

The Disability Council NSW (also known as 'Council') was established under the *Community Welfare Act 1987* (NSW), and was transferred under the *Disability Inclusion Act 2014* (NSW) on 3 December 2014. Council's main responsibilities under the *Disability Inclusion Act 2014* (NSW) are to:

- Monitor the implementation of Government policy;
- Advise the Minister on emerging issues relating to people with disability, and about the content and implementation of the State Disability Inclusion Plan and disability inclusion action plans;
- Advise public authorities about the content and implementation of disability inclusion action plans;
- Promote the inclusion of people with disability in the community and promote community awareness of matters concerning the interests of people with disability and their families;
- Consult with similar councils and bodies, and people with disability; and
- Conduct research about matters relating to people with disability.

Council is funded by the NSW Government through the NSW Department of Family and Community Services (FACS) and is supported by a secretariat team within FACS.

Introduction

Council welcomes the opportunity to make a submission to the Australian Government Department of Social Services (DSS) Disability Employment Taskforce in its review of the National Disability Employment Framework. Employment participation is a key area of focus for Council, which would like to share some of its views on the questions raised in the Issues Paper.

People with disability face a multitude of barriers to employment, ranging from attitudinal to physical. Attitudinal barriers may include low expectations from their families, educational organisations and communities as well as ignorance of disability issues and fear of perceived additional costs from their employers. Physical barriers include environmental and access limitations which reduce the options available to job-seekers with disability. At work, employees with disability may also face pre-conceived low expectations held by their superiors, leading to less opportunity to prove themselves and gain promotions, or experience meaningful work.

While anti-discrimination laws, including the *Disability Discrimination Act 1993* (DDA) provide a foundation for equality and inclusion in the workplace, Council understands that these laws have limited effectiveness in reducing physical and attitudinal barriers to employment participation. The threat of action under the DDA may even make employers reluctant to hire people with disability.

Many of these barriers to employment are perpetuated by the disability support system which perversely de-incentivises employment. For example, job-seekers receiving the Disability Support Pension (DSP) who are unable to use public transport may find that the high costs of travelling to work are greater than the prospective low wage.

This submission will address the principles and key questions proposed in the Issues Paper and will recommend that a holistic whole-of-government approach is required to remove barriers to employment for people with disability.

Principles and Diversity

As Australia is becoming increasingly diverse, a holistic approach is required to respect and respond to diversity, including in relation to people with disability. The needs of people with disability change over their lifetimes and vary between and within different groups.

Employment services should embrace this diversity by adopting different approaches to provide appropriate support to each client. For example, Council is concerned about the transition to employment from education for students with disability. It is important that employment services work with students with disability to provide career planning and options to pursuing employment or vocational training. It would also be valuable to provide support for families to develop high expectations for students with disability and encourage goal-setting.

Additionally, there should be a focus on supporting students with disability from culturally and linguistically diverse (CALD) communities as there is a significant difference in the participation figures of these students in the school system compared with participation in disability programs and employment. It is important to provide targeted support to students with disability and their families from CALD communities to pursue employment and vocational training. A supported transition from education to employment or vocational training is a crucial first step in removing barriers for students with disability, particularly those from CALD communities.

The principles outlined in the Issues Paper do not reflect diversity and are inadequate in their commitment to achieving tangible outcomes. In their current form, the principles do not provide an incentive to change the status quo. A change requires strengthening of policy and service delivery to better meet the outcomes of the Australian Government National Disability Strategy (NDS) 2010-2020 and Article 27 of the United Nations Convention on the Rights of Persons with Disabilities (the UN Convention). Council suggests that the principles of the National Disability Employment Framework specifically reflect those espoused in the NDS and the UN Convention to encourage innovative approaches to mainstream employment for people with disability.

The NDS reflects a combined approach by all levels of government in Australia to make the wider Australian community more inclusive and is a vehicle through which the Australian Government implements the UN Convention. Employment (Economic security) is one outcome of the NDS, and is central to many of the other outcome areas. The key outcome in Policy Direction 1 of this area for the NDS is to:

“[i]ncrease access to employment opportunities as a key to improving economic security and personal wellbeing for people with disability, their families and carers.”

The UN Convention recognises the right of people with disability to work in open, inclusive and accessible labour market. Article 27 prescribes as follows:

“1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity 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. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

- a. Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
 - b. Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
 - c. Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
 - d. Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
 - e. Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
 - f. Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
 - g. Employ persons with disabilities in the public sector;
 - h. Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
 - i. Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
 - j. Promote the acquisition by persons with disabilities of work experience in the open labour market;
 - k. Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.
2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.”

In combination, the NDS and the UN Convention reflect a commitment to focus on innovative employment solutions for business and people with disability that are centered on mainstream employment. Both the NDS and the UN Convention also specifically support tangible outcomes for employment for people with disability and it is vital that any

government initiative reflect these commitments. Increased open employment options will support social and economic gains for people with disability and the broader community.

Recommendation 1: That the principles of the National Disability Employment Framework reflect the outcomes of the Australian Government National Disability Strategy and the United Nations Convention on the Rights of Persons with Disabilities.

Recommendation 2: That the Australian Government take action on projects that provide appropriate support over the life course of people with disability, including students with disability seeking to transition into vocational training or employment, especially those from culturally and linguistically diverse communities.

Australian Disability Enterprises

The practices of Australian Disability Enterprises should not mask the need for dialogue and innovation around employment solutions that would achieve fair and reasonable pay for people with disability. An important first step to raising the status of people with disability as job-seekers and employees is recognising that people with disability have the right to equal pay for work of equal value. This recognition requires governments to promote and foster the economic benefits of employment participation of people with disability in addition to the important social benefits.

From the 1907 Harvester judgment, Australia's minimum wage has been based on what was fair and reasonable rather than what an employer could afford to pay. Council recognises that an employee with disability may have productivity below that of the 'typical' worker which can be accommodated by the Supported Wage System and the *Supported Employment Services Modern Award 2010*. Both supports can be used in open employment. Council recognises that increased pay will place additional financial pressure on Australian Disability Enterprises as they work to operate as viable businesses, but believes the Harvester principles of 'fair' and 'reasonable' that apply to the workforce generally should apply equally to employee with disability.

Recommendation 3: That the Australian Government recognise that people with disability have the right to equal pay for work of equal value.

Visibility of Employment Assistance Fund (EAF)

The EAF is designed specifically to provide financial assistance to purchase a range of products and services as workplace modifications and is an important enabler for employers in hiring people with disability. While the EAF provided assistance to 2,787 people with disability in 2013-14, Council encourages greater visibility of the EAF as many employers, as well as job-seekers with disability, are still unaware of its existence.

Version 3.1 of the EAF Guidelines (December, 2014) restricts the provision of assistance to a person with disability who meets one of the following criteria:

- (a) have an offer of employment or be employed for a minimum of eight hours per week, for at least 13 weeks;
- (b) be employed for a minimum of eight hours per week, where that employment is reasonably expected to continue for at least 13 weeks; or
- (c) be a self-employed worker who has been working at least 20 hours per week over the last 13 weeks and earning an hourly income that is at least equivalent to the National Minimum Wage.

While people with a period of employment of less than 13 weeks or with a position of employment that may not be continuous may be eligible for EAF assistance, applications in such circumstances are considered on a case by case basis. Council notes that people with disability are often unemployed or underemployed and may engage in voluntary work or activity. The EAF Guidelines show that, should a person with disability be engaged in voluntary work or activity, they are unable to access the EAF and must provide their own funding to support any modifications required to participate in the activity.

The NDS highlights the central importance of social inclusion and equality, the restriction on when EAF assistance can be provided restricts the participation of people with disability in a way that is not experienced by their peers without disability. Council recommends adjusting the eligibility of the EAF to include broader vocational needs, rather than just employment. By engaging in other activity, the person with disability would be able to develop vocational skills and experiences which ultimately may increase their opportunity to secure meaningful paid employment.

Some work related expenses are not covered by the EAF and the expense can be a barrier to employment for people with disability. Council recommends that employers receive financial assistance for tax deductions for work related expenses not covered by the EAF, such as vehicle modifications. As a further incentive, Council suggests supporting other incentives including that companies employing a high percentage of employees with disability could qualify for a lower company tax rate.

Expanding the implementation of the EAF assessment is another way to remove other barriers to employment participation for people with disability. Council notes that some EAF assessors lack knowledge of disability and its diversity, meaning that consideration of specific modifications is almost always based on recommendations of the person with disability. This arrangement is acceptable if the person knows what equipment might assist their particular situation, but is of little value when neither the person with disability or the assessor is able to advise on a particular modification. This may mean that the EAF is not maximising its ability to provide workplace equipment, modifications and services that people with disability need.

It appears that lack of knowledge of disability and its diversity of EAF assessors is also shared by some employers. This lack of knowledge may be attributed to the fragmented manner in which information about workplace modifications is presented. Council suggests the creation of an all-encompassing website which provides a “one-stop-shop” of information for EAF assessors, employers and people with disability. The website should be hosted by a disability information provider who is specialised in providing disability information and can update the website regularly. For employers and EAF assessors, the website should feature practical, contemporary advice on workplace modifications, with a focus on innovation and technology. It would also be valuable to include online training modules around workplace accessibility and access to a supplier database so employers can easily order equipment. The website could also include:

- An online discussion board to encourage knowledge-exchange around workplace modifications, and
- Training modules for people with disability to develop their capacity to negotiate workplace modifications and services.

Council views this as an innovative way to remove barriers by providing education and support to employers and people with disability.

Recommendation 4: That Australian Government:

- Expand the eligibility for the Employment Assistance Fund to include broader vocational needs;
- Provide tax deductions for employers for work related expenses not covered by the Employment Assistance Fund, and
- Review the tax rates for companies and consider eligibility of companies employing a high percentage of employees with disability for a lower company tax rate.

Recommendation 5: That the Australian Government enable a specialist disability information provider to provide a “one-stop-shop” on workplace modifications for Employment Assistance Fund assessors, employers and people with disability.

Mobility Allowance

While employers are provided with financial incentives to hire people with disability, such as the wage subsidy scheme, Council firmly believes there should also be recognition of the additional cost to people with disability when engaging in employment, vocational training and job-seeking.

In suggesting a holistic approach to employment for people with disability, Council proposes a review of the Mobility Allowance.

The current amounts for the Mobility Allowance are inadequate for people with disability living in both metropolitan and regional areas. Even with an allowance for the State Government supported Taxi Transport Subsidy Scheme, the standard rate of \$91.80 and the higher rate of \$128.40 (as at 1 January 2015) do not provide sufficient support for people with disability to travel to work or vocational training. Council notes that many people eligible for the Mobility Allowance are unlikely to receive an individual support package under the NDIS.

Council proposes that the amounts for the Mobility Allowance should be reviewed as the cost of transport disincentives the pursuit of employment and vocational training. Additionally, if people with disability who are eligible for the Mobility Allowance are employed by an Australian Disability Enterprise, it is likely that they would lose money by travelling to employment each day due to low pay.

Council welcomes an individualised funding approach to the mobility allowance. A flexible rate rather than a fixed sum would mean the allowance could be tailored to individual’s educational and vocational requirements. The mobility allowance should provide sufficient financial support to allow people with disability to undertake job-seeking activities, vocational training and attend work.

Recommendation 6: That the Australian Government adopted a flexible rate to the Mobility Allowance to tailor the allowance to individual’s educational and vocational requirements.