



4 August 2014

Reference Group Members
Welfare Review C/- Welfare System Taskforce
Department of Social Services
PO Box 7576
Canberra Business Centre ACT 2610

Dear Mr McClure,

**Comments in response to the Interim Report: A New System for Better
Employment and Social Outcomes**

As Age Discrimination Commissioner and Acting Disability Discrimination Commissioner at the Australian Human Rights Commission (the Commission), I welcome the opportunity to make a submission to the Welfare Review.

Introduction

The welfare system cannot usefully be examined in isolation from the broader economy: the settings of the system must be conducive to maximum participation to enhance Australia's productivity and economic growth. In addition, a useful examination of the welfare system should involve consideration of the human rights of the people who rely on income support. These two approaches are mutually reinforcing; a growing economy broadens the possibilities for the realisation of rights and investing in people facilitates their participation.

The Review process is an opportunity for improvement, especially with regards to the interactions between the income support system, the broader social support system and employers. Front end investment in people and in strategies to remove employment barriers will yield positive results in the future through a growing economy.

Without other pro participation measures in place, lowering the level of income support or requiring increased responsibilities in terms of mutual obligation, is unlikely to boost participation. Individuals reduced by unrealistic and overly harsh benefit requirements to poverty, homelessness and other insecurities are less likely to find jobs and become a greater cost to the community.

To increase the movement of beneficiaries to paid employment, the following conditions are essential:

- **Adequate support** – individuals are supported financially at a level where they can avoid poverty;
- **Investing in people** – job seekers (or those with a future attachment to the workforce) are assisted to become job-ready and are provided with appropriate training; and
- **Removing employment barriers** – discrimination on the basis of age, gender, race, disability or other status is addressed so that people are confident that they will be awarded opportunities based on merit, and that employment arrangements are flexible and accessible.

Adequacy of the working age payment

Various previous reviews as well as the Interim Report have noted the large and growing discrepancy between pensions and allowances.¹ The Interim Report recommends a single, tiered, working age payment for people (including for people with disability) who have current or future capacity to work. Depending on the design of the payment and the associated non-financial supports, this could allow recipients to retain a greater connection to the workforce.

The Interim Report also states that “consideration should be given to reducing the current gap between pensions and allowances, particularly for people with limited work capacity, or with significant labour market disadvantages.” This would reduce the incentive for individuals to move from lower allowance payments to higher pensions. Data on the movement of individuals from Newstart to disability support pension demonstrates the contrary incentive effects of the current gap between the two payments.²

The Commission has previously made recommendations relating to the adequacy of Newstart.³ Both Newstart Allowance and the pension (the disability support pension and the age pension) are designed for cost of living expenses. While they serve different purposes, it seems reasonable to assume that there should be a level of equity in these provisions.

The level of the working age payment should not provide a disincentive to employment.⁴ However, any move to reform the architecture of the payment system to minimise the difference between Newstart and the disability support pension (or other higher payments) should look to ensure every payment is enough to meet basic needs and keep recipients from poverty.⁵ The current level of Newstart is well below the poverty line and payments for Youth Allowance lower still for many young people.⁶ The Interim Report recognises that children cost more as they age.

In addition, earning thresholds should be standardised so income support recipients are not discouraged from entering employment. The high earning threshold for the Age Pension is an example.

Recommendation 1: that the single working age payment be available to all those who require it and be sufficient to meet the costs of living, job-seeking and skill development activity.

Capacity building through training

The Interim Report has a strong focus on the social supports required to build capacity.

A significant number of unemployed people require re-skilling or up-skilling in order to be competitive in the labour market. Proactive, positive and intensive support should be provided in the early stages of unemployment and not deferred until job seekers become long-term unemployed. Support should be targeted to those most at risk of becoming long-term unemployed. The expansion of wage subsidies and training assistance to Certificate 3 could assist this.

Job Service Australia Providers (JSAs), Disability Employment Services providers (DESS), training institutions (TAFEs and other Registered Training Organisations (RTOs)), and employers could form more productive relationships. Such relationships would give job seekers the best chance to train in the growth industries in their region. Responsibility for this relationship building could potentially lie with JSAs and DESS, as they are the interface between job seekers, employers, and trainers.

Recommendation 2: JSAs and DESS be required to formalise information sharing arrangements with training providers and employers so that TAFE and RTO courses can be tailored to the training requirements of job seekers and the particular employment opportunities in each region.

Funds are currently available to assist job seekers to undertake training. The recently released *Exposure Draft: for Employment Services 2015-2020 Purchasing Arrangements*, contains the proposal to close the Employment Pathway Fund and tighten training rules to prevent “training for training’s sake”. Funds will be restricted to training that is related to a specific job.⁷

While pointless training is to be avoided, if adopted, such a requirement should not be applied in a way that prevents job seekers re-skilling for employment in a different industry. In many locations in Australia, where individuals have been retrenched from a declining industry sector, it is crucial to redirect and retrain these people for growing sectors.

Recommendation 3: That funds be available through JSAs and DESS to allow job seekers (especially job seekers with complex needs or who are at risk of becoming long-term unemployed) to undertake substantial retraining in growth industries in their region.

The Commission has previously made recommendations relating to the role of TAFEs in providing training to older job seekers. In addition, TAFEs could, in a coordinated national strategy, assess the specific needs of other vulnerable groups and tailor their services accordingly. This could include disability consultants to tailor any reasonable adjustments that needed to be made to suit the needs of individuals. TAFEs must be adequately resourced to take on this role.

The Commission has engaged with the South West Sydney Institute of TAFE (SWSi) on activities to attract mature age students and provide training linked to available jobs. SWSi has mechanisms to tailor their services to individuals’ needs and strong and visible ties with supportive stakeholders. SWSi held an all-day forum for over 50s

job seekers, Pathways Back to Work, which was well-promoted and well-attended. There was no charge for participation, an important aspect in a region with many socially and economically disadvantaged residents. Post event feedback identified that 81 per cent of the surveyed attendees had since enrolled in study or gained employment.⁸

With the right resources and mandate, TAFEs across Australia in conjunction with local employers and government programs could use SWSi's experience as a template to hold their own events to attract job seekers with specific attributes to training opportunities.

Recommendation 4: A coordinated national strategy should be developed by the Commonwealth, States and sector advisers with specialist knowledge of vulnerable groups. TAFE should be at the centre of the national strategy. Under the strategy, TAFEs could be tasked and funded to conduct outreach and marketing to vulnerable job seekers, build relationships with targeted employers and other key stakeholders and mount promotional exercises to encourage otherwise disengaged people to take up employment training pathways.

Reducing workplace discrimination and promoting flexibility

Article 26 of the *International Covenant on Civil and Political Rights* recognises the right of freedom from discrimination.⁹ Discrimination against people with protected attributes is unlawful under legislation administered by the Australian Human Rights Commission.¹⁰ However, workplace discrimination is still widely prevalent and discriminatory attitudes of those making employment and recruitment decisions provide a significant barrier to participation:

- One in two (49 per cent) mothers reported experiencing discrimination in the workplace at some point during pregnancy, parental leave or on return to work.¹¹
- Compared to 9.6 per cent of the Australian community with an Asian background, only 1.9 per cent of executive managers and 4.2 per cent of directors have Asian cultural origins.¹²
- The working age participation rate for indigenous people in 2011 was estimated to be 58 per cent, compared to 78 per cent of working age Australians as a whole.¹³
- For all discouraged job seekers, the most commonly reported main reason for not actively looking for work was 'Considered too old by employers' (33 per cent).¹⁴ In addition, we know that one in ten businesses have an age above which they will not recruit – the average age is 50 years.¹⁵
- Australia ranks 21st out of 29 OECD countries in employment participation rates for those with a disability.¹⁶

Discrimination undermines business success. If recruitment decisions are based on false assumptions about the capabilities (or lack thereof) of applicants, the most talented and suitable candidate will be passed over.

In pursuit of the objective of supporting individuals to move from benefits to jobs, steps must be taken to break down unlawful discrimination and ensure that skilled and willing individuals are not rejected on the basis of discrimination.

This is not a question of benefit design. Discriminatory barriers will not be addressed by changes to rules surrounding benefits. They will be addressed only by workplace changes led by government and employers.

With regard to discrimination on the basis of disability, the Commission understands the scope for the NDIS to provide individualised support for people with disability to become job-ready. However, this must be met with a willingness of employers to provide jobs where suitably skilled candidates can operate effectively. Continued focus on the areas for future action outlined in the 'Economic security' section of the 2010-2020 National Disability Strategy could assist.¹⁷

Small changes can have big impacts. For example, if large employers public and private require ICT equipment to be accessible and compatible with screen reading technology, the adjustments required for a vision impaired person to take up employment are greatly reduced.

Recommendation 5: that an appropriate organisation or taskforce be tasked and resourced to conduct an audit of all options for workplace systems and practices to facilitate employment and recruitment of people with disabilities. This should be done with extensive consultation with the disability sector.

Cultural change to address discriminatory attitudes and behaviour is difficult to achieve and measure, however steps can be taken to open opportunities. The Commission notes the suite of incentives the Government has announced in relation to older workers, younger workers, the long-term unemployed and Tasmanians. While some of these are to facilitate behavioural change for reasons other than discrimination, the role of incentives in achieving systemic change has been noted by the UN Committee on Economic Social and Cultural Rights.¹⁸

Different forms of discrimination manifest in different ways and require specific responses. Effective examples include:

- *Culture change in workplaces:* The Corporate Champions Programme offers tailored support and assistance valued at up to \$20,000 to large employers who commit to moving towards best practice in their recruitment and retention of mature age staff.
- *Reporting responsibilities:* Non-public sector employers with 100 or more staff are required to submit a report to the Workplace Gender Equality Agency. Reporting encourages businesses to consider the gender make-up of their workforce and provides a measuring tool for improvement.
- *Changes in recruitment practice:* The APS has an initiative called RecruitAbility whereby applicants with disability are progressed to the next stage of the recruitment process (i.e. interview) if they meet the minimum requirements for the position.¹⁹

Consideration and consultation with business and community stakeholders could examine to how other programs, practices and monitoring initiatives could promote better outcomes. Consideration could be given to work undertaken by the European Union on the business case for workplace diversity.²⁰

Recommendation 6: that the Government support ongoing campaigns and initiatives to address discrimination by employers and recruiters by educating

them about anti-discrimination obligations, unconscious bias, the business benefits of diversity, and best practice.

Recommendation 7: that an appropriate organisation or taskforce is tasked and funded to work with employers and employer groups to devise a strategy for collecting data about the business benefits of employment diversity and best practice.

Flexibility is key to maintain employment among older workers and those with disability. Flexible arrangements can allow those who are able to work, but have caring responsibilities or medical requirements, to remain in the workforce.

A common scenario of a complaint made to the Commission under the age and disability discrimination legislation relates to employers who do not accommodate long-serving older employees who require flexibility or employees who acquire a disability. If such employees lose their employment, discriminatory attitudes and/or lack of up-to-date skills will hinder their job search. Such people, under the current settings, may become long-term unemployed or become disability support pension recipients.

The Commission's *Supporting Working Parents: Pregnancy and Return to Work National Review*, found that discrimination towards pregnant employees and working parents remains systemic.²¹ The Commission's report *Investing in Care*²² and the submission to the Productivity Commission's Inquiry into Childcare and Early Childhood Education²³, establish that women may face increased barriers to work due to caring responsibilities. Such barriers may prevent women re-entering the workforce successfully at a later stage.

Recommendation 8: Employers should be provided with information and advice to assist them restructure the tasks of employees who develop disability or have caring responsibilities or otherwise require flexibility but are able to continue as productive workers.

Recommendation 9: A suitable body should be funded and tasked to produce guidance material so that employers can make the best use of reliable and effective employees who may require some adjustment to their work place or hours of work.

Human rights framework

Australia's ratification of the *International Covenant on Economic Social and Cultural Rights*²⁴ brings with it obligations to ensure that all citizens have rights to: social security, work, and technical and vocational guidance and training programmes.²⁵

The right to social security requires States to take effective measures within "maximum available resources" to achieve progressively the full realization of the right to social security.²⁶ The social security system should be administered in a way that:

- recognises the principle of human dignity and the right to non-discrimination,²⁷

- ensures that the eligibility conditions for benefits are reasonable, proportionate and transparent;²⁸ and
- ensures that the benefit is accessible and not be provided in a form that is onerous or undignified.²⁹

The Government has announced (but not yet legislated) new rules relating to job seekers under 30, which restrict access to benefits for a period of up to six months and young unemployed people will have to wait until 25 to receive the higher Newstart Allowance. In light of Australia's international obligations, consideration should be given to the sufficiency of support offered to unemployed young people. Many young people are simply not in a position to rely on their families to support them and many experience unstable living conditions.

Further, more onerous work for the dole and job search requirements may have additional negative impacts on certain individuals and groups such as Aboriginal or Torres Strait Islander people, people with caring responsibilities or people with disability. Such negative impacts would work against the objective of supporting the move from benefits to jobs. Further consideration should be given to whether current and planned work for the dole and job search requirements are reasonable and proportionate, and whether they enhance the likelihood of employment.

Concluding remarks

The consultation process in response to the Interim Report is a welcome opportunity for the Commission to comment on how the welfare system can promote participation in a manner which is aligned with human rights.

I note the Andrew Forrest's report on Indigenous Training and Employment was delivered to Government last week on 1 August 2014. This Report covers many areas specific to Aboriginal and Torres Strait Islander peoples but some recommendations refer to Australians more generally, particularly the Healthy Welfare Card. The timing of the release of this Report has not allowed for adequate analysis to be included in this submission.

Matters around employment and welfare are addressed in several current processes and reviews: implementation of this year's Federal Budget; the Forrest Review; the Exposure Draft for Employment Services 2015-2020 Purchasing Arrangements; and, the terms of reference for your review. The challenge is to develop a coherent approach to the areas covered by these exercises.

It is in the interests of individuals on Newstart or the disability support pension to be given practical pathways to appropriate jobs. Securing paid work assists an individual to live in economic security, provides social inclusion, health benefits, and a sense of purpose; in short, it is a chance to live in accordance with their human rights.

While recognising the imperative of sustainable welfare spending, it will be agreed that as more people participate in paid work, the Australian economy will grow. As the workforce grows with the inclusion of previously unemployed individuals, public expenditure on benefits will be reduced to a sustainable level.

Redesigning the welfare system according to these realities should produce a stronger economy and a fairer society.

Please contact me or my adviser, Adriana Siddle (adriana.siddle@humanrights.gov.au) if you would like to discuss these matters further.

Yours sincerely



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¹ The First McClure Review, *Participation Support for a More Equitable Society*, 2000; Harmer Pension Review, 2009; Henry Review, *Australia's Future Tax System*, 2009; to Senate Education, Employment and Workplace Relations References Committee, *Inquiry into the adequacy of the allowance payment system for jobseekers and others, the appropriateness of the allowance payment system as a support into work and the impact of the changing nature of the labour market*, 2012.

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