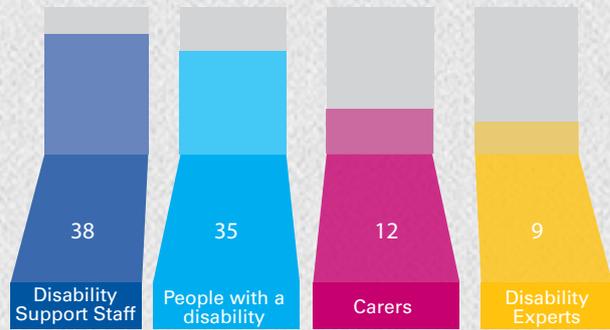


BREAKTHRU PEOPLE SOLUTIONS'
response to
WILLING TO WORK
Australian Human Rights Commission
Inquiry into employment discrimination
against people with disabilities

Willing to Work - A report on the Inquiry into disability employment discrimination



Those who participated include



Benefits of employing people with disabilities



Diverse workforce



Reliable, committed



Acceptance/Inclusion



Willingness to learn



“Business with Heart”

What survey participants said...

80% think that employment discrimination exists

Lack of community awareness about disabilities

Stigma and fear of difference



A national register of employers who employ people with disabilities

A national advertising campaign to raise awareness

Learn from international experiences



WHAT THE PROBLEM LOOKS LIKE

WHAT THE SOLUTION LOOKS LIKE

BreakThru People Solutions' response to Willing to Work – Australian Human Rights Commission Inquiry into employment discrimination against people with disabilities

Break Thru People Solutions (Break Thru) welcomes the opportunity provided by the Australian Human Rights Commission to comment on the Inquiry into disability employment discrimination. As an experienced disability and mental health services provider since 1985 and significant stakeholder within the Australian disability sector, we are pleased to provide feedback on this important issue.

Break Thru is an Australian not-for-profit organisation whose core vision is to “Break Thru barriers and create futures” by being the leading diversity champion, courageously promoting the value, potential and inclusion of all people in the life of the Australian community. We place social inclusion at the core of our mission and therefore support the objectives of the Australian Government’s commitment to encouraging and supporting the equal and active participation by people with a disability in economic life.

In preparing our response Break Thru sought the views of a number of stakeholders including:

- Break Thru’s clients with disabilities who are registered with our federally funded Disability Employment Service and New South Wales state funded Transition to Work program
- Carers, families and support persons of people with disability
- Subject matter experts in the field with either a lived experience of disability, employer related expertise and/or disability knowledge
- Break Thru’s staff expertise with on the ground experience delivering employment related support to people with disabilities
- Experiences drawn from International best practice in five OECD countries

The following feedback is based on questions outlined in the *Willing to Work* issues paper.

Authorising Signature:



Ross Lewis

Managing Director
4th December 2015

Table of Contents

Willing to Work - Infograph (Accessible Version Here)	2
Introductory Letter by Managing Director, Break Thru People Solutions	3
Executive Summary	5
Methodology	6
The International Perspective – A Literature Review	7
The Break Thru Client Perspective – Job Seekers With a Disability	10
The Carer Perspective – Families and Support Persons of People With a Disability	13
The Subject Matter Expert Perspective	15
The Break Thru Staff Perspective	19
Concluding Comments and Recommendations	23
Reference List	25
Acknowledgements	27
Appendix A - Description of Figure One For Those Who Use Screen Readers	28

Executive Summary

This report responds to the matters raised in the *Willing to Work* issues paper with regard to employment discrimination against people with disabilities. It is divided into five main sections which detail a variety of stakeholder perspectives. Almost 100 views were gathered providing stories and often first-hand experiences of employment discrimination. As this report will reveal, people with disability face challenges in accessing the mainstream employment market pointing to evidence that supports Australia's first Disability Discrimination Commissioner's statement: *"people with disabilities swim in a sea of discrimination"*¹. In response to this challenge, our report not only highlights the existing problems but also aims to address the issues by offering a number of solutions. The submission therefore, concludes with a summary of the problems identified by stakeholders and a list of recommendations for the Australian Human Rights Commission to consider.

1. THE INTERNATIONAL PERSPECTIVE

In this section, the report looks at international examples, highlighting their experiences with regard to employment discrimination against people with disabilities. The report suggests the Australian government can learn both from the success of other initiatives abroad but also from lessons learnt in these countries. Examples are from Canada, United States of America, United Kingdom, New Zealand and Sweden.

2. THE CLIENT PERSPECTIVE – JOB SEEKERS WITH A DISABILITY

In this section, the client perspective is discussed listing concerns and considerations for improvement. Among the group, there was general consensus that employment discrimination does exist, the impacts of which reinforce exclusive workplace practices and deny access to employment for those who are more than willing to work.

"People with disabilities swim in a sea of discrimination"

Australia's first Disability
Discrimination Commissioner

3. THE CARER PERSPECTIVE – FAMILIES AND SUPPORT PERSONS OF PEOPLE WITH A DISABILITY

In this section, the views of families and support persons of people with a disability are considered. Disablism; (the negative attitudes and deliberately discriminatory treatment of people with disabilities) and a lack of understanding by others were issues raised by carers as key challenges faced by people with disability seeking work.

4. THE SUBJECT MATTER EXPERT PERSPECTIVE

In this section, Break Thru consulted a range of disability subject matter experts capable of providing the perspectives of the disability services consumer, advocate, service provider, peak body representative and academic around issues of disability employment discrimination. Four of the nine subject matter experts have a lived experience of disability. There was a diverse range of views around the issue of disability employment discrimination with the vast majority agreeing that it exists in either active or passive forms and is an extremely complex issue.

5. THE STAFF PERSPECTIVE

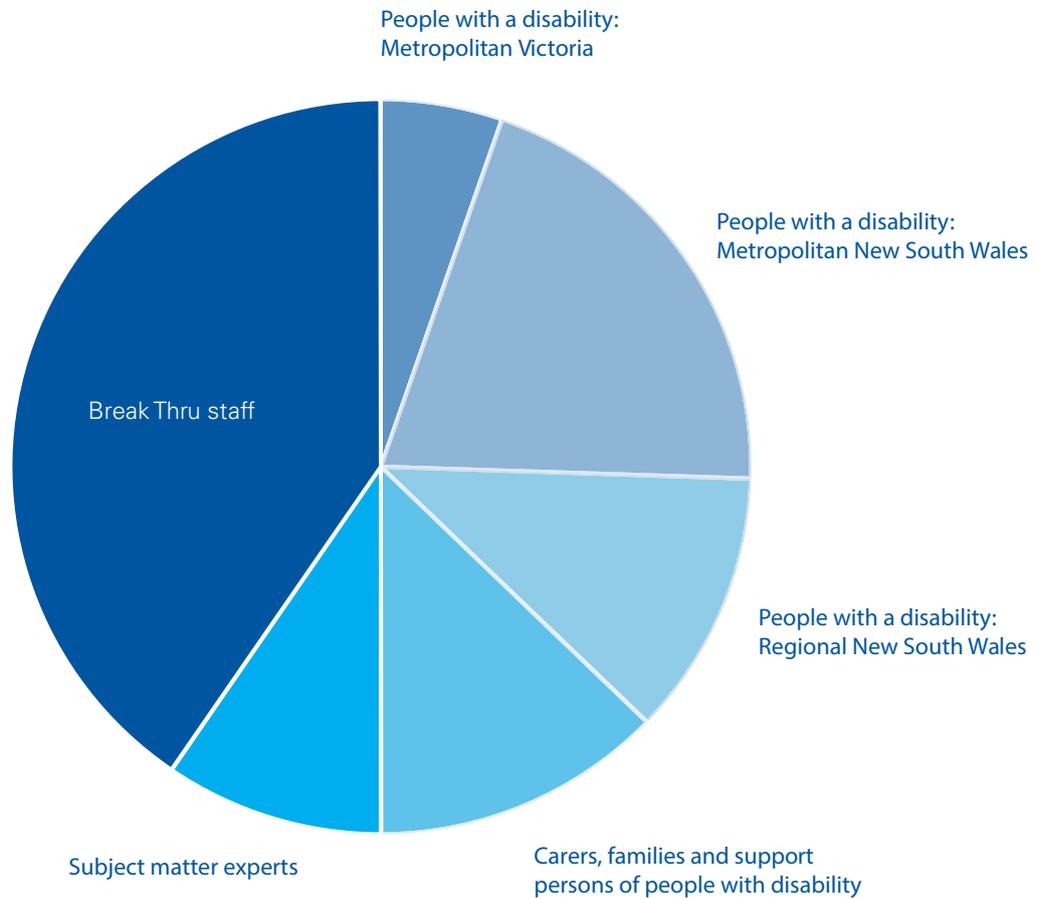
In this section, the staff (disability practitioners at the frontline of service delivery) perspective has been considered. They recommend that discrimination and stereotypes should be tackled by the government replacing these with positive examples of including people with disability in the workforce.

¹ <http://www.abc.net.au/radionational/programs/lawreport/discrimination-against-people-with-disabilities/3321022#transcript>

Methodology

Following ethics approval from Break Thru’s Quality Review Panel a mixed method research study was undertaken to discover the views of Break Thru clients, carers, families and support persons of people with disability, subject matter experts in the field with either a lived experience of disability, employer related expertise and/or disability knowledge, and Break Thru staff, on disability employment discrimination. Anti-discrimination legislation, and disability employment programs and strategies from five OECD countries similar to Australia (Canada, USA, UK, New Zealand and Sweden) were also reviewed, along with academic literature on this topic.

A total of 94 consultations were conducted over a three month period (August - November. 2015). New South Wales and Victoria metropolitan and regional clients’ views were gained using focus groups. Carers’, family and support persons’ perspectives were obtained using an online survey. Telephone interviews solicited subject matter experts’ perspectives, while metropolitan and regional staff perspectives in New South Wales and Victoria were gathered using an online staff survey. Participation in the focus groups, surveys and interviews was completely voluntary. An online employer survey was also launched. However, time and resource limitations restricted the promotion of this survey and no responses were received. All surveys were conducted online via surveymonkey®. Refer below table for consultation numbers.



Stakeholder Type	Number of Consultations
People with a disability:	
Metropolitan Victoria	5
Metropolitan New South Wales	19
Regional New South Wales	11
Carers, families and support persons of people with disability	12
Subject matter experts, including:	9
People with the lived experience of disability, Industry group member, Academics, Disability Peak Body representatives, Disability Advocates, Employers with disability	
Break Thru staff	38
TOTAL	94

The International Perspective – A Literature Review

What lessons and leading practices can we learn from other countries to address employment discrimination and increase workforce participation of Australians with disability?

The Organisation for Economic Co-operation and Development (OECD) claims that virtually all OECD countries have enacted anti-discrimination laws and that cross-country analysis suggests that, if well-designed, these laws can be effective in reducing disparities in labour market outcomes (OECD, 2008). Australia has anti-discrimination laws in place operating at both the national level and also at a state and territory level (Australian Human Rights Commission, 2014). However, even with legislation designed to protect people against discriminatory treatment disparities exist between the employment participation rates of those with and without disabilities. This disparity has a significant economic and human cost. The following literature review compares legislation and disability employment strategies from five OECD Countries similar to Australia; Canada, United States of America, United Kingdom, New Zealand and Sweden.

International Legislation and Disability Employment Strategies

CANADA: The Canadian Human Rights Act (1985) promotes equal rights of all individuals to have their needs accommodated, consistent with their duties and obligations as members of society (Canadian Government, 1985) and yet labour force participation of people with disabilities is substantially lower than that of people without disabilities (Statistics Canada (2006).

Disability Employment Strategies: Canada's Opportunities Fund for Persons with Disabilities (OF) program helps people with disabilities prepare for, obtain and maintain employment or self-employment. Funding is granted on a case by case basis (Service Canada, 2015).

UNITED STATES OF AMERICA: The Americans with Disabilities Act (1990) prohibits private employers with 15 or more employees, State and local governments, employment agencies and labour unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. (Department of Justice, 1990). Recent research has found evidence that disability employment discrimination exists in America, especially in businesses with less than 15 staff and who are not covered by the ADA of 1990 (Ameri et al., 2015). Such findings suggest a positive effect from anti-discrimination laws amongst larger businesses.

Disability Employment Strategies: National Disability Employment Awareness Month (NDEAM²) is an annual campaign to raise awareness of the ways individuals with disabilities strengthen the American workforce, its communities, and the country. The NDEAM website, has tools available for employers to access (Office of Disability Employment Policy, 2015b).

The Equal Employment Opportunity Commission website has resources available for employers, providing advice on matters concerning the recruitment, training and general employment and promotion of people with disabilities (Iyer & Masling, 2015).

THE UNITED KINGDOM: The Disability Discrimination Act 1995 (DDA) and the Equality Act (2010) tackle disadvantage and discrimination (Parliament of Great Britain, 1995, 2010).

Disability Employment Strategies: Work Choice is a voluntary program designed to help people with disability find and keep a job (Gov.UK, 2015a). Eligible job seekers must be able to work at least 16 hours a week after receiving Work Entry Support (Gov.UK, 2015c). Assistance includes up to six months pre-vocational Work Entry Support, up to two years post-placement In-Work Support, and Longer Term In-Work Support which eventually leads to working without support (Gov.UK, 2015b).

² <http://www.dol.gov/odep/topics/ndeam/resources.htm>

NEW ZEALAND: The Human Rights Act (1993) protect people in New Zealand from unfair discrimination in a number of areas, including disability, in line with United Nations conventions (Parliamentary Counsel Office, 1993).

Disability Employment Strategies: The Mainstream Employment Programme targets significantly disadvantaged people with disabilities. It is a four-way partnership among work and income³, supported employment or other agencies, employers, and people with a disability. Most mainstream positions are for a minimum of 15 hours per week, created specifically for the participant and are additional to the usual staffing needs of the business. Funding covers wage subsidies and agreed adaptive technology along with agreed external training for the participant and their direct supervisors (Ministry of Social Development (NZ), 2015b).

The Employers' Disability Network Trust was a not-for-profit network of mainly larger employers. Its purpose was to share best practice experience of working with people with disabilities in all areas of business. The Trust was disbanded in 2013 and replaced by Be. Employed (Be. Accessible, n.d.). Be. Employed invites employers to learn, share and shift their own employment practices by viewing people with disabilities as a large consumer group, in order to tap into the wealth of opportunity in the access employment market (Ministry of Social Development (NZ), n.d.).

SWEDEN: The Discrimination Act (Swedish Code of Statutes 2008:567), introduced in 2009 replaces seven earlier pieces of legislation, (Ministry of Integration and Gender Equality, 2009).

Disability Employment Strategies: The Developing Employment scheme provides the disabled worker with specific training, tailored adjustments, wage subsidy to the employer and personal support to both the employer and employee for up to a year (European Blind Union, n.d.-c). The wage subsidy scheme, funded by the Swedish Public Employment Services, also applies to currently employed workers who acquire a disability. The subsidy amounts to a set per centage based on the full salary and is subjected to a time limit of four years. In special cases the duration may be extended to support the employer into retaining the disabled employee (European Blind Union, n.d.-b). Sweden also offers funding for workplace modifications.

Supported/Sheltered Employment: Sweden uses a supported/sheltered employment model that is located in a regular workplace, known as Special Introduction and Follow-Up Support (SIUS) (European Blind Union, n.d.-a). The Safety Employment scheme concerns those people who are not able to compete on the open labour job market because of a reduced working capacity. Similar to supported employment the scheme applies to ordinary workplaces and enables the employer to receive a high level of personal assistance, support and wage subsidies without time limitation. (European Blind Union, n.d.-c) A specific subsidy is available for sheltered employment in the public sector. It concerns workers whose working capacity is severely reduced by a functional disability.(European Blind Union, n.d.-c). Work trial initiative: Swedish employers who have signed the general agreement with the Labour Union in their relevant job branch are eligible for the work placement programme. This allows the employer to become acquainted to the disabled worker and to introduce each task and it allows the disabled job seeker to gain experience and learn on the job (European Blind Union, n.d.-a).

Financial Incentives:

All countries reviewed offered financial incentives of some kind, although the kind of assistance, amounts and duration of the schemes differed.

CANADA: The Opportunities Fund (OF) program offers a wage subsidy scheme. The rate can vary during the life of the funding agreement and a descending scale may be used so that the subsidy rate diminishes over the duration of the intervention (Service Canada, 2015).

UNITED STATES OF AMERICA: A range of incentives for both workers, job seekers and employers are available (Office of Disability Employment Policy, 2015a). Along with tax credit incentives such as the Work Opportunity Tax Credit (WOTC) for employers who hire people with a disability (Office of Disability Employment Policy, 2010), the US also has Affirmative Action strategies, such as the goal (not quota) for federal contractors to ensure that people with disabilities account for at least seven per cent of workers within each job group, or risk losing their contract (Diament, 2014; Office of Federal Contract Compliance Programs (OFCCP), 2015).

³Work and Income is a service of the Ministry of Social Development and provides financial assistance and employment services throughout New Zealand (<http://www.workandincome.govt.nz/about-work-and-income/>).

UNITED KINGDOM: The Wage Subsidy Scheme provides financial incentives to employers, outside the public sector, to employ young disadvantaged or unemployed people with a disability. (Department for Work and Pensions, 2012) .

NEW ZEALAND: Mainstream Employment Programme provides 100% of the salary subsidy for the first half of an agreed term of a maximum of 104 weeks (two years), and 80% of the salary for the second half (Ministry of Social Development (NZ), 2015a).

SWEDEN: The Developing Employment scheme includes a subsidy set to a particular per centage based on the full salary and is limited to four years. In special cases the duration may be extended to support the employer retain the employee with disabilities (European Blind Union, n.d.-b).

The Perspective of People With a Disability – BreakThru’s Job Seekers

In this section, the job seeker (person with a disability) perspective is discussed listing their views around issues of disability employment discrimination. 35 job seekers participated in four separately held focus groups (two metropolitan Sydney, one metropolitan Melbourne, and one regional New South Wales) during October and November 2015. Their responses were recorded, transcribed and then thematically analysed and are summarised in this section below.

Among the group, there was general consensus that employment discrimination does exist, the impacts of which reinforce exclusive workplace practices and deny access to employment for those who are more than willing to work.

What are the benefits of employing people with disabilities?

People with disabilities registered with Break Thru (referred to as job seekers throughout this document) acknowledge the contribution that people with a disability can make:

“It’s good for the employer to see the person as a ‘whole person’ not just as a disability”

“It’s good for the employer to see the person as a ‘whole person’ not just as a disability”

A number (five) of job seekers indicated that a diverse and inclusive workforce is good for business. The following comments reflect their views:

“A retail store employee who served me had a disability and I thought that was really heart warming because the employers hired him regardless of his disability and I thought – yes, that’s a good place to shop”

Hiring a person with a disability demonstrates that the employer cares:

“We’re fair we care what is happening in the world”

What experiences have you had in gaining and retaining employment?

Over 85% of job seekers had negative experiences associated with accessing employment due to their disability. Issues arising included being discouraged to apply, problems with disclosure, assumed incompetence and lack of self confidence and/or self-oppression. The following comments are examples of their collective experiences.

Over 85% of job seekers had negative experiences associated with accessing employment due to their disability.

Discouraged to Apply/Assumed Incompetence

“They (the employer) think you have a cognitive impairment if you have a physical or mental disability”

Disclosure

“I didn’t tell them I had a disability. Cause I thought that they’d treat me differently”

“I was really embarrassed to tell the employer. I did not want that (my disability) to be the focus”

“I think a lot of people wouldn’t be disclosing their barriers and that is because of the stigma attached”

Self oppression

"I can't keep up. I can't do well. I was basically slow at what I do"

Company size

Size of the business was the centre of discussion in two of the focus groups (metro Melbourne and metro Sydney). The majority of the group participants suggested that the challenges facing people with disabilities were greater in small to medium enterprises as these businesses often do not have inclusive policies. Larger businesses offered better orientation programs and on the job support making it easier for new employees to integrate. However one participant offered an opposing view to the majority by suggesting that large employers can afford to be more selective (and therefore exclude people with disabilities) as they attract more applicants.

Circumstances where you (or someone you know) feel you have experienced discrimination in the workplace due to your disability?

Although participants cited only a few examples of overt employment discrimination, several examples of subliminal or indirect discrimination were given including:

"They told me I was not suitable for the job... it was just a nice way of saying sorry because they see me as a liability"

"I got through heaps of rounds during the application (process) and then when I was completely honest on the paper work (disclosing my medical condition), I never heard anything more"

"You can see it in their (employer) eyes, because of your age and disability. You can tell – they are very nice about it but you can just tell"

In contrast to the above experiences it was encouraging to hear that one participant felt accepted by her employer:

"I was treated really nicely and I was treated the same as everybody else"

Although not the specific focus of the topic of disability discrimination, six participants recalled experiences of discrimination that was gender and aged based.

Do you think disability employment discrimination currently exists in Australia?

65% of job seekers believe that employment discrimination is prevalent in Australia. Some suggesting that *"it exists everywhere"* and is not just limited to the world of work. However, a few job seekers from culturally and linguistically diverse (CALD) communities indicated that Australia fares better when compared to the employment experiences in their country of origin.

What avenues do you know of whereby people with a disability who feel they may have been the victim of discrimination can seek support?

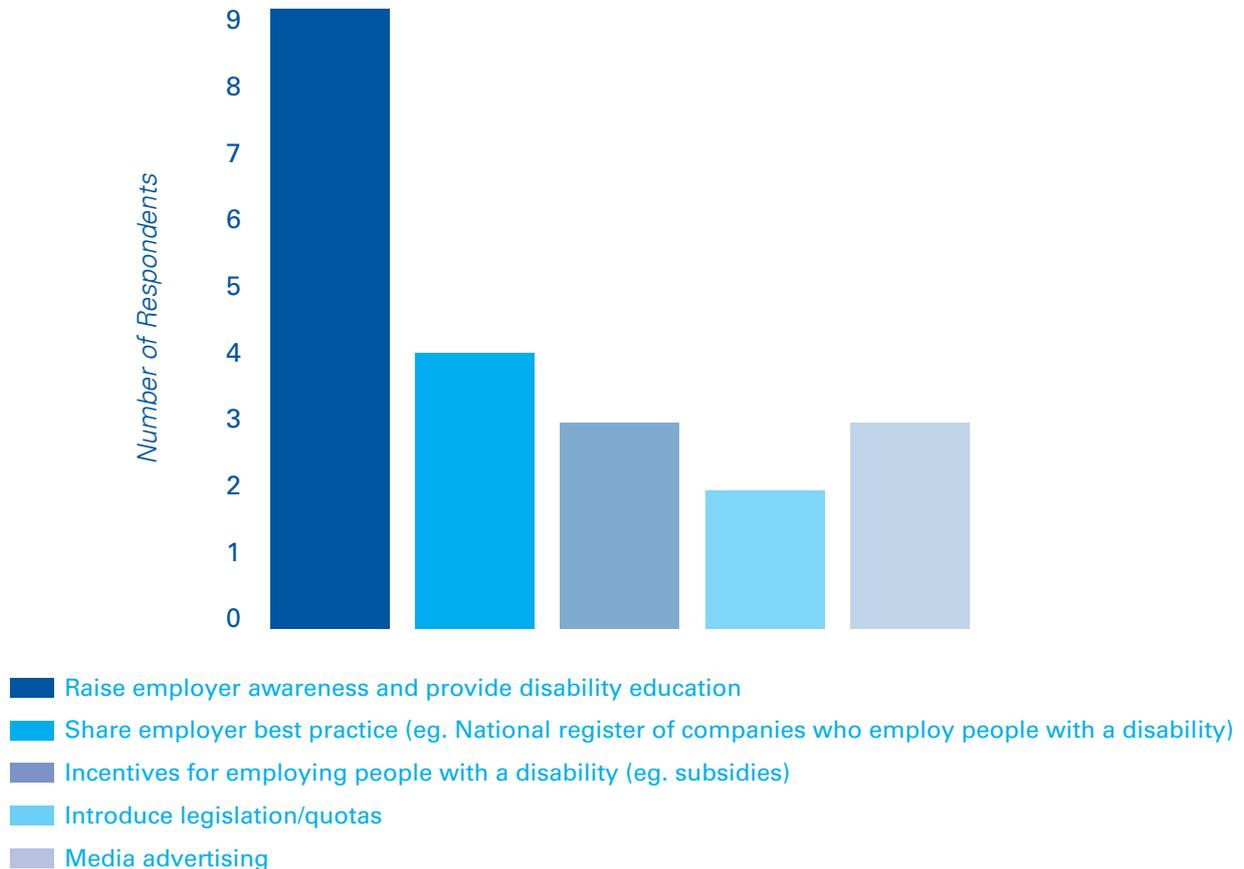
The majority of participants did not seem to be aware of formal avenues to lodge complaints of discrimination. However, a number of job seekers felt confident to gain advice from their employment service provider. Members of the Sydney focus groups suggested the ombudsman, consumer affairs, local Member of Parliament, and lawyer. Despite being provided with the background that this Inquiry was being led by the Australian Human Rights Commission (AHRC), none of the participants identified the AHRC as a place where they could make complaints about discrimination.

How can we better promote people with disabilities to employers?

There were a range of promotional strategies suggested which are outlined in the chart below and illustrated by the following comments:

"It (employer knowledge about disability) is as important and common as workplace health and safety (regulations) and they have to know that stuff"

"Some companies advertise that they hire PWD and I just think. What a beautiful thing"



What type of role do you see organisations/employment service providers such as BreakThru playing to minimise workplace discrimination against people with a disability?

Participant response suggestions regarding the role of employment service providers are evenly categorised into two main topics:

- (a) Provision of pre-employment support for people with disabilities including resume design, interview skills etc and
- (b) Building productive employer relationships to ensure that people with disabilities are effectively promoted and supported on the job.

This aspirational comment from one focus group participant illustrates the hope that inclusive work practices can provide:

"Bring more people into work programs (eg. Transition to Work) so that we can prepare ourselves, get ready for the job interview, practice skills and (then) put them (people with disabilities) in a work environment so that they can soar to the sky and realise their potential"

The Perspective of Carers, Families or Support Persons of People With a Disability

In this section, the carer perspective is discussed listing their views around issues of workplace discrimination.

An online survey was designed and promoted via social media to the families, carers and support persons of people with disabilities to gain their views on the questions raised in the AHRC's paper on disability employment discrimination. The survey was open for six days (12/11/15-18/11/15) and received 12 responses. Data from an online survey was analysed and the following results found.

What do you think are the benefits for employers in employing people with disabilities?

50% of responses spoke of the conscientiousness and reliability of workers with disability. 50% pointed to the benefits gained by promoting social inclusion, including the dismantling of stereotypes eg.

"Encouraging diversity and inclusion"

What challenges exist for people with disabilities in gaining employment?

Disablism; the negative attitudes and deliberately discriminatory treatment of people with disabilities, represented 60% of responses while 40% pointed to a lack of understanding by others as a key challenge faced by people with disability seeking work. For one respondent *"just getting an interview"* was a major challenge.

For one respondent *"just getting an interview"* was a major challenge.

Do you think disability employment discrimination currently exists in Australia?

100% (10/10) said yes

Tell us about any circumstances where you or someone you know, felt that they experienced discrimination in the workplace due to their disability?

One third of respondents gave examples of explicit discrimination and disablist comments directed towards people with disability (4/12).

"From my experience in a regional area, many employers still have barriers to even giving a person with a disability a try at filling the position they have advertised"

What can people do if they feel that they have been discriminated against because of their disability?

With just one third of participants responding to this question it raises the question of whether there is sufficient knowledge in the community about what to do when faced with discrimination. From the responses received one cited New South Wales Anti-discrimination Board; two cited the AHRC; and one suggested an EEO officer within the workplace. However, the futility of approaching such services is reflected in one comment to simply get *"a new job"* and another respondent's observation that *"Go[ing] to AHRC [is] not useful if discrimination occurs during recruitment"*, the assumption being that it is difficult to prove discrimination by an unsuccessful job application.

What are your thoughts on the introduction of employment quotas of people with disabilities?

One respondent believed jobs should be awarded on merit while two respondents agreed with mandatory quotas.

"Worth a try - more accountability is required"

How can disability service providers better promote people with disabilities to employers?

Carers urged services to promote client strengths to employers, to closely match employer needs with the skills and aspirations of the job seeker and to provide adequate and ongoing support, suggesting:

"Giving examples of how we have placed job seekers before, good news stories and providing ongoing support - not just place and run"

What is the role of disability service providers such as BreakThru in reducing workplace discrimination of people with disabilities?

Three respondents claimed the role of services was one to educate employers and the wider community that people with disabilities can work and that diversity has many benefits. They also spoke of the benefits of providing opportunities where people with disabilities can demonstrate this:

"By work experience placement which shows that people with disabilities are able to do the job"

Subject Matter Expert Perspectives

Break Thru consulted a range of disability subject matter experts capable of providing the perspectives of the disability services consumer, advocate, service provider, peak body representative and academic around issues of disability employment discrimination. Four of the nine subject matter experts have a lived experience of disability. Semi-structured telephone interviews lasting on average 58 minutes and were conducted over a three month period (Aug-Nov. 2015). Responses to set questions were categorised, coded and then sorted into emergent themes. These are summarised below.

Disability employment discrimination was variously understood as either *active* discrimination - explicit, unequal treatment of people with a disability or *passive* and *covert* discrimination - which includes an unconscious and unintentional bias against people with a disability. Various subject matter experts spoke of deeply imbedded cultural factors that perpetuate passive discrimination, including what previous Disability Discrimination Commissioner, Graeme Innes, has often referred to as

“the soft bigotry of low expectations”⁴

“The intersectionality of disadvantage means the problem is multi-layered and very complex”

Associate Professor Leanne Dowse

What does the problem look like?

There was a diverse range of views around the issue of disability employment discrimination with the vast majority agreeing that it exists in either active or passive forms and is an extremely complex issue. Associate Professor Leanne Dowse stressed that employment-related discrimination of people with a disability is firmly grounded in social disadvantage. She noted that people with disabilities are multiply disadvantaged across a range of areas, such as access to education, transport, affordable housing, the built environment, amongst other issues, and explained that discrimination is very much a socially stratified and gendered issue, not just a disability issue.

Subject matter experts spoke of the lack of opportunity for employment in entry-level positions by PWD along with the lack of awareness by employers of the workplace supports and accommodations that were available.

“Fear of what is different perpetuates the problem”

Another common issue raised was the broad lack of understanding of disability by the wider community and of the capabilities of people with disabilities. Interviewees noted the community’s low expectations of people labelled with disabilities and how these people are under represented in the workforce and undervalued in society. This point was taken up by one subject matter expert who noted the symbolism of the fact that Australian no longer has a dedicated Disability Discrimination Commissioner.

The broad brush term *disability* implies an homogenous group of people with similar needs and abilities, but it is far more complex than that. It was suggested that a lack of understanding about disability in the community manifests itself as discriminatory behaviours (passive or active). One interviewee with a physical disability stated his disability

“makes them feel uncomfortable and so they avoid me. I’m Mr Invisible. They go about as if I’m not even there, and they will sit somewhere else.”

He also spoke of the fear of difference. *“Fear of what is different perpetuates the problem.”*

Subject matter experts noted that employers are community members and so one should not be surprised that employers reflect the prevailing negative attitudes of the general community towards people with a disability. Most participants spoke of the need to educate people, including employers and co-workers on disability issues.

Numerous subject matter experts observed that many people with disabilities fail to gain a job interview, with Dr Kevin Murfitt noting *“something is happening in the space between advertising and filling the position.”* One interviewee pointed out that when people disclose their disability on an application it is very easy for employers to cull their application on the grounds that they do not have the *“inherent requirements for the job”*; thereby masking

⁴<http://www.smh.com.au/federal-politics/political-news/outgoing-disability-discrimination-commissioner-graeme-innes-fires-parting-shots-at-abbott-government-20140702-3b83a.html>

the fact that they are discriminating. Another participant criticised current recruitment processes as discriminatory for their reliance on internet access. They cited the New South Wales Government as the largest employer in the southern hemisphere and yet one to which all jobs applications must be made online. This criticism echoes concerns raised by the Victorian Council of Social Service's (VCOSS) in its 2015 report into employment programs, which noted the current employment market requires a degree of competency in using information technology to undertake job search. Such an environment disadvantages individuals and groups, including young people with and without disabilities, who have low digital literacy skills or access to computers and the internet (VCOS, 2015)⁵.

“Getting a job is like playing a game. You need to know the rules of the game. People need a village to support them in understanding the rules, bearing in mind the rules are ever changing.”

- Suzanne Colbert

Is it a matter of law?

Diverse views were also held around the current laws, such as the Disability Discrimination Act (DDA), with one person saying there were good laws in Australia and a general awareness within society that disability discrimination is not acceptable. However, most were highly critical of the current laws, with one participant claiming

“Many people within the disability rights movement don't think the DDA is worth the paper it is written on.”

The adversarial nature of the law was a common criticism, where the onus is on the victim to prove their case. Whilst it was noted that the DDA and the UN Convention on the Rights of Persons with Disabilities are tough once a person has established a case, the difficulty of getting to that stage was said to be significant. The need for greater education about the laws and the avenues available to people who think that they have been unfairly treated was also raised.

Respondents spoke of the complexity of the complaints process, prohibitive costs involved in legal action, a lack of access to good counsel, under-funded legal services, and a lack of specialist legal services, as some of the issues that discourage people from pursuing discrimination complaints or from achieving a successful complaints outcome. One subject matter expert who sits on the New South Wales Civil & Administrative Tribunal claimed that most applicants are unsuccessful, for a variety of reasons, but generally because they lacked good advice, adequate support and preparation. Another criticism of the current system was the fact that when one uses mediation to resolve issues the matter never goes to court and never becomes case-law upon which precedence can be set. It was claimed that mediation therefore keeps the extent of the problem hidden.

One interviewee criticised the effectiveness of the DDA claiming it relies upon the development of standards (such as transport and education standards) against which discrimination is judged. Without a clear set of standards the DDA does not articulate what it is that it is prohibiting.

Another interviewee pointed to Industrial Relations laws as a reason for employers not taking on people with a disability, claiming that the laws lack a focus on the needs of employers.

What works well?

All subject matter experts raised the merits of support workers such as job-coaches, mentors, and those providing pre and post-placement support (including Disability Employment Service providers), as a means of ensuring a successful work placement. Several participants mentioned that apparent discrimination could be minimised by implementing strategies such as accurate job-matching and attending more closely to job requirements and employer needs. Using strength-based approaches to job-seeker servicing was also raised by a number of subject matter experts. More specifically, Dr Geoff Waghorn discussed the benefits of a plan for Managing Personal Information (MPI) for people with mental illness which aims to shift the focus from a diagnostic to a strength-based approach; one that begins by identifying the client's talents, abilities, and resources.

Although wage subsidy is a common incentive offered to employers of people with a disability, one participant claimed it did not reduce discrimination since the employer's attitude was the issue. Another participant opposed wage subsidies for sending a negative message about the person's capabilities and perpetuating stigma.

Subject matter expert, Mark Bagshaw (CEO, Innov8group) draws on his own experiences and professional marketing background in developing a framework to assist in determining how marketing tools can be more appropriately used to promote people with disabilities to employers. The below diagram outlines five major types of employer attitudes

⁵ VCOS. (2015). Employing Victorians experiencing disadvantage: VCOSS response to the employment programs review (pp. 22). Melbourne: Victorian Council of Social Service.

each of which require a distinct market segmentation approach.



Figure One

Most participants spoke of the need for community education and workplace training around issues to do with disability. Another area of community education was on the numerous economic benefits to employing people with a disability. For example, research by Graffam, Shinkfield, Smith, & Polzina (2002⁶) found that, on average, workers with a disability generally have a higher retention rate, fewer OHS incidents, lower workers' compensation costs and their productivity is similar to that of employees with no disability. In contrast to this, one participant suggested a need for peak bodies and employer industry groups to calculate the cost of hiring a person with a disability and suggested employers should be supported to offset those costs. Several subject matter experts recommend that Disability Employment Service staff should play an active role in promoting the business case for hiring a person with a disability by highlighting the:

- (a) Economic benefit (reduced cost to the taxpayers in terms of welfare payments and carer support needs),
- (b) Social benefit (social inclusion, stigma reduction, improved sense of self-worth and sense of identity) and
- (c) Significant talent on offer (diverse range of skills and qualifications). This sentiment was reinforced by an employer and key note speaker at a business breakfast attended by one of the subject matter experts;

"If one of my team said we were ignoring 20% of the talent pool, I would run them out of the company"

Workers with a disability generally have a higher retention rate, fewer OHS incidents, lower workers' compensation costs and their productivity is similar to that of employees with no disability

Whose responsibility is it?

Subject matter experts noted that Disability Employment Service providers were well placed to promote the conversation of disability employment with employers and to be part of the educative process. They also point to the poor representation of people with a disability in the public service workforce, stating that the government has a responsibility to lead by example. One person recommended an Affirmative Action campaign introducing quotas to government departments and targets for the wider workforce. There were mixed views on targets and quotas in general, with some suggesting quotas increased the risk of people being placed into work that is not meaningful and others suggesting quotas were the only way of levelling up employment representation of people with a disability. Several participants preferred the *"carrot to the stick"* approach suggesting that employers with greater representation of people with a disability in their workplace be awarded government contracts, celebrated with diversity-related achievement awards and recognised for the efforts they were making in social inclusion.

⁶ Graffam J, Smith K, Shinkfield A, & Polzina U. (2002). Employer benefits and costs of employing a person with a disability. *Journal of Vocational Rehabilitation*, 17, 251-263.

Rick Kane (CEO Disability Employment Australia) drew attention to the recent legislative changes made in the Netherlands with the 2015 Participation Act, which aims to create employment for 125,000 people with a disability (referred to in the literature as work-incapacitated persons⁷) by 2026. This scheme commences with targets, which are intended to be reviewed after two years and could potentially change to mandatory quotas if insufficient progress is being made by the organisation.

Financial incentives, such as tax deductions for businesses, were suggested as another way government could encourage the employment of people with a disability.

Recommendations from Subject Matter Experts

Several Subject matter experts recommended a national advertising campaign. This reiterates a principle recommendation of the *Work Wanted: Mental Health and Workforce Participation report (House of Representatives Standing Committee on Education and Employment, 2012⁸)*, for an Australian government-coordinated and comprehensive, multi-faceted national education campaign to target stigma and reduce discrimination against people with a mental illness in Australian schools, workplaces and communities.

“The government should be granting contracts to those businesses who proactively support people with disabilities”

- Noel Hiffernan

However, as Dr Murfitt has noted, whilst an awareness program is important, it is not enough to shift deeply embedded attitudes and beliefs about people with a disability. Based on research evidence he recommends experiential strategies that establish relationships between employers and people with a disability, such as mentoring, work experience and work trials in real workplaces. These provide an opportunity for employers and co-workers to see people with a disability being successful. This view is also supported by Mark Bagshaw who suggests that the

“Primary intervention for employers who have never thought of hiring a person with a disability, is to use employers who are actively employing people with disability and likely to become advocates”

Success builds success, so if others see for themselves that people with disabilities can do the job this first hand experience will dismantle unhelpful stereotypes and work to reduce discrimination.

⁷ Kromann Reumert. (2015). The Netherlands: Several employment law developments. Retrieved from Kromann Reumert website: <https://en.kromannreumert.com/News/2015/05/The-Netherlands-Several-employment-law-developments>

⁸ House of Representatives Standing Committee on Education and Employment. (2012). *Work wanted: Mental health and workforce participation*. Preliminary pages. Canberra: The Parliament of the Commonwealth of Australia

BreakThru Staff Perspective

In this section, the staff perspective gathered via online survey is discussed. 38 staff of Break Thru's disability employment service programs responded to the survey, their responses were thematically coded and analysed. Their views are summarised below.

Among those surveyed, there was general consensus that the prevalence of stigma associated with disability is a contributing factor for the low labour force participation rates of people with disabilities. However, the majority believe there is a significant role for employment service providers to play in ensuring employers are better informed and supported so that people with disabilities are given the right to work, free from discrimination.

What do you think are the benefits for employers in employing people with disabilities?

The majority (61%) of participating staff highlighted reliability as a key benefit for employers in hiring people with disabilities. According to the respondents, reliability incorporates fewer sick leave days, being appreciative of being given an opportunity (suggesting therefore that the person is more committed) and having a willingness to learn. Several (10) survey respondents indicated that employers would receive positive exposure for recruiting people with disability. They would be acknowledged for their disability confidence; for being an inclusive business with a diverse workforce. The following comment is indicative of respondent views:

"It shows customers of the business that they are an equal opportunity employer, compassionate and caring - they are a "business with a heart" It is a good face for the business"

Additional benefits highlighted in the survey response include:

- (a) Increased employer awareness and
- (b) Access to wage subsidies and specialist support.

What challenges exist for people with disabilities in gaining employment?

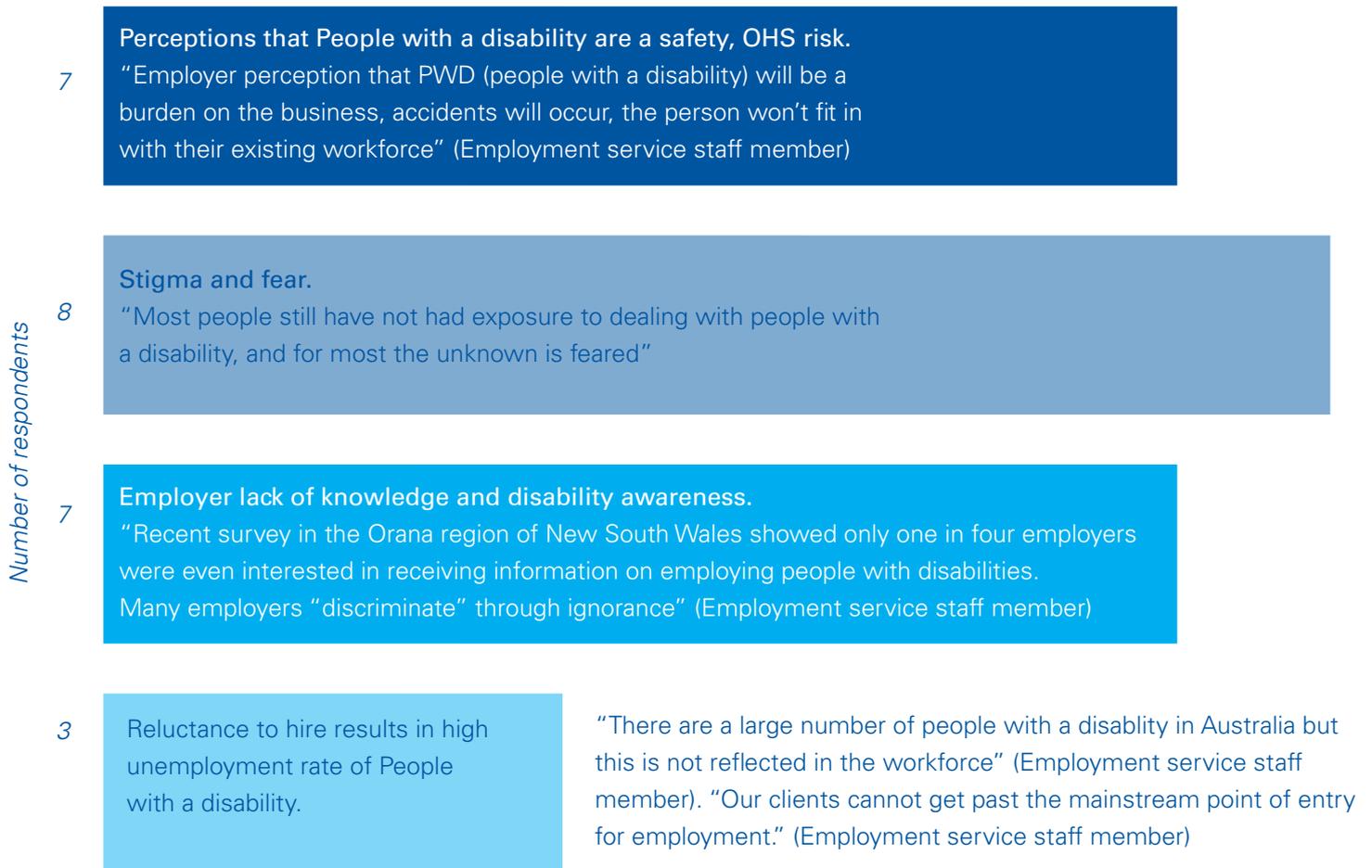
The most popular challenges identified by respondents included employer stigma (53%) and lack of disability awareness and knowledge (37%) whilst five respondents indicated that competition and lack of skills were also barriers to engagement. Although most of the staff perceived employer stigma as the main challenge, two respondents concluded that barriers exist within the disability employment service system itself:

"Employment services create additional barriers deeming people with disability 'not work ready' and sedentary staff do not network with employers sufficiently, (there is) large scale disappearance of the place and train model"

"There is limited advocacy (provided) for job seekers on some occasions"

Do you think disability employment discrimination currently exists in Australia?

An overwhelming majority (89%) of employment service staff believe that employment discrimination exists. Justifications by respondents for reaching this conclusion are outlined in the chart and participant statements below:



Tell us about any circumstances where you or someone you know, felt that they experienced discrimination in the workplace due to their disability?

18 staff respondents detailed a range of unsettling examples of both overt and subliminal discrimination. In most cases the victims of discrimination were the clients of disability employment services. The comments below provide a small sample of the staff experiences in witnessing discrimination:

"A client stated on the application form that they had a disability, they were told that they would not be interviewed because the worksite did not have disability access for wheel chairs. The client was not in a wheel chair, they had only ticked they had a disability (on the form)"

What can people do if they feel that they have been discriminated against because of their disability?

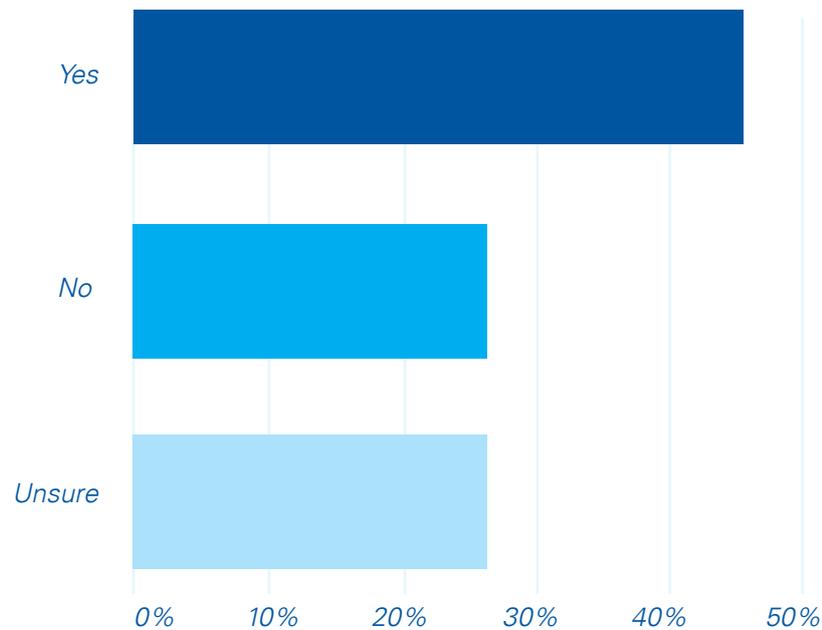
Respondents suggested the following avenues of support if people felt that they had been discriminated against: Employment Service Provider, Human Rights Commission, Advocate, family member, Fair Work and Ombudsman.

Two respondents suggested communicating with the employer as an alternative to a formal complaints process. The comment below articulates the success one staff member had with this approach.

"I feel bringing awareness is the best solution, once someone is aware and has an understanding of disabilities then we experience little to no discrimination in that particular workplace or environment"

Do you think the inclusion of disability employment quotas and/or targets are an effective way to promote diversity in the workplace?

The following chart summarises the response rate to the question regarding whether quotas and/or targets are effective.



Explanations for the above responses were varied. For those who disagreed with targets they thought they would be of little value and tokenistic. Those in support of targets, believed that they could be a vehicle of *"affirmative action"* in *"cultivating a continued awareness"*. However some respondents also caution that if quotas are mandated then appropriate support needs to be in place.

What is the role of disability service providers such as BreakThru in reducing workplace discrimination of people with disabilities and promoting people with disabilities to employers?

Survey participants provided comprehensive and detailed qualitative responses to this question which is a reflection of both their expertise and commitment to their work in the disability services industry. 53% of respondents agree that a mix of promotion (advocacy) and media advertising is an effective method to facilitate changing the employment proposition for people with disabilities. A further nine respondents propose that employer education and disability awareness-raising is a key responsibility of employment service providers. The suggestions below are reflective of the many comments received in response to this survey question:

“Ensuring that we’re busting the myths and re-educating employers by placing the correct candidate into the correct job - if an employer has a positive experience they will be more likely to share this with other employers

“Engage businesses in the discussion” and “promote the value proposition”

Concluding Comments and Recommendations

As previously outlined in the introductory letter to this report, our response to the *Willing to Work* issues paper considers a variety of perspectives including those from job seekers, carers, families and support persons of people with disability, subject matter experts and Break Thru staff. Although the views from each group are unique, there are common themes which are summarised in the concluding comments and recommendations below.

WHAT DOES THE PROBLEM LOOK LIKE?

The stakeholder perspectives outlined in this report are united in their view that employment discrimination against people with disabilities is prevalent in Australia, that it is systemic and denies people with disabilities access to human rights. Below is a list of the key problems identified and shared by the collective stakeholders.

1. The overwhelming majority (75/94) of respondent stakeholders indicate that employment discrimination exists and that employment discrimination was understood as either active discrimination - explicit, unequal treatment of people with a disability or passive and covert discrimination.
2. Stigmatisation and the fear of difference were viewed as pervasive and perpetuating the problem (clients, subject matter experts and staff).
3. Over 85% of the job seekers interviewed had negative experiences when accessing employment opportunities including; being discouraged to apply, disclosure issues, assumed incompetence and lack of self confidence and self oppression.
4. Current on line recruitment processes are discriminatory and a barrier to access for people with a disability (staff, subject matter experts, international experience).
5. There is insufficient knowledge in the community about avenues of support for victims of discrimination. The majority of clients and carers were unaware of the Australian Human Rights Commission's role in hearing about complaints of discrimination.

WHAT DOES THE SOLUTION LOOK LIKE?

Despite the collective view that employment discrimination is pervasive and a significant problem for people with disabilities, it was encouraging to hear stakeholder suggestions on what can be done. The following recommendations offer potential solutions to the problem and a pathway to providing people with disabilities access to their fundamental right to work, free from discrimination.

Recommendation 1: [Australian Government to lead the way in employing people with disabilities](#)

Federal, state and local governments have a real opportunity to improve the labour participation rate of people with disabilities. As large employers (for eg. New South Wales Government is the largest employer in the southern hemisphere), we recommend that the federal, state and local governments lead by example in hiring and promoting people with disability.

Recommendation 2: [Practical and experiential work experience and effective job matching](#)

Implement experiential strategies that establish relationships between employers and people with a disability, such as mentoring, work experience and work trials in real workplaces. These provide an opportunity for employers and co-workers to see people with a disability being successful. Success builds success, so if others see for themselves that people with disabilities can do the job this first hand experience will dismantle unhelpful stereotypes and work to reduce discrimination.

Enhance Disability Employment Service provision so that employment service staff can provide effective job-coaching, mentoring, and improved pre and post-placement support as a means of ensuring a successful work placement. A

greater focus on accurate job-matching and attending more closely to job requirements and employer needs will have a positive impact on the labour force participation rates of people with a disability.

Recommendation 3: Raise community awareness about complaints mechanisms, avenues of support and discrimination legislation

Provide better education about the laws and the avenues available to people who think that they have been unfairly treated or are victims of discrimination.

Recommendation 4: Draw from international experiences

Lessons can be learned from examining the experiences of our global community. Such best practices and lessons learnt include:

- Work trial initiative: Swedish employers participate in a work placement programme. This allows the employer to become acquainted to the disabled worker and to introduce each task and it allows the disabled job seeker to gain experience and learn on the job (European Blind Union, n.d.-a).
- Disability Employment Strategies: National Disability Employment Awareness Month (NDEAM) is an annual campaign to raise awareness of the ways individuals with disabilities strengthen the American workforce, its communities, and the country.
- Be. Employed invites employers to learn, share and shift their own employment practices by viewing people with disabilities as a large consumer group, in order to tap into the wealth of opportunity in the access employment market (Ministry of Social Development (NZ), n.d.).
- Netherlands the 2015 Participation Act aims to create employment for 125,000 people with a disability by 2026. This scheme commences with targets, which are reviewed after two years and changed to mandatory quotas if insufficient progress is being made by the organisation.

Recommendation 5: A national advertising campaign

Most stakeholder groups highlighted the benefits of advertising as a way of improving awareness and recommend an Australian government-coordinated and comprehensive, multi-faceted national education campaign to target stigma and reduce discrimination against people with disability (including mental illness) in Australian schools, workplaces and communities.

Recommendation 6: Tax credits and incentives for employers

Although not universally supported by all stakeholders, the international literature, some staff, clients and subject matter experts recommend that employers may be incentivised to employ people with disabilities if they receive tax credits to offset any productivity costs.

Recommendation 7: Innovations in job seeker and employer servicing

Using strength-based approaches such as the Managing Personal Information (MPI⁹) framework when disclosing disabilities to employers has the potential for raising awareness, reducing stigma and assisting job seekers in maintaining employment.

Recommendation 8: Disability confident register

Develop a national register of best practice employers who have been officially acknowledged for their *disability confidence* in employing people with disabilities.

⁹Waghorn, G., and Spowart, C.E. (2010). Managing personal information in supported employment for people with psychiatric disabilities. Ch 13 in Vocational rehabilitation and mental health. C. Lloyd (ed). New York: John Wiley and Sons.

References

Ameri, M., Schur, L., Adya, M., Bentley, S., McKay, P., & Kruse, D. (2015). The disability employment puzzle: A field experiment on employer hiring behavior, NBER Working Paper No. 21560. Retrieved 18 November 2015, from <http://www.nber.org/papers/w21560>

Americans with Disabilities Act (1990).

Australian Human Rights Commission. (2014). A quick guide to Australian discrimination laws. Good practice, good business. Retrieved 18 November 2015, from <https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/quick-guide-australian-discrimination-laws>

Be. Accessible. (n.d.). Be. Accessible. Retrieved 18 November 2015, from <http://www.beaccessible.org.nz/>

Canadian Human Rights Act (1985).

Department for Work and Pensions. (2012). Youth Contract – Wage Incentives https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/317370/wage-incentives-state-aid-terms.pdf

Diament, M. (2014, 25 March 2014). Feds Move Forward With Disability Hiring Mandate. Disability Scoop. Retrieved from <http://www.disabilityscoop.com/2014/03/25/feds-disability-hiring-mandate/19222/>

Disability Discrimination Act (1995).

Equality Act (2010).

European Blind Union, E. (n.d.-a). Looking for a job. Information for countries: Sweden, Work and Employment - Article 27. Retrieved 18 November 2015, from <http://www.euroblind.org/convention/article-27-work-and-employment/nr/136#11>

European Blind Union, E. (n.d.-b). Measures to Support Employers. Information for countries: Sweden. Retrieved 18 November 2015, from <http://www.euroblind.org/convention/article-27-work-and-employment/nr/136#1>

European Blind Union, E. (n.d.-c). Measures to support workers with disabilities. Information for countries: Sweden, Work and Employment - Article 27. Retrieved 18 November 2015, from <http://www.euroblind.org/convention/article-27-work-and-employment/nr/136#3>

Gov.UK. (2015a). 1. Overview. Work choice. Carers and disability benefits. Retrieved 2 November 2015, from <https://www.gov.uk/work-choice>

Gov.UK. (2015b). 2. What you'll get. Work choice. Carers and disability benefits. Retrieved 2 November 2015, from <https://www.gov.uk/work-choice/what-youll-get>

Gov.UK. (2015c). 3. Eligibility. Work choice. Carers and disability benefits. Retrieved 2 November 2015, from <https://www.gov.uk/work-choice/eligibility>

Human Rights Act (1993).

Iyer, A., & Masling, S. (2015). Recruiting, hiring, retaining, and promoting people with disabilities: A resource guide for employers.

Washington DC: Equal Employment Opportunity Commission Retrieved from https://www.whitehouse.gov/sites/default/files/docs/employing_people_with_disabilities_toolkit_february_3_2015_v2.pdf.

Ministry of Integration and Gender Equality. (2009). New anti-discrimination legislation and a new agency, the Equality Ombudsman. Government Offices of Sweden. Stockholm: Ministry of Integration and Gender Equality. Article no. 2009.02.

Ministry of Social Development (NZ). (2015a). About the Mainstream Employment Programme. Mainstream Employment Programme. Retrieved 16 November 2015, from <http://www.msd.govt.nz/what-we-can-do/disability-services/mainstream/index.html#AbouttheMainstreamEmploymentProgramme1>

Ministry of Social Development (NZ). (2015b). Requirements for Mainstream positions. Mainstream Employment Programme.

Retrieved 16 November 2015, from <http://www.msd.govt.nz/what-we-can-do/disability-services/mainstream/index.html#RequirementsforMainstreampositions6>

Ministry of Social Development (NZ). (n.d.). The employers' disability network trust. Retrieved 18 November 2015, from <http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/initiatives/employers-disability-network/>

OECD. (2008). The price of prejudice: Labour market discrimination on the grounds of gender and ethnicity. OECD Employment Outlook 2008, 139-202.

Office of Disability Employment Policy. (2010). Work Opportunity Tax Credit—An Under-Utilized Employer Tax Incentive to Hire Individuals with Disabilities. <http://www.dol.gov/odep/documents/WOTC-incentive.pdf>

Office of Disability Employment Policy. (2015a). Financial Capability, Asset Development, and Work and Tax Incentives.

Disability Employment Policy Resources by Topic. Retrieved 19 November 2015, from <http://www.dol.gov/odep/topics/FinancialEducationAssetDevelopment.htm>

Office of Disability Employment Policy. (2015b). National Disability Employment Awareness Month 2015. Retrieved 2 November 2015, from <http://www.dol.gov/odep/topics/ndeam/resources.htm>

Office of Federal Contract Compliance Programs (OFCCP). (2015). Frequently Asked Questions. New Section 503 Regulations. Section 503. Retrieved 19 November 2015, from http://www.dol.gov/ofccp/regs/compliance/faqs/503_faq.htm

Service Canada. (2015, 2015-09-28). Funding: Opportunities Fund for Persons with Disabilities. Retrieved 17 November 2015, from <http://www.servicecanada.gc.ca/eng/of/index.shtml>

Statistics Canada. (2006). Participation and Activity Limitation Survey of 2006: Labour Force Experience of People with Disabilities in Canada. Retrieved 17 November 2015, from <http://www.statcan.gc.ca/pub/89-628-x/89-628-x2008007-eng.htm#a5>

Acknowledgements

Break Thru wishes to acknowledge contributors to this report.

Special thanks to:

Break Thru job seekers:

Parramatta office, New South Wales; Maroubra office, New South Wales; Port Macquarie office, New South Wales; Glenroy office Victoria

Subject matter experts:

Mark Bagshaw, Managing Director of Innov8 Consulting Group

John Clark, National Claims Consultant, Break Thru People Solutions

Suzanne Colbert, AM. Chief Executive of the Australian Network on Disability

Associate Professor. Leanne Dowse, Chair in Intellectual Disability and Behaviour Support at UNew South Wales

Noel Hiffernan, General Member, New South Wales Civil & Administrative Tribunal

Rick Kane, CEO, Disability Employment Australia

Dr Kevin Murfitt-Lecturer, Disability and Inclusion, School of Health & Social Development, Faculty of Health, Deakin University

Professor Vivienne Riches, Clinical Prof. Psychologist, Snr Research Fellow, Centre for Disability Studies, University of Sydney

Dr Geoff Waghorn Head, The Queensland Centre for Mental Health Research

Authors and investigators:

Liz Hudson (Break Thru Research Manager) and Dr Janice Ollerton (Break Thru Research Co-ordinator)

Document design

Break Thru's Marketing team:

Cara Anderson (Break Thru Marketing & Communications Manager)

Carmen Tom (Break Thru Marketing & Communications Officer)

Reegan Myers (Break Thru Marketing & Communications Co-ordinator)

Appendix A – Description of Figure One for Those Who Use Screen Readers

Figure One is a five tiered two sided-pyramid demonstrating five major type of employers attitudes. Each employer type has a corresponding marketing approach. It is a three dimensional pyramid with the employer types on the left hand side of the pyramid and the corresponding marketing approach (strategy) on the right hand side of the pyramid.

Top level of the pyramid

The top employer type in the pyramid (the smallest group) is the “I am doing it” type and there is no corresponding marketing strategy on the right hand side of the pyramid.

Level Two

Level two on the left hand side of the pyramid is the “I’m ready” employer type and the corresponding marketing approach on the right hand side is “help”.

Level Three

Level Three on the left hand side of the pyramid is the ‘Never thought of it’ and the corresponding marketing approach on the right hand side is “encourage”. Additionally on this level, there is an arrow beginning from the top level pointing down to level three. The arrow appears along the right hand edge of the pyramid and the arrow head points to the words ‘encourage’ on the right hand side of level three.

Level Four

Level Four on the left hand side of the pyramid is the ‘I tried but..’ and the corresponding marketing approach on the right hand side is “sell”.

Level Five (bottom of pyramid)

Level Five on the left hand side of the pyramid is the ‘They’re not like ME’ and the corresponding marketing approach on the right hand side is “legislate”.