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

# Submission No 331

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# Discussion questions – Older Australians

1. What policies, workplace practices, programs or incentives assist with increasing participation of older workers? How adequate are these policies, practices or incentives? What is the role of Government, peak business and employee groups, and individual employers?

The current Australian Federal Government is encouraging older Australians to work until they reach the age of 70.

However, other forces are working against the wishes of the Federal Government, and an example is the Australian Taxation Office (ATO) granting Early Retirement Scheme tax rulings to Queensland Government Statutory Authorities to exit older Australians from the business..

Key elements of the tax rulings granted by the ATO include the following:

The target group is 60-64 years of age

This group was selected because a mature and long serving workforce which exposes the business to increased costs due to higher absenteeism and greater risk of lost time injuries.

Rrebalance the organisation’s operations, efresh the current workforce, and develop the next generation of workers for a labour-intensive area of the organisation.

The ATO has been an unwitting signatory to an agreement which can be exploited to terminate older Australians from the business, despite performing the inherent requirements of their duties, plus not expressing any interest to participate in the scheme. The scheme also exploits older Australians with a disability.

The ATO is not aware that Employers registering their Early Retirement Schemes ar conducting practices contrary to the spirit of the Scheme and applying enormous pressure on their older workers and forcing them out of the business against their will. The Scheme is voluntary and a formal expression of interest must be lodged to participate in the scheme, but this is not happening in some cases, because the Employer is circumventing the ATO tax ruling guidelines by continually pressuring the worker to leave.

I believe the ATO needs to carry out full investigations of these schemes and to work closely with the Federal Government and AHRC to determine the number of self-regulatory actions being carried out by Employers.

1. Are there distinct challenges faced by different sized businesses and organisations, sectors and industries in employing older workers?

Possibly needing to train in new computer technology.

1. What other data or information is available on employment discrimination against older Australians?

Not applicable

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

Not applicable

1. How adequately do existing laws protect older Australians from employment discrimination? How effective are the legal remedies for older workers who have experienced discrimination? How could existing laws be amended or supplemented?

This type of discrimination is too subtle to measure

1. What difficulties are there for employers in understanding and complying with legal obligations?

Not applicable

1. What are the distinct challenges faced by certain groups of older Australians (e.g. women, Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds or LGBTI people) in relation to employment discrimination?

Not applicable

# Discussion questions – Australians with Disability

1. What policies, workplace practices, programs or incentives assist with increasing participation of people with disability? How adequate are these policies, practices and incentives? What is the role of Government, peak business and employee groups, and individual employers?

The unemployment rate for people with disability in 2012 was 9.4%, nearly twice the rate of 4.9% for people without disability. [[1]](#endnote-1)

Going by the above statistics, it is an uphill battle for people with disabilities to overcome the non-disabled job seekers. What further compounds this problem, is Employers most commonly will adopt the “one size fits all” approach, but will use Equal Employment Opportunity policy stating they

are an equal employer that does not base decisions on attributes other than performance. But Employers can hire based on merit and role requirements so whilst they have policies to ensure no discrimination, they don't proactively take initiatives to increase opportunities to employ disabled people.

A few Positives of employing disabled people are:

- more likely to stay for long periods in a job as they are more grateful to have a job

- potential funding from government

There needs to be support by Federal and State Governments for setting target numbers for disadvantaged disability groups in the Community to participate in the workforce. The first employment group to use as a supporting model, should come from Federal, State and Local Governments.

Having a Corporate Social Responsibility Policy that demonstrates to the public a business commitment to employing people with a disability, which is good business practice, particularly where there are Customers who have a disability.

1. Are there distinct challenges faced by different sized businesses and organisations, sectors and industries in employing Australians with disability?

It is amazing how many employer organisations don’t even know about Federal Government funding programs for workers with disabilities to participate in the workforce. Many Employers think it is going to cost them a lot of money for workplace modifications and adaptive equipment, and they have not even heard of Jobaccess.

Larger organisations have the required resources to understand disability in the workforce; adopt appropriate policies and practices and to create awareness about Disability to work colleagues. Smaller to medium organisation may find it harder to understand how to employ people with disabilities and don’t bother.

All large organisations have restructuring practices, and with that comes new manager, team leaders and team mates, and some people have difficulty with adjusting to a person’s disability, despite awareness being propagated to as many people as possible about their disability.

1. What other data or information is available on employment discrimination against Australians with disability?

It is one challenge for a person with a disability to find a job, but it is another challenge for a person with a disability to stay in employment.

The AHRC should look at inviting feedback from organisations that have had contact and involvements with people with a disability who have suffered disability discrimination in their workplace.

This may be difficult as some organisations probably don’t keep records or don’t want to hand information over. The following organisation types are examples of those that I contacted to highlight my personal plight:

Doctor

Employee Assistance Program (EAP)

Unions

National disability peak service organisations

National disability peak advocacy organisations

State disability peak advocacy organisations

Pro bono lawyers

Federal Statutory Authority on discrimination

State Statutory Authority on discrimination

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

We need to name and shame Australia as a poor example as reflected by the OECD ranking of 21 out of 29 countries internationally in terms of employment of people with disabilities..

1. How adequately do existing laws protect Australians with disability from employment discrimination? How effective are the legal remedies for Australians with disability who have experienced employment discrimination? How could existing laws be amended or supplemented?

The Australian Human Rights Commission has a statutory responsibility to investigate and conciliate complaints of discrimination based on a person’s disability.

From my own recent personal experience in lodging a complaint with the AHRC for disability discrimination against my former Queensland Statutory Authority Employer, I found that the AHRC are not able to enforce, police and monitor DDA legislation violations by Employers. Employers are able to simply use the DdA as window-dressing within their own workplace environments and self-regulate their anti-discrimination policies and practices. It all comes down to the Complainant with a disability discrimination claim having the courage and financial capacity to take on their Employer in the Federal Court.

Legal Cost Risk Assessment

One of the greatest fears and uncertainty for Complainants considering lodging a disability discrimination claim, is people with a legal background e.g. pro bono lawyers, Unions etc advising of confronting legal cost projections, no matter how genuine the case may be. It gets more confronting when the AHRC mentions the words Federal Court, and this is in unknown territory for the lay person.

I would like the AHRC to be more specific on conciliation conference outcomes in advance, so that Complainants can better understand their direction. For example, the following statistical information would be helpful, but it must state what type of specific disability type is covered:

% of conciliation outcomes with financial compensation made to the Complainant

% of conciliation outcomes with an apology letter issued to the Complainant

% of conciliations unresolved

% of Complainant cases taken to the Federal Court with a successful outcome

% of Complainant cases taken to the Federal Court with unsuccessful outcome

This information is critical to a worker with a disability discrimination complaint to consider, as their Employer may have superior financial capacity to engage lawyers at high cost, in comparison with the Complainant who does not have those resources.

There must be an external regulator to ensure good policy and practice is delivered that stamps out unwanted disability discrimination in the workforce.

The Federal Government needs to help people with genuine cases and not see them lose their dignity by not knowing if they could have succeeded in taking their matter to Court.

1. What difficulties are there for employers in understanding and complying with legal obligations?

Not applicable

1. What are the distinct challenges faced by certain groups of people with disability (e.g. women, Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds or LGBTI people) in relation to employment discrimination?

Another category should also include those people with dual and multiple disabilities.

1. [↑](#endnote-ref-1)