



Royal Commission
into Violence, Abuse, Neglect and Exploitation
of People with Disability

Issues Paper

Employment

12 May 2020

Introduction

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission) is interested in understanding the experiences of people with disability in employment. This paper relates to:

- receiving an income, including through paid work, independent contracting, self-employment and apprenticeships
- segregated employment settings
- community based enterprises in First Nation communities

People with disability can face barriers to employment that may prevent financial independence and other benefits associated with work, including dignity, a sense of purpose and social connectedness. Having a meaningful job with fair and equitable pay can promote the inclusion and independence of people with disability and support their right to live free from violence, abuse, neglect and exploitation. While not the only factor, financial independence may reduce the risk of violence, abuse, neglect and exploitation of people with disability.

We invite information and discussion from the public on how the Royal Commission should look at employment as it relates to people with disability, including key issues and examples of good practice. We welcome information on the experiences of people with disability participating in employment.

A list of questions is included to assist with responses. The questions are only a guide. You do not have to answer every question. More information about how to respond is at the end of the paper.

If you wish to share an individual experience of violence, abuse, neglect or exploitation, experienced by you or another person with disability, please consider making a submission. You can contact us in writing, by telephone or by sending a video. More information is on our [website](#).

Attachment A sets out the Royal Commission's working definitions of violence, abuse, neglect and exploitation.

A human rights-based approach

We are committed to the rights of people with disability. Australia has ratified the *UN Convention on the Rights of Persons with Disabilities*.¹ This means Australia has agreed to respect, protect and fulfil the rights described in that Convention.

Article 27 of the CRPD requires ratifying countries to:

[R]ecognize the right of persons with disabilities to work, on an equal basis with others ... [and to] gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

We will consider the multi-layered experiences of people with disability of different ages, sexes, gender identities, sexual orientations and races. We will look at experiences of participating in employment for groups including women, First Nations people and culturally and linguistically diverse people.

A life-course approach

We are interested in understanding barriers to and experiences of people with disability in employment across their lives. A life-course approach considers how experiences in one stage of life can have life-long impacts for people. The quality of education that people with disability receive can affect their employability later in life. Transitions between life stages are also important. People with disability may need support for transitions, and may be exposed to heightened risk of violence, abuse, neglect and exploitation if they do not have access to appropriate resources and support. If a person with disability experiences violence or abuse at one point in their life, it can affect them in other parts of their life.

We are interested in understanding how key transition points, such as leaving school, entering the workforce, changing jobs or retiring, can influence the ongoing participation of people with disability in employment, and the impacts this has on other areas and stages of life.

Employment of people with disability in Australia

Finding and keeping a job

People with disability in Australia experience poorer employment outcomes than people without disability. People with disability:

- are less likely to participate in the labour force than those without disability. The labour force participation rate means the proportion of people aged 15 to 64 who have or are looking for a job. In 2018, just over half (53.4 per cent) of people with disability were in the labour force, compared with 84.1 per cent of people without disability²
- who are in the labour force are also less likely to be employed. In 2018, the unemployment rate of people with disability was 10.3 per cent, more than twice that of people without disability (4.6 per cent)³
- have lower incomes than people without disability. In 2018, the median gross income for a person with disability aged 15 to 64 years was \$505 per week, less than half the \$1,016 per week median gross income of a person without disability⁴
- are less likely to be working full time than people without disability. The rate of full time employment is almost two times higher among people without disability compared to people with disability.⁵

First Nations people with disability face additional barriers to finding and keeping a job and experience higher rates of unemployment than non-Indigenous people with disability.⁶ Discrimination on the basis of both disability and race can prevent some First Nations people with disability from looking for, finding and keeping a job.⁷ Cultural differences and remote locations can pose barriers to stable employment for other First Nations people with disability.⁸

Culturally and linguistically diverse people with disability also face additional barriers in finding and keeping a job. These can include:

- language barriers
- different understandings around work and caring
- lack of recognition of previous experience or qualifications
- racial discrimination by employers.⁹

People with disability experience poorer employment outcomes, which may place them at higher risk of violence, abuse, neglect and exploitation. We are interested in hearing about the experiences of people with disability in looking for, finding and keeping a job. We are also interested in issues relating to job support, career progression, opportunities for training, mentoring, coaching, professional development and promotion, and transitions from school to work, from one job to another and into retirement.

Employment programs and policies

Australia has a number of employment programs aimed at increasing the participation of people with disability in employment. These include:

- **National Disability Insurance Scheme (NDIS) employment supports:** Funding for employment supports may be included in a person's NDIS plan giving them assistance to build skills and capacity to find employment. These include individual and group employment supports, employment related assessments and School Leaver Employment Supports (SLES).
- **Department of Social Services (DSS) employment supports:** These include Disability Employment Services (DES), designed to support people with disability to find work in the open labour market, and the Employment Assistance Fund (EAF), which organises customised reasonable adjustments and provides funding to employers of people with disability for work related modifications, equipment, and supports.
- **Supported Employment (ADEs):** Australian Disability Enterprises (ADEs) are programs where people with disability work in a segregated environment under supervision. ADEs commonly employ a large number of people with cognitive disabilities and use a modified wage system where the employee is paid based on their work capacity. Participants at ADEs can be legally paid less than minimum wage under this system. ADEs are transitioning from DSS to the NDIS. This change will uncap the number of ADE places and potentially increase the number of people with disability in ADEs.
- **Wage assessment tools:** Wage assessment tools assess the work capacity of an employee with disability against an employee without a disability. The employee with disability is then paid a proportion of the minimum wage, based on their assessed work capacity. Wage assessment tools are used in both ADEs and in open employment. There are currently 29 approved wage assessment tools, one of these tools is the Supported Wage System (SWS). The SWS is the only wage assessment tool that is used in open employment.

The Royal Commission is interested in whether the current range of employment programs and supports for people with disability are easy to access, how well they assist people to find and keep a job and whether or not the jobs provide an adequate income. We want to know how large and small employers can be assisted to help people with disability to find and keep a job. We want to know how those programs may or may not protect people with disability from violence, abuse, neglect and exploitation in their employment.

Laws, policies and practices

The Royal Commission is also interested in understanding how Australia's laws, policies and practices can better support the participation of people with disability in employment.

It is against the law to discriminate, directly or indirectly, against someone on the basis of their disability in many areas of public life, including employment.¹⁰ It is unlawful for an employer to discriminate on the grounds of a person's disability.

Complaints about disability discrimination make up the highest number of discrimination complaints reported to the Australian Human Rights Commission (AHRC). In 2018, 9.6 per cent of people with disability experienced discrimination in the previous 12 months.¹¹ One in five of these people (20.7 per cent) said the source of the discrimination was their employer.

In 2018-19 the AHRC received 2037 complaints and 891 (44 per cent) of these were in relation to disability discrimination. Of these 891 complaints, 317 were in the area of employment.¹²

People with disability can face violence, abuse, neglect and exploitation in the workplace but not all violence, abuse, neglect and exploitation at work is a result of discrimination against people with disability. The extent of violence, abuse, neglect and exploitation in employment settings including in the open labour market is not well understood. For example, there is research that suggests women with disabilities who work in ADEs may be at an increased risk of sexual harassment or sexual violence and feel less able to make a complaint, seek assistance or find relevant information when harassment or violence does occur.¹³

The provision of 'reasonable adjustments' by employers is designed to allow people with disability to participate equally in the workplace.¹⁴ Reasonable adjustments can include changes to a process, practice, procedure or environment that allows an employee with disability to perform their job. Disability discrimination includes the failure to provide reasonable adjustments or insufficient adjustments to allow the employee to access supports to complete their work. 'Unjustifiable hardship' can be claimed by the employer in denying reasonable adjustments to an employee with disability.

We are interested in the legal avenues that employees with disability take to seek help or make a complaint when something goes wrong. We are also interested in understanding how and how often people with disability experience violence, abuse, neglect and exploitation in a range of workplaces. We would like to hear about experiences of discrimination, demotion and termination for workers with disability. We are interested in experiences in the provision of reasonable adjustments.

Questions

Please answer as many of these questions as you wish. You do not need to answer them all and your response does not have to address any of the questions.

Question 1:

How do people with disability experience violence, abuse, neglect and/or exploitation in employment settings?

Question 2:

What barriers exist for people with disability in finding and keeping a job? What helps people with disability find and keep a job in an environment free of violence, abuse, neglect and exploitation? What opportunities are there for career progression for people with disability in Australian workplaces?

Question 3:

What are the experiences of First Nations people with disability participating in employment? How does this vary across different life stages?

Question 4:

What are the experiences of women with disability, culturally and linguistically diverse people (including migrants) with disability, and LGBTIQ people with disability in looking for, finding and keeping a job?

Question 5:

What could be done to prevent, or respond to, discrimination, violence, abuse, neglect and exploitation against people with disability in the workplace? This could include better systems for support or making a complaint.

Question 6:

Are the current employment programs and supports for people with disability effective? If not, why not? What changes should be made to these programs?

Question 7:

What are employers' experiences of hiring and retaining workers with disability? What benefits and challenges have employers encountered? What supports have helped, or would help?

Question 8:

Do you have any ideas for improving employment participation for people with disability? Do you have examples of good practice?

Question 9:

Is there anything else we should know?

Responding to this issues paper

Responses to this issues paper can be provided by:

- email to DRCEnquiries@royalcommission.gov.au
- letter to GPO Box 1422, BRISBANE QLD 4001
- phone on 1800 517 199 or +61 7 3734 1900 (between 9:00am to 6:00pm AEDT Monday to Friday). We can make a time with you to take your response over the phone.

Responses can be in writing, an audio recording or a video recording. Responses can be in any language. The Royal Commission will translate the response to English.

We encourage responses by **14 August 2020**, however responses will also be accepted after this date.

Support to respond to this issues paper

The Australian Government provides support to assist people to engage with the Royal Commission. This support includes:

- free legal advisory services provided by National Legal Aid and the National Aboriginal and Torres Strait Islander Legal Services
- emotional support services provided by the Blue Knot Foundation
- advocacy support services provided under the National Disability Advocacy Program.

Further information about these supports, including how to access them, is available on our website at <https://disability.royalcommission.gov.au/counselling-and-support>.

How we will use your response

All responses will inform the work of the Royal Commission.

We may make your response public, unless you tell us not to. You can request your response be anonymous.

If you refer to individual experiences or case studies, it is your responsibility to make sure the individual has consented to their information being published.

We may publish your response on our website and your response may also be referenced in any public document prepared by the Royal Commission, for example, our interim and final reports.

Attachment A – Definitions

The Royal Commission has provisionally defined key terms as follows:

Violence and abuse – include assault, sexual assault, constraints, restrictive practices (physical and chemical), forced treatments, forced interventions, humiliation and harassment, financial and economic abuse and significant violations of privacy and dignity on a systemic or individual basis.

Neglect – includes physical and emotional neglect, passive neglect and wilful deprivation. Neglect can be a single significant incident or a systemic issue that involves depriving a person with disability of the basic necessities of life such as food, drink, shelter, access, mobility, clothing, education, medical care and treatment.

Exploitation – means the improper use of another person or the improper use of or withholding of another person's assets, labour, employment or resources including taking physical, sexual, financial or economic advantage.

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- ¹ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008).
- ² Australian Bureau of Statistics, *Survey of Disability, Ageing and Carers, Australia, 2018*, Catalogue 4430.0. <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/4430.0>>
- ³ Australian Bureau of Statistics, *Survey of Disability, Ageing and Carers, Australia, 2018*, Catalogue 4430.0, Table 8.3. <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4430.02018?OpenDocument>>
- ⁴ Australian Bureau of Statistics, *Survey of Disability, Ageing and Carers, Australia, 2018*, Catalogue 4430.0, Table 7.1. <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4430.02018?OpenDocument>>
- ⁵ Australian Bureau of Statistics, *Survey of Disability, Ageing and Carers, Australia, 2018*, Catalogue 4430.0, Table 8.3. <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/4430.0>>
- ⁶ Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey, 2014-15*, Catalogue 4714.0, Table 27.3. <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4714.02014-15?OpenDocument>>; Australian Bureau of Statistics, *Survey of Disability, Ageing and Carers, 2018*, Catalogue 4430.0, Table 8.1. <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4430.02018?OpenDocument>>
- ⁷ Scott Avery, *Culture is Inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability*, 2018, p 133.
- ⁸ National People with Disability and Carer Council, *Shut Out: Experience of People with Disability and their Families in Australia*, 2012. <<https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/shut-out-the-experience-of-people-with-disabilities-and-their-families-in-australia>>
- ⁹ Joint FECCA & NEDA Submission to the Australian Human Rights Commission's 'Willing to Work' Inquiry: Employment Discrimination Against Older Australians and Australians with Disability, 2015.
- ¹⁰ *Disability Discrimination Act 1992* (Cth).
- ¹¹ Australian Bureau of Statistics, *Survey of Disability, Ageing and Carers, Australia, 2018*, Catalogue 4430.0, Table 21.3.
- ¹² Australian Human Rights Commission, Complaint Statistics 2018-2019, <https://www.humanrights.gov.au/sites/default/files/2019-10/AHRC_AR_2018-19_Stats_Tables_%28Final%29.pdf>.
- ¹³ Women with Disabilities Victoria, Submission to the Australian Human Rights Commission's National Inquiry into Sexual Harassment in Australian Workplaces, 29 February 2018, p 11.
- ¹⁴ *Disability Discrimination Act 1992* (Cth) s 4(2), s 5(2), s 6(2).



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