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

# Submission No 291

**Name** Daniel Heffernan

**Submission made by**

[x]  Australian with disability in work

# Submission regarding Older Australians / Australians with Disability / Both

### **Your experience**

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

[x]  Yes

[ ]  No

[ ]  Not sure

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

[x]  Yes

[ ]  No

**Please tell us more, for example, what action you took and how effective you felt it was; or why you chose not to take any action.**

After returning from major spine surgery and being successful in obtaining a new role under normal recruitment procedures (with all restrictions from the surgery/injury/disability clearly spelt out), I was removed from that very role due to not being full-time (after 11 months in the role).

I was then moved around the organisation as a ‘stop-gap measure’ and a ‘fire-fighter’ due to my lengthy skills and experiences within the **[redacted]** industry. **[The redacted employer]**’s continual excuse was that they had previously ‘had no degree qualified worker injured and ‘you are a test case’.

At one time I was seconded to a 12 monthly position that lasted greater than 30 months. This ended after I took time off for stress from **[employer]**’s inaction to secure a ‘suitable’ role within the organisation after lying that they had been developing one.

Over this lengthy period of time, I had contacted my employer **[redacted]** via HR/IR (**[redacted]**) but found that they were the main perpetrators of the discrimination. The destruction of documents on my personnel file, recruitment records and hand-shake deal were conveniently forgotten and misplaced. FOI applications were blocked due to excuses such as exorbitant costs to the organisation, files moved to tape or other blocks that no other agency would impose.

I also turned to my CEO (**[redacted]**) who, no longer than 3 weeks after receiving my request for help, sent out a memo to senior managers to have his ‘current staffing issues’ compared to a resent court determination. ‘FWA decision clarifies inherent-requirement dismissal rules; and Psychological factors critical in back pain assessments’ (obtained under FOI). No communication from **[CEO redacted]** was ever received.

I turned to Comcare’s via the OHS Act and I was told that my discrimination did not ‘make a threshold’ to start an investigation. **[The employer redacted]** were giving a basic questionnaire to fill out and the decision not to investigate was based on that. My chance to prove their statements were false was never offered. It was also stated by the OHS team member that ‘the term ‘suitable employment’ in the SRC Act is open to interpretation’ and **[redacted employer]** used this in their favour and there was nothing Comcare could do other than request suitable work.

All this, combined with the continual mistakes that Comcare (numerous AAT visits from injury claim rejections), the inability of numerous Rehabilitation Providers (**[redacted]**) to progress with my return to work plan (i.e. gain suitable duties from **[employer redacted]**) and HR stating that there was no suitable work onsite and that my pay had been cut (and recreation leave reduced), were making with my claim work load very large. Not long after, I became even more stressed and I left work with a bout of depression.

When I tried to return to work with the full backing of my GP, Orthopaedic Surgeon, Pain Specialist, Psychologist and Psychiatrist, **[my employer redacted]** block me and send me to two of their chosen Doctors (Occupational and Psychiatrist). These reports showed that I was fit to return to work on reduced hours (Psychiatrist) but totally unfit for work due to my ‘catastrophic’ back injury and my depressive condition.

I took my discrimination case to the Australian Human Rights Commission (AHRC) to get **[redacted]** to follow procedure and complete their obligations under the SRC Act in terms of the Medical reports they ordered on me. **[The employer redacted]** explicitly stated at this hearing that stated that ‘no **[redacted]** positions were available or were going to be available on site (**[employer redacted]**) for a long while’

It was agreed that in exchange for closing my case against **[redacted]** at the AHRC, **[redacted]** would provide a section 37 of the SRC Act report (combining all medical history) and supply if Comcare were to determine in my favour from this s37 determination, **[employer redacted]** were to provide suitable work and follow due process.

Finally, under section 37 of the SRC Act, **[employer redacted]** determined (6 months after I was interviewed by their doctors) that I was ‘totally unfit for work at **[redacted]** but able to work elsewhere’. In their s37 report, my team of medical professions’ reports were either totally ignored or taken out of context and twisted to suit **[employer redacted]**’s agenda.

In addition to the biased report and about 1 month after the AHRC case withdrawal, **[employer redacted]** advertised the very role I was unjustly removed from. Due to this direct breech of the AHRC understanding, I contacted the AHRC to re-open the case but I was told that it was not possible due to a technical reason.

Dumbfounded by the AHRC’s reasoning I was forced to contact yet another authority. I took **[employer redacted]** to FWA (Fair Work Australia) regarding the newly advertised role that I was removed from where it was noted by council of **[employer redacted]**’s statements in the AHRC of ‘no **[redacted]** role being available’ in the near or distant future and that **[employer redacted]** had altered the requirements of the role that would stop me from applying, with my medical restrictions.

A decision was made at FWA to wait for the s37 process to be finalised and that if a decision was made in my favour, **[employer redacted]** would commit to supplying a ‘suitable’ role within the organisation. There was nothing I could do about the newly advertised role as **[employer redacted]** deemed it to be of ‘operational importance’ and I was to be excluded due to my ‘less than full-time hours.

Some 11 months after I saw the 2 doctors that **[employer redacted]** arranged, Comcare overturned **[employer redacted]**’s s37 determination and I was fit to return to work.

**[Employer redacted]** took another 7 months to find a ‘suitable’ role even though I had named numerous around site where my skills and experiences would fit. **[employer redacted]** also tried to engage their own appointed doctors again, in direct breech of Comcare’s s37 decision reversal.

My wage had been cut making it impossible to pay my mortgage (my injury payment was exhausted trying to keep up). We hence lost our home and had to move further from work.

My new ‘suitable’ role was supposed to be temporary until something was found/built (in discussion with myself and my Union) that matched my current skills and experiences (**[redacted]** based). Not once in ~ 20 months was I contacted about a role, though under FOI, I became aware there was a role being touted but a late withdrawn by the Division’s General Manager due to not wanting ‘troubled workers’ closed that avenue, without my knowledge or input.

After 20 months in the temporary ‘suitable’ role I noticed that my old **[redacted]** position was readvertised internally again! I questioned my Union why **[employer redacted]** has not discussed this role with us prior to advertising it. **[employer redacted]** could not answer that other than to say that “…this is Daniel’s role…it will close off a lot of issues…”

I contacted the role holder **[redacted]** to explain my situation with HR/Union and said I didn’t want to step on anyone feet if there was already someone earmarked for the role. He stated there wasn’t and that the normal recruitment process would prevail. I informed him of being told not to apply for the role, which he had no idea of (I was initially told not to apply for the position but at the last minute was told the opposite, apply). I also stated that under my current return to work plan, I could be transferred over to his division and get back up to speed on the role and be a ‘free’ resource’ while transitioning to a new production facility being built.

I didn’t believe I went that badly in my first interview (Friday morning) in 7 years, being my old role I had more than enough knowledge to answer the questions comfortably. On the Monday morning I was informed I was unsuccessful by **[redacted]** but there was many role going in the new **[redacted]** facility and I would be utilised there. I was not too worried regarding the role knock-back as I had been advised that my skills were going to be used in the new plant in the near future.

This sense of wellbeing quickly deteriorated when I was informed that a graduate had acquired the position. The very graduate that was working side by side with **[employer redacted]**.

I could not believe that this has gotten so blatantly wrong. Firstly by HR and my Union letting this go to print without consultation – it was my old job! Secondly how HR had stated that I would have to apply and I’d basically have the role and a lot of issues would be resolved. Thirdly that nepotism was allowed to rule the recruitment process by granting a graduate the role over someone who’s role it had once been and also had many more years of on the ground experience. Under FOI it was revealed that the graduate was already ear marked for the role in email correspondences “…**[redacted]**’s role…” (**[redacted]**) and that there were changes made to signed documents that allowed the graduate to meet certain selection criteria (5 year experience removed). The role was also a band level higher than I was when I was employed.

I contacted HR’s GM **[redacted]** in an attempt to “…right the wrongs…heart on sleeve…” but I was ignored. I also attempted to contact the CEO **[redacted]** but again, my attempts to have the issues corrected were ignored.

My only other avenue was to appeal the decision and engage HR’s supposed agreement to address certain roles (FWA) such as these prior to going to print. At this same time FOI documents show that it was contrived by senior management (**[redacted]**) that I did not meet the selection criteria and my technical knowledge of the process was lacking. In direct questioning with **[redacted]** it was stated that “…needed someone to hit the ground running… (Graduate) had done an excellent project whilst at university…I was warned you would appeal…you only drew up the training documents for the old process…” There was nothing regarding my supposed failure at the interview level.

Furthermore and again via FOI information, my appeal was being brushed off as an ‘age’ thing (I couldn’t handle that a younger person had been chosen) and that I was also under the belief that a female should not be appointed over a male.

Of course **[employer redacted]**s internal review came back with their recruitment procedure being air tight and that my ‘concerns’ added to nothing. There was no mention of the nepotism, failure in consultation from the FWA directions or the changes to the signed recruitment documents.

My name became more of a black mark and a point of attack. All other options in the new production plant were cut off and I was ‘offered’ a role (not suitable to my skills and experiences) in the same department I was in ‘temporarily’. This time it was with the provision of ‘redundancy’ if I didn’t take it. The redundancy threat occurred around Christmas time and, whilst having a BBQ with my colleagues, the IR person **[redacted]** came to shake my hand. I refused due to him being directly responsible for the ‘redundancy’ threat to which he replied with “…you’re a grub…”

I attempted to contact Comcare (**[redacted]**) with my discrimination concerns but their reply was unsatisfactory but a typical response. ‘We cannot do anything about workplace issues. Contact you HR department.

Ministers whose portfolios covered **[employer redacted]** (MacFarlane and Abetz) were also given a detailed history and a request to intervene. Both ministers failed to act only directing me back to my HR department or Comcare.

I finally contacted the Prime Minister (Abbott) who also received an up to date history and a request to intervene. Unfortunately the Prime Minister just referred me back to one of his previously contacted ministers. All other correspondences were ignored.

There are current bills before the senate that turn the ‘no-fault’ SRC Act system on its head. The removal of secondary mental illness claims from the system is a farce. Many other injuries including back injuries such as mine will be classed as normal deterioration (could happen at some point during one’s lifetime).

**Did your experience of employment discrimination impact on your participation in the workforce? (For example, did you have to stop work, change jobs or take sick leave?)**

[x] Yes

[ ] No

**Please tell us more**

Aggravation of known depressive condition from initial workplace injury (something that Comcare will no longer consider if the current SRC Act amendment Bills before the senate are passed.

### **Barriers**

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

[x] Yes

[ ] No

[ ] Not sure

**If yes, or not sure, what do you think these barriers might be?**

Barriers include but are not limited to:

Upper Management Culture (Us V them), Sweep under the carpet, It is embarrassing for the employer to look like it has acted discriminatory so they turn the blame on the other party (Victim).

The continual use of interpretational ‘Acts’ to side step responsibilities/hide behind veil of ‘procedure is already in place’ ‘already acting/doing the best we can’

Ministers and other Government agencies that regulate these things do not want to act against other government agencies. Agreements are never enforced, there are no consequences for employers (Government agencies) if in breech.

Long standing cover-up culture, bullying and harassment by upper management is investigated (if at all) without input from the victim. Statements are taken out of context to protect fellow managers.

**Does employment discrimination have an impact on gaining and keeping employment for older Australians/Australians with disability?**

[x] Yes

[ ] No

[ ] Not sure

**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**

AS ABOVE – CULTURE. EVERYTHING IS HIDDEN FROM THE OUTSIDE WORLD OR COVERED UP

**What are the incentives and disincentives for older Australians/Australians with disability to work?**

**Incentives:**

MENTAL IMPROVEMENTS FROM BEING AT WORK, MORE INDEPENDANCE

**Disincentives:**

PAY CUT, MORE DISCRIMINATION, FACE SAME OLD CULTURE, INADEQUATE TRANSPORT SUPPORT, LACK OF ‘SUITABLE’ EMPLOYMENT. GROSSLY OUT OF DATE SRC ACT (CURRENT BILS WILL WATER IT DOWN MORE AND BE HARSHER ON DISABLED EMPLOYEES)

### **Good practice**

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

[x] Yes

[ ] No

[ ] Not sure

**Please tell us of examples of good practice in employing and retaining older Australians/ Australians with disability in work that you are aware of.**

There are good policies but they are rarely followed or put into practice. They are usually there just to show regulators that the employer has policies. The policies are usually just a device to show a process was followed but no fact or employee input was considered and therefore the company is protected. The policies are run by the very instigators of the discrimination

### **Solutions**

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

Severe penalties for the perpetrators – public or private, including penalties for individual managers.

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

Focus on the employers instead of labelling the potential employees as useless before they start.

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

Meaningful outcomes, not just fruit picking of the ‘easy fixes’ as most governments do with recommendations.

Severe financial penalties and gaol terms for companies and managers responsible for the discrimination. Nothing else will deter or change the imbedded culture