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

**Submission No 208**

**Name** Shop, Distributive and Allied Employees’ Association (SDA)

**Submission made by**

[x]  Trade union

 **Organisation or Government Agency Submission**

* + 1. ***About you***

**What is your role within your organisation?**

[ ]  Owner

[ ]  Manager

[ ]  Human Resources Manager

[x]  Other

**If other, please tell us your role within your organisation**

National Women’s Officer

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

The SDA advocates on behalf of members at work and in the relevant legal jurisdictions.

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

The SDA surveyed members using the AHRC survey. Our submission includes 347 survey responses. Our submission includes experiences provided in the survey responses and examples from our advocacy role.

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

See Submission

* + 1. ***Barriers***

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

[x] Yes

[ ] No

[ ] Not sure

**Please tell us more**

See Submission **[attached]**

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

[x] While working in a job

[x] While looking for work

[ ] While dealing with recruitment companies

**Please tell us more**

See Submission **[attached]**

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

See Submission **[attached]**

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

[x] Yes

[ ] No

[ ] Not sure

**Please tell us more**

See Submission **[attached]**

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

**Incentives**

See Submission **[attached]**

**Disincentives**

See Submission **[attached]**

* + 1. ***Good practice***

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

[x] Yes

[ ] No

[ ] Not sure

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

See Submission **[attached]**

* + 1. ***Solutions***

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

See Submission **[attached]**

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

See Submission **[attached]**

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

See Submission **[attached]**

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**AHRC**

**WILLING TO WORK – NATIONAL INQUIRY INTO EMPLOYMENT DISCRIMINATION AGAINST OLDER AUSTRALIANS AND AUSTRALIANS WITH DISABILITY**

###### SUBMISSION BY

*SHOP, DISTRIBUTIVE & ALLIED EMPLOYEES' ASSOCIATION*

**December 2015**

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**Introduction**

1. The Shop, Distributive and Allied Employees’ Association (SDA) is Australia’s largest single trade union with over 215,000 members. The SDA has membership in retail, fast food, warehousing, hairdressing, pharmacy and modelling.
2. The SDA welcomes the opportunity to make a submission to the AHRC regarding the Willing to Work National Inquiry.
3. The SDA sees first-hand the level of discrimination experienced by older workers and workers with a disability in Australian workplaces. Such discrimination impacts not only on their working life, but all aspects of life including family, financial, physical and mental.
4. As part of our submission we have collected over 340 survey responses from members. Attachment A of our submission provides a summary of responses from some of the survey questions. Attachment B1, B2 and B3 provide the individual survey responses **[not published to protect privacy]**.
5. Our survey results show that:
	* Over 65% of respondents have experienced discrimination
	* 84% believe older workers and workers with a disability face barriers when they look for, or are in, a job
	* 77% believe employment discrimination has an impact on gaining and keeping a job
6. Throughout our submission we will refer to examples of discrimination and the survey responses to demonstrate some of the issues which are particularly relevant for our members.
7. The SDA is greatly concerned with the current system and look forward to the recommendations this Inquiry will make to assist in improving the effectiveness of anti-discrimination and other legislation in promoting equality for older workers and workers with a disability.
8. The SDA is particularly interested in ensuring effective preventative measures are legislated, and where breaches occur, having appropriate mechanisms which provide just, low cost and speedy resolutions to complaints.
9. The SDA believe this is an important opportunity to address not only the inherent failings of the current anti-discrimination legislation but also other legislation which is discriminatory towards older workers and workers with a disability such as superannuation, taxation and workers compensation legislation.

**SDA RECOMMENDATIONS**

**Recommendation 1**

**There needs to be a clear framework of rights and responsibilities which is consistent between jurisdictions, in particular Work Health and Safety (WHS) and the *Disability Discrimination Act 1992*.**

**Recommendation 2**

**Amend the WHS Act to clarify how it interacts with an employers’ obligations with regard to ill or injured workers under the *Disability Discrimination Act 1992.***

**Recommendation 3**

**A greater compliance focus from the Regulator and better education for employers about their obligations.**

**Recommendation 4**

**The relevant Government Authorities be funded to investigate breaches and ensure compliance with the *Disability Discrimination Act 1994* and WHS obligations and that an enforceable Code of Practice be developed in consultation with appropriate stakeholders regarding the obligation to provide reasonable adjustments.**

**Recommendation 5**

**Amend S351(b) of the *Fair Work Act 2009* (FWA) to replicate the *Disability Discrimination Act 1992 (DDA)* to include all elements of the DDA test for determining discriminatory conduct not just ‘inherent requirements’ but also whether ‘reasonable adjustments’ could have been made without ‘unjustifiable hardship’. This would prevent the creation of a sub-standard discrimination jurisdiction which allows for widespread discrimination in employment.**

**Recommendation 6**

**Ensure greater protection, regulation, investigation and compliance necessary to prevent bullying and harassment which results from disability in the workplace.**

**Recommendation 7**

**The SDA strongly recommends the following amendments to Section 65 of the *Fair Work Act 2009*:**

* + **Removing the qualification requirements in section 65(2)(a) of the FWA (ie the requirements for 12 months service)**
	+ **Introducing a positive duty on employers to reasonably accommodate a request for flexible working arrangements**
	+ **Establish an appeals process through the Fair Work Commission for decisions related to s65 of the FWA , the right to request flexible working arrangements including the ability for employees to appeal an employer’s decision to refuse the request.**

**Recommendation 8**

**Remove discriminatory age exclusions for workers compensation legislation to ensure equal access to workers compensation for all injured employees regardless of age.**

**Recommendation 9**

**A review of current Workers Compensation schemes to ensure there is a genuine focus on rehabilitation and return to work outcomes, rather than insurance/financial driven outcomes.**

**Recommendation 10**

**Remove discriminatory age exclusions for concessional taxation rates on redundancy payments.**

**Recommendation 11**

**That the Government legislate against the denial of insurance** **coverage, including income protection and Total and Permanent Disability (TPD), on the basis of age, and that the government provide financial incentives to combat increased premiums as workers age, such as tax rebates.**

**Recommendation 12**

**The *Age Discrimination Act 2004* and the *Disability Discrimination Act 1992* should prohibit discriminatory requests for information.**

**Recommendation 13**

**Legal advocacy and advice should be made available to complainants to assist them through the complaints process.**

**Recommendation 14**

**That a variety of measures need to be adopted to ensure that the conciliation and court process in anti-discrimination cases are more accessible and effective. It must be more transparent, more timely, less costly and provide greater support remedies and outcomes for claimants.**

**Recommendation 15**

**The role and functions of the Australian Human Rights Commission must be greatly enhanced to provide for inquisitorial powers, investigative powers and determinative powers. The AHRC must be sufficiently funded to operate as an effective research, education and enforcement body.**

**Recommendation 16**

**That the burden of proof under discrimination legislation should shift to the respondent once the complainant has established a prime facie case of discrimination, as is the case in the *Fair Work Act 2009*.**

**Recommendation 17**

**That the government reinstate the role of the Federal Disability Discrimination Commissioner.**

**SDA SURVEY RESULTS**

1. The SDA conducted a survey of members using Survey Monkey based on the AHRC Submission Form 1: Submission regarding Older Australians/ Australians with Disability / Both. The SDA received over 340 responses from members which provided a range of experiences and examples regarding both disability and age discrimination, the reasons why members often don’t make complaints and a variety of suggestions to address employment discrimination.
2. **Attachment A** of this submission provides a summary of responses to several questions. This summary demonstrates that:
	* Over 65% of respondents have experienced discrimination
	* 84% believe older workers and workers with a disability face barriers when they look for, or are in, a job
	* 77% believe employment discrimination has an impact on gaining and keeping a job.
3. It is clear from the responses that our members have many issues and concerns regarding current workplace practices which they perceive create barriers to employment for older workers and workers with disability. It is also clear that most of our members who had experienced discrimination were not willing to make a complaint about the discrimination.
4. Many of our members also suggested a variety of measures which they believe could be taken to prevent discrimination against older workers and workers with disability.
5. Question 8, 9 and 10 of the SDA survey asked members if and what barriers older workers and workers with a disability face when they look for or are in a job, and whether employment discrimination impacts older workers and workers with disability gain and keep employment. Most of our members believe barriers do exist for older workers and workers with disability. The barriers for workers with disability included unreal expectations and hard to reach bench marks, jobs advertised with additional duties which stop workers applying and attitudes and understanding, or lack of understanding of disabilities. (See **Attachment C**)
6. The barriers for older workers included being more likely to be in job for less time, technology, reluctance to spend money on training older workers, competing with cheaper young workers, attitudes – perceived as a burden, physical limitations, liability on wages. (See **Attachment C** for full responses)
7. Question 5 of the survey asked respondents if they took any action in relation to employment discrimination. Question 6 asked for details regarding any action taken including how effective it was or why they may have chosen not to take action. Most of our members chose not to take any action in relation to discrimination. It is clear from these responses that the current system doesn’t support employees to make complaints.
8. The main reasons given for not making a complaint related to fear of repercussion and victimisation, losing their job or hours etc., not being able to prove it, not believing it would make a difference or due to the perceived stress created by making a complaint. (See **Attachment C** for full responses).
9. The final three questions of the survey asked; ‘what action should be taken to address employment discrimination’; ‘what should be done to enhance workforce participation’ and ‘what outcomes or recommendations would you like to see from this National Inquiry?’. Our members made the following broad suggestions (See A**ttachment C for** full responses):
	* 1. More penalties for discrimination
		2. Tax incentives/subsidies for employers who employ older workers and workers with disability
		3. Education for employers/managers regarding disability and ageing workforce
		4. Training programs for older workers and workers with disability
		5. Review of discrimination legislation and improved access to a just, simple and independent complaints process
		6. Quotas/laws which obligate companies to hire older/disabled workers
		7. More flexible workplaces

**EMPLOYMENT DISCRIMINATION AGAINST EMPLOYEES WITH DISABILITY**

1. The right for Australians to have access to and maintain meaningful employment is a fundamental human right which provides the ability to live independently and with dignity. A fundamental right for Australians with disability is that they have equal access to employment.
2. Unfortunately, labour participation rates for people with disability in Australia are low, 52.8%, compared with 82.5% for people without a disability. These rates have seen little improvement since 1993 when labour force participation rates for people with a disability was 54.9%.[[1]](#footnote-1)
3. In response to the *AHRC National Disability Forum Survey 2014*, people with a disability ranked work and employment as the second most important human rights issue.[[2]](#footnote-2)
4. Consistent with the responses from our members, the *AHRC National Disability Forum Survey 2014* reported that people with a disability rank flexible workplace practices as the fourth most important issue requiring attention, and reasonable adjustments or reasonable accommodation as the seventh most important issue.[[3]](#footnote-3)

‘*Many respondents commented on the limitations of existing legislative protections, including the Disability Discrimination Act, and the need for strengthened laws, enforceable standards, monitoring processes for increased accountability and sanctions for non-compliance with certain laws and standards’*[[4]](#footnote-4).

1. Many of the responses to the SDA survey suggested strengthening laws; the need for greater compliance; increased penalties; and better access to a simple and effective complaints process. These issues we address in more detail later in our submission.

**Disability Discrimination and Work Health and Safety (WHS)**

1. The SDA has seen a disturbing trend emerge over the past decade of the use of Work Health and Safety (WHS) legislation to undermine and exclude workers with disabilities. Current WHS practices encourage a generic response to disability discrimination which is drastically failing those with disabilities. The misuse of WHS legislation to override other legal obligations has become common place.
2. The primary source of legal responsibility for workplace health and safety is derived from the relevant state WHS Act. Under this Act an employer has a general duty of care to ensure the workplace, so far as reasonably practical, is safe and healthy. This general duty extends to all employees, including those with a disability (whether permanent or temporary). The WHS Act requires employers to provide a healthy and safe workplace and safe systems of work. ‘Safe systems’ can include things such as work hours, rosters, overtime and work duties.
3. However the duty to provide safe workplaces and safe systems of work may sometimes conflict with the needs of employees with a disability. An employee with a temporary disability may not be able to perform their duties for a period of time until they fully recover. They may therefore need to return to work on limited, light or suitable duties. An employee with a permanent or ongoing disability may need permanent adjustments made to the workplace or systems of work in order to be able to do the job.
4. The SDA experience is that overwhelmingly employers believe the worker with a disability poses a safety risk to themselves and/ or a risk to the health and safety of others in the workplace by continuing to work while not being ‘fully fit’ and ‘healthy’. The main reason for this argument is an employer wanting to mitigate against any possible liability. Employers increasingly refuse to permit injured, ill or workers with a permanent or temporary disability to return to work until they are fully fit to return to their full duties, whether the injury or illness is work related or not. Employers do so with no consideration or regard for the provision of reasonable accommodations.
5. All Branches of the SDA report regular complaints from members regarding their treatment when ill or injured. This not only includes returning to work after a workplace injury but also in relation to illness or injury outside of work or matters arising from a disability. The treatment of these workers ranges from completely ignoring medical certificates or failing to accommodate basic reasonable adjustments outlined in medical certificates to being stood down until they can provide a ‘full’ clearance.
6. The misunderstandings of WHS legislation, and the failure of employers to fully understand their legal obligations under the *Disability Discrimination Act 1992* (DDA), and how the two interact is greatly affecting the opportunity for meaningful and engaging work for people with disabilities. This comes at not only a great personal cost to employees but also has a substantial social and economic cost to the community at large.
7. WHS legislation provides that the primary duty holder (employer) provide a workplace which is safe for employees. It does not mandate that an employer cannot have an injured or ill worker or worker with disability on site, whether work-related or non-work-related, because they pose a danger to the workplace.
8. WHS legislation is being used against individuals with employers claiming the ‘employee is unsafe’ rather than seeing the unsafe work practice or system of work for that employee. Even though the primary duty is to provide a safe and healthy workplace.
9. It is not the intention of WHS legislation that injured employees equate to dangerous or unsafe employees, yet WHS legislation is being manipulated in workplaces across Australia to this exact effect. It is this shift in basic understanding of the WHS Act which is causing workers with disabilities to be continually excluded from workplaces.
10. The SDA had a recent example of a large company unjustly using WHS as an excuse not to accommodate and make reasonable adjustment for a long term employ with a disability under the guise of WHS:

*A long term employee working in the loading bay of a large national department store experienced a seizure at work due to epilepsy which he has had since birth. The employee had never had an epileptic seizure at work before. As a result of the seizure the company attempted to move the employee from his role in the loading bay to a position on the shop floor which is a significantly different role because they perceived his condition as a threat to health and safety even though nothing in his medical certificate indicated that this was the case. Rather than make slight adjustments to our members working arrangements the company tried to force our member to change his role within the store which he had been doing without incident for a number of years. Following union involvement over a number of months, and the assistance of Epilepsy Tasmania at the request of the union, the issues for our member were resolved and the store was provided with education regarding epilepsy and how it may impact the workplace.*

1. **The SDA recommends that there needs to be a clear framework of rights and responsibilities which is consistent between jurisdictions, in particular the *Model Work Health and Safety (WHS) Act* and the *Disability Discrimination Act 1992*.**
2. **The SDA recommends that the *Model Work Health and Safety (WHS) Act* be amended to clarify how it interacts with an employers’ obligations under the Disability Discrimination Act 1992.**
3. **The SDA also recommends a greater compliance focus from the regulator and better education for employers about their obligations.**

**Disability Discrimination and ‘reasonable adjustments’**

1. Disability discrimination in employment is a significant issue for members of the SDA. Issues for our members arise in relation to both work-related injuries, which result in ongoing or permanent restrictions, and any needs which arise as a result of an injury which incurred outside of work, or a permanent or temporary disability. Often issues for our members arising from a disability are around conditions where symptoms are not always visible or come and go, for example conditions such as epilepsy and mental illness.
2. It is of great concern that many employers have little regard for their legal obligations in this area. They regularly fail to make accommodations of any kind, even where the reasonable adjustments for the disability are needed on a temporary basis.
3. The current *Disability Discrimination Act 1992* provides an explicit duty for employers to make ‘reasonable adjustments’ on an individual / case by case basis, taking into consideration the circumstances and needs of that individual. However, it is our experience that employers make generic policy decisions about job descriptions and task analysis which results in inflexible and discriminatory outcomes for our members.
4. The SDA recently had a very serious case where a company applied a blanket rule of not permitting transfers between states if an employee had any disability which required permanent work restrictions:

*A member was a long term employee of a large national supermarket chain had been experiencing domestic violence. In order to escape domestic violence our member applied for a transfer within the business to another state. After no contact from the company regarding the application our member contacted the SDA for assistance. In advocating on her behalf we discovered that despite the fact the company knew the reason for the transfer request and the significant immediate danger our member was in, the company had decided to refuse the transfer because the state she wanted to transfer to had a blanket rule of not accepting any employees who had any kind of work restrictions. Our member’s issue was only satisfactorily resolved after several meetings and the intervention of senior level corporate HR. This is despite the fact they were discriminating against our member on the grounds of disability and that she had worked without issue with reasonable adjustments with the company for 2 years prior to the request.*

1. The SDA regularly receive complaints from members who have been unable to get their employer to make reasonable, and often very minor, adjustments to their duties, hours or work systems which would assist them to work with their disability, whether on a temporary or permanent basis and whether the disability is work related or not.
2. There is a great deal of pressure put on workers with injuries, illnesses and disabilities. Most of this pressure is designed to ultimately remove them from the workplace. Some of the behaviors our members are subjected to when ill or injured include; :
* Employers refusing to accept ill and injured employees back to the workplace even when a doctor has cleared them to return to work, or when their workers compensation claim has been successfully closed and they are fully recovered and ready to return to their jobs.
* Employers, insurers and employer representatives attending medical consultation/examination/ appointment with ill and injured workers;
* Employers challenging doctors’ certificates and not accepting medical information from GP’s, unless they are a company GP.
* Employers forcing ill and injured workers to attend company doctors. (Including arranging the appointment, changing the appointment, collecting them from their home and driving them to the appointment)
* Ill and injured workers being subjected to constant medical assessments and functional capacity assessments even though their treating doctor has cleared them to return to work
* Workers being required to undergo regular medical assessments with company doctors as part of their ongoing employment.
* Medical information being used by third parties and without the consent of workers (e.g Superannuation funds, Insurers, government departments etc)
* Lack of consultation and engagement with injured workers in the Return To Work process
* Full access is being sought by employers to **all** health information, rather than that which pertains to the injury, illness or disability;
* The use of the ‘lawful and reasonable’ direction to force workers to reveal medical information and attend unnecessary ‘independent” medical assessments
* Medical certificates and suitable duties/ return to work plans not being adhered to
* Ill or injured workers being refused work because they are deemed not ‘fit for work’ with no consideration of reasonable accommodations.
* Ill or injured workers being told that by being injured, whether presently or in the past, they now pose a ‘risk ‘ to the business or organisation and as such face the termination of their employment.
* The “duty of care” is being used by employers to remove ill and injured workers from the workplace;
1. A recent example of an employer failing to provide reasonable adjustments based on a medical certificate was:

*A long term part-time employee of a national supermarket chain who has epilepsy experienced a seizure and as a result her doctor provided a certificate to say she could not work beyond 6pm for a period of 6 months. At that time our member worked 7 shifts per fortnight, 3 of which finished at 8pm and two finishing at 7.30. The store would not provide alternative shifts finishing at 6pm, instead they forced our member to accept a reduction in hours even though our member was available from 9am-6pm every weekday and every second weekend and willing to work in any position in the store. As a result our member lost over $450 in wages over the four week roster cycle. This is in a store that trades extended hours seven days a week, and despite the fact the requested change was only for a 6 month period. This has since been resolved with union involvement.*

1. The above example is representative of the types of small adjustments that our members seek in order to work with a disability, which are regularly refused by employers.
2. The following are further examples taken from the SDA Survey responses:

 #39

*I had an accident outside of work but was not allowed to come back to work unless I said I was fully capable of doing my job. I was not allowed to come back doing light duties as my department at work really has no light duties but there was no consideration to allow me to work in another department. I lost the position that I had prior to my accident.*

*I didn't take any action because basically I was told that if I wanted my position I could sit "on bench" until something in another store came up, or stand down. Because of family situations I feel that they knew that I would stand down rather than possibly be transferred to a store many kilometres away.*

*I am not physically capable of working at working at an extra fast pace anymore or reaching to extremes. But I am criticised for being too slow and expected to finish a list of tasks which my manager knows will infringe on my personal time and so effectively I am working many extra hours a week for no pay.*

*#95*

*As I have diabetes and am on insulin I need regular breaks. I have supplied a letter from my doctor at the request of the manager yet I am still not getting breaks when required as there is so many changes to supervisors and they don't seem to understand the importance. I have worked through several hypos caused by to long between breaks.*

*#99*

*I was working in a private school uniform shop. I had a seizure at work and was diagnosed with possible epilepsy and a non-malignant meningioma. I had to take time off and was told my job would be held for me. When I was able to return to work I was told they had restructured and my job was gone, as I was a casual I had no redress.*

*#113*

*Knew a mature lady who work in administration for more than 20 years and all was well until she had problems with her fingers and had to have numerous surgeries to make her better. Yet she was always a top worker, and she was a full time worker, so when ask to have shorter shift management turn her down and terminated one morning when she came to work management told her that she was no longer needed. And I am afraid that one day that can happen to me.*

 *#212*

*I was of work for 3 months with an illness. I was cleared by dr to return on light duties and no night work about a month before I returned fully to work but was refuse light duties. Was told that if I couldn't work all shifts I couldn't do any. So therefore I had to take leave without pay and caused me hardship. Didn't take any action as I didn't think I could as it wasn't a work related illness or injury. This cause finically hardship as I then had to take leave without pay for about month.*

*#237*

*I had a heart attack and asked to do a different job with less heavy lifting strain and stress and was told the only job they would offer me was the job I had been doing for 5 years night fill in the freezer. I explained I'm 51 and now have coronary heart disease. I begged but to no avail so came back to my old job otherwise I wouldn't have a job.*

*#285*

*I took action in the form of attempting to acquire accommodation for my disability - different work responsibilities, shift changes, accommodation like a chair (due to physical disability preventing long-term standing). These were only occasionally permitted, and I with a great deal of reluctance on my employer's part. Eventually, I ceased to enquire due to long-term ignoring of my disability.*

*Took less and less work, as well as sick leave, was given less shift offers, developed anxiety relating to this. Eventually 'fired' due to a non-working period of six months (I was not offered work and my calls to ask were rebuffed), although I was not informed of such (except by termination of my ability to use the employee web portal)*

*#303*

*Had to have time off for a hip replacement before the operation the Dr gave me a letter asking that I had to go on light duties. After giving this to my manager, the next day I was told that I had to take leave without pay because there was no light duties at the store. I explained that I would sign a letter saying that if I hurt myself at all I would not take action against the company as it was wear and tear injury. I was told that they would not accept it and I wasn't allowed to return to work until I had a full clearance from the surgeon after my operation.*

1. **The SDA recommends that the relevant Government Authorities be funded to investigate breaches and ensure compliance with the Disability Discrimination Act 1994 and WHS obligations and that an enforceable Code of Practice be developed in consultation with appropriate stakeholders regarding the obligation to provide reasonable adjustments.**

**Disability Discrimination and the Fair Work Act**

1. The SDA has great concerns about the structure and intent of the disability discrimination provisions in the *Fair Work Act* (2009) (FWA). Section 351 fails to reflect Commonwealth discrimination legislation to the point where it only affords minimal, if any, protection from discrimination for those with a disability in the workplace.
2. S351(2)(b) of the *Fair Work Act* (2009) provides an exemption to adverse action on account of discrimination, where the action is taken because of the inherent requirements of the particular position concerned. The consequence of this provision is an employee can legally be discriminated on the grounds of disability in their employment where the inherent requirements of a position cannot be met. This is inconsistent with the *Disability Discrimination Act 2004* (DDA) which requires three elements be considered for the purpose of determining discrimination; inherent requirements, reasonable adjustments and unjustifiable hardship.
3. Under the DDA ‘inherent requirements’ are but one part of the test in determining discriminatory conduct. The second and third parts of the test are whether ‘reasonable adjustments’ could have been made by the employer without causing ‘unjustifiable hardship’ to that employer. However the FWA does not provide part two and three of the long standing test which applies in both state and Federal disability discrimination legislation. This is not an acceptable position. All elements of the test should require consideration when determining whether discriminatory conduct has occurred. The FWA must be amended so that the principles of anti-discrimination legislation are consistent across jurisdictions.
4. The ‘inherent requirements’ exemption should remain balanced with the concept of ‘reasonableness’ and ‘unjustifiable hardship’. It is of great concern that the Fair Work Act (FWA) (2009) does not adequately reflect both State and Federal discrimination legislation and has deviated so dramatically to the detriment of those employees with a disability in the workplace.
5. The disability discrimination provisions in the FWA have the effect of creating a sub-standard discrimination jurisdiction which allows for widespread disability discrimination to occur in employment. This parallel, sub-standard discrimination jurisdiction only creates greater confusion for duty holders and for those with disabilities. It is most disappointing that at a time when the positive duty to make reasonable adjustments was being inserted into the Federal Disability Discrimination Act, the Federal employment legislation was drastically eroding the rights of people with disabilities in employment. The FWA is creating a body of case law which has greatly diminished the rights of those with a disability in the workplace and treats employment differently from other areas of life.
6. **The SDA recommends that the Fair Work Act 2009 be amended to include the ‘reasonable adjustments’ and unjustifiable hardship’ tests consistent with Commonwealth anti-discrimination legislation.**

**Disability Discrimination and discriminatory requests for and use of personal information**

1. In recent years it would seem that employers believe they have an unequivocal right to know anything and everything about a prospective or current employee. It would appear that the line between a work life and a private life is becoming increasingly blurred. It is our experience that employers are demanding, and getting access to, a whole range of personal information which can, and is being used for discriminatory purposes. This is particularly true in regard to disability with more and more requests for personal health information and testing. The request for such information is often made under the guise of (misunderstood) WHS obligations.
2. Employers have been given unfettered access to the health records of employees and are subjecting employees to pre-employment medical testing, drug and alcohol testing, and even DNA testing in some instances, to determine pre-dispositions to medical conditions and diseases.
3. Employers are also engaging in private discussions with employees’ treating doctors when the employee is not present. They are physically attending an employee’s medical consultation, without consent. They are requesting and receiving an employee’s ***full*** medical history which goes well beyond the information needed to effectively deal with a workplace injury or disability.
4. It is disappointing that the *Privacy Amendment (Private Sector) Act 2000* (C’W) which sets out the National Privacy Principles (NPP) affords no protection to the health information of employees, due to the employee records exemption. This exemption has allowed employers to obtain personal and sensitive health information which goes far beyond the bounds of the employment relationship.
5. An employee is also prevented under NPP6 from accessing their personal information in an employee record. Therefore it would be difficult, if not impossible, for an employee to ascertain the extent and nature of the information known about them by their employer and whether that information was the basis of discriminatory action against them.
6. Employers have increasingly focused their ‘safety’ initiatives on health and wellbeing programs which look more at lifestyle choices than workplace factors. While these programs may be with the consent of the employee and sound like a positive workplace initiative, the reality is that a whole range of health and other lifestyle information is being collected in these programs. It has become commonplace for employers to ‘screen’ workers for unhealthy lifestyle choices in the workplace. However, the question must be asked as to the relevance of and purpose for the collection of this information. This greatly impacts on people with disabilities as they become actively and covertly excluded from the workplace.
7. There have been some well documented cases in relation to discriminatory questions being asked on application forms as part of recruitment processes. An example of the extent of private medical information being sought by employers was highlighted in a newspaper article from October 2013 in WA Today <http://www.watoday.com.au/wa-news/chevron-recruitment-form-asks-how-many-stillbirths-an-applicant-has-had-20131009-2v8c7.html>.
8. This employer was using a 7 page recruitment form titled Medical History & Physical Examination. This form contains invasive questions with one section asking if prospective employees have experienced 74 different conditions, with an additional item for female workers containing questions regarding their menstrual cycle and capability of bearing a child. Clearly the vast majority of the questions contained in the form do not relate to specific duties of the position an applicant may be applying for nor would they assist in determining if an employee could perform the inherent requirements of the job.
9. More recently, the SDA has been provided with a job application currently being used by a fast food retailer which again asks questions relating to an employees’ medical history and fitness for work. The relevance of the questions to determining whether the applicant meets the inherent requirements of the job is questionable. (Please see **Attachment D** for a copy of this form).
10. **The SDA recommends that the *Disability Discrimination Act* *1992* and the *Model Work Health and Safety (WHS) Act* should clarify the prohibition of discriminatory requests for information particularly where they relate to WHS and Workers Compensation claims.**

**Disability Discrimination and Bullying and Harassment**

1. Many of our members who experience disability discrimination commonly report experiencing bullying and harassment as a result. The bullying and harassment is experienced by members who are currently on workers compensation or returning to duties after a workplace injury and also members who have a disability.
2. Harassment was also an issue in the example provided in paragraph 20 of the member who suffered from epilepsy. Not only did the company try to force our member to change his role rather than make reasonable adjustments but he was also subject to harassment from management:

*After already feeling embarrassed after having a seizure at work the Regional HR Manager would refer to his ‘buddy’, who worked with him upon his return after his seizure, as his ‘babysitter’.* ***He was also told he should have apologized to the staff who had to clean up his blood as a result of the fall he had after his seizure.***

1. Many of the responses to the survey conducted by the SDA discussed bullying and harassment as a result of an illness, workplace injury or disability. The following provides these examples:

*#8*

*I injured my back from heavy lifting, I was discriminated against, bullied and verbally abused. I lodged a work cover claim and notified work safe. My claim was accepted, worksafe investigated my work place however the perpetrators are still gainfully employed and I had to leave my place of employment and am having to look for other employment.*

 *I had to go on anxiety medication, take sick leave, stop work eventually as my reporting about the incidents that were happening were not being taken seriously.*

#17

*I have the medical condition of non-melancholia chronic clinical depression and informed my previous department manager, whom spread the information throughout the store. This gossip affected my advancement within the company and l was bullied and l still am because of the said department manager choosing not to be discreet for her own agenda. Management said all the right words but no action was effectively taken.*

*I use all my sick leave and inform management on a regular basis of the bullying l experience and l have since been diagnosed by my psychiatrist with post traumatic stress disorder due to the discrimination and bullying l have and still endure, due to the indiscreet behaviour of the afore mentioned department manager.*

*Mental illness is a medical condition like any other and needs to be directed as such and there should be no discrimination, however passive aggressive the workplace displays it, however the said discrimination is still rampant in my store.*

#18

 *I've taken leave, they are trying to put me to casual from part time if I take more leave they insist that's what they'll have to do so now can't attend hospital appointments due to having to work which is now putting more stress on me.*

 #32

*Difficult situation to prove. I have a low back injury and company policy states that reasonable adjustments should be made. This is also detailed in current legislation, unless a company can prove unreasonable. I did raise the matter with the SDA but the matter seemed to resolve itself. I had time off work and my doctor certified me as fit with some changes. Despite this I was informed that I had to meet the full requirements of the job and was kept away from work. I did, however, locate a company document which stated the requirements that met with my doctors restrictions. I did make enquiries at Fair Work, SDA and also Equal opportunity Commission. I let it go when I returned to work but I felt bullied and harassed. This has led to substantially increased anxiety and depression.*

*This has led to increased sick leave and stress and anxiety. I had the store manager operations tell me directly to my face and I quote "I wish to have young fit casuals, but if this is repeated I will deny it." He did say it though. Although he may have not been able to act on it this demonstrates an attitude that pervades and must be stopped.*

*#106*

*The culture is one of bullying and discrimination towards people with mental disorders. I have P.T.S.D. from a work related injury. I had to take 2 weeks off work and seek assistance from a Phycologist*

*#121*

*I've had two temporary work place injuries, in the last 18 months. Both times I was put on restricted duties and both times I was bullied by my store manager. As it was a temporary injury I did not complain.*

*#139*

*Currently have hayfever, sinus, asthma and reflux (allergies to additives and preservatives) which I have taken treatment from allergy specialist and now ENT specialist. With my dept manager and store manager have been upfront, provided specialist letter and drs letter which states what triggers that set my problems off (flowers, perfumes and deodorants) Have had issues with workplace bullying ie you can work on express lane or service desk (even though the flowers are close by)*

1. Harassment and bullying are common issues for members who have a disability or a workplace injury. The SDA believes that current discrimination and WHS legislation is not providing the protection necessary for workers experiencing bullying and harassment arising from this form of discrimination.
2. The ineffectiveness of current legislation is exacerbated by the difficulty workers face in understanding the process and having the ability to make a timely and inexpensive claim.
3. We will make further comment regarding the complaints process later in our submission but the **SDA recommends greater protection, regulation, investigation and compliance is necessary to prevent bullying and harassment of workers with a disability.**

**EMPLOYMENT DISCRIMINATION AGAINST OLDER EMPLOYEES**

1. Australia has an ageing population which combined with increasing life expectancy will put greater pressure on older Australians to remain in the workforce. This is evident in recent legislative changes increasing the retirement age and consequently the age at which workers can access the age pension and superannuation.
2. Despite this labour force participation rates for older Australians are low with one in three Australians over 55 participating in the labour force, 16% of the total labour force.[[5]](#footnote-5)
3. As with workers with disability, older Australians have a fundamental right to work to ensure financial security and the ability to live with dignity. Often employment will provide an income which is wholly above the age pension or is used to supplement the pension. Older workers should be given equal opportunity to employment so that they are able to choose the most appropriate time, given individual circumstances, to exit the labour market.
4. The SDA represents many older workers across the industries we cover. Many of our members continue to work beyond retirement age and make a full and valuable contribution to their workplace. Despite the valuable contribution older employees make, many of our members aged over 50 face barriers in the workplace due to their age. As demonstrated in our survey responses many feel that as a result of their age they are not offered a fair share of hours, are overlooked for promotion or permanency, and are pushed out of their employment.
5. Many older employees believe they are being discriminated on the basis of their age but will not make a formal complaint because it is too hard to prove.
6. The AHRC National prevalence survey of age discrimination in the workplace found that over a quarter (27%) of Australian aged 50 years and over experienced some form of age discrimination on at least one occasion in the workplace in the last two years and that this resulted in a third of people giving up looking for work.
7. Therefore, discrimination is a substantial barrier for older Australians seeking and maintaining employment.
8. This is also evidenced by the fact that 62% of complaints made to the AHRC under the *Age Discrimination Act 2004* in 2013-2014 were regarding employment.[[6]](#footnote-6)
9. Earlier in our submission we demonstrated that the vast majority of older workers who experience discrimination do not make a complaint due to inability to prove the discrimination, fear of retaliation, loss of job or hours and fear of harassment and victimization. Therefore, the complaints made to the AHRC represent just the tip of the iceberg.
10. The following are some examples from the SDA survey of discrimination experienced by older workers:

*Example #10*

*I was being pushed out of promotions on the basis of my mature age and gender. I escalated it to our HR department who told me I was being oversensitive as a "woman of a certain age". nothing changed and the poor treatment I had been receiving escalated. I took two weeks stress leave from a now diagnosed PTSD.*

*Example #12*

*Being an older person in the workplace, moving to another department without a valid reason, but you know because of your age. As the company is hiring younger person, who have the image but very poor work ethics.*

 *Example #13*

*Was bullied into resigning on account of age; after new younger casual staff were hired.*

*Example #23*

*At former workplace, a new Manager arrived whom I had never met before or had any experience with. At first meeting, he took me away from other employees in the workplace in his car, drove a short distance & stopped. A brief conversation followed which basically went along the lines, "You've been here too long, it's time to move on." I was dumbfounded. From that point onwards, I was pretty much bullied out of the job. I took sick leave as I had 36 years’ worth not previously taken. Got counselling and ultimately took early retirement to end all the crap I was enduring. Current employer showed confidence in employing me at 57 years of age, initially with good hours. Unfortunately the hours have disappeared, two three hour shifts a week can hardly be called a job.*

*Example #30*

*Employers don't want to pay the wage of someone in their 30's. Just the other day I asked if a store had any hours going & the girl said "maybe if you were 15" I could tell she was just as unimpressed with this attitude as I was so it’s obviously coming from higher up*

*Example #32*

*There is discrimination based on age and ability. The difficulty though is proving this, when they could answer - too much experience, not enough experience, or operational requirements.*

1. Our members discuss the importance of work as they get older in helping them to maintain financial security, to provide a sense of purpose and attachment to the community and benefits to their self-esteem. They also discuss the valuable contribution older workers are able to provide to a workplace.
2. Through our survey of members and our experience in advocating on behalf of our members we have identified some areas in legislation which we believe need to be addressed to assist in preventing discrimination against older workers.

**Age Discrimination and the Fair Work Act**

1. The SDA is concerned about the ineffective provisions of S65 of the *Fair Work Act 2009 (Cth) (FWA)* which provide the right for employees in a range of circumstances, including employees over the age of 55, to request flexible working arrangements.
2. This legislation recognises that eligible employees, such as, those aged over 55 may have particular needs which may require them to access flexibility in their employment such as a change in hours, patterns and location of work.
3. Section 65 of the FWA however is one of only two sections of the Act which lacks the right of appeal. Therefore, an employee who believes their employer has unreasonably refused a request for flexible working arrangements has absolutely no recourse or avenue to have the issue independently scrutinized and determined.
4. Many of the respondents to the SDA survey cited flexible working arrangements as important for older workers. Some of these responses were provided earlier in our submission where we provided how our members thought discrimination should be addressed. See survey responses #137, #169 and #186 which discussed flexible working arrangements for older employees.
5. **The SDA strongly recommends the following amendments to Section 65 of the Fair Work Act:**
	* **Removing the qualification requirements in section 65(2)(a) of the FWA (ie the requirements for 12 months service)**
	* **Introducing a positive duty on employers to reasonably accommodate a request for flexible working arrangements**
	* **Establish an appeals process through the Fair Work Commission for decisions related to s65 of the FWA, the right to request flexible working arrangements including the ability for employees to appeal an employer’s decision to refuse the request.**

**Age Discrimination and Workers Compensation**

1. Australia currently has 11 different workers compensation schemes. Whilst there is variation across the jurisdictions regarding payment cut offs, all but states and territories bar QLD and WA, discriminate on the basis of age.
2. Under most jurisdictions weekly workers compensation payments usually cease when an employee reaches retirement age, and in most schemes this is determined to be 65 years. **However, compensation for necessary medical and related expenses may continue to be payable for up to 12 months.** If an injury occurs after retiring age, an employee may be entitled to weekly compensation payments for up to 12 months after the first date of incapacity. Compensation for reasonably necessary medical and related expenses may also be payable for up to 12 months after an employee ceases to be entitled to weekly compensation payments.
3. The original reasoning behind excluding those aged 65 and over from receiving workers compensation payments was that those employees would be entitled to the aged pension.
4. As discussed earlier, given Australia’s ageing population and increased life expectancy there is going to be more and more pressure on older Australians to continue working beyond retirement age. Therefore, the government needs to support workers to do this and laws need to reflect this. Current laws which mandate that payments will cease at a certain age are discriminatory towards older workers. Such laws also provide a disincentive for older workers to continue employment because important workplace entitlements, like workers compensation payments, are not applicable to them.
5. There is an inherent assumption in the current legislation that everyone is entitled to the age pension. This, however, is not the case for all older workers. Eligibility for the age pension is assessed against income, assets and superannuation, including the income of a spouse or partner. Therefore, many older workers who are on weekly workers compensation payments and reach retirement age will lose this payment and not be eligible for the age pension. Workers are then forced to access superannuation or rely on their partner for financial assistance through no fault of their own.
6. The SDA currently has a member who is facing cessation of weekly payments due to her age:

*Our member suffered a workplace injury in 2010 when she was assaulted by a shoplifter who threw her to the ground. She suffered hip and lower back damage. Her role was a loss prevention officer. She has been successful in making a claim for TPD.*

*She did her last shift in 2012, but is still employed. She reached her retirement age in January 2015 turning 65. Her weekly benefits will cease in January 2016 and she will be covered for medical benefits for a period of one year after January 2016 (medical benefits to cease Jan 2017).*

*She is struggling at the moment on her current weekly benefits. She lives with her daughter’s family and cannot afford to move out. She is currently making a claim for whole person impairment, which is still ongoing after 5yrs and 6 months. She has seen a psychologist for the last four years which the insurer pays for. She needs to see a psychologist because of the pain and anxiety. The anxiety arises from the uncertainty of the direction her claim will take. Her hip pain means she can only sleep on one side, which has affected her sleep. She has sought medical treatment for insomnia which the insurer has paid for.*

*Her insurer makes her travel 20km once a fortnight to job seek in the city and she also job seeks from home, needing to submit 3 jobs per week to her insurer. If she does not do this, her insurer has threatened to stop her payments.*

*She currently cannot afford to access her age pension as it is insufficient. When her weekly payments cease she will have to access her age pension.*

*Her injury has affected her mentally and physically as she has had two operations on her hips.  She will never fully recover and at some point will be terminated from her employment.*

1. The SDA also find that claims for older workers are often prolonged because insurers know that the employee is reaching retirement age. It is also a common experience of members that medical expenses often quickly cease after retirement age. Workers are also forced to continually attend reassessment when they reach retirement age and are no longer working, as the assessment often shifts from being a work related medical expense to a degenerative condition.
2. Current Workers Compensation schemes are inconsistent with the Government’s attempts to encourage older workers to remain in the workforce.
3. This issue is further complicated by the increase in age that workers will be eligible for the Age Pension, from 65 to 67 years. When this happens there will be a gap in entitlement to workers compensation and the ability to access the age pension.
4. Another important issue for older workers is that although research shows that the number of claims declines as employees get older, it takes longer for older employees to recover and return to work from an injury. The current design of the system is based on an insurance model which uses a financial management approach to manage the injured worker rather than a rehabilitation approach. Therefore, decisions which impact on the employees’ ability to return to work are largely made on a financial basis rather than the best interests of the health and well-being of the employee and a focus on their return to work. This approach significantly impacts on older workers who may need additional support to return to the workplace.
5. Legislation, Government policy and workplace policy needs to shift to a rehabilitation focus and policies need to be reviewed to take into account longer recovery times for older workers.
6. **The SDA recommends the removal of discriminatory age exclusions for workers compensation legislation to ensure equal access to workers compensation for all injured employees regardless of age.**
7. **A review of current Workers Compensation schemes to ensure there is a genuine focus on rehabilitation and return to work outcomes, rather than insurance/financial driven outcomes.**

**Age discrimination and taxation**

1. With an increasing expectation and policy initiatives encouraging older Australians to work longer the Government needs to ensure that other legislative provisions do not discriminate against older workers.
2. The SDA has recently dealt with a large number of voluntary redundancies across Australia being taken up by long term members working for a large national department store. This process resulted in almost 500 redundancies nationally, many of which were long term employees over 65 years of age.
3. As a result of the current tax legislation, the redundancy payments received by members who were over 65 years at the time of redundancy were taxed at a higher rate than employees aged under 65 with the same entitlements.
4. For these members, who are less likely to have the same job opportunities as younger workers who were made redundant, it is even more important that any payment on redundancy at that age is maximized not reduced by discriminatory taxation laws.
5. In our NSW Branch, of the 130 members who accepted voluntary redundancy approximately 30, or almost one quarter, of employees were aged over 65 years. Some members had just turned 65 in the preceding months and received less than colleagues who were just coming up to their 65th birthday.
6. To meet the requirements of a genuine redundancy for the purpose of taxation, Tax Ruling 2009/2 provides that:

*Age-based limits*

*34. Under paragraph 83-175(2)(a), an employee must be less than 65 years old at the time of dismissal for a redundancy payment to qualify as a genuine redundancy payment.*

*35. However, if the employment of a particular employee would have otherwise terminated at a younger age than 65, the employee must be dismissed before that time. This younger age becomes the employee's age-based limit in these circumstances.*

1. The impact of this ruling is that employees aged over 65 years who are made redundant are not eligible for the same tax treatment on the redundancy payment as those aged under 65 years because it is not deemed a genuine redundancy. Instead the entire redundancy payment is taxed as an eligible termination payment not a redundancy payment.
2. The SDA believes that this is discriminatory against older workers who are at greater risk of not being able to re-enter the workforce after being made redundant. This unfair tax treatment creates further disincentive for employees to continue in the workforce particularly if they are offered redundancy before they turn 65.
3. **The SDA recommends the removal of discriminatory age exclusions for concessional taxation rates on redundancy payments.**

**Age and Income protection Insurance**

1. The SDA is also concerned about the discrimination that exists for older employees in relation to accessing income protection and Total and Permanent Disability (TPD) insurance.
2. Whilst some insurers and superannuation funds have lifted age limits on income protection and TPD insurance, most policies are only available up until the age of 65 years and premiums generally increase with age. This provides a direct disincentive for older workers to continue to participate in the workforce.
3. Currently the *Age Discrimination Act 2004 (Cth)* (ADA) provides;

*that insurers may discriminate on the grounds of age in offering an insurance policy, or the terms or conditions upon which such a policy is offered, if certain conditions are satisfied. The conditions are satisfied if the discrimination is:*

* *based upon actuarial or statistical data on which it is reasonable for the*

*discriminator to rely; and*

* *reasonable having regard to the matter of the data and other relevant factors; or*
* *in a case where no such actuarial or statistical data is available, and cannot*

*reasonably be obtained, reasonable having regard to any other relevant factors.*

1. The Government needs to legislate against the denial of insurance coverage based on age. The provision of insurance coverage should instead be based on relevant health and well-being measures.
2. In order to encourage older workers to continue to take out income protection insurance and TPD the government should provide financial incentives to combat the increasing premiums as workers age, such as tax rebates.
3. **The SDA recommends that the Government** i**mprove legislation to ensure fair access to income protection and Total and Permanent Disability (TPD) insurance for employees over 65 by legislating against the denial of insurance** **coverage based on age and providing financial incentives to combat the increasing premiums as workers age, such as tax rebates.**

**Age discrimination on the grounds of health**

1. The SDA has also observed discrimination against older workers on the grounds of health, illness and injury and the perception from employers that older workers present greater risk of reduced productivity because they are more inclined to be ill or injured or unable to perform tasks as well or quickly because of their age.
2. The SDA finds that employers often use the health of an employee as a reason to remove them from the workplace disguising the real reason, that is, their age. This often involves the employer requiring older employees to provide medical certificates stating fitness for work.
3. The following provides an example of this:

*Employee G worked in a department store and had been employed with the company for 38 years. G was constantly asked when he was going to retire. He loved his job as a door greeter and wanted to stay on as long as he could. He was 72. The company decided they were going to get rid of door greeters. G had always walked with a limp, however the company decided after 38 years that they needed a medical certificate from him stating that he was fit for work. He refused to provide this because no one else was asked to provide it and he had been performing his work without issue. The company HR manager told him that if he did not provide the medical certificate by the set date then she would make sure he would be required to work in the heaviest job in the store; moving and unpacking cages. The HR manager kept putting him under constant and undue pressure to take a redundancy. With great sadness he left the company. The company still employs door greeters.*

1. As with our discussion regarding disability discrimination and the misuse of duty of care under WHS, our older members face similar issues with regard to age discrimination.
2. **The SDA recommends that there needs to be a clear framework of rights and responsibilities which is consistent between jurisdictions, in particular the *Model Work Health and Safety (WHS) Act* and the *Age Discrimination Act 1992* and that guidelines be developed which clearly sets out obligations of employers with regard to reasonable adjustments for older workers.**

**Complaints process under Discrimination Legislation**

**Legal advocacy for Complainants**

1. The complaints process in anti-discrimination jurisdictions is too legalistic. It is common for companies to attend conciliations with a solicitor and/or barrister to represent them and the complainant can be faced with a ‘wall of suits’ on the other side of the table. The individual may have union representation, but equally may just have their mother or husband to support them. Needless to say this is a very intimidating situation for the worker, who is likely to be completely out of their depth in trying to argue a reasonable settlement.
2. To try to create some balance in the situation, and therefore increase the likelihood of a fairer outcome, individuals feel they are forced to obtain and pay for legal representation at the conciliation stage. Legal representation is definitely required post an unsuccessful conciliation, and depending on the solicitor, they may also recommend the services of a barrister. This is all very costly and beyond the means of most workers, especially if their situation has meant that they are no longer employed. Legal advocacy and advice should be made available to complainants to assist them through the process.

**Conciliation process**

1. The process of formal complaints handling should include compulsory conciliation. The conciliation process:
* should not require legal representation (although this should be available if requested)
* should be conducted by a Commissioner
* should be free
* should be adequately resourced
* should be able to be arranged quickly
* should be transparent
* should be an informal, pro-active process which encourages the reaching of agreement, or at least the acceptance of the direction indicated by the Commissioner. If the conciliation fails then there should be the capacity to schedule a hearing within a reasonably quick period.

***Court process***

1. The discrimination jurisdiction should be a no-costs jurisdiction, recognizing the obvious power imbalance which exists between the parties and also recognizing that this jurisdiction is often dealing with vulnerable complainants. The cost of taking a complaint through the current discrimination jurisdiction and especially in the Federal Court is a substantial deterrent for complainants.
2. The Discrimination Acts should contain civil penalty provisions similar to those in the FWA which can assist a complainant with mitigating their costs.
3. The Discrimination Acts must give the court the powers to:
	* Provide appropriate remedies to reflect the seriousness of a complaint which properly values the loss suffered in discrimination cases, including future loss of pay and career advancement
	* Provide significantly higher penalties, especially when 99% of claimants lose their employment as a result of making a claim
	* Ensure that sufficient remedies are available to not only compensate a complainant but also to act as a deterrent against discriminatory practices
	* Allow representative complaints provisions which will enable organisations to engage in strategic litigation on behalf of complainants

***Powers of the AHRC***

1. The complaints process for discrimination claims is too costly, time consuming and does not provide adequate remedies for breaches of the law. The current process greatly discourages an individual from making a formal complaint.
2. The AHRC should be given investigative powers and determination powers in order to investigate, hear and determine claims of discrimination. Matters would still be appealable to the Federal Court but only after the AHRC has determined them. It should operate in a very similar manner to that of the Fair Work Commission (FWC). The FWC offers a quick, relatively informal, cost effective and transparent complaints’ resolution model. This model should be adopted in the discrimination jurisdiction.

**Adequate resources must be given to the AHRC.**

1. The AHRC should be adequately resourced to:
	* ensure a fair, fast and equitable legal claims process,
	* educate, support and provide material to duty holders
	* enforce the Act
	* conduct research to assess the costs of discrimination to individuals, employers and the community, and that such research is widely publicised
	* collect data of all discrimination enquiries, complaints, conciliations, confidential settlements, and hearing outcomes, and that such data be analysed, according to key demographic groups, industry sectors and types of complaints, and is also widely publicised.
2. The DDA and ADA must equip the AHRC with the ability to;
	* Provide remedies to reflect the seriousness of the complaint and properly value the loss suffered in discrimination cases, including future loss of pay and career advancement
	* Provide much higher penalties, especially when 99% of claimants lose their employment as a result of making a claim
	* Ensure that sufficient punitive measures are in place to act as a deterrent
	* Ensure that the AHRC has the requisite skill and expertise to resolve, investigate and determine complaints
	* Ensure that the AHRC has the requisite skill and expertise to deal with cross jurisdictional matters. This is particularly an issue in regards to discrimination in employment matters. An understanding of employment law, the Fair Work Act, awards, enterprise agreements, WHS legislation and Workers compensation legislation may be relevant and can impact on the outcome of a claim.
	* Initiate inquiries into systemic discrimination. The current arrangements require individuals to have the courage to pursue a complaint, and to take on the risk in a jurisdiction which is completely foreign to them, and where they are disadvantaged against the might of large companies and corporations. Remedies address individual compensation but do nothing to address the workplace situation to prevent further discrimination occurring in that workplace or in others. This is particularly the case where the matter is settled prior to a hearing. The ADA and DDA need to provide an effective means of addressing systemic discrimination and broad workplace culture and behavior.
3. **The SDA recommends that a variety of measures be adopted to ensure that the conciliation and court process in anti-discrimination cases are more accessible and effective. It must be more transparent and timely, less costly and provide greater support remedies and outcomes for claimants.**
4. **The SDA recommends that legal advocacy and advice should be made available to complainants to assist them through the complaints process.**
5. **The SDA also recommends that the role and functions of the AHRC be greatly enhanced to provide for inquisitorial powers, investigative powers and determinative powers. The AHRC must be sufficiently funded to operate as an effective research, education and enforcement body.**

**Discrimination Legislation and the burden of proof**

1. Through our advocacy of members and the responses to our survey of members we know that one of the main reasons workers don’t make complaints about experiences of age discrimination is because they feel it is impossible to prove. Therefore, it is vital that any complaints system ensures that once a prima facie case has been established the burden of proof shifts to the respondent.
2. The ADA and DDA should adopt a reverse onus of proof on the respondent once a prime facie case has been established. The onus of proof must be on the party with the knowledge. The respondent knows the reason for their decision and as such must bear the burden of proof. The SDA supports the approach of the *Fair Work Act 2009* in s361, where once a complainant alleges that a person took an action for a particular reason, this is presumed to be the reason unless the respondent proves otherwise.
3. A reverse onus of proof is imperative to ensure that complainants are not disadvantaged through this process as they often don’t have the knowledge to prove the discrimination and it would redress the obvious and inherent power imbalance which exists between the parties.
4. Under both the ADA and the DDA the burden of proof is only reversed where the employer has to prove the reasonableness of a requirement, condition or practice.
5. ‘In the United Kingdom and Ireland, the evidentiary burden of proof shifts to the respondent once the complainant has established a prima facie case of discrimination. The law has always required the respondent to prove ‘justifiability’ in an indirect discrimination complaint. Recently, this approach was extended to direct discrimination complaints.[[7]](#footnote-7)
6. The SDA believes that, like in the United Kingdom and Ireland, once a prima facie case has been established for all aspects of discrimination, indirect or direct, the respondent should bear the burden of proof.
7. The introduction of the general protections provisions of the *Fair Work Act 2009* provides a different onus of proof from Anti-Discrimination legislation. The SDA supports the approach of the *Fair Work Act 2009* in s361, where once a complainant alleges that a person took an action for a particular reason, this is presumed to be the reason unless the respondent proves otherwise.

*‘A reverse onus is not a feature of anti-discrimination statutes in Australia.89 In anti-discrimination law the applicant bears the onus of proving that the various elements of the claim are established, a feature of the schemes that is recognized as imposing substantial difficulty for many applicants.90 The reverse onus in the adverse action provisions may accordingly be a factor encouraging applicants to bring claims under Part 3-1rather than anti-discrimination laws.’[[8]](#footnote-8)*

1. **The SDA recommends that the burden of proof should shift to the respondent once the complainant has established a prime facie case of discrimination, as is the case in the *Fair Work Act 2009*.**

|  |  |  |
| --- | --- | --- |
| Answer Choices | Responses |  |
| Female | 74.71% | 257 |
| Male | 25.29% | 87 |
| X (Indeterminate/Intersex/Unspecified) | 0.00% | 0 |
| Total |  | 344 |

**Attachment A – SDA Survey Response Summary**

Q1 Gender

Answered: 344

Skipped: 1

Female

Male

X

Indetermina...

(

0

%

10

%

%

20

30

%

40

%

%

50

60

%

70

%

%

80

90

%

100

%

Q2 Are you of Aboriginal or Torres Strait Islander descent?

 Answered: 340 Skipped: 5

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Answer Choices | Responses |  |  |  |
| Aboriginal | 1.76% |  |  | 6 |
| Torres Strait Islander | 0.00% |  |  | 0 |
| No | 98.24% |  |  | 334 |
| Total |  |  |  | 340 |

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |  |  |  |

Aboriginal

Torres Strait

Islander

No

 0% 10% 20% 30% 40% 50% 60% 70% 80% 90% 100%

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Answer Choices | Responses |  |  |  |
| Yes | 18.53% |  |  | 63 |
| No | 81.47% |  |  | 277 |
| Total |  |  |  | 340 |

Q3 Are you from a non-English speaking background?

Answered: 340

Skipped: 5

Yes

No

0

%

10

%

%

20

30

%

40

%

50

%

60

%

70

%

80

%

90

%

100

%

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Answer Choices | Responses |  |  |  |
| Yes | 65.80% |  |  | 227 |
| No | 21.16% |  |  | 73 |
| Not sure | 13.04% |  |  | 45 |
| Total |  |  |  | 345 |

Q4 Have you (or the person you are submitting on behalf of) experienced employment discrimination?

Answered: 345

Skipped: 0

Yes

No

Not sure

0

%

10

%

%

20

30

%

%

40

50

%

60

%

%

70

80

%

90

%

100

%

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Answer Choices | Responses |  |  |  |
| Yes | 22.67% |  |  | 73 |
| No | 77.33% |  |  | 249 |
| Total |  |  |  | 322 |

Q5 Did you take any action in relation to the employment discrimination you experienced?

Answered: 322

Skipped: 23

Yes

No

0

%

10

%

%

20

30

%

40

%

50

%

60

%

70

%

80

%

90

%

100

%

Q8 Do you think older

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Answer Choices | Responses |  |  |  |
| Yes | 84.38% |  |  | 270 |
| No | 6.25% |  |  | 20 |
| Not sure | 9.38% |  |  | 30 |
| Total |  |  |  | 320 |

Australians/Australians with a disability face barriers when they look for work or are in a job?

Answered: 320

Skipped: 25

Yes

No

Not sure

0

%

10

%

%

20

30

%

%

40

50

%

60

%

%

70

80

%

90

%

100

%

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Answer Choices | Responses |  |  |  |
| Yes | 77.19% |  |  | 247 |
| No | 6.25% |  |  | 20 |
| Not sure | 16.56% |  |  | 53 |
| Total |  |  |  | 320 |

Q10 Does employment discrimination have an impact on gaining and keeping employment for older

Australians/Australians with a disability

Answered: 320

Skipped: 25

Yes

No

Not sure

0

%

10

%

%

20

30

%

%

40

50

%

60

%

%

70

80

%

90

%

100

%

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Answer Choices | Responses |  |  |  |
| Yes | 31.12% |  |  | 89 |
| No | 12.94% |  |  | 37 |
| Not sure | 55.94% |  |  | 160 |
| Total |  |  |  | 286 |

Q11 Are there any practices, attitudes or laws which discourage or prevent equal participation in employment of older

Australians/Australians with a disability

Answered: 286

Skipped: 59

Yes

No

Not sure

0

%

10

%

%

20

30

%

%

40

50

%

60

%

%

70

80

%

90

%

100

%

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Answer Choices | Responses |  |  |  |
| Yes | 24.65% |  |  | 70 |
| No | 14.44% |  |  | 41 |
| Not sure | 60.92% |  |  | 173 |
| Total |  |  |  | 284 |

Q13 Are there examples of good practices and workplace policies in employing and retaining older Australians/Australians with a disability?

Answered: 284

Skipped: 61

Yes

No

Not sure

0

%

10

%

%

20

30

%

%

40

50

%

60

%

%

70

80

%

90

%

100

%

**Attachment C – SDA Survey Responses**

* + **Barriers discussed for workers with disability included unreal expectations and hard to reach bench marks, jobs advertised with additional duties which stop workers applying and attitudes and understanding of disabilities:**

#71 Unreal expectations from bosses even though they are aware you have a disability/illness. May not give you a job because of your disability.

#189 The jobs/positions advertised include extra tasks (most of the time un-necessary) which will stop an older person or a person with disability to apply for the job in the first place due to the job description requirements.

#220 Older people or people with disabilities have trouble getting employed because they are viewed as a liability on wages and productivity. Employers look past their determination and experience while looking at the 'bottom line'.

#316 Benchmarks for able bodied workers are high and hard to achieve less abled or injured workers cannot meet the bench mark and put other workers under duress.

#334 Mental health is a major barrier which many people do not understand. As we get older it is much harder to gain employment and if you have a disability it is even harder...employers really want young people so they don’t have to pay them a higher wage.

* + **Barriers discussed for older workers included cheaper young workers, more likely to be in job for less time, technology, reluctance to spend money on training older workers, attitudes – perceived as a burden, physical limitations, liability on wages.**

#34 Ageism. Companies don't want an older person in case they are fully informed of their rights. Companies like young people who generally won't stand up for themselves.

#43 Age discrimination is hard to prove. At my workplace if a younger employee can work instead of an older employee they would get preference as they would help reduce the average hourly rate within the restaurant.

#46 Employers seem to want young employees that they can employ on a casual basis. Cheaper but lacking experience and in my experience the correct work ethic

#49 Not getting enough shifts as a casual, because the younger ones are cheaper, and not enough flexibility if older and have young children, as childcare is expensive and not flexible enough. Employers need to take this into consideration, and give older workers the flexibility to work when they want to work, not when the company wants them.

#50 Younger people are cheaper. Employers generally would prefer people more computer savvy, more up to date with technology generally

#54 They may naturally have more health complications due to their disability or advanced age, which means more sick leave, and are generally not as physically able as a younger non-disabled person so cannot complete some tasks. Older people can sometimes be unwilling or less confident to learn new technologies.

#57 Yes. Wages are a factor. They get the younger ones with NO experience and at cheaper rates

#60 Employers are unwilling to take on an older person because of factors such as age-related illness or the limited time before retirement. This is despite the experience an older person can bring to a job.

#63 The assumption that senior workers cannot carry out the duties as well as younger work members/physically or mentally. Economically better for employers to hire younger staff cheaper wages etc.

#66 Being overlooked when managers complete the roster, for a cheaper junior employee

#87 Age is barrier in itself, disability exacerbates it in that "perceive person huge burden" and costly

#104 They supposed we have so much experience and we must threaten their position. If I were getting old, I couldn't do more heavy work.

#126 Employers would prefer to employ teenagers where at all possible to save on wages

#129 I feel certain employers do not want to employ older people as they are not able to keep up the working pace of younger generation. Unfortunately in most cases it's the other way around

#198 The barrier is just the age barrier. It seems to me that anybody over the age of maybe 55 is too old. Corporations always look to younger people rather than older people who in many cases have more experience of life and work generally.

#202 Employers are less reluctant to spend money training and older person (55 plus) as they will retire sooner rather than later and someone with a considerable disability will take more money to train, and may not be able to perform as well (mentally and physically)

#214 Because management does not see any value in training an older person for a more effective role, they do not provide any opportunity to attend workshops or to train. I have been told that I have to go and learn for myself but am not provided time or resources to do so.

#220 Older people or people with disabilities have trouble getting employed because they are viewed as a liability on wages and productivity. Employers look past their determination and experience while looking at the 'bottom line'.

#230 What company policy is and what they actually do are two different things.

And its up to employee to prove discrimination. This can be both time consuming and impossible without others getting involved. Of course nobody wants to get involved as it puts their job in jeopardy. Management are only interested in numbers and we are part of that system.

#245 It is assumed they are nearing retirement, do not have up-to-date skills, or will leave the job quickly.

#295 Physical limitations, experience, prejudice, bias, discrimination (less expensive employees - age), communication barriers

#310 Most employers use agencies who mainly have young university graduates who don't appreciate the knowledge or reliability older Australians have so they don't get to the interview stage

#319 I believe it is attitude towards older Australians where it is believe they are happy just to have a job, which is important, however, we also want to be rewarded for doing well.

#320 Employers only want to pay 15yr old wages

#332 Older workers are not as fast or as strong. My employer likes to employ young people and work them flat out for short shifts rather than put on someone older who would not be as fast

#334 Mental health is a major barrier which many people do not understand. As we get older it is much harder to gain employment and if you have a disability it is even harder...employers really want young people so they don’t have to pay them a higher wage.

#337 Employers want more out of their employees no longer do you have one job to do, As at my employer you need to do multiple jobs with less staff. At times when l am in Trade I am on my own for 4 hours and its physically and mentally tiring.

#339 Older workers cannot do every facet of the job, these days you have to be an all-rounder, older people often can't do heavy lifting or stand on non-cushioned surface.

* + **Reasons given for not making a complaint related to fear of repercussion and victimisation, losing their job or hours etc., not being able to prove it, not believing it would make a difference or due to the perceived stress created by making a complaint :**

#62 I would have lost the remaining hours I had.

#65 I didn't take any action because I didn't want to lose my job, but I did in the end anyway

#67 I can't take the stress because I suffer from severe depression.

#68 I chose not to take action because I didn't want to create more stress for myself.

#76 I chose not to take action because I believed that it would not have resulted in a positive outcome and also because I was afraid that it would hamper future promotions and transfers to different departments as I currently for the corporation.

#77 I did not take any action because it never works. I quit my job

#97 No point to take action as was told if I couldn't do the job I would be terminated

#102 no action taken as of fear of losing job and getting given bad hours and jobs so that we get fed up.

#104 I didn't take any action because I am just a casual staff, not contract staff.

#110 No action no point cause I need my job and don't want to be pointed out I was causing trouble

#113 Because I was afraid to lose my job

#119 Attempted to discuss issue with store manager however gave up after seeing no results and did not involve the SDA.

#120 did not take action as supervisor takes it personally you get less hours, also treated with no respect

#122 No point would not change anything and if it did imagine the attitudes towards me in the chosen workplace in which I had reported the discrimination

#124 It's not worth the hassle

#132 Didn't take action as afraid my hours would be cut

#138 I contacted the union to seek verification that I was being discriminated against, to ensure I was misreading the situation. I chose to take no further action for fear of losing my job.

#145 I didn't feel it would make a difference

#154 I was scared that I would get bullied more if I told someone

#156 Could not prove it

#157 Fear would have no job

#166 There was no clear evidence that would stand up to official scrutiny, and no one would provide evidence to support each other.

#170 Too scared to take action because they single you out after that

#184 I was worry I'm losing my job.

#214 I didn't take action as I could see that they (management) were aiming to make my life difficult so I would resign. My response was to suggest that constructive dismissal is frowned upon.

#229 I have taken no action for fear of retaliation

#240 Did not choose because of fear and not having faith. Having an injury and medical condition the workplace makes it hard and there are many obstacles that the employer does not take the time to correct.

#244 Didn't complain because I didn't want to get fired.

#247 Had fear and made me feel that there was nowhere to go. l felt that l will lose my job and have no trust if l spoke up. They would not deal in an honest way.

#258 I have an incurable disease which prevents me from working as well as others. I get very fatigued and wasn't allowed to go on a break during a 4 hour shift during which I had to spend the whole time standing behind a register. I did not take action because I chose not to inform my employer of my disease and its symptoms. I ended up quitting my job because of the stress and the pain I was in after every shift.

#271 I have not taken any action as I'm not sure if it is discrimination. I'm on forced sick leave without pay due to not being able to perform my duties 100% after an operation last year.

#273 Didn't want to make things worse

#290 Did not feel that any action is going to change anything

#291 My employer punishes those who make complaints against management. The complainant is usually moved to other stores and / or demoted. You are made to feel ineffective in your position & belittled in front of workmates. It's very clear you are deliberately being denied opportunities. Workmates are too scared to support you openly, refusing to corroborate witnessed treatment & comments.

#293 I'm too scared to.

#295 I felt I could not take any action because I could not provide hard evidence of the age discrimination.

#299 I still need my job, simple as that.

#302 I didn't take any action as it would have made my working conditions uncomfortable.

#311 I felt it wouldn't change things so I took no action.

#316 no action, philosophy of organisation is grocery is for young workers.

#320 Would not make any difference. Got another job because I was not getting any shifts because I was not 15yrsold

#321 I'm new in the company so as a result I'm not wanting to speak up about my disability and ask for changes.

#326 Because it was very hard to prove it took place as it was verbal communication not witnessed by other team members.

#328 I chose not to take action because I was being intimated. I ended up having to quit, then was put on disability as psychologist recommend.

#334 I choose not to take any action due to personal stress due to my partner’s severe mental health issues

#336 How can I prove it?

#339 Feared for my job security

#340 In fear of not being listened to and losing my job. Fearing to be further victimised and discriminated against.

* + **In response to the final three questions of the survey which relate to ‘what action should be taken to address employment discrimination’, ‘what should be done to enhance workforce participation’ and ‘what outcomes or recommendations would you like to see from this National Inquiry?’, our members made the following broad suggestions:**
		1. **More penalties for discrimination**
		2. **Tax incentives/subsidies for employers who employ older workers and workers with disability**
		3. **Education for employers/managers regarding disability and ageing workforce**
		4. **Training programs for older workers and workers with disability**
		5. **Review of discrimination legislation and improved access to a just, simple and independent complaints process**
		6. **Quotas/laws which obligate companies to hire older/disabled workers**
		7. **More flexible workplaces**

#37 Make it Law that old people must be hired as well as young people. You can't prove discrimination goes on because they won’t, don't admit it. Heavy fines should fix the problem and force big companies to hire all ages. Don't go by hourly rates in how much it will cost them. They make a lot of money, there just greedy.

#40 It should be a government initiative

#42 Maybe the government can give a tax benefit to companies employing people with disabilities

#44 Payment to companies

#49 Should be forced to hire a minimum of older workers or people with a disability.

#55 Look everyone knows what is right and wrong with regards to treatment of people in the workplace. The problem lies in the fact that employers and big Companies know that it is next to impossible to be caught out, and if they are by some remote chance, the pressure on the individual to settle and accept less that what their rights and entitlements are is so great that the system in actual fact really works in favour of business. Simplify the process/procedures and work with employees to attain minimum Australian Standards in the workplace.

#57 Training schemes like they have for younger people. Government subsidies.

Big companies need to take the lead. Lead by example. More older and disabled people being more accepted in the workplace. Give business's an incentive to hire them. Instead of the dole.

#60 Employers need to be educated about the benefits of employing older workers. Re-education for older workers. Penalties for discrimination to be enforced.

#61 Governments need to give incentives to employers for older Australians the way they do for the younger Aussies.

#65 Harsher penalties. A wider range would be great, but more training for possible employees. More available positions for us oldies

#68 Education of staff and managers

#69 The laws are toothless tigers. To take someone to court over this is impractical, costly and a nightmare.

#73 The companies who are seen as being discriminated should be penalised and prosecuted for being unfair.

#84 Consideration regarding person’s age and ability to work needs to be thought of. An older person is naturally slower than a younger person. Also as one gets older they are not able to lift or carry same weight as a younger person. Also if you have suffered an injury in the past you are at risk to be injured again if not being considered.

LAWS need to be changed. COMPANIES need to be mindful when making expectations of their workers and COMPANIES should not discriminate when hiring persons for their company

NEW laws to be introduced as well as an independent body to ensure they are being met. At the moment it is all being "swept" under the carpet and laws being flouted

#87 Legislative, financial, interagency collaboration partnering probus/lions club/rotary as support to business seeking to employ older Australian with disability like the WAM programming (Deakin University)

Education incentives working models partnerships tax offsets development of encompassing culture

Movement towards more equitable working environment since many disadvantage adults by their situation will have to work longer- low paid work results in low super, extended financial burdens whether owing to health/ support or purely financial disadvantages

#97 Looking at qualifications and what is suitable for the injury or age of person. Looking at long term wear and tear on the body of long standing employees. Looking at ratio of older to younger employees as in cities staff turnover is a lot greater then country stores as it is a career choice not just a turn over Job.

Using staff to the best of their ability, treating staff as people not just a staff number without a face. Promoting good morale in stores, having more staff and Lessing the pressures put on everyone to cut, cut, cut wages and staff receiving the abuse of customers.

Big companies need to look after the loyal staff they have, using the wages that are budgeted instead of being told to cut all the time. Look at country stores as more of a career rather than the turnover of city stores. Looking at putting IT controls back to Australia so you can understand who you are speaking with and putting some controls back into the stores instead of remotely relieving on overseas help desks

#99 Govt incentives. Good employment providers to find jobs for people. More employment providers to find them positions. Advocacy. More money to help keep people in work boosting self-esteem.

#104 Need to force the employer for developing the policy towards to older and disability workers have long term part time contract for working maximum 20 hours a week or less. Force the employers to make an agreement with union.

Hope every older worker like me must have long term and security employment

#137 More Government involvement in promoting aged employment and developing effective incentives for employers- Offering $10,000 over 2 years hasn't worked.

The motivations for people over 50 to re-enter the workforce and work through to retirement will be dependent on the individual's circumstances so it is hard to state any one thing that will enhance participation.

As it is the current governments wish for Australians to work longer, I would like to see stronger planning and policy being developed for older workers and employers, including flexible work hours/pay rates and incentives such as employer tax breaks for employing older workers.

#166 If action is to be brought against companies or individual employees there needs to be an independent authority, who is not influenced or affected by pressure from specific parties involved, so that justice is available to any person who may need support when addressing employment discrimination against older or disabled people.

Provide easier access to employment for mature aged people, either through training or direct employment, which offers real prospects of long term employment to individuals that would otherwise find it almost impossible to gain employment.

A more realistic and respectful mental attitude towards mature aged people employed. This should include recognition of the fact that older employees are usually experienced, reliable, trustworthy, honest and hard working when given the chance by employers and society in general.

#169 Government should give the employer an incentive to employ an older Australian and it will help the bottom line of the business too and therefore give the employer an opportunity to see how valuable older workers are.

 Flexible work hours and respect for decline in age.

Government giving the employer incentives like half pay for 6 months to employ older people to get them back to work. Just like the government did in the 80's for youth unemployment. It worked for me when I was an employer.

#178 Need to have modifications for these people, facility eg.checkouts. case worker between staff and management. Protest and should be scheme put in place for training to encourage business to take on people

#186 More incentives to employers e.g. training. Flexible working hours

 More penalties for companies who knowingly discriminate

#187 Fair and equal rights, fine employers for discrimination.

 Awareness and more training for disadvantage and elder persons

#202 having somewhere for people to report to if they feel they have been discriminated against higher incentives and also keeping track of performance. Better training programs that are free more people with disability in front line work force

#221 Making the laws very clear on these types of discrimination as it can sometimes be a grey area.

Education on the benefits of employing older or disabled people. There would be a lot of success stories of employees who do well or exceed in the workplace even with their limitations.

 Discrimination laws reviewed, more education for employers and employees.

#230 Independent party involvement to find a reasonable solution. The government want us to work into our 70's so perhaps there needs to be assistance for older and disabled workers. I personally am disabled and could easily go on a pension. Yet I fight to keep my job. Perhaps there should be extra sick days provided by government for such workers...

And also more allowance of GP involvement and providing guidelines as to what worker can do.

Government providing assistance for older or disabled people to continue to stay in the work force. Even if it means job sharing between two such employees and government subsidy payments. Thus providing the ability to continue working without losing the monetary value. Also the employer would have less issues with staff absence.

#245 More flexible workplaces. Many workplaces are too rigid in general in terms of employees with disabilities as well as carer or family commitments. Employers don't want to know about it, even though often only a small temporary change is needed to adapt the employee's schedule or work.

#286 The government needs to look into the denial of the deaf people into wanting to learn and doing other skills. And make regular checks of the large publicly listed companies that seek to restrict the deaf people into very limited opportunities perpetually.

Increase the hours for the deaf people into proper part time (24 hrs min, also more hours per day and less day shifts instead of always 4 hr shifts that wear down our knees due to lack of recovery) or full time weekly hours. That's a start. Bolster the hours of the general workforce, less hiring of more people that take away from the current workers' rosters because we have more than enough in each store! Force companies to train us into doing more skilled-up jobs which help our resumes and increased work experience.

#289 Educate those in HR about the value of experience from say 30 years ago. The only difference is in media and forms of communication, and these can be learnt as the job requires them. Orson Welles made "Citizen Kane" without a computer. Richard Branson doesn’t use one. Nor does Dick Smith or Clint Eastwood.

Encourage age-appreciative language in the workplace, i.e., discourage ageist jokes in the same way we are teaching people not to be sexist or racist.

Why not an advertising campaign showing older people and those with a disability happily engaged in a workplace, successful and being treated respectfully and warmly and just like any other valued employee. Make it funny, use older comedians and/or actors and non-actors, for that matter.

#291 Educating all employees in the practice of speaking up. The power of the masses may change the workplace culture. Sadly, probably government subsidies may be the only way to encourage companies to employ & value us. Serious Re-education of big companies particularly. Platitudes mean nothing. Management need a major attitude shift.

#295 Auditing and survey studies should be undertaking to ensure organisations are employing equally people with and without disabilities or varying ages. Increase the number of opportunities for experience/employment, ensure workplaces are accessible for the disabled. Organisations being accountable for the people they choose to employ and better opportunities for everybody, especially the disabled.

#316 more government support with possibly tax incentives for businesses

#317 More penalties for employers who discriminate. Compulsory training and certificate for managers in the work place advising them of the laws and regulations. Utilize their skills.

Management attitude change. Investigation into workplace bullying and discrimination.

#318 Training to other staff about people with injuries. Management need to understand the impact it has on their lives and do everything they can to help staff at work with injuries. Make sure there is no discrimination. More training with other staff to make sure they understand what an injured worker goes through.

#319 Government talk about older workers staying in the workforce longer, however, there are no work place policies that ensures this happens.

It depends on the occupation - more physically demanding jobs makes it harder for older workers in remain in that occupation and it may be more productive for employees to seek younger works. Perhaps allowing reduced hours to be more acceptable on an ongoing basis or re-training older workers to new skills should be considered to become the norm.

Legislation or quotas may be an option, however, this could be said for women and youth employment also. There must be some jobs that are better suited to older workers where they can be encouraged to apply like some jobs are for indigenous applicants.

#320 All casuals should be rostered the same way. Subsidise wages

All casuals get fair treatment.

#321 Making basic amenities such as toilets accessible, making policies and procedures accessible. Employing them and making workplaces flexible and accommodating.

Easier for people to apply (online applications only), making workplaces more flexible, better hr and support.

#326 Greater awareness, more incentives to get them into the workplace over the 'cheap wages' which can be paid to younger staff/

Training session, on job training - helping older Australians get access to new skills in a range of ways which they can meaningfully apply to new roles.

More older Australians feeling like they have the ability and security of finding a new job or if becoming redundant in old job being able to easily and readily approach new opportunities instead of retiring, should they want it.

#335 Introduce a non-interview hiring process (standardised or employer-created) that a job seeker can request, so they can be judged on something other than social skills.

Support services for disabled workers (creation or greater visibility of) that can, if necessary, liaise and co-operate with unions to ensure that necessary accommodations are made or alternative tasks arranged.

Introduction of an optional alternate non-interview hiring process. Greater support for disabled employees.

Practices: having to interview for jobs is a significant discouragement for people with social disabilities. Why bother applying if you already know you'll do poorly in an interview? Attitudes: non-physical disabilities are frequently underestimated in severity and impact, not just in employment but in everyday life. Sufferers of "invisible" disability already feel lonely and isolated - trying to add a job to those stresses only makes them worse. Laws: not off the top of my head, but the ease of employers being able to give other reasons for not interviewing/hiring is discouraging. It feels like a waste of time applying for anything when any little thing can be picked as a reason, instead of having to say "I don't want to hire a disabled person". The truth hurts, but lies can hurt just as much (or more)

#339 Probably government and union intervention, rules set up to have a certain percentage of mature age employees.

Make the hours available to older people, jobs given out with the provision that the older employee will not be able to do every facet of the job, ie lifting, standing on non-cushioned surfaces, etc.

Bend the rules for older people wanting a job that can't do the full aspect of the position. Don't make them feel inferior because of some injury they may carry thru age.

#340 The store manager is the last word on most decisions. This needs to change. An independent body should investigate

#344 Financial incentives should be offered to employers

TV ads showing the benefits of employing older workers like they do with the work safe ads

Financial incentives to employ older or disabled workers.

A**ttachment D – [redacted] Application form**

***SUPERVISOR / MANAGEMENT APPLICATION FORM***

Please print this form, and fill it in. You can scan it and email it to ….. fax it to …., or mail it to … .

 ***Family Name : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Given Names : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

***Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

***Suburb: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Postcode: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

***Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Mobile: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date of Birth: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Age: \_\_\_\_\_\_\_\_\_\_\_ Height: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

**Note :- Use an “X” to tick the appropriate box.**

***Are you: At School At Uni/CIT Other***

***If other, please specify \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

***Highest level of educational achievement \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

 ***Do you have your own transport? Car / Motorbike***

***Do you have to share the use of this transport? Yes No***

 ***Do you have a Tax File Number? Yes No***

***Do you have a Bank Account into which your wages can be paid?***

 ***Yes No***

 ***Are you a Citizen or a Permanent Resident of Australia? Yes No***

***If your Answer to the Previous Question is No, How many hours can you work for a week? \_\_\_\_\_\_\_\_ When does your visa expire? \_\_\_\_\_\_\_\_\_\_\_\_\_***

***If you are a Citizen or a Permanent Resident of Australia Will you be interested in a traineeship? Yes No***

***PREVIOUS EMPLOYMENT HISTORY***

*Please list your last 3 employers.*

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | ***EMPLOYER***  | ***START DATE***  | ***FINISH DATE***  | ***DUTIES*** ***PERFORMED***  | ***REASON FOR LEAVING***  | ***CONTACT NAME / PHONE***  |
| ***1.***  |  |  |  |  |  |  |
| ***2.***  |  |  |  |  |  |  |
| ***3.***  |  |  |  |  |  |  |

***Do you agree to the use of Closed Circuit Television in the store for your protection, security and training ? Yes No***

***Disclosure*** *– We require this information to assess your suitability for employment with this company. This information is confidential and will not be disclosed to any unrelated party.*

1. *Have you ever been dismissed for breaching cash handling procedures? \_\_\_\_\_\_\_\_\_*
2. *Have you been dismissed for fighting or being intoxicated at work? \_\_\_\_\_\_\_\_\_\_\_\_\_\_*
3. *Have you been dismissed for other misconduct? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*
4. *Have you made any insurance claims: workers comp. or otherwise? \_\_\_\_\_\_\_\_\_\_\_\_\_*
5. *Have you ever been dismissed for unsatisfactory work performance? \_\_\_\_\_\_\_\_\_\_\_\_*
6. *Have you been convicted of a criminal offence in the last 10 years? \_\_\_\_\_\_\_\_\_\_\_\_\_\_*
7. *Do you currently have any lifting or movement restrictions? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*
8. *Do you have or expect to require medical follow up for any of the following:*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| *.Blood disorder*  | *Yes**No*  |  | *Mental illness*  | *Yes* *No*  |
| *Cancer*  | *Yes**No*  |  | *Pregnancy*  | *Yes* *No* |
|  |  |
| *Heart disease*  | *Yes**No*  |  | *Respiratory disease requiring admission to hospital*  |

*Do you have any hearing or seeing impairment?*

*Hepatitis B*

*Yes*

*No*

*Any form of surgery*

*Yes*

*No*

*HIV infection including*

*AIDS.*

*Yes*

*No*

*Any other Health*

*conditions not listed*

*here (give details)*

*Yes*

*No*

*Liver Disease*

*Yes*

*No*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

 ***If you answered ‘YES’ to any of these questions, please write the question number (e.g. 1) and explain why in the space below.***

 *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* ***Would you be willing to attend weekly meetings at Head Office. Yes No***

***Dod you agree to work during public holidays when rostered on. Yes No***

***Do you agree to attend training sessions in Head Office. Yes***

 ***No***

***How many hours do you want to work in a week? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Hours***

***How much do you expect to earn per week? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

***Are you prepared to undergo a 15 hr pre-employment training programme on your own time and expense?******Prepared Not prepared to***

***Are you prepared to study certain material before the commencement of training?***

***Yes No***

***Are you prepared to attend one-hour … crew meetings outside work hours once a fortnight on Saturday or Sunday morning? Prepared Not prepared to***

***I am able not able to work on close up shifts and understand that this may require me to complete my responsibilities at 10:30 PM or 11:00 PM at night.***

***If unable to do a close up shift, please explain:***

***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

 ***Declaration***

*I declare that the information I have given on this form is complete and true to the best of my knowledge and belief.*

*I consent to a representative of the business contacting my previous employer(s) to conduct reference checks.*

*I understand that any false statement or failure to disclose any material information could result in the rejection of my application or instant dismissal from employment.*

*I understand and accept that if successful, I will be on a probationary period of 6 months.*

***Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name (please print) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

***……*** *thanks you for taking the time to complete this application. It will be evaluated along with the other applications and we will notify you of its progress****.***

1. ABS - Disability and Labour Force Participation, 2012, 4433.0.55.006 [↑](#footnote-ref-1)
2. Australian Human Rights Commission, National Disability Forum 2014 Summary of Survey Results, 15 September 2015, p 5 [↑](#footnote-ref-2)
3. Ibid, p 9 [↑](#footnote-ref-3)
4. Ibid, p 15 [↑](#footnote-ref-4)
5. ABS, Australian Social Trends Older People And The Labour Market, 4102.0 – Sep 2010 [↑](#footnote-ref-5)
6. Australian Human Rights Commission, *Annual Report 2013-2014*, p 132 [↑](#footnote-ref-6)
7. D Allen, *Reducing the Burden of Proving Discrimination in Australia*, Sydney Law Review, OL 31: 579 p 596. [↑](#footnote-ref-7)
8. Anna Chapman, Beth Gaze & Kathleen Love, *Adverse Action, Discrimination and the Reverse Onus of Proof: Exploring the Developing Jurisprudence*, Conference Paper: Australian Labour Law Association Annual Conference 2012, Centre for Employment and Labour Relations Law, Melbourne Law School, University of Melbourne, p 18. [↑](#footnote-ref-8)