

Submission to Inquiry into the employment of people with disabilities

Canberra Community Law, 26 April 2017

Introduction

1. Canberra Community Law (CCL) is a community legal centre providing free legal advice, assistance and representation to people in the ACT on low incomes for matters relating to tenancy, public housing, social security and disability discrimination law.
2. CCL also operates:
 - the Street Law program which provides legal advice, assistance and representation on relevant areas of law to people who are homeless or at risk of homelessness;
 - the Night Time Legal Advice Service which provides legal advice to any member of the public on most areas of law from 6 to 8pm on Tuesday evenings; and
 - the Socio-Legal Practice Clinic which combines legal assistance with intensive social work support to maximise the prospect of a successful outcome.
3. Fifty per cent of CCL's 860 clients in 2015-16 had a disability. Many of these clients sought assistance in employment matters from CCL's Disability Discrimination Law program.¹ CCL is therefore well placed to provide a submission to the ACT Legislative Assembly's Standing Committee on Health, Ageing and Community Services' Inquiry into the employment of people with disabilities (the Inquiry). This submission will be based on the lived experience of CCL clients who have been discriminated against in employment because of their disabilities. The submission will also refer to relevant literature concerning the employment of people with disabilities.²
4. CCL acknowledges that the Standing Committee on Health, Ageing and Community Services (the Committee) has noted that:
 - a. The employment rate of people with disability in the ACT Public Service is 2.2 per cent as at June 2016;
 - b. The Australian Human Rights Commission report, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and*

¹ Canberra Community Law Annual Report 2015-16 available at <http://www.canberracommunitylaw.org.au/annual-reports> p2

² CCL acknowledges the contribution of Australian National University Community Law Clinical Program student, Ross Mackey in analysing the case studies and the literature referred to in this submission.

Australians with Disability found the ACT to be the only jurisdiction with an increase in the employment of people with disability over the 2013-15 period; and

- c. The ACT Government's new Office for Disability and Disability Reference Group has been established to provide strategic policy advice on disability issues.
5. CCL also notes that that the Committee has undertaken to inquire into and report on the employment of people with disabilities, with particular reference to:
- a. The implementation of the *ACT Public Service Disability Employment Strategy*;
 - b. The effectiveness of current attraction and retention programs in the ACT Public Service;
 - c. The effectiveness of current attraction and retention programs for ACT based private enterprise and community organisations;
 - d. Data collection, monitoring and reporting mechanisms;
 - e. Relevant experiences and learnings from Australian State, Commonwealth and international jurisdictions;
 - f. The applicability to the ACT Public Service of recommendations and findings from the report, *Employing people with disability in the APS* published by the University of Canberra;
 - g. Gender related matters that intersect with the employment of people with disabilities; and
 - h. Any other relevant matter.
6. In this submission CCL focuses on the terms of reference relating to the implementation of the *ACT Public Service ('ACTPS') Disability Employment Strategy*; relevant experiences and learnings from Australian State, Commonwealth and international jurisdictions; and the applicability to the ACTPS of recommendations and findings from the report, *Employing people with disability in the APS* published by the University of Canberra.
7. This submission will draw primarily from the two key documents referred to in the terms of reference, the *ACTPS Disability Employment Strategy*³ and the *Employing people with disability in the APS* report published by the University of Canberra (the *Doing it Differently Report*).⁴ The submission will also refer to other relevant documents and the lived experiences of CCL clients.

³ Commissioner for Public Administration (ACT), *Employment Strategy for People with Disability* (2011) ('*ACTPS Disability Employment Strategy*') available at www.cmd.act.gov.au/_data/assets/pdf_file/0015/203127/pwdstrategy.pdf

⁴ Institute for Governance and Policy Analysis, University of Canberra, *Doing it Differently: Staff Perceptions of the Barriers to Workplace Participation Experienced by Public Servants with Disability in the Australian Public Service* (2016) ('*Doing it Differently Report*') available at www.governanceinstitute.edu.au/magma/media/.../online-%20disability%20report.pdf

8. Forming an integral part of the ACT Government's *Respect, Equity and Diversity Framework*,⁵ the *ACTPS Disability Employment Strategy*'s vision is for a 'disability confident service, in which people with disability are able to access secure and sustainable employment opportunities and are respected for their skills and capabilities.' The objective of the *ACTPS Disability Employment Strategy* is to ensure that the ACTPS can attract, employ, and retain people with disability.⁶ The success of actions taken to achieve these objectives will be evaluated in this submission.
9. Conducted by the University of Canberra's Institute for Governance and Policy Analysis, the *Doing it Differently Report* details research conducted over 2015-16 across seven Australian Public Service ('APS') departments.⁷ Staff were surveyed on their perceptions of the barriers to workplace participation experienced by people with disability in the APS. The applicability to the ACTPS of the recommendations and findings from this report will be considered in this submission.

Statistics and Employment Targets

10. As the Committee notes, employees with disabilities made up 2.2% (458 employees) of the ACTPS workforce as at June 2016.⁸ This figure has grown consistently over the previous five reporting periods, increasing from 1.8% at June 2012.⁹ Such growth is encouraging given the surrounding circumstances, with a recent report of the Productivity Commission finding that for people aged 15-64 years with a profound or severe core activity limitation, both the labour force participation rate and the employment-to-population ratio fell approximately 6% between 2009 and 2015.¹⁰ Indeed, as the Australian Human Rights Commission report, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* ('*Willing to Work Report*') found, the ACT is the only jurisdiction to report an increase in the employment of people with disability between 2013 and 2015.¹¹

⁵ Commissioner for Public Administration (ACT), *Respect, Equity and Diversity Framework* (2010) available at <http://www.cmd.act.gov.au/employment-framework/workplace-behaviours/the-respect,-equity-and-diversity-red-framework>

⁶ Above n 3, pp 4, 7.

⁷ Above n 4, p 11.

⁸ Commissioner for Public Administration (ACT), *State of the Service Report 2015-16* (2016) ('*15-16 State of the Service Report*') available at <http://www.cmd.act.gov.au/functions/publications/2015-16annualreport/state-of-service-report>, p 64.

⁹ *Ibid*, p 65.

¹⁰ Productivity Commission, *Report of Government Services* (2017) available at <http://www.pc.gov.au/research/ongoing/report-on-government-services>, [15.28].

¹¹ Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australian with Disability* (2016) ('*Willing to Work Report*') available at <https://www.humanrights.gov.au/our-work/disability-rights/publications/willing-work-national-inquiry-employment-discrimination>, p 197.

11. However, there is still much to be achieved. The *ACTPS Disability Employment Strategy* committed to increasing the employment of people with disability from 1.6% in 2010 to 3.4% by 2015.¹² The timeframe for this target has been extended until the 2018-19 financial year and has been supplemented by Directorate-specific annual diversity targets to support achievement within this timeframe.¹³
12. Despite consistent growth, the ACTPS compares poorly to other Australian jurisdictions. The disability employment rate of 2.2% is below the rate in the APS, and all other State and Territory Public Services outside of Western Australia and South Australia as at 2015.¹⁴ It is also below the disability employment rates of other international jurisdictions. For example, as at March 2016, the disability employment rate in the United Kingdom Civil Service was 9.2%.¹⁵ Similarly, in the 2014-15 reporting period, the Canadian Federal Public Service reported a disability employment rate of 5.6%.¹⁶
13. In 2015, almost one in five Australians reported living with disability (4.3 million people representing 18.3% of the population). Of those of working age (2.1 million people), the labour force participation rate was 53.4%.¹⁷ There is a clear economic case for increasing disability employment rates within the ACTPS. Research indicates that 90% of employees with disability have productivity rates equal or superior to comparable workers and 86% have equal or superior attendance records.¹⁸ The Business Council of Australia has also recognised the benefits of a diversified workforce such as the inclusion of new ideas and perspectives.¹⁹

Recommendation 1: That the ACTPS continue to increase its targets for the employment of people with disabilities and develop further initiatives to achieve current and future increased targets.

¹² *Disability Employment Strategy*, above n 3, p 7.

¹³ *15-16 State of the Service Report*, above n 8, pp 12- 13.

¹⁴ *Willing to Work Report*, above n 11, pp 444-5.

¹⁵ Office for National Statistics, *Civil Service Statistics* (2016)

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/publicsectorpersonnel/bulletins/civilservicestatistics/2016>.

¹⁶ Treasury Board of Canada, *Employment Equity in the Public Service of Canada* (2016)

<https://www.canada.ca/en/treasury-board-secretariat/services/values-ethics/diversity-equity/employment-equity-annual-reports/employment-equity-public-service-canada-2015-2016.html>

¹⁷ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings* (2015), Cat. No. 4430.0 < <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4430.0>>

¹⁸ Diversity Council of Australia, Submission 210 to the Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australian and Australian's with Disability*, December 2015, available at <https://www.dca.org.au/submissions/submission-willing-work-national-inquiry-employment-discrimination-against-older> p 4; See also Joseph Graffam et al, 'Employer Benefits and Costs of Employment a Person with a Disability' (2002) 17 *Journal of Vocational Rehabilitation* 251.

¹⁹ Business Council of Australia, *Recognising Ability – Business and the Employment of People with Disability* (2015) <http://www.bca.com.au/publications/workforce-inclusion-of-people-with-disability>

Managerial Capability and Support

14. The *ACTPS Disability Employment Strategy* recognises that the capability and confidence of managers in working with employees with disabilities is a key component of developing a disability confident ACTPS. Managers must be supported with information and guidance to ensure employees with disabilities are understood and relevant workplace adjustments which meet the needs of employees are implemented in a timely manner.²⁰
15. This strategy is reinforced by the findings of the *Doing it Differently Report*. Most survey respondents believed that managers were an important support mechanism for employees with disabilities. Managers were viewed as key enablers who were critical to individual success with the experiences of employees with disabilities differing greatly depending on the understanding of their managers.²¹
16. The need for support for building the capabilities and confidence of managers in the ACTPS in relation to disability awareness was identified in a 2015 review of the *Respect, Equity and Diversity Framework*.²² Managers can get assistance from dedicated Inclusion Officers to support and implement reasonable adjustment strategies. Managers also have access to the *Manager's Guide* produced by the Australian Network on Disability. Available in the ACTPS Manager's Toolkit, the *Manager's Guide* provides information to help managers effectively manage employees with disabilities throughout the entire employment cycle.²³
17. Of significance has been the development of the whole of government *Reasonable Adjustment Policy* in 2015. Developed in consultation with the Australian Network on Disability and included in the ACTPS Manager's Toolkit, seven Directorates reported promoting the Reasonable Adjustment Policy during 2015-16 to support employees with disability.²⁴
18. Despite these positive actions, there is evidence of an implementation gap. This gap is often the result of inconsistent managerial practices, with lived experience suggesting that a recent change in manager often results in difficulties arising for an employee with disability.

²⁰ *ACTPS Disability Employment Strategy*, above n 3, p 11.

²¹ *Doing it Differently Report*, above n 4, pp 56-58 [4.5.4].

²² See Chief Minister, Treasury and Economic Development Directorate (ACT), *Final Report on the Review of the Respect, Equity and Diversity Framework* (2015) <http://www.cmd.act.gov.au/employment-framework/workplace-behaviours/the-respect,-equity-and-diversity-red-framework> p 22.

²³ *15-16 State of the Service Report*, above n 8, p 67.

²⁴ *Ibid*; See also Commissioner for Public Administration, *ACT Public Sector – Reasonable Adjustment Policy* <http://www.cmd.act.gov.au/employment-framework/inclusion-programs/reasonable-adjustment-policy> ('ACTPS Reasonable Adjustment Policy').

Case Study:

Jeff (not his real name), an employee of an ACT Government Directorate contacted CCL regarding the implementation of reasonable adjustments. Reasonable adjustments, including working from home arrangements, had previously been provided for him. However, after a change in a particular manager, he was advised that this had to be renegotiated with the central office of the Directorate and he could not work from home while this was being done. CCL assisted Jeff to lodge a disability discrimination complaint to have the issue resolved.

19. The *Doing it Differently Report* recommended the introduction of a passport system to ease system navigation of the reasonable adjustment process.²⁵ The aim of the passport is to ensure that any reasonable adjustments are documented. The passport is an optional document in which an employee explains their circumstances, including any barriers experienced in the workplace and any specific support or adjustment required, in their own words. The passport is then signed by the employee and the manager as a way of confirming agreement to the reasonable adjustment. Where there is a change in manager, the key information about those reasonable adjustments is readily available. Provided the underlying circumstances have not changed, the reasonable adjustments documented in the passport cannot be changed without the agreement of the employee.²⁶
20. The passport system has been successfully introduced in the Australian Public Service Commission as well as in the United Kingdom Civil Service.²⁷ An example of an Australian Public Service Commission passport is attached to this submission.
21. The introduction of a passport system into the ACTPS would enhance consistency in managerial practice and reduce the difficulties which arise where there is a change in manager.

Recommendation 2: That the ACTPS introduce a passport system to improve the reasonable adjustment process and enhance consistency in managerial practice.

Education and Training

22. The implementation gap in relation to the *ACTPS Disability Employment Strategy* could also be related to education and training. The *Willing to Work Report* found that a lack of training about diversity and inclusion was a common issue in

²⁵ *Doing it Differently Report*, above n 4, p 64 [5.2.2].

²⁶ Australian Public Service Commission, *Reasonable Adjustment Passport Guide* (2016) <http://www.apsc.gov.au/about-the-apsc/the-commission/reasonable-adjustment-policy/passport-guide>.

²⁷ *Ibid*; See also Civil Service (United Kingdom), *Workplace Adjustment Passport* (2017) <https://civilservice.blog.gov.uk/tag/workplace-adjustment-passport/>

workplaces which often resulted in an implementation gap between workplace policies and practices.²⁸

23. Similarly, the *Doing it Differently Report* found that unconscious bias, reflected in negative preconceptions of the abilities of employees with disabilities, was perceived to be prevalent amongst staff and managers. Nearly two-thirds of respondents believed that other people's preconceptions about the capability of an employee with disability was a barrier in the workplace.²⁹
24. Disability training and development was viewed as satisfactory by just over half of survey respondents with major concern over lack of training for managers. Survey respondents were also critical about the frequency and format of training. Training was largely based on e-learning without fundamental human interaction and was not mandatory in many departments. It was suggested that training should be compulsory, repeated frequently (a refresher course as required for first aid), and carried out in person to ensure full engagement with the process. Drawing on this suggestion, the report recommended that mandatory face to face learning and development should underpin core disability awareness training and education.³⁰
25. Emphasis was placed on increased training regarding mental health. Respondents suggested that obvious physical disability was better understood and responded to than sometimes less obvious disabilities such as mental illness. There was a general perception that mental illness was still stigmatised with individuals fearing the consequences of disclosure. Managers often felt ill-equipped to support employees with mental illness.³¹
26. These observations are also supported by data from the Australian Human Rights Commission, which found that a significant percentage (35.4%) of disability discrimination complaints made to it in 2014-15 related to the area of employment. The most common type of disability reported in complaints to the Commission from 2012-15 was mental health/psychosocial disability.³²
27. The *ACTPS Disability Employment Strategy* recognises that education is an essential element of disability confidence. For the ACTPS to be an employer of choice for people with disability, there must be a dedicated effort to create a culture of inclusion which raises awareness and challenges incorrect assumptions about people with disability.³³

²⁸ *Willing to Work Report*, above n 11, p 187.

²⁹ *Doing it Differently Report*, above n 4, p 54 [4.5.3].

³⁰ *Ibid*, pp 49-50 [4.4.2], p 65 [5.2.3].

³¹ *Ibid*, pp 59-60 [4.5.6].

³² *Willing to Work Report*, above n 11, p 171.

³³ *ACTPS Disability Employment Strategy*, above n 3, p 11.

28. In addition to the material contained in the Manager's Toolkit considered above, seven Directorates reported providing disability awareness training during 2015-16.³⁴ Furthermore, the Reasonable Adjustment Policy notes that funding is available through Job Access for disability awareness training up to the value of \$1,500.³⁵
29. Despite these actions, lived experience suggests that there is need for greater training, particularly surrounding mental health.

Case Study:

Sally (not her real name), an employee of an ACT Government Directorate contacted CCL regarding the behaviour of her manager. While providing informal feedback on her work performance, the manager made several disparaging comments regarding Sally's mental health. The manager insinuated that Sally was incapable of working in a team because of a presumed mental illness and removed Sally from the team. CCL assisted Sally to lodge a disability discrimination complaint to resolve the issue.

30. Whilst the material provided in the Manager's Toolkit is a useful resource, given the findings of the *Doing it Differently Report*, there should be an emphasis placed on face to face learning to increase engagement. This training should be compulsory, particularly for managers.
31. The ACTPS should also consider implementing training initiatives which involve employees with disabilities. Such initiatives could enhance engagement and allow managers to 'step into the shoes' of employees with disabilities and so build trust and confidence between employees and managers.
32. One such example which has been implemented in APS departments is '10 plus 10' meetings.³⁶ In these meetings, ten employees with disability share with ten senior leaders their experience of the workplace. This allows managers to see beyond statistics and policies and understand the impact their practices have on individuals.

Recommendation 3: That the ACTPS should introduce mandatory face to face disability awareness training, including training relating to mental illness. The ACTPS should involve employees with disabilities in the design of such training.

Co-Designed Policies and Processes

33. Building on the importance of trust and confidence, a key finding of the *Doing it Differently Report* was the importance of co-designing policies and processes with

³⁴ 15-16 *State of the Service Report*, above n 8, p 67.

³⁵ *ACTPS Reasonable Adjustment Policy*, above n 24, [17].

³⁶ Australian Public Service Commission, *Disability Initiatives – What Agencies Are Doing* (2017) <http://www.apsc.gov.au/managing-in-the-aps/disability/as-one-aps-disability-employment-strategy-2016-19/hr-managers/implementation-guide-for-hr-practitioners>

employees with disabilities. A point which was continually raised by survey respondents was the importance of treating people with disabilities as individuals with different needs. As one manager noted, understanding how to support others with disabilities was only possible through direct communication with such individuals. The report recommended that an ‘ask the person’ approach should be used in all service interactions with employees with disabilities.³⁷

34. There is some provision for such an approach in the *Reasonable Adjustment Policy*. Managers, once being notified of the employee’s circumstances, are responsible for speaking with the employee to clarify their needs. The Policy states that the employee should provide assistance if required in relation to what reasonable adjustments can be made.³⁸
35. However, lived experience suggests that the process of close communication between manager and employee does not always occur with managers proceeding on preconceived assumptions about what adjustments will be required.

Case Study:

Stavros, who has a hearing impairment, contacted CCL regarding an offer of employment by an ACT Government Directorate. He was the preferred candidate and a workplace assessment was organised to identify the adjustments required for him. The workplace assessment recommended some assistive technology as a reasonable adjustment for Stavros. However, the Directorate was unable to install the recommended technology and decided not to proceed with the offer of employment. Stavros felt this was unfair as he could have worked around the impact of his disability by other means as he had in other positions. CCL assisted him to lodge a disability discrimination complaint to have the issue resolved.

36. Poor communication between managers and employees with disability is a clear barrier to a positive workplace culture. An ‘ask the person’ approach is essential to ensure employees with disabilities are understood. If the objective is to ensure that employees with disabilities can work to their full capability and are respected for their skills, the essential first step is to ask the person about their needs. The passport system recommended above may prove a useful tool in facilitating discussions between employees and their managers regarding the adjustments the employees feel are required.

Recommendation 4: That the ACTPS introduce an ‘ask the person’ approach to improve the reasonable adjustment process.

³⁷ *Doing it Differently Report*, above n 4, pp 64-5 [5.1]-[5.2.3].

³⁸ *ACTPS Reasonable Adjustment Policy*, above n 24, [16].

Conclusion

37. The lived experience of CCL clients demonstrates that much discrimination still exists in relation to employment of people with disabilities. This submission has focussed on the Inquiry's terms of reference relating to the employment of people with disabilities in the ACTPS. CCL clients also experience discrimination in employment in the private and community sectors. CCL hopes that its recommendations to improve the experience for employees with disabilities in the ACTPS will also influence the situation in other sectors so that employees with disabilities will no longer be subject to discrimination regardless of where they work.

38. CCL hopes that this submission is of assistance to the Committee. A CCL representative would be pleased to elaborate on the submission at any public hearing conducted by the Committee.