



Willing to Work Submission

Australian Human Rights Commission Issues paper: Employment discrimination against Australians with disability

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Willing to Work Submission: Preface

The Mental Health Council of Tasmania (MHCT) is the peak body representing the interests of the community mental health sector, providing a public voice for people affected by mental illness and the organisations in the community sector that work with them.

MHCT advocates for effective public policy on mental health for the benefit of the Tasmanian community as a whole and has a strong commitment to participating in processes that contribute to the effective provision of mental health services in Tasmania. The Council welcomes the opportunity to respond to the Australian Human Rights Commission's *Issues paper: Employment discrimination against Australians with disability* as part of the Willing to Work: National Inquiry into Employment Discrimination against Older Australians and Australians with Disability.

Mental illness can impact on individuals in many different ways and at different times in their lives. There are those who experience mental illness episodically while others may experience mental illness for a short or long period of time or, indeed, for the entirety of their lives. People can also experience co-morbidities manifesting as a combination of mental illness and physical impairment or a co-occurring addiction along with the social disadvantage that comes with these. For these and other reasons, people with mental-ill health require more complex and sophisticated responses that cannot easily be provided by health, support, education services and employers, particularly if they are acting in isolation.

There is an abundance of research demonstrating that people with mental illness experience considerable barriers to their participation in the workforce. Amongst the number of barriers to employment for people with mental ill-health, discrimination is the one that is consistently referred to more than any other by both mental health consumers and service providers alike. When it comes to people living with mental ill-health, discrimination can manifest in many ways. People with mental ill-health can be subject to stereotyping, poor treatment and bullying. They can be excluded from promotion, well-paying jobs, professional development and training. For many people with mental ill-health, discrimination leads to self-stigma, loss of confidence, hopelessness and reluctance to take on work even when it is available. The 2012 Victorian *Inquiry into Workforce Participation by People with a Mental Illness* found that:

Inquiry participants told the Committee that people with mental illness face increased risk of being ruled out of recruitment and promotion processes because of misconceptions about the ability of people with mental illness to cope with the demands of work. People can also experience harassment and discrimination because of stigma associated with mental illness. The Committee also heard that a fear of being stereotyped and discriminated against can lead many people to keep their mental illness hidden within the workplace. This can prevent people from getting the help they need to maintain their employment during times when they are unwell.¹

Another issue that cannot be ignored is that it is easier to discriminate against people generally perceived as not 'fully functional' in an environment where job-seekers are many and jobs, especially un-skilled jobs, are few. A report by the World Health Organisation back in 2002 explains the context within which people with mental ill-health are competing for jobs and this is as true now as it was then:

¹ Family and Community Development Committee (2012), *Inquiry into Workforce Participation by People with a Mental Illness*, Melbourne, p. 96.

Obtaining competitively paid employment for a person with a background of serious mental illness remains a challenge at the best of times. It is even more difficult in periods of high unemployment when the availability of nondisabled workers is plentiful. Globalization, technological development and changes in the organization of work are having an impact worldwide. In the manufacturing sector of OECD countries, the employment of unskilled labourers has fallen by 20% and there is a definitive trend towards the hiring of highly-skilled workers. We are forced to acknowledge that important changes have taken place in the very nature and organization of work: the free-market economy which predominates is often accompanied by downsizing of human resources and increased loss of job security.²

A north American study found that 'Employees with mental health problems report that once their mental illness becomes known, they experience discrimination from co-workers, feel socially marginalized, have to cope with negative comments from workmates, and have to return to positions of reduced responsibility.'³ This is very similar to what we are hearing in Australia. It is clear that we need to develop training and induction programs that take into account the needs of persons with mental health problems and their co-workers as well as the requirements of potential employers.

Discussion questions

1. What policies, workplace practices, programs or incentives assist with increasing participation of people with disability? How adequate are these policies, practices and incentives? What is the role of Government, peak business and employee groups, and individual employers?

Government

One of the main roles of Government in assisting to support people with mental illness into meaningful and sustainable jobs is to incentivise employers and employment agencies to this end. The Federal government currently provides the following incentives to employers:

- **The Employment Assistance Fund** provides funding for the cost of workplace adjustments or solutions that accommodate a worker with disability in a job. This funding can also cover the cost of specialised workplace assistance support services such as disability awareness training, mental health first aid training and support for people with mental illness and specific learning disorders.
- **The Wage Subsidy Scheme** may pay an employer up to \$1,500 (excluding GST) as an incentive to employ a person with disability who is registered with a Disability Employment Services provider. The job must be for eight hours or more per week for at least 13 weeks and have an expectation of continuing for more than 13 weeks (or six weeks in a seasonal industry). The job seeker must be employed under open employment conditions. That is, under a legal industrial agreement that complies with minimum standards established under Commonwealth, state or territory law. It must also guarantee the job seeker a weekly award-based wage, for example, no commission based or subcontracting type arrangements.

It is important to note that these incentives alone cannot achieve the desired results if there is still widespread stigma and discrimination within the broader community. For this reason, MHCT believes that Government should also consider the following measures.

² Gaston Harnois and Phyllis Gabriel (2002), *Mental health and work: impact, issues and good practices*, World Health Organization and the International Labour Organisation 2002 Geneva, Switzerland, p. 23.

³ Nene Ernest Khalema and Janki Shankar (2014), 'Perspectives on Employment Integration, Mental Illness and Disability, and Workplace Health', p. 2, *Advances in Public Health*, Vol. 2014, p. 2, <http://dx.doi.org/10.1155/2014/258614>

A comprehensive and prominent anti-stigma campaign

The MHCT has long advocated for a national campaign to address stigma associated with mental illness. This would increase understanding and recognition of mental health problems and mental illness, resulting in better access to, and participation in, education, training and employment for people with a lived experience of mental illness. We believe that the best way to fight stigma is through appropriate education and information. This should include a public information campaign to combat the altogether frequent sensational stories propagated by the media.

In the world of English-speaking OECD countries only Ireland and Australia do not have national anti-stigma campaigns. Witnesses in the Federal Inquiry on mental health and workforce participation similarly called for a broad anti-stigma strategy to change perceptions and challenge discrimination against people with mental illness. The key recommendation of the Federal Inquiry's report recommended that the Commonwealth Government coordinates 'a comprehensive and multi-faceted national education campaign to target stigma and reduce discrimination against people with a mental illness in Australian schools, workplaces and communities.'⁴

A paper by the Queensland Alliance notes that, 'Where national anti-stigma and social inclusion programs exist there is strong agreement on the importance of this approach and public approval ratings are high. Consumer surveys reveal that people continue to experience broad discrimination but where national programming exists there is a shift towards feeling more included, that media reporting is improving, and people are experiencing less discrimination within their daily lives.'⁵

Of all the national anti-stigma programs, New Zealand's Like Minds, Like Mine (LMLM) is considered a 'gold standard' in program design and delivery. The cost benefit analysis calculated that Like Minds had cost a total of \$52m since its inception. The estimated economic benefits (increased access to employment, hours worked, and increased use of primary care) totalled \$72m, or \$13.80 for every dollar spent.'⁶

As far as the workplace is concerned, despite current Government initiatives, there still low rates of understanding of mental illness by employers and many myths remain. Mental health literacy in the workplace is critical to combating stigma. Researchers Szeto and Dobson believe that while widespread anti-stigma campaigns help, more targeted workplace interventions might better reach more people who make a difference in the employment environment. They state that 'although participation in public programs is by definition voluntary, the possibility exists that an organization could implement an intervention program as a requirement in on-going training or professional development. As well, many large scale campaigns have the intent of reaching a large segment of the population', and this is achieved largely through media. 'A targeted workplace intervention can be, and often is,' Szeto and Dobson inform us, 'more intensive in both length and content.'⁷

⁴ House of Representatives Standing Committee on Education and Employment (2012), *Work wanted: Mental health and workforce participation*, Canberra, Commonwealth of Australia, p.xvii.

⁵ *From Discrimination to Social Inclusion: A review of the literature on anti-stigma initiatives in mental health* (2009), Queensland Alliance, p. 9, www.qldalliance.org.au

⁶ Ministry of Health and Health Promotion Agency (2014), *Like Minds, Like Mine National Plan 2014–2019: Programme to Increase Social Inclusion and Reduce Stigma and Discrimination for People with Experience of Mental Illness*, Wellington, NZ Ministry of Health.

⁷ A C H Szeto and K S Dobson (2011), Reducing the stigma of mental disorders at work: A review of current workplace anti-stigma intervention programs, *Applied and Preventive Psychology*, p. 3, http://www.researchgate.net/publication/257421521_Reducing_the_stigma_of_mental_disorders_at_work_A_review_of_current_workplace_anti-stigma_intervention_programs

MHCT believes that both are needed to effect the necessary cultural change in the broader community. Government must continue to provide and expand provision of resources, training materials and support to employers in partnership with organisations like *beyondblue*.

Social enterprise

The MHCT would like to also draw attention to the many positive social enterprise activities which employ people living with a mental illness. An example of this activity is the Fresh Start program run by Colony 47 in southern Tasmania. Here, people with a lived experience of a mental illness are engaged in mainstream employment, receive professional support and award wages. It allows people living with a mental illness to positively contribute to the community and receive recognition for the work they do. The Federal Government's Social Enterprise Development and Investment Funds (SEDIF) improve access to finance and support for social enterprises to help them grow their business and increase the impact of their work in their communities. In an article for ProBono Australia Christopher Mason, Senior Research Fellow for the Swinburne Centre for Social Impact, points to Government's 'welcome and tentative backing for particular kinds of social enterprise development, signifying a slow shift in how the sector is supported by Government.' He stresses, however, that 'in order for social enterprise to reach more widely across our communities, we need to conceive of social enterprise as more than a market opportunity, and instead an essential part of the fabric of local economies and communities.'⁸

In another article for Pro Bono Australia Jonathan Bland, an international expert on social enterprise, states that despite the Federal Governments and other state government initiatives, Social Enterprise Development and Investment Funds,

... social enterprises in Australia are having to push up hill. They are not recognised as a sector and many of the social enterprises themselves don't identify as such and they don't get much help ... there has not been the level of strategic support for social enterprise seen in the UK or some other parts of Europe.⁹

Peer workforce

Another avenue for ensuring work for people with psychosocial disability is that of a dedicated focus on hiring people with lived experience. Health Workforce Australia has called for the establishment of a mental health peer workforce in public, non-government and private mental health services. Peer workers appear uniquely placed to assist people using mental health services, and their families and carers. There could be a role for a peer workers with specialised employment services especially under the IPS model described below (page 7).

Another impetus for change, as described by Health Workforce Australia WA is that of the stark workforce challenges facing mental health services.

The mental health workforce includes a range of different disciplines, and operates across a complex set of interrelated services. For public mental health services, nursing is the single largest discipline involved in care. Workforce projections conducted by HWA demonstrated that in the absence of any change, demand for mental health nurses will substantially exceed supply by 2025 (by approximately 9,000) ... Non-government mental health services too are facing workforce shortages [with an] annual staff turnover exceeding 25 per cent, specific staff

⁸ <http://www.probonoaustralia.com.au/news/2014/11/backing-or-carving-out-role-government-supporting-social-enterprise#sthash.vWknxQrE.dpuf>

⁹ <http://www.probonoaustralia.com.au/news/2015/07/social-enterprise-australia-realising-potential#sthash.bmrHwz6y.dpuf>

supply shortages, and challenges in recruiting staff with adequate experience and longevity to match the complexity of client issues ... Peer work does not replace clinical or other services, but instead can complement and support existing mental health and community care services. Exploration of new and emerging roles is one way to support service delivery. Peer workers have been identified as being able to contribute to better health outcomes, and are employed in significant numbers in countries similar to Australia. There is evidence to suggest that peer workers offer a number of benefits, and can reduce the rate of hospital admissions for the service users with whom they work.¹⁰

Paid peer workers therefore can help with maintaining a sustainable mental health workforce while offering people with lived experience a career path. Because they offer experiential knowledge and the ability to engage consumers through building relationships of trust based on shared lived experience, peer worker roles are being introduced in mental health services internationally. HWA informs us that 'In America, the Centre for Medicare and Medicaid Services recognises peer support providers as a distinct provider type for the delivery of support services, and considers it an evidence-based mental health model of care. Currently, 26 states offer Medicaid Benefits for services delivered by mental health peer workers, and the number is growing (Minnesota Department of Human Services 2013).'¹¹ In Australia, the Government could also recognise peer support workers as a 'distinct provider type for the delivery of support services', it could also support the peer work workforce by providing subsidies for peer worker training and by employing peer workers in government services.

Employment Services

Employment agencies, particularly Disability Employment Services, have a big role to play in assisting people with mental illness into the workforce. However, despite substantial investment by Government, they have not yet shown significant results.

Employment programmes

While there are a number of programs in developed countries to help people with disability into employment, most of these programs appear to have been formulated for people with physical disability and do not meet the specific requirements of people with mental ill-health. The programs may either be too limited in duration or have requirements of rigid working hours which people with serious mental illness would find difficult to fulfil, at least initially and without adequate support, or, most commonly, have been designed with no real knowledge or understanding of people with serious mental illness. Although people with mental illness are known to represent a majority of 'persons with a disability', only a very small number of structured programs exist that are adapted to the needs of this group, as compared to programs for those with physical disabilities.

Disability Employment Services

In an article on employment and disability Dr George Taleporos states that, 'According to recent Senate Estimates, Australia invests around \$750 million annually in Disability Employment Services (DES). This funding covers support for people with disabilities to find a job, and support to assist employers to hire people with disability. This includes wage subsidies, work based personal assistance funding and provision of immediate support for people who are at risk of losing their job as a result of their disability.'¹² However, only 3% of employers turn to DES when recruiting and all indications suggest that people with psychosocial

¹⁰ Health Workforce Australia (2014), *Mental Health Peer Workforce Study*, Adelaide: HWA, p. 9.

¹¹ Health Workforce Australia, p. 9.

¹² Dr George Taleporos (2014), 'Employment and disability: A complex problem with no simple solution', *Ramp Up*, <http://www.abc.net.au/rampup/articles/2014/01/13/3922428.htm>

disability make up a very small percentage of the number of people helped into employment under this program.

On top of that, DES employment agencies focus on getting people with disability into jobs, not ensuring that those jobs are retained. In their submission to the National Disability Employment Framework Discussion Paper this year, *beyondblue* pointed out that:

The current disability employment policy and support services adopt a largely static approach, which does not recognise the variety and fluctuating needs of people with a mental health condition. [The common assumption made is] that people remain at one point on the spectrum of capacity to work and the level of support they receive. This may reflect the situation for people with certain disabilities, but it does not adequately reflect the reality for many people with mental health conditions, who may move up and down the spectrum across their lifespan. Transitions between different programs, payments, and supports need to be anticipated and catered for. Yet people with a mental health condition often report experiencing the problem of ‘red tape’ in transitioning between the disability and income support systems and preparing for work and employment maintenance services. This has been highlighted in *beyondblue* focus groups with people with depression and/or anxiety and their carers.¹³

There are many areas that could be improved in the provision of successful employment services to people with mental health issues including up-skilling existing staff to better understand mental health conditions. This would potentially result in the delivery of services in a non-stigmatising and non-threatening manner. Up skilling would also lead to a real understanding of the impact of mental health conditions on employment participation and outcomes, including the role of employment in recovery; best practice strategies to support people with a mental health condition; and knowledge of the availability of health and support services. Employment services do need to go beyond placing consumers in employment, and include ensuring work environments support people living with mental illness to sustain their employment. This may include working directly with employers to educate them on reasonable adjustments to the workplace for people with mental illness, and how to develop programs and policies to support wellbeing for all employees. The expertise of Australia’s mental health peer support workforce could also be utilised to assist in up-skilling staff working in employment services.

Individual Placement and Support (IPS)

People with severe mental illness, in particular, need a more flexible, multifaceted employment service which provides the supports that help to keep people in sustainable employment. There is substantial international research into all aspects of the Individual Placement and Support (IPS) approach. One of the main characteristics of supported employment such as the IPS model used in an increasing number of countries is to provide service and support on an ongoing basis, in line with the individual’s needs. IPS is an evidence-based, supported employment model providing a means for individuals living with a mental illness to seek and obtain competitive employment. It is a model that fosters hope, participation and a sense of a better and brighter future, and therefore is in line with the mental health recovery model. This views employment as a basic human right which can reduce and/or stabilise symptoms, increase self-worth and confidence and provide an increased disposable income for those with a lived experience of mental illness.

¹³ *beyondblue* Submission to National Disability Employment Framework – Issues Paper (2015), Hawthorn West, Victoria, *beyondblue*, pp. 10-11.

IPS has been evaluated in 19 randomised controlled trials in North America, Europe, Asia and Australia. In every single one of those it has significantly outperformed the comparison employment system. On average 61% of people with severe mental illness receiving IPS return to work. When young people access IPS in the early stages of their illness and combine education as well as employment, rates of success have been approximately 85% ... Compared to the money spent on disability employment services currently, implementation of IPS could save approximately A\$1.5 billion dollars (to service 100,000 clients), not to mention the other savings that would accrue through people working and paying tax rather than receiving a benefit.¹⁴

The costs associated with this type of reform are far less than the current cost of administering an expensive system which continually fails to achieve employment outcomes for people with a mental illness. On this basis alone it is imperative that evidence based models such as IPS are made accessible across Australia. In addition, advances in the mental health system and IPS successes overseas, demonstrates the value of incorporating the expertise of people with a lived experience and families.

Employers

Employer accommodation for psychosocial disability

When it comes to employer accommodations for workers with disability, the majority of these pertain to physical disability and include making facilities used by employees readily accessible, the acquisition or modification of equipment or devices, the provision of readers or interpreters, etc. The provisions that apply most often to persons with psychosocial disability require individual development around issues like part-time or flexible work schedules, job restructuring to eliminate or exchange auxiliary job functions that increase pressure for the worker and time off for doctors and therapeutic appointments. The accommodations needed for people with psychosocial disabilities require an attitudinal change on the part of the employer and co-workers. The law decrees that such accommodations are made available while also ensuring that the cost of bringing about 'reasonable accommodations' should not be unreasonable or unbearable for the employer. However, many people with psychosocial disabilities may not need accommodations of any kind.

Good practice towards 'reasonable accommodation' for persons with mental health issues can include:

Increased flexibility, e.g.:

- Changing the start or end of the workday to accommodate side effects of medication.
- Part-time work hours, job sharing.
- Compensation time and/or "make up" of missed time.
- greater flexibility in scheduling breaks
- Flexible leave arrangements

Modifying work sites, e.g.:

- Reduction and/or removal of distractions in the work area.
- Addition of room dividers, partitions or other soundproofing or visual barriers between workspaces to reduce noise or visual distractions.

Management/Supervision practice, e.g.:

- Development of strategies to deal with problems before they arise and writing up an advance care directive.
- Relevant training for all employees, including co-workers and supervisory staff.

¹⁴ Eóin Killackey (2014), 'Welfare to work: a different approach for people with mental illness'
<http://theconversation.com/welfare-to-work-a-different-approach-for-people-with-mental-illness-22293>

2. Are there distinct challenges faced by different sized businesses and organisations, sectors and industries in employing Australians with disability?

Australian Human Resources Institute (AHRI) reported results to the Victorian Family and Community Development Committee Inquiry into Workforce Participation by People with a Mental Illness from a survey it undertook in 2011 of 700 members. The survey asked those at the front line of recruitment about workplace attitudes towards people with disability and mental illness:

- 44 per cent of those surveyed said that there was a perception that people with mental illness were not as good performers as people without mental illness.
- 48 per cent said there was also a perception that people with mental illness posed a higher risk to businesses.
- Almost half said that these negative perceptions translated into organisations choosing not to employ people with mental illness.
- Research studies suggest some employers may also be apprehensive that other staff will react negatively to the employment of someone with mental illness, and in some cases that this would lead to broader organisational performance issues.¹⁵

One of the issues of employing someone with an enduring mental illness is that employers have perceptions based on diagnosis rather than skills and this can impact on their decision to hire or retain a person with a mental health condition. *Beyondblue* notes that 'It is essential that policies considering employment participation focus on functioning rather than diagnoses for people with a mental health condition. This recognises the considerable variability in individual experiences, the effectiveness of treatment, and capacity to work.'¹⁶ Accommodation policies are also often based on an individual's permanent needs, rather than recognising that these can change over time and a flexible approach is required. Clearly employers are concerned about the provision of flexible workplaces and the inability or difficulty of accommodation practices in specific industries. Concerns that have also been expressed by employers in various consultations include:

- OH&S and Workers Compensation and the potential financial impact of employees with mental illness.
- Low expectations of capacity and ability.
- Low levels of disability confidence and awareness.
- Concern that if they say the wrong thing to someone they think might have a mental illness, they could end up in court. They feel that they might be afraid to talk about performance issues and don't understand where the boundaries are, and see this as being a real problem for them.
- Low level awareness of available supports (and confusion about different service types).
- Disability discrimination issues within the workplace and the potential cost and considerations presented.
- Industrial relations issues and complications arising around the termination of unproductive people with a disability in the workforce (relationship with the Disability Discrimination Act).
- Issues of equity between employees with a disability and able-bodied employees.
- Perception that there will be an excess use of sick leave.
- Issues causing confusion arising from a lack of coordination of government programs, or between education and training and employment.

¹⁵ Family and Community Development Committee (2012), *Inquiry into Workforce Participation by People with a Mental Illness*, Victorian Family and Community Development Committee, East Melbourne, 3002, p.p. 98-99, Transcript of evidence 9, Australian Human Resources Institute (AHRI), p.2.

¹⁶ *beyondblue* Submission to National Disability Employment Framework – Issues Paper (2015), Hawthorn West, Victoria, *beyondblue*, p. 4.

- Perceived requirement for additional and unknown costs. This includes the direct and indirect costs of supporting people with disability and other employees in adjusting the workplace environment over an unknown time period.
- The idea that identifying risks is more difficult.

A range of research suggests that these concerns are largely unfounded; however employers continue to remain unsure and reluctant to take on an employer whom they perceive as presenting insurmountable issues. However, in their paper on Stigma, SANE Australia (a national charity helping all Australians affected by mental illness) referred to research commissioned by WISE Employment (2012), which 'found that of the 254 small and medium-sized enterprises (SMEs) surveyed:

- 32% of employers would consider hiring a person who has a mental illness.
- 68% of employers who had employed someone who has a mental illness still do.
- 74% of employers described their experience as positive.
- 45% of all hiring managers had a friend, family member or someone close to them who has a mental illness.¹⁷

While it is important to ensure the extent to which any employer's obligations are reasonable, it is clear that one of the biggest issues that requires addressing is that of inadequate general mental health literacy.

Mental health literacy

There is still a low level of understanding and many misconceptions about mental illness which prevents people with mental illness accessing employment, housing and social opportunities. Geoff Waghorn and Chris Lloyd point out that:

People with mental illness have fewer opportunities to work than the general population. Mostly owing to the many misperceptions and prejudices about their abilities and needs. They are not expected to work, and indeed they are often considered not fit or well enough to work. The lack of work serves to reinforce negative stereotypes and social exclusion.¹⁸

Waghorn and Lloyd also note the resulting self-stigma which has 'the potential to impact on the success or failure of employment opportunities.'¹⁹ It is critical to the participation in employment of people with a mental health condition that the general understanding of mental health and mental illness is increased. In particular, mental health literacy among employers will have to be addressed as a priority if people with mental illness are to be hired and retained as valued employees. As *beyondblue* has noted, 'A significant barrier for people with a mental health condition participating in employment is a poor understanding of mental health – this applies to employers, managers and disability employment service staff. It is common for employers and employment services to misinterpret the impairments caused by depression and anxiety as disinterest or poor motivation for work.'²⁰

In an employment relationship, the ability to do the job should always take precedence over any perceived disability that may not have any real effect on that individual's performance in the workplace. 'Ideally, government policy should seek to normalise, rather than exceptionalise the employment of people with

¹⁷ WISE Employment (2012), *SME Readiness to Employ People with a Mental Illness*, cited in SANE Australia (2013), *A life without stigma: A SANE Report*. Melbourne, SANE Australia, pp. 8-9.

¹⁸ Geoff Waghorn and Chris Lloyd (2010), 'Employment and people with mental illness, *Vocational Rehabilitation and Mental Health*, edited by Chris Lloyd, Oxford, UK, Wiley-Blackwell, p. 9.

¹⁹ Geoff Waghorn and Chris Lloyd, p. 9.

²⁰ *beyondblue* Submission to National Disability Employment Framework – Issues Paper (2015), Hawthorn West, Victoria, *beyondblue*, p. 5.

disability. Compulsory targets, quotas and reporting would only serve to reinforce the exception, and are all about the stick and not about the carrot.'²¹

In their final report on workforce participation, the Victorian Family and Community Development Committee noted that Mental Health@Work, *beyondblue*, and SANE deliver workplace mental health literacy training programs. However, 'despite the availability of these programs, research shows that relatively few workplaces are adequately equipped to deal with mental health issues in the workplace. For example, a 2010 survey of 26,000 members of the Australian business community by Beaton Consulting and *beyondblue* found that 83 per cent had not received any training to deal with mental health issues in the workplace.'²²

To facilitate the wider reach of workplace mental health literacy training, the Committee proposed that mental health literacy training could be incorporated within human resources and management training curricula. It determined that 'establishing mental health literacy training as an ongoing component of training curricula would achieve a more sustained approach to developing the capacity of business to manage mental health issues within the workplace.'²³ However there are many employers that do not have HR staff and the Committee recognised 'that large organisations and small businesses have varying capacities to participate in, and benefit from, workplace mental health literacy training programs. Alternative forms of support in how to manage mental health issues within the workplace, such as a telephone information and advice service, may be more suited to the needs of small business.'²⁴

Small Business

Not only is there a limited capacity for small businesses to participate in mental health literacy training programs delivered within the workplace. It is also fair to acknowledge that most small businesses are time and resource poor and that there is very little capacity to develop an employment policy which is inclusive of people with mental illness.

Small business owners remain divided on the issue of employing a person with mental illness. Those who are empathetic are usually those who have experience of mental illness, either as a consumer or a carer, friend or family member. Others view it as a problem they do not want to deal with. In a recent media report on the topic, one small business owner put that attitude in a nutshell, declaring, 'I know I'm not supposed to feel this way. But I have enough on my plate as it is. It's already a challenge to manage my existing staff. And I know there are enough people in the world without a mental illness who can fill the roles I need. Why would I hire someone who has one?'²⁵

It is clear that small to medium-sized employers require a strategy that is suited to them. For the most part they do not have dedicated human resources personnel and therefore are lacking in the internal expertise that larger employers have.

²¹ ACCI Response (2013), Commonwealth Department of Education, Employment and Workplace Relations Improving the Employment Participation of People with Disability in Australia Discussion Paper, Canberra, DEEWR, p. iii.

²² Family and Community Development Committee (2012), *Inquiry into Workforce Participation by People with a Mental Illness*, East Melbourne, Family and Community Development Committee, p. 133.

²³ Family and Community Development Committee, p. 133.

²⁴ Family and Community Development Committee, p.134.

²⁵ *Would you hire someone with a mental illness?* (2013), Sydney Morning Herald: My Small Business page, <http://www.smh.com.au/small-business/managing/enterprise/would-you-hire-someone-with-a-mental-illness-20130613-2o5co.html>

3. What other data or information is available on employment discrimination against Australians with disability?

According to the Human Rights Commission's own reporting, 'Analysis of complaints under the *Disability Discrimination Act 1992* and corresponding State and Territory anti-discrimination legislation and complaints mechanisms continue to inform us that over 40 per cent of complaints relate to discrimination in employment and a large proportion of these are towards individuals who experience mental illness related conditions.'²⁶ There are many examples of research on the difficulties of people living with mental illness in securing and keeping a job. We have listed a small number of these.

Disclosure – 'Choosing your path'

The University of Western Sydney and the University of Ballarat report *Choosing Your Path - Disclosure: It's A Personal Decision* states that many people with disability choose not to disclose due to the nature or impact of their disability because:

- They fear that their disability may provoke curiosity or unnecessary concern in others.
- They believe that employers may have preset and unrealistic attitudes about people with disabilities.
- They fear that they may be treated differently by colleagues, possibly patronised or given unfair advantages in the job.
- They may not have come to terms with their disability.
- There is a perceived or real lack of understanding in the workplace about disability issues.
- They fear being marginalised, particularly with certain disabilities that are steeped in stereotypical attitudes.
- The fear that they will be patronised.
- They feel that they will be treated more appropriately if they do not disclose because they won't be exposed to the attitudes and stigma associated with some disabilities.²⁷

'Mental [ill] health still taboo in the workplace'

Research conducted by the Mental Health Council of Australia (now Mental Health Australia, MHA) found that more than one in five Australians have experienced discrimination in the workplace due to mental illness. The research was conducted as part of MHA's World Mental Health Day 2013 campaign.

The research asked people if they had witnessed discrimination at their place of employment, due to either their own mental illness or a mental illness affecting a co-worker. 22% of people surveyed told researchers that they had. This includes 41% who believe they currently have a mental illness, 38% of those who have been diagnosed with one but only 17% of people who say they've never had one. In addition, the study found 69% of people were uncomfortable disclosing a mental illness to their employer. While a third of people said they would disclose a mental illness, more than a third never would.

These results demonstrate that some people have a real fear about potentially negative consequences should they tell their employers and their colleagues that they are mentally unwell. The reality is that for the vast majority of people with a mental illness, openness and conversations do help employees, employers and workmates to contribute through meaningful and successful employment. We need to have

²⁶ Australian Human Rights Commission Annual Report 2009-2010, p. 8.

²⁷ Anna Mungovan and Fran Quigley (2012) *Choosing your path – disclosure: It's a personal decision*, University of Western Sydney and the University of Ballarat, <http://pubsites.uws.edu.au/ndco/disclosure/pdfs/disclosure.pdf> 2012.

a goal for our society to make it acceptable for individuals to talk about mental health in the workplace and to make it ok to seek help when they need it, without fear or stigma.²⁸ Key findings of this research are:

- 33% of people with a current or past mental illness have disclosed it to their current employer. This includes 49% of those who believe they still have a mental illness.
- When hypothetically asked if they were to have a mental illness in the future, would they tell a future employer, 35% said they would not tell, 29% said they would.
- Three-quarters of people surveyed would feel uncomfortable telling their employer they were experiencing a mental illness relevant to their work, including 61% of those who say they still have a mental illness and 71% of people who claim to never have had one.
- A large majority of Australians – more than 8 in 10 – believe schizophrenia, depression, bipolar and anxiety all diminish a person’s ability to undertake paid work. A high 42% believe schizophrenia reduces this ability ‘a lot.’

‘Small and Medium Enterprise Readiness to Employ People with a Mental Illness’

Research commissioned by WISE Employment, ‘Small and Medium Enterprise Readiness to Employ People with a Mental Illness’,²⁹ conducted by McNair Ingenuity Research, reported of the 256 small and medium-sized enterprises (SMEs) surveyed that:

- Two in five employers would not consider employing someone who has a mental illness citing unpredictable and changeable behaviour (57%), possibility of a breakdown (54%) and too many sick days (43%) as the biggest barriers.
- Employers prioritised hiring job seekers without any TAFE or tertiary experience (66%), who are learning English as a second language (43%) or who have a physical disability (50%) over hiring someone who has a mental illness (29%), even if they were qualified for the job.
- 50% of employers would prefer to hire someone who has a physical disability. Employers felt it was more possible to “work around physical disability” and that it was not seen to affect motivation or personality, unlike mental illness.
- Of the organisations that had a positive experience in employing people with a mental illness, 78% said they fitted in well with the team (up from 57% in 2013), 67% were hardworking and 53% were good for the company.
- 68% of employers who have employed a person who has a mental illness still do.
- 34% of all managers have a friend or someone close to them with a mental illness and 26% have a member of their family who has a mental illness.
- 26% of employers would consider hiring a person who has a known mental illness.
- 42% of SMEs had never been approached by anyone asking them to consider employing a person with a mental illness.
- 22% had a lack of awareness of the support and resources available to them if they chose to employ a person with a mental illness.

beyondblue’s ‘Depression and Anxiety Monitor’

A recent community based *beyondblue* survey - the Depression and Anxiety Monitor (2014) –indicated that people who report experiencing depression or anxiety in the last year felt they had been treated unfairly in:

- finding or keeping a job – 23 per cent
- getting welfare benefits or disability pensions – 13 per cent
- education – 11 per cent³⁰

²⁸ Sarah Morrison (2013) *Mental health still taboo in the workplace*, Mental Health Australia, <http://mhaustralia.org/media-releases/mental-health-still-taboo-workplace-september-2013>.

²⁹ <http://www.wiseemployment.com.au/en/community/empowermental/>

³⁰ *beyondblue* Submission to National Disability Employment Framework – Issues Paper (2015), Hawthorn West, Victoria, *beyondblue*, p. 6.

Perspectives on Employment Integration, Mental Illness and Disability, and Workplace Health

In an international paper reviewing the literature on the interplay between employment integration and retention of individuals diagnosed with mental health and related disability, the authors found that surveys conducted in the US show that ‘approximately 70% of employers are reluctant to hire someone with a history of substance abuse or someone currently taking antipsychotic medication while almost a quarter would dismiss someone who had not disclosed a mental illness.’ They also found that employees with mental illness are among the first employees to be retrenched in times of economic downturn.

The paper found that literature on employer attitudes demonstrates that employers express a wide range of negative beliefs regarding hiring individuals with mental illness. These include concerns such as poor quantity and quality of work, brief tenure, absenteeism and low flexibility. Negative beliefs about people with mental illness also include factors such as motivation to work, work quantity, likelihood of injury, difficulties following directions, the need for excessive supervision, taking little pride in work, low acceptance of work role, difficulty following instructions, poor social competence, making friends, and becoming angry.

According to the authors, Khalema and Shankar, ‘a Canadian study on stigma of mental illness defined 5 distinct assumptions held within the workplace that contribute to the disposition towards acting in a discriminatory manner: the assumption of incompetence, the assumption of dangerousness and unpredictability, the belief that mental illness is not a legitimate illness, the belief that working is unhealthy for people with mental illness, and the assumption that employing people with mental illness represents an act of charity inconsistent with workplace needs.’³¹

4. What lessons and leading practices can we learn from other countries to address employment discrimination and increase workforce participation of Australians with disability?

In its submission to the National Disability Employment Framework – Issues Paper (2015), *beyondblue* points out that:

The OECD (2015) highlights a number of innovative strategies being implemented internationally, to improve the coordination and relationship between health care providers and employers/employment support services. This includes:

- United Kingdom - moving from ‘sick notes’ to ‘fit notes’, which specify what the person can do, rather than what they can’t do.)
- Sweden and the Netherlands – introducing GP guidelines on the interplay between mental health and work and GP responsibilities
- Denmark – introducing an e-training program which gives GPs guidance on filling in the obligatory work ability report, on whether someone is fit for work. Denmark also remunerates GPs for talking to employers.

These initiatives provide examples of the incentives and support programs that could be introduced in Australia, to improve the coordination of employment and health care services.³²

³¹ Nene Ernest Khalema and Janki Shankar (2014), ‘Perspectives on Employment Integration, Mental Illness and Disability, and Workplace Health’, p. 2, *Advances in Public Health*, Vol. 2014, p. 2, <http://dx.doi.org/10.1155/2014/258614>

³² *beyondblue* Submission to National Disability Employment Framework – Issues Paper (2015), Hawthorn West, Victoria, *beyondblue*, p. 12.

In a paper as part of a background paper for an EU conference in 2010, David McDaid noted a number of initiatives from European countries that demonstrate the level of effort that other countries are putting into helping people with mental ill-health achieve sustainable employment.³³ These include:

The Ex-IN project: Harnessing the lived experience of people with mental health needs in work

EX-IN (EXperienced INvolvement) is a pilot project funded by the European Leonardo da Vinci Programme. The project aims at the qualification of people with lived experiences in mental health distress to work as supporters in mental health services or as trainers for mental health professionals. Mental health professionals and trainers from six European countries are working together to develop a specific training which is focused on the experiences of the participants. <http://www.ex-in.info/>

Why it matters: People with experience in living with mental health problems have key skills and insights which they can utilise through paid employment in mental health services.³⁴

Czech Republic: Green Doors Training Cafés

Green Doors is a not for profit organisation operating in Prague. It aims to promote the integration of people with mental health needs into all aspects of society and to promote a change in the public perception of mental illness through a range of public events. The organisation has three Training Cafes that provide vocational rehabilitation. One provides intense vocational training in an environment similar to regular employment conditions on the open market. Occupational therapists and social workers support the clients during training. The goal is to improve support a return to the open job market. The project reports that between 60% and 70% of clients eventually return to open employment.

<http://www.greendoors.cz/english>

Why it matters: It is important that different sectors including social welfare, health and employment work together to help facilitate a return to work. Not for profit organisations can play a key role in delivering services.³⁵

European IPS scheme

Under the European project EQOLISE, individuals with severe mental health problems in six European countries were randomly allocated to IPS or conventional vocational rehabilitation services. Over the 18 month study period the average number of days working in competitive employment in the IPS group was 130 compared with 31 in the vocational service group. 55% of people in the IPS group worked at least one day in competitive employment compared with 28% in the vocational service group. Time spent in hospital in the IPS group was half that in the vocational service group. Why it matters: This project demonstrates IPS can work in very different European contexts. It can help individuals with mental health problems return to work more quickly than would otherwise be the case. They benefit from jobs obtained on the open employment market paying a competitive wage, whilst continuing to receive support. If well implemented, it can potentially improve long-term participation in employment and avoid some costs to social welfare and health care systems.

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³³ David McDaid (2010), 'Routes to Recovery: Employment and Meaningful Activities', *Background document for the thematic conference "Promoting Social Inclusion and Combating Stigma for better Mental Health and Well-being"*, Organised by the European Commission and Portuguese Ministry of Health with the support of the Belgian Presidency of the EU 8th- 9th November 2010, Lisbon, European Communities, pp. 35-43.

³⁴ David McDaid, p. 41.

³⁵ David McDaid, p. 41.

continuing to receive support. If well implemented, it can potentially improve long-term participation in employment and avoid some costs to social welfare and health care systems.³⁶

England: “Working it Out”: A Resource for Employers

Working it Out is a comprehensive resource pack launched in September 2010 designed to help raise awareness of mental health conditions in the workplace and provide employers with practical advice and guidance on how best to support and manage a member of staff should they become unwell. It was produced by SHIFT – an initiative to tackle stigma and discrimination surrounding mental health issues in England. Its aim is to create a society where people who experience mental health problems enjoy the same rights and opportunities as other people.

The DVD, free to employers and organisations based in England, includes a brand new set of short employment films with accompanying training notes and other resources. Five short films show employees recounting their real-life experiences of mental health conditions within the workplace, mixed with dramatic reconstructions. The films also feature managers who describe how they effectively managed and supported their staff using best practice approaches. <http://shift.org.uk/employers/workingitout/>
Why it matters: Employers need to have better awareness of the needs and positive experiences of people with mental health needs in the workplace. Training and support for employers can help facilitate the greater participation of people with mental health problems in the workforce.³⁷

5. How adequately do existing laws protect Australians with disability from employment discrimination? How effective are the legal remedies for Australians with disability who have experienced employment discrimination? How could existing laws be amended or supplemented?

Mental health stigma is basically an attitude that marginalises someone based on their mental health condition. For many people stigma is really discrimination in disguise. However it does muddy the waters in that while discrimination can be quite overt, stigma is often more subtle. It may include unfounded beliefs which are not voiced but which impact on an employer’s decision to hire or retain a person once they are aware of a mental health condition.

In terms of discrimination laws, these are just and appropriate but rely on the person who has been discriminated against applying to the court for their case to be heard. People with mental ill-health are often the least confident people whose anxiety levels and fear of official processes does not lend itself to seeking justice. Also, their own self-stigma may lead them to believe that they deserve to be treated in such a way and this also will impact on whether they seek redress or not through the court.

Workers Compensation Acts across Australia include the aggravation, acceleration or recurrence of a pre-existing disease. For people with mental illness, this means that the employee would have to prove that he or she had suffered a compensable 'injury', being the exacerbation of her pre-existing mental illness. The insurance industry itself acknowledges that ‘workers compensation systems are not responding to mental health claims in an optimal way.’³⁸

³⁶ David McDaid, p. 40.

³⁷ David McDaid, p. 39.

³⁸ *A best practice Workers Compensation Scheme*, (2015), Sydney, Insurance Council of Australia, p. 27.

Comcare, the agency responsible for workplace safety, rehabilitation and compensation in the jurisdiction of the Australian Commonwealth reported that, 'better identification and early intervention are often hindered by non-disclosure, due to potential stigma and discrimination. There is a difficult balance in opening up the possibility for adequate support, while avoiding unfair workplace discrimination.'³⁹

A Consumer's Story

Kate (not her real name) took up a job based on her qualifications in the offices of a union. The job was offered as part-time at a low level on the Award Scale. However, Kate found that the work itself could not be adequately completed within the hours commissioned and that her award level was not commensurate with the work itself and the level of expertise required. She had the capacity to do the work but felt that she was being exploited by not being put on the correct award rate and she made this known to management. Things went from bad to worse with Kate being told that her attitude was due to her mental illness and she found that whatever she said, she kept being referred to as mentally ill and was not listened to. At one stage she was told to 'take medication and see a psychiatrist'. The fundamental issue of pay commensurate with duties was never addressed and Kate became more and more stressed, finally going on stress leave. Seeking compensation, Kate found the whole system lacking in understanding and empathy. She became very ill and could not continue her struggle. Previously, Kate had worked in several jobs where she had not disclosed her mental illness and had not had any negative experiences. She now feels it is unsafe to disclose because, if any issues arise, employers can simply fall back on the idea that it is the mental illness that is causing problems.

6. What difficulties are there for employers in understanding and complying with legal obligations?

For the most part available legislative measures address mental health as a part of disability issues generally, rather than referring to specific legislation for people with mental health problems. Employers do not always understand this and are able to understand the legislation as it applies to physical disabilities (accommodations and workplace modifications) but find it hard to relate this to psychosocial disability. All policy and information about legislation should explain very clearly that disability includes psychosocial disability. Other difficulties faced by employers in understanding and complying with legal obligations include:

- In particular, small business employers, who usually operate on an informal basis with no written policies and procedures, do not seem to be consciously aware of the impact of regulation on their practices.
- Larger employers are more likely to recognise the influence of legislation on their practices because they often have HR personnel, recruit more frequently and have formal recruitment policies in place.
- Employers with access to professional HR services are usually proactive in finding out about, and updating their knowledge, of relevant legislation. Those without HR support tend to seek out information as and when problems arise.
- Despite being aware of online resources employers without an HR specialist find it difficult to acquire the required information. This is partly because they do not know where to look.
- Government websites are a first port of call to access information about unfamiliar regulation. However, it is not always easy for employers to find the information they are looking for and the content can be insufficiently detailed to be useful.

³⁹ Collaborating for Better Practice in Mental Ill Health Related Claims: A discussion paper for workers' compensation and relevant insurance authorities (2014) Canberra, Comcare, p. 17.

There is a clear need to provide a single information portal that guides employers to the relevant information which will support employers that have HR capacity, little time for research and find regulation too complex to follow. More employers need to be made aware of existing supports such as the Government's JobAccess website and this could be done through existing pathways, including on Workers Compensation Insurance documentation.

7. What are the distinct challenges faced by certain groups of Australians with disability (e.g. women, Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds, or LGBTI people) in relation to employment discrimination?

In the general community, there is clearly some degree of discrimination and stigma faced by people from diverse backgrounds, religions, sexual and gender orientation. This can serve to compound the stigma faced by people with a mental illness and produce, in effect, a dual stigma.

According to an Australian study, job seekers with foreign-sounding names could be missing out on job interviews because of "habitual workplace discrimination". Researchers from the Australian National University submitted 4000 fictional job applications for entry-level jobs, and found those with "non-Anglo" sounding names had to submit more resumes in order to gain an interview. They found that:

Someone with a Middle Eastern-sounding name typically must submit 64 per cent more applications than a person with an Anglo-sounding name to land a job interview. Those with a Chinese-sounding name needed to submit 68 per cent applications, an Indigenous person 35 per cent more, and an Italian person 12 per cent more.⁴⁰

The Human Rights Commission (HRC) itself has reported that the majority of LGBTI Australians experience bullying and harassment. Furthermore, in the workplace, two thirds of LGBTI Australians told the HRC they felt they could not tell their colleagues about their sexual orientation.⁴¹ This not only compounds the mental health conditions of those with a diagnosed mental health issue, it also can cause mental ill-health due to stress in the workplace.

The Productivity Commission has reported that 'The unemployment rate for Indigenous Australians was around five times the rate for non-Indigenous Australians in 2012.'⁴² This large gap is already an issue of great concern let alone the extra layer of discrimination faced by people who are both Indigenous and have a mental health condition.

Conclusion

The issue of supporting people with mental illness into sustainable and rewarding jobs is complex and challenging. A Canadian report makes the valid point that, 'simply having a job is not enough. The quality of the work is also important. Research shows that individuals with mental illness are often relegated to

⁴⁰ 'Job hunters change "foreign sounding" names' (2013), SBS, <http://www.sbs.com.au/news/article/2013/04/15/job-hunters-change-foreign-sounding%E2%80%99-names>

⁴¹ *Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights national consultation report* (2015), Australian Human Rights Commission,

https://www.humanrights.gov.au/sites/default/files/document/publication/SOGII%20Rights%20Report%202015_Web_Version.pdf

⁴² Steering Committee for the Review of Government Service Provision (2014), *Overcoming Indigenous Disadvantage: Key Indicators 2014*, Productivity Commission, Canberra.

minimum-wage jobs. These types of jobs are often non-standard types of work, such as part-time, temporary work or contracts. In addition, they often lack benefits and room for advancement, and are particularly vulnerable to fluctuations in the economy. The stress associated with precarious employment has been linked to diminished mental health status.⁴³

MHCT recognises that no single policy, regulatory or funding initiative can radically improve the rate of workforce participation for people with mental health problems. Instead, making progress requires a sustained commitment to the rights of people with mental illness, a commitment to explore innovative approaches to service delivery and a thoughtful review of disability income supports to ensure they do a better job of promoting social inclusion. We also need to see a real attempt at improving mental health literacy and breaking down stigma across the whole community and targeted programs for employers and disability employment services. In the community managed mental health sector we would like to see support and funding for a program to establish partnerships with employers and industry groups to encourage, train and support employers to employ people with a severe mental illness.

If we do not begin the important work of creating a supportive employment service for people with mental illness, a strong structure of support and information for potential employers and a prominent message to the community at large to increase everyone's mental health literacy and reduce stigma and discrimination, the result will be to increase health care costs and compound the social consequences of mental illness.

In 2012 the results of research conducted by academics from the Department of Econometrics and Business Statistics, Monash University, commissioned by beyondblue found that

The total labour market cost of mental illness in Australia in terms of individuals' forgone earnings or employers' loss in productivity is estimated to be almost \$49 billion per annum. This estimate excludes a number of costs that cannot be easily measured with available data, thus represents a lower bound on the costs.⁴⁴

The continuing situation of denying people who are willing to work the opportunities and supports they need to secure sustainable employment is not only discriminatory, it makes bad economic sense.

⁴³ *Employment and Education for People with Mental Illness Discussion Paper* (2010), Ontario, CAMH & CMHA, p. 5.

⁴⁴ Professor Brett Inder, Professor Graham Meadows, Dr Kathryn Cornwell (2012), Labour market costs of mental illness in Australia, Department of Econometrics and Business Statistics, Monash University, <https://www.beyondblue.org.au/resources/research/research-projects/research-projects/labour-market-costs-of-mental-illness-in-australia>