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

# Submission No 335

**Name** Karla Tighe

**Submission made by**

Australian with disability who would like to 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?**

Yes

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

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.**

I chose not to take any action because when I sought advice they told me that I would most likely not win. That this company would probably gain advantage had more money than me to pay for representation etc. This employer was a former employer of mine who re-employed me.

Secondly the company acted in an underhanded way. The people they chose to do a survey were not experts and their report demonstrated their lack of knowledge. Their report was a cut and paste from another companies report and the measurement techniques were very ineffective and unreliable. They did not consult with me on the measurements and asked that I stay away from the office.

I was not treated with respect.. HR were quite antagonistic. My boss insisted I go and cover for another employee in an environment that would damage my health. He had someone organised and kept insisting I go. I believe now he was testing me. Something my GP says happens often.

It would have been a very stressful exercise for our family and we were dealing with numerous issues having just moved from Ireland.

I chose to prioritise my health and family.

**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?)**

Yes

**Please tell us more**

Due to changes being made in this work environment I could not stay. I disclosed a health issue for not only me but also the residents. Anyone with heart issues or a [pacemaker.](http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/HomeBusinessandEntertainment/CellPhones/ucm116311.htm)

They made a show of doing something and did nothing. There were delays in implementing agreed actions, communication stunted, my immediate superior stopped sending me information and including me in meetings. It was humiliating and extremely stressful.

They acted very irresponsibly, sending me to locations to work when I had disclosed my health issues and sending IT teams to our office operating on WiFi dongles which were emitting extraordinary levels of radiation in my vicinity.

They forced me to take leave whilst they took measurements and did not pay me out. I lost wages and an opportunity to liaise with the EMR surveyors which was agreed to.

I had a very good work history with this company having worked with them previously. I worked closely with very senior executives, supporting them. I had a very good reputation with staff at this company, many who are still there in employment. I used them as a referee for many positions. I felt now I had lost this contact, which, being a very large company, was a valuable resource in finding work.

### **Barriers**

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

Yes

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

I’m not employed. I cannot get work due to inaccessibility of most work environments due to non-compliance with [Article 9 in terms of ICT.](http://www.vnverdragwaarmaken.nl/vnverdragwaarmaken/images/publicaties/Generalcommentart9.pdf) , transport, services including hospitals, building access, even parks and roadways.

For those with my condition they cannot work without putting themselves in harms way. To ignore that EHS exists is wilful blindness and not acknowledging developments in accommodations overseas and in scientific and medical studies.

I believe that many employers are so afraid of liability that they chose to focus on this rather than work with people with disability. If I disclose my health issues they will overlook me as a potential employee because they view this as being in the too hard basket. When in fact, it isn’t that difficult. I even gave them mitigation methods and had professionals willing to advise them but they chose to employ people who had no experience in EMR surveys.

Many employers and other departments are not aware of the human rights aspects of disability and their responsibilities. I do not think this is being monitored very well.

There are TOO MANY organisations and groups and initiatives that a person with a disability finds it hard to get to the information they need. Huge barriers right there.

Adopt KISS and simplify processes and methods for exercising rights, legal assistance, registering disability and gaining access to schemes such as the NDIS.

I know of someone that had to jump through so many hoops in application for the disability pension payment and was denied. She has a valid disability, is very ill and worked very hard to get the information to the assessors. It cost her significant amounts of money and she was refused.

I have a child with a disability in the public school system. They gave us absolutely no assistance whatsoever. Even though their website says they must follow various processes and spelled out responsibility – information was not readily available and they (DOE) shrugged their shoulders and said we work for the teachers.

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

Yes

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

Yes

**Please tell us more**

Yes. How can you view the lack of legislation and monitoring around universal design concepts that allow accessibility for all and a lack of monitoring and acknowledgement of emerging impairments as anything else but. The CRPD state on Accessibility:

*therefore the built environment is under the full control of society. Such artificial barriers are often the result of a lack of information and technical know-how rather than a conscious will to prevent persons with disabilities from accessing places or services intended for use by the general public. In order to introduce policies that allow better accessibility for persons with disabilities, it is necessary to change attitudes towards persons with disabilities in order to fight against stigma and discrimination, through ongoing education efforts, awareness-raising, cultural campaigns and communication.*

*The International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination clearly establish the right of access as part of international human rights law. Accessibility should be viewed as a disability-specific reaffirmation of the social aspect of the right of access. The Convention on the Rights of Persons with Disabilities includes accessibility as one of its key underlying principles — a vital precondition for the effective and equal enjoyment of civil, political, economic, social and cultural rights by persons with disabilities. Accessibility should be viewed not only in the context of equality and* non-discrimination, but also as a way of investing in society and as an integral part of the sustainable development agenda.

My experience is that people don’t want to know about this disability. EHS. They either don’t believe you and treat you with disrespect or don’t want to look at accommodations. It’s easier to go with someone else.

It’s too hard to help us and the information. A reliance on “reasonable adjustments” as an out and very little knowledge of [The Conventions on the Rights of the Disabled](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#9). In particular Article 9 – Accessibility [(PWD)](http://pwdwa.org/ImplementationofArticle9oftheCRPDMar2012.pdf)

The CRPD stated:

The Committee is concerned that despite the adoption of the National Disability Strategy, the State party has not yet brought its legislation fully into line with the Convention. It is further concerned about the interpretative declarations that the State party has made on articles 12, 17 and 18 of the Convention.

Equality and non-discrimination (art. 5)

14. The Committee is concerned that the scope of the protected rights and grounds of discrimination in the Disability Discrimination Act 1992 is narrower than that provided for under the Convention and does not provide the same level of legal protection to all persons with disabilities.

15. **The Committee recommends that the State party strengthen anti-discrimination laws to address intersectional discrimination and to guarantee protection from discrimination on the grounds of disability so as to explicitly cover all persons with disabilities, including children, indigenous people, women and girls, the hearing impaired, the deaf and persons with psychosocial disabilities.**

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

**Incentives:** None I am aware of.

**Disincentives:** Too many to mention. Lack of monitoring universal design of product, buildings and accessible and inclusive design.

As already stated. A lack of universal design to allow for accessible buildings, products, ICT to allow access to all is a violation of human rights. We are now operating under a social model of disability. I see plenty of websites claiming compliance and I can see attempts at ticking boxes, with glossy reports, outsourced submissions such as the Disability Standards in Education. Incentives that many people aren’t even aware of. My impression is that they are there to look the part

### **Good practice**

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

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.**

Not aware of any. My company had a Diversity group. Unfortunately they did not care to hear from me regarding my issues. My former boss was the CEO of the group and ignored my email. We had a very good relationship prior to this and he assisted me in getting the role. But I did not fit the “diversity” they had in mind.

They should take note of this.

*1. Accessibility is a precondition for persons with disabilities to live independently and participate fully and equally in society. Without access to the physical environment, to transportation, to information and communication, including information and communications technologies and systems, and to other facilities and services open or provided to the public, persons with disabilities would not have equal opportunities for participation in their respective societies. It is no coincidence that accessibility is one of the principles on which the Convention on the Rights of Persons with Disabilities is based (art. 3 (f)).*

### **Solutions**

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

See below: The CRPD has it covered.

A. General principles and obligations (arts. 1 and 4)

8. The Committee is concerned that despite the adoption of the National Disability Strategy, the State party has not yet brought its legislation fully into line with the Convention. It is further concerned about the interpretative declarations that the State party has made on articles 12, 17 and 18 of the Convention.

9. **The Committee recommends that the State party incorporate all rights under the Convention into domestic law and that it review its interpretative declarations on articles 12, 17 and 18 with a view to withdrawing them.**

10. The Committee regrets that there are not enough mechanisms for consultation and engagement between Government and persons with disabilities and their organizations in all matters of policy development and legislative reform relating to the Convention.

11. **The Committee recommends that the State party, in partnership with persons with disabilities — including children with disabilities — through their representative organizations, establish mechanisms to ensure meaningful participation in the development and implementation of legislation and policies to implement the Convention.**

12. The Committee is concerned that not all organizations of persons with disabilities, including those of persons with psychosocial disabilities, and Aboriginal and Torres Strait Islander people, are provided with adequate resources for their operations.

13. **The Committee recommends that the State party take initiatives to increase the resources available for independent organizations of persons with disabilities, including organizations representing children with disabilities.**

Equality and non-discrimination (art. 5)

14. The Committee is concerned that the scope of the protected rights and grounds of discrimination in the Disability Discrimination Act 1992 is narrower than that provided for under the Convention and does not provide the same level of legal protection to all persons with disabilities.

15. **The Committee recommends that the State party strengthen anti-discrimination laws to address intersectional discrimination and to guarantee protection from discrimination on the grounds of disability so as to explicitly cover all persons with disabilities, including children, indigenous people, women and girls, the hearing impaired, the deaf and persons with psychosocial disabilities.**

Accessibility (art. 9)

20. The Committee notes that the Disability Standards for Accessible Public Transport 2002 and the Disability (Access to Premises – Buildings) Standards 2010 introduce regulations to address accessibility barriers for persons with disabilities. However, it remains concerned at the level of compliance with accessibility standards and regulations in the State party.

21. **The Committee recommends that sufficient resources be allocated to ensure the monitoring and implementation of the disability standards and requirements.**

Equal recognition before the law (art. 12)

24. The Committee notes that the Australian Law Reform Commission has been recently commissioned to inquire into barriers to equal recognition before the law and legal capacity for persons with disabilities. However, the Committee is concerned about the possibility that the regime of substitute decision-making will be maintained and that there is still no detailed and viable framework for supported decision-making in the exercise of legal capacity.

25. **The Committee recommends that the State party effectively use the current inquiry to take immediate steps to replace substitute decision-making with supported decision-making and that it provide a wide range of measures which respect a person’s autonomy, will and preferences and are in full conformity with article 12 of the Convention, including with respect to a person's right, in his or her own capacity, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry and to work.**

26. **The Committee further recommends that the State party provide training, in consultation and cooperation with persons with disabilities and their representative organizations, at the national, regional and local levels for all actors, including civil servants, judges and social workers, on recognition of the legal capacity of persons with disabilities and on the primacy of supported decision-making mechanisms in the exercise of legal capacity.**

Freedom of expression and opinion, and access to information (art. 21)

43. The Committee is concerned by the State party’s failure to provide all information in accessible formats and effectively promote and facilitate the use of Australian Sign Language (Auslan) as Australia’s official sign language, as well as the use of all other forms of accessible formats of communication (deaf-blind interpretation, Braille, easy and plain English, audio description), in particular when persons with disabilities are engaged in official interactions.

44. **The Committee recommends that the State party recognize Australian Sign Language as one of the national languages of Australia, and develop the use of other accessible formats of communication by allocating adequate funding for their development, promotion and use, in accordance with articles 24, paragraph 3, and 29 (b) of the Convention.**

Right to work (art. 27)

49. The Committee is concerned that employees with disabilities in Australian Disability Enterprises are still being paid wages based on the Business Services Wage Assessment Tool.

50. **The Committee recommends that the State party:**

1. **Immediately discontinue the use of the Business Services Wage Assessment Tool;**
2. **Ensure that the Supported Wage System is modified to secure correct assessment of the wages of persons in supported employment;**
3. **Adopt initiatives to increase employment participation by women with disabilities by addressing the specific underlying structural barriers to their workforce participation.**
4. C. Specific obligations (arts. 31-33)
5. Statistics and data collection (art. 31)
6. 53. The Committee regrets the low level of disaggregated data collected on persons with disabilities and reported publicly. It further regrets that there is little data on the specific situation of women and girls with disability, in particular indigenous women and girls with disabilities.
7. 54. **The Committee recommends that the State party develop nationally consistent measures for data collection and public reporting of disaggregated data across the full range of obligations provided for in the Convention, and that all data be disaggregated by age, gender, type of disability, place of residence and cultural background. The Committee further recommends that the State party commission and fund a comprehensive assessment of the situation of girls and women with disabilities, in order to establish a baseline of disaggregated data against which future progress towards the implementation of the Convention can be measured.**
8. 55. The Committee regrets that the situation of children with disabilities is not reflected in data on the protection of children. It further regrets the paucity of information on children with disabilities, in particular indigenous children, alternative care for children with disabilities and children with disabilities living in remote or rural areas.
9. 56. **The Committee recommends that the State party systematically collect, analyse and disseminate data, disaggregated by gender, age and disability, on the status of children, including any form of abuse and violence against children. It further recommends that the State party commission and fund a comprehensive assessment of the situation of children with disabilities in order to establish a baseline of disaggregated data against which future progress towards the implementation of the Convention can be measured.**
10. National implementation and monitoring (art. 33)
11. 57. The Committee is concerned that Australia lacks a participatory and responsive structure for implementing and monitoring the Convention in line with article 33 thereof.
12. 58. **The Committee recommends that the State party immediately set up a monitoring system that is fully in line with the provisions of article 33 of the Convention.**
13. Follow-up and dissemination
14. 59. The Committee requests the State party to implement the recommendations of the Committee as contained in the present concluding observations. The Committee recommends that the State party transmit the concluding observations for consideration and action to members of the Government and Parliament, officials in the relevant ministries, the judiciary and members of relevant professional groups, such as education, medical and legal professionals, as well as to local authorities, the private sector and the media, using modern social communication strategies.
15. 60. The Committee requests the State party to disseminate the present concluding observations widely, particularly to representative organizations of persons with disabilities, non-governmental organizations, persons with disabilities and members of their families, in accessible formats.
16. 61. The Committee encourages the State party to involve civil society organizations, in particular disabled persons’ organizations, in the preparation of its next periodic report.
17. Next report
18. 62. The Committee requests the State party to submit its combined second and third periodic reports no later than 17 July 2018, and to include therein information on the implementation of the present concluding observations.

Source: [**Committee on the Rights of Persons with Disabilities** Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013)](http://r.duckduckgo.com/l/?kh=-1&uddg=http%3A%2F%2Fdocstore.ohchr.org%2FSelfServices%2FFilesHandler.ashx%3Fenc%3D6QkG1d%252fPPRiCAqhKb7yhsnzSGolKOaUX8SsM2PfxU7tjZ6g%252fxLBVYsYEv6iDyTXyNk%252bsAB%252fHgrVpAKHcEYTB%252b1t%252fH3HX1F%252f%252bo%252bk3O4Khxfj5GxDmgo%252fBj6r0YRBjfnWP)

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

See above the CRPD have covered a lot of it. The Authorities already know their obligations. The public need to be aware of their rights and processes for obtaining support, relief and justice need to be simplified. It is way to complicated and appears to be just ticking boxes and ineffective.

Refer to the UN’s review on Australia’s non-compliance and “areas of concern”. Refer to the many complaints from all the disability organisations around the country. **Comply, monitor, regulate, champion equality and support.**

EHS are unable to work in most offices because of WiFi, mobile phones, other technology choices not conducive to an inclusive environment for all.

*“Accessibility and Reasonable accommodation are two related concepts that have to be understood within the "social model of disability". They are both contributing to solutions to ensure equal access for person with disabilities when interacting with goods and services and performing a task.*

*Accessibility is important for the general group of persons with disabilities addressing their most common needs and has to be complemented by measures of reasonable accommodation. These are ” appropriate measures to be taken, where needed in a particular case, to enable a person with a disability to have access to a product or a service that target a particular individual with a disability”.*

*Achieving accessibility requires acting on the design and functioning of the product, service or infrastructure itself to be "more usable" by persons with disabilities in general while taking into account the diversity of requirements coming from various impairments. Accessibility is thus mostly preventive and proactive while reasonable accommodation is often reactive. In both cases, when developing new products or when retrofitting is needed the preferred approach to accessibility is Universal Design.*

*The implementation of accessibility is often supported by general guidelines or standards that describe how products or services should be built. “*

*It is important to have clear accessibility requirements Those requirements in the standards become often the "de facto" definition of accessibility. They are supposed to be testable to be able to monitor their implementation.”*

Source: European Commission’s Submission on Article 9

Accessibility is a social problem not a burden for the disabled person to bear. Universal Design of products, buildings, service incorporating ICT and technology that supports those with impairments is needed.. Please refer to attached General Comment on Article 9 from the CRPD.

Below are Australia’s comments in relation to accessibility. There seem to be a lot of reluctance to comply and “howevers” in this document.

<http://www.ohchr.org/Documents/HRBodies/CRPD/GC/Australia-DGC_Art9.doc>

It’s really simple.

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

Identification of common “loopholes” used by employees. Justice. A monitoring system that is independent of the Govt. More assistance for resources and help for disabled people.

# Exposing the lack of adherence to the Conventions on the Rights of the Disabled. Acknowledge that there is a growing population of people with EHS that are ignored, humiliated, unsupported unlike other countries such as Sweden, Canada, Spain and Italy.

**Make Human Rights more visible. Advertise. Publish. Get out to the public and review all processes currently and simplify the process so that people with disability have access to resources**

**Including children who are sensitive who have no options for education, primary, secondary or tertiary.**

Make it easier for persons with disabilities more accessible. (see article 9)

Refer to the UN’s review on your work. Refer to the many complaints from all the disability organisations around the country. Comply, monitor, regulate, champion equality and support.

It’s really simple.

Simplify – it is so hard to find the help a disabled person needs. It is not accessible. Nor are the statistics gathering or complaint mechanism processes.

# Provide training and support. I have had to retrain but because of a lack of funds I have not been able to take up the opportunities I would like to. I was even discriminated against in my application for A Bachelor in Inclusive Education. Only offered on campus thus I could not attend.