal or Abstract reasoning test)
- Group based assessments
- Role plays
- Presentations
- Work sample activity e.g. in-tray exercise, case study, and
- Technical Skills/ Knowledge assessments.

These capability based assessments match the focus capabilities to the role description. To be successful as the preferred candidate or to be placed in the talent pool, applicants are required to demonstrate immediate proficiency in specified capabilities.

Use of psychometric testing

Despite the availability of all of the capability assessments above, psychometric testing is frequently used. While there are arguments for the use of psychometric testing due to its purported objectivity, these tests can be discriminatory against people with disability and damage their self-esteem and confidence. For applicants

with visual impairment, there may be difficulties in physically completing the test as it may not be compatible with accessible software. For applicants with mobility restrictions, there may be difficulties in completing the test by manipulating the mouse or typing. For applicants requiring the assistance of a support person, it also may be difficult to complete the test within the required time. For applicants with intellectual disability, they may have a negative association with psychometric testing from their use in a medical context. When psychometric tests are administered online, there is also an inherent expectation that the applicant has ready and reliable access to computers and internet; this expectation itself may present a barrier. As the results of psychometric tests remain valid for 12 months, this restricts the job prospects in the NSW Government sector for people that do not perform well in the tests.

Although there are accessible forms of psychometric testing, the onus is on the hiring manager and HR staff to implement the accessible version in preliminary stages. The manager or HR staff may be reluctant to do this because they may perceive it to cause delay. The person with disability will have to disclose their disability before they sit the test so they are supplied with a test they can access. As separate psychometric tests are not comparable, HR officers are restricted and cannot simply offer an applicant who discloses disability a different test if fellow applicants are completing an inaccessible version, as the results are not comparable.

In totality, these challenges present systemic barriers to employment in the NSW government sector for people with disability.

Legal framework for protecting people with disability from employment discrimination

In Council's view, the current legal framework does not adequately protect people with disability from employment discrimination. While anti-discrimination laws, including the *Disability Discrimination Act* 1993 (DDA) provide a foundation for equality and inclusion in the workplace, the time, cost, effort and limited prospects of success involved in bringing an action against an employer is often not worth the result.

The *Disability Discrimination Act* 1993 (DDA)

The DDA gives individuals the opportunity to bring a complaint about a specific incident of employment discrimination against an employer to the Australian Human Rights Commission. While for some people with disability this may allow them to vindicate their experience of discrimination and achieve a specific outcome, it does little to achieve the systemic change required to ensure all people in society, including people with disability, have their right to freedom from discrimination upheld. The DDA has continually been interpreted by courts in a highly technical and restrictive manner and as a result there are many challenges for people with disability who seek to use the DDA to protect themselves from employment discrimination.

The following challenges created by the current operation of the DDA limit the effectiveness of the DDA. They provide some insight into why people with disability continue to experience employment discrimination.

- Number of complaints will not always reflect number of instances of discrimination

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.

When people with disability do raise concerns about discrimination with an employer or potential employer, any complaints, investigations and the outcomes of these are not reported externally. It is only when the person takes the complaint to the AHRC that these are recorded and some details of the discrimination are made available. This is why it is not always possible to gauge the extent to which people with disability experience discrimination in employment, and this supports recommendation 1 above that calls for further research on this type of discrimination.

- People who experience discrimination on the basis of disability and another form of disadvantage cannot make a single claim about discrimination based on all relevant forms of disadvantage

People with disability may face discrimination on the basis of disability concurrently with discrimination on the basis of other forms of disadvantage, including ethnicity, cultural background or gender. However, currently the DDA does not allow a

complaint to be simultaneously made under the DDA, *Racial Discrimination Act* and/or *Sex Discrimination Act.* This means separate complaints need to be made about each form of disadvantage, which could increase the time it takes to resolve the issue between the employee and employer. It is also difficult because it isn't always possible to delineate how much each form of disadvantage contributed to the discrimination.

Under NSW legislation, a single complaint can be made on the basis of multiple forms of disadvantage. [35] For example, if a person with disability from a particular ethnic background believes they have been discriminated against on the basis of their ethnicity and because they have a disability, they can make one complaint about discrimination they have experienced because of both of these factors.

Council recommends that the DDA be amended to allow a single complaint to be made simultaneously under the DDA and other relevant anti-discrimination legislation where discrimination occurs on the basis of multiple forms of disadvantage. This may increase the protection the DDA offers for people with disability who face multiple forms of discrimination.

- There are no Disability Standards for Employment

Under s 31 of the DDA the power exists to make disability standards for employment, however, disappointingly, to date no standards have been adopted.

Standards provide more detail on rights and responsibilities about equal access and opportunity for people with a disability and are legally binding. Standards would be particularly useful in the employment context to clarify the expectations placed upon employers to ensure equal employment opportunities for people with disability. Where these standards are not complied with, people with disability will be able to make a complaint in relation to a specific standard rather than on the general basis of discrimination and this may assist in improving their prospects of success. Standards are also a way to demonstrate a commitment to protecting the right of people with disability to employment on an equal basis with others.

Council recommends that the AHRC develop and implement Disability Standards for Employment that provide more detail on rights and responsibilities about equal access and opportunity for people with disability in employment.

- The concept of unjustifiable hardship perpetuates the perception that people with disability are costly

The availability of the defence of unjustifiable hardship reinforces the idea that disability is a defect of the individual that needs to be compensated for and encourages employers to focus on cost to defend their discriminatory actions.

Council notes that the defence of unjustifiable hardship is not available under any other anti-discrimination legislation – it is only available under the DDA. The defence of unjustifiable hardship is particularly easy to prove where, as there currently are, there are insufficient subsidies and support for employers to provide the reasonable adjustments that are required. As what is and what is not unjustifiable hardship is

---

[35] *Anti Discrimination Act* (1977) NSW.

different in every context and may require independent advice, cost analysis and time to establish, employers may also be able to rely on this defence to unnecessarily drag out complaints. As a result, people with disability may abandon their complaint or suffer emotionally and/or financially as they go through the drawn out process of having their complaint resolved.

Council recommends that the DDA be amended to remove the defence of unjustifiable hardship.

- The use of the narrow comparator test in establishing direct discrimination

To establish direct discrimination in employment, a person with disability must prove that they were discriminated against based upon their disability and that they were treated less favourably than a person without that disability in the same or similar circumstances.[36] Since the decision in *Purvis v State of New South Wales*, the comparator test has been read down narrowly so that the relevant comparator is a person who has only the same disability, not a person whose disability manifests in the same behaviours or limitations. Circumstances where an employer discriminates against a person because of the fact they have a disability and not the limitations or impairment of that disability rarely occur. In effect, if a person with disability is discriminated against because of a manifestation of their disability (such as behavioural manifestations for Autism Spectrum Disorder or inability to walk for paraplegia) then they will find it difficult to establish a complaint of direct discrimination.

It is disappointing that the narrow comparator test is still being applied, given that it limits the ability of people with disability to prosecute genuine discrimination claims. Council recommends that the DDA be amended to broaden the comparator test that applies to instances of direct discrimination

- Difficulty in proving discrimination in recruitment and selection cases

The DDA is designed to protect employees in situations of unequal power with their employer, but it has little effect where conscious or unconscious bias and prejudice leads an employer to choose the person without disability over the person with disability from a pool of comparable applicants. The onus is on the complainant (person with disability) to prove discrimination, which will always be difficult because the evidence required to prove discrimination is usually in the respondent's (employer's) possession. Direct evidence may not exist because discrimination is often unconscious and an employer is unlikely to admit they acted on bias in not selecting a person with disability for the role. The complainant thus usually is only able to rely on circumstantial evidence. If the complainant is unsuccessful at the conciliation stage and proceeds to court, they are likely to find it difficult to persuade the court to draw an inference of discrimination from circumstantial evidence.

- Disability Discrimination Action Plans are not common

Although the DDA encourages organisations to develop action plans to eliminate discriminatory practices, it is clear from the register on the AHRC website that many businesses have not created nor enforced disability discrimination action plans. The

---

[36] *Purvis v New South Wales* [2003] HCA 62.

plans featured on the register are mainly from public sector organisations, with few private organisations represented.

Disability discrimination action plans can be effective in helping organisations to identify where discriminatory practices exist and make a commitment to eliminating these practices. The fact that they are not mandatory and there have been no efforts in recent years to encourage employers to create disability discrimination action plans continues to undermine the effectiveness of the DDA.

Council recommends that the AHRC initiate a public awareness campaign to encourage organisations to develop Disability Discrimination Action Plans and make these a mandatory requirement of becoming accredited as a disability confident and inclusive employer

- Threat of costs orders where discrimination cases are taken to the Federal Circuit Court or Federal Court of Australia

Where complainants are unhappy with the outcome of conciliation and wish to take case to the Federal Circuit Court or Federal Court, their ability to do so will always be limited by financial implications. The jurisdiction of each of these courts to hear discrimination complaints are not no-costs jurisdictions, and thus where a complainant's case is unsuccessful they can be ordered to pay their own and the respondent's costs. Many complainants may be deterred from taking their complaint further by this potential expense, and this significantly undermines the effectiveness of the DDA and the potential protection from employment discrimination it could provide for people with disability. Council recommends that the relevant legislation be amended to make the jurisdictions of the Federal Circuit Court and Federal Court to hear discrimination cases no-costs jurisdictions.

Recommendation 27: Amend the *Disability Discrimination Act* to allow a single complaint to be made simultaneously under the DDA and other relevant anti-discrimination legislation where discrimination occurs on the basis of multiple forms of disadvantage. (E.g. disability AND ethnicity or gender)

Recommendation 28: Develop and implement Disability Standards for Employment that provide more detail on rights and responsibilities about equal access and opportunity for people with a disability in employment

Recommendation 29: Amend the *Disability Discrimination Act* to remove the defence of unjustifiable hardship.

Recommendation 30: Amend the *Disability Discrimination Act* to broaden the comparator test that applies to instances of direct discrimination

Recommendation 31: Initiate a public awareness campaign to encourage organisations to develop Disability Discrimination Action Plans and make these a mandatory requirement of becoming accredited as a disability confident and inclusive employer

Recommendation 32: Amend the relevant legislation to make the jurisdictions of the Federal Circuit Court and Federal Court to hear discrimination cases no-costs jurisdictions.

Factors contributing to positive employment outcomes for people with disability

Although the evidence suggests the majority people with disability have negative employment experiences and face many barriers to obtaining and retaining employment, there are many insights to be gained from those who have experienced positive employment outcomes. It is clear that there are a range of factors that contribute to positive outcomes for people with disability in employment, including:

- Career support that is individualised, tailored and integrated with other supports and works together with other supports to meet the needs of the person with disability.
- Working with employers to identify roles that match the skills and experience of people with disability and accommodate the diversity of ability that exists in the community.
- Inclusive and fair recruitment practices that anticipate and accommodate people with disability
- Equal Employment Opportunity policies, which may include a commitment to including a statement of diversity and inclusion in the role description of all advertised positions and thus 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.
- Employer's focusing on a person's ability rather than disability, as this can counter prejudicial attitudes and ignorance about what a person with disability is capable of.
- Senior management championing inclusion in the workplace by committing to inclusive practices and working with people with disability to advance their employment.
- Disability-confident employers who have the knowledge, understanding and capability to employ people with disability – employers with experience in employing people with disability will be able to build on their experience and provide more positive outcomes for new employees with disability.
- Normalising the employment of people with disability by not employing out of exception or special treatment, but because people with disability have skills and experience the workforce and community can benefit from.
- Culturally and linguistically relevant support from disability employment service providers to help people with disability from CALD backgrounds find employment that is appropriate to their cultural and linguistic needs.
- Mentoring and/or one-on-one training and interaction between people with disability who have retained employment in a field of their choice and people with disability looking for work.
- Commencing employment support for people with disability before they leave school and following it up immediately after they leave school to give school-leavers with disability a better chance at obtaining a job of their choice.
- 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 internships.

- Career support that is flexible to peoples changing needs and aspirations.
- A focus on long-term career planning and capacity building rather than merely placement of people with disability in any available job.

The below case study highlights how some of these factors intersect and work together to provide positive employment outcomes for people with disability.

Case Study: Josh

Josh has Autism Spectrum Disorder and has always been fascinated by cars and numbers. He has a photographic memory and is able to instantly recite the specifications and features of thousands of car models. He is also easily able to memorise numberplates and numbers.

Josh commenced work experience internships while still at school and was encouraged and supported to find internships that aligned with his interests. He was also supported to find a transition to work provider in his area that met his needs and in his final term of school attended the transition to work program one day a week to assist with the post-school transition to the program.

Josh completed the two and half year transition to work program in mid 2014. During the program, Josh learnt many new skills including how to write a resume, present himself at interviews, organise and manage his time and use public transport to get to and from work independently. Josh also undertook a number of work experience placements at retail outlets, restaurants and car dealerships.

Upon completion of the transition to work program, Josh's family and employment consultant were concerned that Josh would be unable to obtain his dream job in a car dealership. Josh is easily distracted when around cars and will often try and look into or sit in other people's cars without asking.

Josh's employment consultant worked with potential employers to identify roles that would allow Josh to use his unique skills and identify solutions to any challenges Josh would face in these roles. At times this was difficult because many employers had never employed a person with disability before and were concerned that Josh would require too much extra support, supervision and assistance. However, the individual, tailored support of the job consultant helped Josh to gain employment as a spare parts interpreter in a spare parts warehouse three days a week. In this role, Josh applies his knowledge of car specifications and parts and utilises his excellent memory skills to source the correct parts to send to smash repairers and dealerships.

One year on, Josh has increased his work hours and now works five days a week. Josh's employer had never considered employing a person with disability previously, but is so impressed by Josh's positive contribution to the workplace that they are now working to identify other roles that can be filled by people with disability.

The above case study highlights how individualised, tailored support can help to break down barriers to meaningful employment and overcome discrimination. It also highlights the importance of commencing employment support early, before and immediately after people with disability finish school can lead to more positive employment outcomes. It is an example of how working with employers to change attitudes and identify strategies to overcome any barriers in the workplace can lead to positive outcomes for people with disability in employment.

Reference List

Ageing, Disability and Home Care NSW, *From Protection to Productivity: An Evaluation of the Transition to Work Program* (2009) available at: https://www.adhc.nsw.gov.au/__data/assets/file/0020/240374/Evaluation_of_the_Transition_to_Work_Program_Report.pdf

Anti Discrimination Act (1977) NSW.

Australian Bureau of Statistics, *Disability Ageing and Carers Australia: Summary of Findings* (2012) available at: http://www.abs.gov.au/ausstats/abs@.nsf/mf/4430.0

Australian Bureau of Statistics, *Disability and work, Australian Social Trends* (2012) available at: http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features40March+Quarter+2012

Australian Disability Enterprises, *What are ADEs?* (2015) available at: http://www.ade.org.au/what-are-ades

Australian Government Department of Human Services, *Pensioner Concession Card* (2015) available at: http://www.humanservices.gov.au/customer/services/centrelink/pensioner-concession-card

Australian Human Resources Institute*, Recruiting people with disability: an employer perspective* (2011) available at: https://disabilityemployment.org.au/static/items/disability_employment_report_web.pdf

Australian Public Service Commission, *RecruitAbility* (2015) available at: http://www.apsc.gov.au/priorities/disability/recruitability

Deloitte Access Economics, *The economic benefits of increasing employment for people with disability* (2011) available at: http://www.and.org.au/data/Conference/DAE_Report_8May.pdf

Department of Social Services, *Disability Employment Framework Round Two Discussion Paper* (2015) available at: https://engage.dss.gov.au/disability-employment-framework-2/disability-employment-framework-discussion-paper/

Department of Social Services, *Personal Helpers and Mentors Scheme* (2015) available at: https://www.dss.gov.au/our-responsibilities/mental-health/programs-services/personal-helpers-and-mentors-phams

Disability Employment Australia, *Real Work, Real Pay and Real Careers* (2013) available at: http://disabilityemployment.org.au/news/item/1355/

Fair Work Ombudsman, *Fair Work Ombudsman Discrimination Policy Guidance Note* (21 December 2012) available at: https://www.fairwork.gov.au/fwoguidancenotes/GN-6-FWO-Discrimination-Policy.rtf.

Federation of Ethnic Communities' Councils of Australia (FECCA), *Engaging people with disability in the multicultural sector: barriers to accessing services and employment* (2014) available at: http://www.fecca.org.au/images/Documents/disability%20survey%20report.pdf

Graffam, J. et all, *Employer benefits and costs of employing a person with a disability* (2002) Journal of vocational rehabilitation Vol. 17 (4).

Hahn, M., & Wilkins, R. *Perceived discrimination in Australia: Its correlates and consequences.* Melbourne Institute Working Paper No.9/13, Melbourne Institute of Applied Economic and Social Research, The University of Melbourne (2013) available at: https://www.melbourneinstitute.com/downloads/hilda/Bibliography/Working_Discussion_Research_Papers/2013/Hahn_etal_Perceived_job_discrimination.pdf.

Hogue, K., Bacon, N. and Parr, D. *Employer disability practice in Britain: assessing the impact of the Positive About Disabled People 'Two Ticks' symbol* (2014) Work Employment & Society Vol. 28 (3).

Hunter, R. Indirect Discrimination in the Workplace (Federation Press, 1992).

Mental Health Commission, *A Contributing Life: the 2012 National Report Card on Mental Health and Suicide Prevention* (2012) available at: http://www.mentalhealthcommission.gov.au/media/39292/NMHC_ReportCard_2012_05_Work_and_employment.pdf

Mungovan, A & Quigley, F, *Choosing your path. Disclosure: It's a personal decision* (2009) University of Western Sydney and University of Ballarat, available at: http://pubsites.uws.edu.au/ndco/disclosure/pdfs/disclosure.pdf

Office of State Revenue NSW, *Payroll Tax Rebate Scheme – Disability Employment* (2014) available at: http://www.osr.nsw.gov.au/sites/default/files/file_manager/ofs_pt8.pdf

Perry, E. et al., *An exploration of access and treatment discrimination and job satisfaction among college graduates with and without physical disabilities* Journal of Human Relations Vol. 52(7).

Public Service Commission NSW, *Workforce Profile Report June 2015* (2015) available at: http://www.psc.nsw.gov.au/reports---data/workforce-profile

Public Service Commission NSW, *People Matter Employee Survey 2014* (2014) available at: http://www.psc.nsw.gov.au/reports---data/state-of-the-sector/people-matter-employee-survey/people-matter-employee-survey-2014

Purvis v New South Wales [2003] HCA 62.

Rice,S, *It Just Doesn't ADD Up: ADHD/ADD, the Workplace and Discrimination* (2010) Melbourne University Law Review Vol. 12 (34) (2) available at: http://www.austlii.edu.au/au/journals/MelbULawRw/2010/12.html#fn8

United Kingdom Government, *Recruitment and Disabled People* (2015) available at: https://www.gov.uk/recruitment-disabled-people/encouraging-applications

United Nations Convention on the Rights of Persons with Disabilities (2008) available at http://www.refworld.org/docid/45f973632.html.

United States Internal Revenue Service, *Tax Benefits for Businesses Who Have Employees with Disabilities* (2015) available at: https://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Tax-Benefits-for-Businesses-Who-Have-Employees-with-Disabilities