

SUBMISSION ON EMPLOYMENT ISSUES FOR THE ROYAL COMMISSION INTO VIOLENCE, ABUSE NEGLECT AND EXPLOITATION OF PEOPLE WITH DISABILITY













About this submission

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About the CRE-DH

The first centre of its kind internationally, the Centre of Research Excellence in Disabilty and Health (CRE-DH) is generating the evidence needed to guide social and health policy reform with the intent of improving the health of Australians with disability aged 15-64 years, and reducing the avoidable (inequitable) health and wellbeing disparities between Australians with and without disability. The CRE-DH has a particular focus on reducing disability-related inequities in the social determinants of health, that is, the upstream factors that affect health through the conditions in which people are born, grow, live, work, and age, and which are, in turn, shaped by political, social, and economic forces.

The CRE-DH Co-Directors are Professor Anne Kavanagh (University of Melbourne) and Professor Gwynnyth Llewellyn (University of Sydney). The CRE-DH includes Chief Investigators from the University of Melbourne, University of Sydney, Monash University, UNSW Canberra and RMIT with multidisciplinary skills in epidemiology, health economics, health and social policy, psychology, psychiatry, public administration and public health. In addition, we have Associate Investigators from a range of national and international universities and the World Health Organization. We work in collaboration with key stakeholders including DSS, ABS, AIHW and peak bodies in the disability advocacy and service sector through our Partner Advisory Group. Several members of the CRE-DH research team and the Partner Advisory Group also have lived experience of disability.

Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Employment Issues Paper

KEY POINTS

- Australia's current and future labour market poses serious challenges for all job seekers, yet challenges are far greater for job seekers with disability who already experience significant labour market exclusion. Policy and programmatic responses must ensure job seekers with disability have equitable opportunities and appropriately resourced support to participate in the labour market on an equal basis with job seekers without disability. This should include both individual-level personalised support and macro-level labour market reform, reform of disability employment services and job creation programs.
- 2. In line with its obligations under Article 27 of the United Nations Convention on the Rights of Persons with Disabilities, Australia must safeguard and protect the rights of people with disability to equal opportunities for work and safe and healthy working conditions, and ensure they are protected from harm in the labour market on an equal basis with others. This responsibility should be actively supported by legislation and appropriate mechanisms and channels for reporting and collecting data on discrimination, violence, abuse, neglect and exploitation in the labour market on the basis of disability.

Question 1. How do people with disability experience violence, abuse, neglect and/or exploitation in employment settings?

Employment is fundamental to inclusion and protection from violence

Participation in work is fundamental to social-economic status, civil and political participation, and health and well-being^[1,2]. Conversely, unemployment can lead to social exclusion, economic disadvantage, poor mental and physical health, exacerbation of mental illness, and housing instability, all with resultant costs to individuals, families and communities^[3]. This is of particular concern for Australians with disability, who continue to experience poorer employment outcomes, despite undertakings made by governments under the CRPD and the National Disability Strategy^[4].

The entrenched disadvantaged status of people with disability with respect to obtaining employment that is adequate in terms of hours, pay, skill-level, work conditions, work environment and job security, places individuals at increased risk of experiencing abuse and exploitation in work settings, and, compounds existing socio-economic disparities when compared to Australians without disability^[5-8].

Discrimination contributes to exploitation and violence

Disability discrimination remains widespread within the workplace. In 2015, more than one in four workingage Australians with disability who had experienced discrimination in the previous 12 months reported their employer as the source (27%), with around one in six reported work colleagues as the source (18%) [2,9,10]. Job seekers who have experienced violence and discrimination when trying to find work, or in the workplace itself, can find it very challenging to continue to pursue and maintain adequate levels of employment. The fear of discrimination can also create disincentives for employees to disclose disability and/or mental illness, and therefore may mean they do not access support to which they are entitled and which may help them maintain employment^[2,11].

Discrimination and violence are intimately linked. Limited understanding of disability contributes to exclusion across many life domains including education, employment, and access to violence prevention and response programs^[12]. For example, low expectations of work capabilities not only limit the willingness of employers to employ people with disability, but can generate an exploitative perception that people with disability will be satisfied with any work, including unfairly paid work, and, work with limited or no career progression. Further, limited understanding of reasonable accommodation requirements and government programs that can assist employers to implement accommodations, should be seen as a neglected opportunity to improve accessibility of workplaces and subsequent employment outcomes[13].

The perception that people with disability are less able to defend themselves from harassment and violence, increases the risk that people with disability may be subject to violence, including within the workplace [12] (Vaughan et al 2016). Further, perpetrators of violence may exploit the fact that people with disability experience a number of barriers in reporting violence, let alone experience justice within current systems [13]. Accordingly, the 2018 Australian Human Rights Commission National Survey reports on the continued high rates of sexual harassment in Australian workplace. Overall, a third of all

survey respondents (39% of women compared with 26% of men) reported experiencing sexual harassment at work in the last five years. People with disability were more likely than those without disability to report sexual harassment in the workplace (44% and 32% respectively). Again, women with disability were more likely to report sexual harassment compared to men with disability (52% and 35% respectively)^[14].

Recent CRE-DH research supporting these findings

Researchers from the CRE-DH have been leading the Australian Research Council Linkage Grant known as the Improving Disability Employment Study (IDES). IDES aims to improve understanding of factors that promote sustainable and meaningful employment outcomes for people with disability. It involves the implementation of a two-wave longitudinal quantitative survey with people engaged with government funded Disability Employment Services (DES). Wave 1 was conducted between April and December 2018, with Wave 2 implemented between March 2019 and February 2020^[15].

Discrimination was identified as a significant barrier to work for IDES respondents, although varied between people with different impairments. For example, respondents with physical disability were more likely to report experiencing discrimination while looking for a job (such as when trying to engage with employers). Whereas respondents with psychosocial disability were more likely to report experiencing discrimination from other employees in the workplace (such as being excluded from social events). Regardless of the type of discrimination, respondents reporting discrimination were more likely to experience poorer mental health^[16].

Qualitative interviews with DES participants with psychosocial disability, conducted alongside the IDES survey, found most participants described previous or current stressful or precarious work conditions. This included underpayment, even when a government funded wage subsidy was concurrently being claimed by the employer; bullying within the workplace; and, unrealistic employer expectations in regards to job roles [17,18]. Others reported that people may only be kept in jobs for the length of time that wage subsidies remain available.

Question 2a. What barriers exist for people with disability in finding and keeping a job?

Barriers to finding and keeping a job can be either personal (relating to the person with disability, such as past experiences of discrimination) or situational (relating to the employers, employment situation or other contextual issues, such as limited awareness of employers), as follows:

Personal barriers

Discrimination within education and career development

Personal barriers derive from poor past experiences of looking for work, but also result from individuals being exposed to systematic stigma and direct discrimination (within and external to the labour market) which lowers self-esteem and expectations about success^[19]. Many of the barriers to education and skills training, and, employment experienced by people with disability, for example, can be linked to stigmatising attitudes, such as the low societal expectations of the capacity of people with disability[20-21]. In turn, people may be poorly prepared for the world of work and may need additional training compared to other people^[23,24]. This is further compounded by a lack of appropriate school to post-school transition support, and, career planning for students with disability^[25]. A lack of access to appropriate supports, inclusive of practical supports such as organisational skills and supported social engagement opportunities^[26] are further barriers to employment and successful transition to life after school.

Situational barriers

Low demand from employers for people with disability

Situational barriers relate to the preparedness of the employment market to include people with disability. These 'demand-side' barriers are arguably more significant than the 'supply side' barriers, which are attached to individuals with disability, because it limits opportunities even when individuals are well prepared for work by education and training. Employers may be limited by their exposure to stigmatised views about disability which makes them negatively disposed to people with disability[13,27,28]. However, even when positively motivated and wanting to build their capacity to employ and manage people with disability, they often lack 'disability confidence' in how to do this^[29-31]. This has been found to be more acute for smaller businesses who do not readily access information about employing people with disability and the supports available to them to do so^[13]. Importantly, while the government often relies on financial incentives to increase employer inclusion of people with disability, these have not been found to be effective in workplaces where existing understanding of disability was low^[32].

Underemployment and casualisation of work

Under-employment remains a significant issue for many workers with disability. More than a third of our IDES Wave 1 respondents that were working, reported wanting more hours than they currently had access to. This increased to more than 40 per cent amongst IDES Wave 2 respondents. The IDES survey also identified that approximately 40 per cent of Wave 1 respondents that were working were commonly contracted on a casual and/or temporary basis^[16].

This figure increased to 50 per cent amongst IDES Wave 2 respondents (currently unpublished).

IDES qualitative interview concurred that for participants that were currently working, the majority reported not being able to gain as many hours of work as they would like, or were in roles that undermined their mental health^[16].

Layering effect of personal and situational barriers

There is a layering effect of disadvantage and circumstance which means that some people with disability (e.g. influenced by factors such as gender and sexuality, cultural identity and experiences) will have more difficulty in obtaining appropriate employment. IDES survey respondents consistently reported that their greatest barriers to employment included lack of jobs close to where they live; lack of skills and qualifications; and lack of confidence[16,33]. Qualitative interviews with DES participants with psychosocial disability further identified numerous compounding barriers to employment. These included family breakdown, disrupted education, unemployment, traumatic life events, poor physical health, housing insecurity and homelessness, discrimination, and significant financial hardship. These factors often intertwined to influence mental health, engagement with DES, and the ability to find and keep work, particularly in areas where there were limited jobs that met the self-beliefs, aspirations and skills of participants[17,33]. This layering effect necessitates a personalised approach to employment support so that individual circumstances can be addressed by individualised planning and support.

Question 2b. What helps people with disability find and keep a job in an environment free of violence, abuse, neglect and exploitation?

Financial incentives for employers and competitive markets for disability employment

With the above limitations about employer 'disability confidence' in mind, financial incentives are useful in contexts where there is already good understanding of disability. Creation of a competitive market where employers find it desirable to focus on diversity and inclusion and compete on these terms is an effective facilitator of disability employment which has been used in Australia and elsewhere^[34]. Examples of this were included in ABC TV's Employable Me, where organisations were choosing to employ staff with autism because of the comparative advantage it gave them. Another example is the international German software company SAP (who also operate in Australia) who have committed to actively recruiting people

with autism so that they represent 1 percent of staff by 2020^[35]. This is being done through a strategy across its international offices (including India, USA and Germany) focused on recruitment and training and is strategically important for the company^[34] writes that "SAP is committed to their Autism at Work program because of the business value and innovation promise it delivers. This is not about social responsibility or philanthropy. SAP values the unique skills and abilities that people with autism bring to the workplace." Elsewhere other options used successfully are "ice breaker" wages for recent graduates or "flexjobs", which is another system of subsidised wages for employees who need to work flexibly^[34].

Enhanced support to gain and maintain employment

IDES survey respondents were asked about what support they would like from their DES provider to help them gain and maintain employment. Overwhelmingly, respondents (62%) identified ongoing support when they gain employment. This was followed by support to feel confident in their abilities (60%), and support to identify jobs that meet their needs and skills (58%). More than half of all respondents also wanted DES help to apply for jobs^[33]. Critically, DES were often reported as not providing supports that meet the needs and preferences of participants. This included a lack of ongoing support within employment, which would also help identify and address any issues related to violence, abuse, neglect and exploitation occurring in the workplace.

Question 2c. What opportunities are there for career progression for people with disability in Australian workplaces?

To the best of our knowledge there is no Australian data related to the career progression of people with disability. This is a significant gap as we are unable to determine the effectiveness of policy and practice changes without this data. This should be added to workplace datasets and available via the Commonwealth Government's Labour Market Information Portal. In theory, once people with disability are connected to the workplace, career progression requires disability inclusive HR policies that ensure that workers with disability are included in and benefit from workplace initiatives such as ongoing professional development, performance reviews and mentoring programs. Examples of programs that do support career attachment and progression, include the Australian Network on Disability's (AND) Stepping Into Program, which connects people with disability to organisational recruitment strategies and graduate programs, and, their Positive Action towards Career

<u>Engagement (PACE) Mentoring</u> program, which matches people with disability with mentors who can help develop their workplace skills and confidence.

At the same time, the PACE program supports managers and supervisors to build their leadership for inclusive workplaces^[36].

Question 3. What are the experiences of First Nations people with disability participating in employment? How does this vary across different life stages?

Research by the First Peoples Disability Network highlights the impact of apprehended discrimination (whereby repetitive exposure to discrimination on account of cultural and disability identity contributes to avoidance of situations where discrimination could possible occur) on the participation of First People with disability across all life domains, including employment^[37]. Disability discrimination, however, was reported to be a more significant barrier within job seeking than being Aboriginal or Torres Strait Islander^[37].

This is perhaps also evidenced by the employment participation rates of First People with disability with different levels of impairment. Labour force participation and employment for First People with severe or profound disability is 31 and 19 per cent respectively, compared to 68 and 55 per cent of First People without disability. The unemployment rate of First People with severe or profound disability is 34 per cent, as compared to 19 per cent for those without disability. The report also highlights the mismatch of the plethora of programs aimed at building job seeker capacity, in comparison to the dearth of consideration given to building the understanding and capacity of employers to employ First Peoples with disability.

Question 5. What could be done to prevent or respond to discrimination, violence, abuse, neglect and exploitation against people with disability in the workplace?

The recommendations from the Committee for the Convention on the Rights of Persons with Disabilities (CRPD) outline several ways in which the Australian Government must act to improve the rights of people with disability in relation to employment if it is to make progress in its commitments to the CRPD.

Specifically they are concerned with:

 The limited review of the National Employment Framework for People with Disability and particularly the focus on reform of Disability Employment Services

- The 'segregation' of people with disability into employment within disability enterprises and lower than minimum wages received in these roles
- Limited labour force participation of people with disability, "particularly women with disabilities, Aboriginal and Torres Strait Islander persons with disabilities, persons with disabilities from culturally and linguistically diverse backgrounds and refugee and asylum-seeking persons with disabilities"

These areas of concern should be turned around as points of action in improving disability employment in Australia. In doing so the Human Rights Commission's 2016 Willing to Work recommendations should again be considered and more appropriately responded to. Again, key to supporting these recommendations is improving monitoring and reporting, as further discussed below.

National disability data is lacking

At a systems level, monitoring the systematic, sociallyproduced disadvantage experienced by people with disability in relation to employment is essential. Routine publishing of reliable, quantitative data is a powerful tool for raising awareness among all stakeholder groups (governments, policy makers, employment program providers, advocacy groups, employers, people with disability, and the general public) about the entrenched inequities that exist. This is in line with Article 31 of the CRPD: 'States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention'. Work by the CRE-DH has identified that current data reporting systems are limited and we currently lack any data in Australia to monitor the following domains:

- Access to job design modifications and reasonable adjustments
- Experience of bullying or harassment
- Experience of financial abuse

In response, the <u>Disability and Wellbeing Monitoring Framework</u> has been developed by the CRE-DH, in consultation with people with lived experience of disability, to measure and track inequalities between people with and without disability in relation to exposure to social determinants of health and wellbeing^[38,39]. Indicators are specified within each of the 19 domains of the framework, grouped under the headings: Health and wellbeing, Social determinants, and Service system. In the 'Employment' domain the following indicators are specified: Labour force participation rate; Employment to population ratio; Engagement in employment, education and training; Unemployment rate; Youth unemployment rate; Long-

term unemployment ratio; Under-employment; Leave entitlements; Employment in high skill jobs; Access to job design modifications and reasonable adjustments; Experience of disability-related discrimination in the workplace. National data are currently available for all indicators except 'Access to job design modifications and reasonable adjustments'. The CRE-DH intends to report data comparing people with and without disability, for all indicators where such comparison is applicable. 'Pay' is a topic within the Monitoring Framework for which no indicators have yet been specified – the disability pay gap is an important issue on which data should be reported, and work to specify an indicator for this topic is planned.

The 'Justice and safety' domain of the Monitoring Framework includes a number of indicators relevant to the experience of discrimination, violence and abuse by people with disability: Experience of discrimination or being treated unfairly; Experience of disability-related discrimination; Experience of bullying or harassment; Experience of partner violence; Experience of physical violence; Experience of sexual violence; Experience of emotional abuse; Experience of financial abuse. National survey data are available for reporting on all of these indicators except 'Experience of bullying or harassment' and 'Experience of financial abuse'. However, the available national data sources have some serious limitations that mean these data cannot provide a complete picture of the discrimination, violence, abuse, exploitation and neglect experienced by people with disability.

A key limitation is that survey data do not cover people with disability who live in 'non-private dwellings', including boarding houses, accommodation for people who are homeless, and group homes for people with disability^{[38].} See also "Deeper data needed to understand the scale of abuse faced by people with disability".

Question 6. Are the current employment programs and supports for people with disability effective?

Australia's Disability Employment Services program

There are serious concerns raised by the UN Committee on the Rights of Persons with Disability in relation to the operation and review of Australia's DES program, the country's main employment program for people whose disability is identified as their key barrier to work. In Australia, knowledge of the services offered by DES is low, with only 52 per cent of employers understanding their role and only 3 per cent engaging with DES in the previous year ^[13]. Despite significant investment and ongoing reviews and reform to the DES program, employment outcomes within

and external to DES remain stagnant^[40]. It has been argued that until Australia addresses the systemic inequalities and barriers to employment experienced by people with disability (e.g. discrimination, limited number of available jobs), it will be challenging for any further DES reform to enable employment services to address the complexity of vocational and non-vocational barriers to employment often experienced by participants of Australian employment programs^[17,41-46]. Further, trends in the economy and the labour market in Australia in the wake of the COVID-19 pandemic pose serious challenges for job seekers with disability competing for scarce employment.

Question 7. What are employers' experiences of hiring and retaining workers with disability?

Researchers from the University of Sydney, who are part of the CRE-DH have recently completed a report commissioned by the NSW Government, investigating the experiences of people with disability within Vocational Education and Training and subsequent access to employment. This will be provided on request to the Commission when the NSW Government makes it publicly available.

Concerted effort and grounded strategies are needed, now more than ever, to ensure they are not sidelined as the economy rebalances.

DES commentators and stakeholders have long advocated for more individualised approaches to supporting people with disability, particularly within their engagement with employment services. This includes recommendations to increase participant choice and control in how people with disability access employment services and the type of support they require. There are also calls to improve the interface between DES and supports provided under the National Disability Insurance Scheme (NDIS) [47]. The NDIS has committed to having 30 per cent of participants of working age in meaningful employment by 30 June 2023. This target is currently not being met, with many participants insufficiently supported to include employment as a goal within their plan, or, access appropriate supports to help them gain and maintain employment^[48].

To address this issue, the DSS and NDIA formed a Participant Employment Taskforce, releasing their Participant Employment Strategy in 2019. The strategy outlines that the NDIA will work closely with DES and other service systems, in a complementary way, while not duplicating existing systems. However, there is limited clarification and detail of how this will be achieved, except perhaps that the NDIS is now seen as a mechanism to

build the work capabilities of NDIS participants, before they engage with DES^[49]. Other changes made under the strategy are designed to enable more flexibility in how NDIS participants' access employment supports. This includes supporting participants to purchase supports across a broader range of workplaces beyond disability enterprises, including within the public and private sector, social enterprise, self-employment or microbusiness.

Further NDIS participants are now able to access support to build capacity for future work from the age of 14^[50]. See also <u>here</u> This is in line with evidence of best-practice highlighted in the following section.

The importance of structured training, career development and work experience

Early career development and experience to help young people with disability transition smoothly from education to work, is critical to gaining and sustaining employment. Research into in-school predictors of effective post-school outcomes identifies three mutually reinforcing elements for success [51,52]:

- 1. Effective vocational preparation career education, pre-vocational and work skills training, work experience, community experience, school completion, inclusion in general school life.
- Psychological and social development self-advocacy/ self-determination, independent living skills, social skills
- External support interagency collaboration, parental support, student support networks, transition programs

These elements are not always well coordinated or mutually reinforcing for school students with disability. In particular, competing priorities and rigid rules and processes across jurisdictions can impede interagency collaboration responsible for different educational and employment programs^[53]. This should be addressed as a matter of priority. Recent changes to NDIS employment supports presents a critical opportunity to support investment in local/placed-based, targeted, collectiveaction solutions and partnerships between families, schools, businesses, disability and employment services and complementary services, offering work experience and training tied to a 'first job' outcome, can build young people's confidence and skills for future employment through early success, and reinforce their right to participate fully in society and the economy. These and broader ideas on improving employment participation of people with disability are discussed further in Question 8.

Question 8. Ideas for improving employment participation for people with disability.

We need a National Jobs Plan

People with Disability Australia (PWDA), one of Australia's national umbrella bodies for Disabled People's Organisations, have called on the government to develop and implement a National Jobs Plan. Key recommendations under the plan include provision of practical tools for addressing systemic and structural barriers to finding and maintaining work; introducing a minimum quota of 15% for employment of people with disability in the public sector, with the NDIA minimum quota to be set at 51%, alongside specific targets, performance indicators and timeframes for increasing the workforce participation for people with disability across all sectors; strengthening the transition of secondary students with disability into tertiary education and into open/ mainstream employment; and, ensuring the social security system better enables people with disability, particularly those with episodic conditions to move in and out of employment^[54].

Collaborative, 'life course' approaches are needed

Improving employment for people with disability requires a life course approach to maximising capabilities across all life domains. This includes access to early intervention and supports, education and post-school transition, health and well-being, accessible transport, and safe and affordable housing^[55]. As highlighted above, earlier, more coordinated and individualised support for career development is also critical. This requires greater collaboration between education providers, employment programs, and, employers to develop opportunities for paid and unpaid work experience for people with disability from an early age to develop confidence and practical work skills to support transitions into paid employment[19,28, ^{30,32,56-60]}. Work experience can also counteract some aspects of the negative stereotyping of people with disability, as employers can learn about the work capabilities of people with disability, and, how workplace reasonable accommodations can be implemented to support workers with disability^[19]. Dedicated career planning provided by educational facilities has also been shown to be effective, with students having double the rate of employment compared with those who have received no structured career planning[61].

An excellent Victorian example of collaborative practice to support young people with disability in their career development and transition to employment, is the National Disability Service's Ticket to Work program. This program works to encourage young people with disability and their families to identify skills and work aspirations. This is similar to processes of discovery often used within customised employment programs for people with intellectual disability.

Whilst there are examples of emerging practice, such as that implemented by the <u>Centre for Disability Employment</u> Research and Practice, such programs are not readily available in the Australian context. The Ticket to Work program also provides guidance on available programs best placed to support individuals to further develop skills and work towards their employment aspirations. At the same time, Ticket to Work encourages place-based collaboration between the various employment programs and other stakeholders that can provide different types of supports for young people with disability^[62]. As highlighted above, the Australian Network on Disability programs to support internships and mentoring for people with disability within Australian businesses, Universities and TAFEs, is a further positive example of improving employment participation for people with disability.

A Job Guarantee is needed where employers are unresponsive to other measures

Finally, the idea of a Job Guarantee as an employment policy option is gaining traction. A Job Guarantee policy would provide a guaranteed job for every citizen who wants one at the time fraction they prefer. This would be federally funded but administered locally. A Job Guarantee would be a counter cyclical economic policy which would act to automatically stablise unemployment levels irrespective of current economic conditions (i.e. whether economy is

growing or in recession). One of the most prolific writers on the implementation and administration of a Job Guarantee policy, Pavlina Tcherneva, discusses how the most effective implementation of a Job Guarantee is via federal funding with local administrated by social enterprises and non for profit organisations^[63,64]. However, while it has been argued that a Job Guarantee could have significant economic benefits and address issues of unemployment, it is not necessarily a panacea to the current COVID-19 related employment crisis.

By design a Job Guarantee focuses on entry level and minimum wage positions. This does not meet the needs of unemployed people with already existing skills and qualifications. Further it does not address issues related to social structures such as racism and negative attitudes to people with disability that exclude people from private sector employment opportunities. There is a significant dearth of research exploring these issues, especially as they relate to disability.

A Job Guarantee may be one policy option which has the potential to improve employment outcomes for people with disability but without a robust research base from which to recommend a Job Guarantee there could be unintended negative outcomes of such a scheme. More research in this area is urgently needed.

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