

**Human Rights and
Equal Opportunity Commission**

**Human Rights Commissioner &
Commissioner Responsible for
Disability Discrimination**

Senator the Hon Joe Ludwig
Minister for Human Services
Parliament House
Canberra ACT 2600

By email to: minister@humanservices.gov.au

Dear Minister

Thank you for inviting me to contribute to the current review of job capacity assessment services and provide comment on how current services and arrangements can be improved to better meet the needs of people with disability with barriers to work, service providers and the Australian community.

For many people with disability access to income support and employment support programs and services are vital to ensure a successful and seamless transition into the workplace. Assessment, whether it is for income support, capacity for work or eligibility for services, is necessary to ensure delivery of the necessary supports to enable this to occur effectively and efficiently.

However, I believe the current framework for assessment is failing to meet the needs of people with disability. Additionally, the current framework is deterring many people with disability on the Disability Support Pension (DSP) with partial work capacity from giving work a go. Redesign of the current job capacity assessment process will hopefully ensure positive individual outcomes and successful transition to work for individuals and enable service providers to assist in the most effective and efficient manner. I believe the focus must shift to the individual and centre on identifying individual needs and supports required and ensure that individuals are referred to appropriate services to address those identified needs, whether they be vocational and non-vocational. This approach will help achieve sustained participation of people with disability in the workforce, leading to gains to the individual (economic, social and political), government (from reductions in welfare dependency and efficient delivery of services) and the community overall (social inclusion).

You may be aware that in 2005 the Human Rights and Equal Opportunity Commission (HREOC) conducted a National Inquiry into Employment and Disability to address the low employment participation rate of people with disability in the Australian labour market. The Inquiry was conducted in two phases. The first phase focussed on the barriers and needs of people with disability and their actual or potential employers. The second phase focussed on the development of solutions to address those barriers to advance employment opportunities of people with disability. The Inquiry made 30 wide-ranging recommendations which were outlined in *WORKability II: Solutions* which was tabled in Federal Parliament on 14 February 2006 (copy of the final report enclosed for your information).

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In the 12 months following the tabling of the Inquiry report, concerns continued to be raised with HREOC regarding the delivery of government-funded employment support services. As a result, in 2007 HREOC convened a roundtable with key stakeholders to urgently identify specific areas for reform in the delivery of employment support services. Assessment for employment support services was one of four critical areas identified as requiring urgent attention by the roundtable members. The other three areas were: responsive service delivery; connectedness between services; and program design, evaluation and research. I will include where appropriate comments from each of these areas in responding to your questions.

Job Capacity Assessment Guidelines, particularly as they relate to assessment and referral practices

As mentioned above, the assessment process was one of four critical areas of focus of the working group convened by HREOC. Principles to guide the reform of assessment and referral practices, and recommendations in accordance with these principles, were developed by the group. I believe the application of these principles and adoption of these recommendations in the reform of assessment process will enhance the assistance available to people with disability from employment service providers and lead to more efficient use of government resources.

Critically, I believe assessment for income support and assessment for employment support must be separated. This view was shared by the working group members. Firstly, separation of the two processes will enable people on the DSP who would like to give work a go an opportunity to be assessed for appropriate supports and services without the threat of having their income support reviewed. The opportunity to trial work while on the DSP with the assurance of retaining the DSP was also recommended by OECD in the recent report *Sickness, Disability and Work: Breaking the Barriers (Vol 2: Australia, Luxembourg, Spain and the United Kingdom)* as a way to encourage people to enter the workforce.

Additionally, separation of the two processes will ensure that people with disability better understand the purpose of each assessment and provide informed consent with regard to the disclosure of personal information. This is particularly important with respect to disclosure of medical information which may be necessary for assessment for income support but not for assessment for employment support services. This issue is analysed in further detail in the section below headed 'quality of information recorded during the assessment process'.

The Working Group developed sixteen principles to guide the reform of assessment for employment support services which are endorsed by HREOC:

1. An assessment for service should be focused on identifying individual needs and should not be linked to other purposes.
2. Assessment tools should be individually focused and not comparative.
3. The assessment tool to determine support needs must be evidence-based and produce reliable, consistent and valid results.

4. The assessment should ensure that all barriers (vocational and non vocational) associated with participation in employment are identified.
5. The assessment should ensure that individuals are referred to appropriate services to address all identified needs, vocational and non-vocational, in order to achieve sustained participation in the workforce.
6. The assessment should be conducted in a manner which establishes a positive relationship between the assessor and the person being assessed.
7. Assessments should acknowledge that people with disability have specific insight into their own conditions and experience and should give this due regard and weight.
8. Assessment guidelines should encourage assessors to seek expert/specialist advice when required.
9. People with disability have the right to determine the extent to which the information they disclose during the assessment process is shared with other agencies.
10. Where information is shared between agencies, mechanisms need to be provided to ensure information about jobseekers is transferred efficiently, effectively and in accordance with privacy laws.
11. The number of re-assessment processes should be minimised.
12. People with a disability should not have the supports recommended in their assessment compromised by the lack of availability of services.
13. No-one should be deemed 'unemployable' at the end of an assessment for service.
14. Where a recommended referral cannot be followed through because a service is not available, this should be recorded and used to inform service design.
15. Service providers and jobseekers should be able to challenge and appeal all assessment for service decisions within a reasonable time frame.
16. Service providers should have effective internal complaints resolution procedures in place and people with disability should be able to complain to an independent body where internal procedures have been ineffective or are not appropriate.

In accordance with these principles, the Working Group made seven recommendations. These recommendations are endorsed by HREOC:

RECOMMENDATION 1: Assessment for service and assessment for income support processes must be uncoupled and operate independently. At no time should the assessments be conducted concurrently by the same assessor in order to guarantee that the purpose of assessment is clear. This will assist to ensure that the assessment process produces reliable, valid and consistent results.

RECOMMENDATION 2: Current rules which link volunteering to look for work to an automatic review of eligibility through the JCA process for ‘grandfathered’ Disability Support Pension (DSP) recipients should be overruled. This is currently having the unintended effect of acting as a disincentive to looking for work for people in receipt of the DSP.

RECOMMENDATION 3: The Job Seeker Classification Instrument (JSCI) should be replaced with a single tool that measures absolute disadvantage and is individually focused.

RECOMMENDATION 4: The Job Capacity Assessment process should be redesigned to conform to the 16 principles outlined above.

RECOMMENDATION 5: An effective tool to assess the functional impact of impairment on participation and the need for support should be developed that is consistent with the International Classification of Functioning and Impairment.

RECOMMENDATION 6: All support programs must have an identified assessment phase.

RECOMMENDATION 7: All service providers should have an effective internal complaints resolution procedures in place and an independent complaints body should be established where internal procedures have been ineffective or are not appropriate.

The appropriateness and range of the qualifications necessary for Job Capacity Assessors to undertake assessments of people with different disabilities, including those with a mental illness

HREOC has consistently raised concerns regarding the appropriateness and range of qualifications of Job Capacity Assessors to adequately assess many people with disability, and people with mental illness in particular. Unless the assessor (an allied health professional) has special expertise in mental health, HREOC does not believe that the brief on-line mental health training program provides assessors with the necessary skills or expertise to make appropriate assessments and identify all the necessary needs and supports for people with mental illness. Furthermore, depending on the qualifications of the assessor, a lack of expertise and skills to adequately deal with many other disability types may also arise. The high turnover of assessors and the implications this has on the collective expertise of the workforce is also of concern.

HREOC has received many complaints from people who have a mental illness who appear to be fine at the assessment because they are well on that day or appear well due to medication, but who have a long history of ill health and can not really sustain working 15 hours a week over a long period. They complain that the assessment is based on a single presentation without reference to their medical history or their case worker or the reasons they are receiving the DSP. HREOC also receives complaints about medical evidence being provided but not considered.

The current system of random allocation to a Job Capacity Assessor (an allied health professional), with no opportunity for allocation to a specialist assessor or a system whereby assessors can refer or request specialist assistance, severely diminishes the

overall quality of the assessment process. At the very least, as stated above, HREOC recommends that assessment guidelines should encourage assessors to seek expert/specialist advice when required.

The quality of information recorded during the assessment process, including whether this is sufficient to assist agencies making decisions on income support and/or employment assistance

Many of HREOC's concerns in relation to the quality of information collected during the assessment process to assist agencies in making income and employment support decisions are outlined above in the section 'Job Capacity Assessment Guidelines as they relate to assessment and referral practices'. The principles and recommendations noted in that section are applicable here.

As mentioned above, HREOC has a specific concern in relation to the section of the Job Capacity Assessment Report marked "Medical Information" and, more specifically, how this information is currently shared between agencies. HREOC does not believe that employment service providers need to know, nor have the right to know, the level of detailed personal information contained in this section of the report in order to be able to find, place and support a person with disability in a job.

HREOC is aware that provision has been made in the reporting process that, after completion of the report by the Job Capacity Assessor, Centrelink receives a complete version of the report and employment service providers receive the same report without the section from which income support payments are determined. We request that the same treatment be applied to the medical information section of the report.

HREOC is aware that very detailed information is collected by the assessor for each client in order to determine functional work capacity, identify barriers and determine the level and type of employment support needed. HREOC believes that this is the only information that needs to be provided to employment service providers in order for the effective provision of job support services.

In support of our argument that it is not "necessary information" HREOC notes that Centrelink currently does not provide information about medical conditions and treatment to employment service providers.

Further, HREOC is concerned that the sharing of detailed personal medical information with employment service providers breaches the Commonwealth Privacy Act 1988 and the Information Privacy Principles (IPP). Three issues are relevant here: consent; the collection of information and disclosure to third parties; and further release of information by third parties to other parties.

With regard to consent, HREOC notes IPP 11.1 and IPP 2. However, HREOC is concerned that people with disability are not directly consenting to the release of their detailed medical information to employment service providers as they may see the whole process as linked to the provision of information to Centrelink for the determination of income support payments. People with disability, or indeed any individual, may not be aware that the issues are separate and may believe that if they do not consent, or do not fully disclose, they may jeopardise their qualification for income support.

With regard to collection of information and disclosure to third parties HREOC notes IPP 1 and IPP 3 with regard to the collection of information and IPP 11.1 with regard disclosure to third parties. However, HREOC notes that the Job Capacity Assessor is collecting information for two different purposes (qualification for income support and determination of work capacity) and providing the information to two very different types of organisations (namely, Centrelink and employment service providers, government and non-government).

HREOC does not contest the collection of personal medical information by the Job Capacity Assessor for the purposes of completing the impairment tables, determining the broad bandwidth of work capacity and identification of barriers and level of support needed and the forwarding of this information to Centrelink.

However, as noted above, HREOC does not believe that medical information falls within the class of “necessary information” for employment service providers to fulfil their function. All the information required by employment service providers will be contained in the identification of barriers and determination of capacity sections of the report.

With regard to further release of information by third parties, HREOC is concerned about the potential further release of medical information by employment service providers to other third parties, including employers. While we understand that Centrelink has rigorous processes in place with staff to manage privacy and confidentiality concerns, HREOC is concerned that this strict adherence will not be replicated by employment service providers, even though they may be bound by the same rules as a Commonwealth agency.

RECOMMENDATION 8: The Job Capacity Assessment Report marked “Medical Information” should be forwarded to Centrelink only and not to employment service providers.

The appropriateness of arrangements to ensure attendance at Job Capacity Assessments

HREOC understands that some people with mental illness, who are unwell and unwell on the day of a scheduled appointment, are failing to attend Job Capacity Assessments and as a result are receiving a participation penalty. HREOC requests that this situation be urgently addressed and appropriate arrangements implemented.

With regards to access to premises to ensure attendance, HREOC welcomed the Department of Human Services’ commitment to apply resources to ensure that people with disability can access Centrelink and JCA premises without difficulty and with dignity and I hope this commitment continues. HREOC notes that DHS developed an access checklist and accompanying guidelines for service providers and has inserted requirements for compliance in this regard in contractual arrangements with providers. Due to the success of this initiative and access implications for people with disability and the wider community to Centrelink and JCA premises, HREOC suggests the Department replicate this and implement the checklist and guidelines in all of its own offices, and become the example for a roll-out to all other Commonwealth Departments, and any organisation providing contracted services to the Commonwealth.

The role of the Job Capacity Account program, including the effectiveness of the current referral arrangements to the Job Capacity Account and the Job Network

HREOC notes that the Job Capacity Account is currently restricted to jobseekers registered with Job Network. HREOC believes many jobseekers with disability registered with a Disability Employment Network provider would also benefit from the short-term services funded by this account. At the very least, this restriction should be removed.

However, in examining the role of the Job Capacity Account program, which is to address non-vocational needs of job seekers to become work-ready, and current referral arrangements HREOC suggests that a wider approach to the reform of the services and utilisation of funding should be contemplated.

The Working Group convened by HREOC which developed key principles and recommendations to guide the delivery of employment support services also examined these issues. With regard to responsive service delivery, which included services to address vocational and non-vocational needs, the Working Group identified nine principles to guide reform. These principles are endorsed by HREOC:

1. A range of services should be available to respond to the range of individual needs.
2. People with disabilities should have access to services appropriate to their particular needs on an as-needed basis.
3. People with disability should have access to quality services irrespective of where they live, disability type or degree of impairment.
4. Waiting lists should only be used in limited situations and be of short duration with identified maximum limits.
5. There should be capacity within programs to easily transfer people according to the changing circumstances of the individual.
6. Services need sufficient resources and capacity to be flexible to ensure the delivery of programs to meet the needs of their clients.
7. Parameters for the service model should enable service providers to deliver flexible and tailored services to meet the individuals' needs.
8. The range of available services should be promoted to service providers and people with disability to ensure appropriate referrals and choice for people with disability.
9. Services should put in place effective mechanisms to ensure that service plans are developed in partnership with people with disability; government regulations should also support this outcome.

The working group also examined connections and referrals between agencies to enhance the quality of service delivery. To this end, the Working Group outlined three principles to guide the reform of delivery of services which are also endorsed by HREOC:

1. Government should engage in high level, strategic planning, using cross departmental collaboration and strategic cooperation to ensure effective connections are established and maintained across employment support programs and health, education and training, housing and other relevant service areas.
2. Frameworks and structures should maximise utilisation of available expertise encouraging interagency referral, collaboration and parallel servicing to meet client needs and achieve employment.
3. The framework for the delivery of employment support services should also ensure individuals are linked with subsidies to meet costs associated with preparation for and participation in employment.

In accordance with these principles, HREOC urges the adoptions of the following ten recommendations:

RECOMMENDATION 9: All programs should be uncapped to ensure services are available on demand.

RECOMMENDATION 10: In order to ensure access to services on an as-needed basis in accordance with assessments, restrictions on the amount and type of support available to each individual should be lifted.

RECOMMENDATION 11: In order to ensure services have the capacity to easily transfer people with disability when circumstances change to new services, this should be done without detriment to the service and in recognition of the contribution of that service to the point of transfer.

RECOMMENDATION 12: The range of employment support services and programs available to people with a disability must be at least maintained and funded to meet need.

RECOMMENDATION 13: All job seekers, whether in metropolitan or non-metropolitan areas, should have equity of access to quality services.

RECOMMENDATION 14: Service plans should be developed in partnership with jobseekers with disability.

RECOMMENDATION 15: The operating framework for service providers needs to be revised in order to improve capacity and ensure the delivery of streamlined and responsive services.

RECOMMENDATION 16: All providers of Australian Government employment services (DEN, JN, VRS, PSP) should have the capacity to provide services in parallel with each other, and to link with other services, such as housing or substance use treatment, to assist people to attend and maintain employment.

RECOMMENDATION 17: No job seeker should receive a participation penalty for failure to attend medical or psychological treatment purchased through the Job Capacity Account.

RECOMMENDATION 18: A National Disability Employment Strategy, with a whole-of-government approach, developed in cooperation with a multi-sector coalition, should be developed and implemented as soon as possible to ensure increased participation, recruitment and retention of people with disability (see Recommendation 30 of HREOC's National Inquiry into Employment and Disability).

We note that Minister for Employment Participation, the Hon. Brendan O'Connor MP, and the Parliamentary Secretary for Disabilities and Children's Services, The Hon Bill Shorten MP, have recently announced the development of National Mental Health and Disability Employment Strategy. We trust the Strategy will have a whole-of-government approach, as recommended above, and will be developed in cooperation with a multi-sector coalition. This approach should assist with the delivery of even further coordinated assessment, referral and support services.

Key strengths of the current arrangements and any lessons for the future, from your knowledge of current and past arrangements in Australia and internationally

During HREOC's National Inquiry into Employment and Disability, research was conducted into employment support models operating in New Zealand, Canada, the United States and the United Kingdom as these countries demonstrated alternative approaches to encouraging participation, employment and retention of people with disability in the open workplace. HREOC believes the New Zealand approach offers the most interesting alternative and warrants further investigation.

The Job Support program in New Zealand appears to enable people with disability to access job support on an as-needed basis, and for as long as support is required. The New Zealand model also appears to provide employers with the reassurance that support will be available to their employees – at no cost – if and when required. HREOC considers these features to be essential to a support system which aims to: encourage people with disability to enter the open workplace; and assist people with disability to retain and progress within their jobs.

I congratulate you on your commitment to address concerns that have been raised with the job capacity assessment processes. I would be very happy to meet with you or contribute as you see fit to the development of any new model or revised Job Capacity Assessment Guidelines to better meet the needs of people with disability with barriers to work and service providers. The Australian community will benefit as a result.

Yours sincerely



GRAEME INNES AM
Human Rights Commissioner and Commissioner responsible for Disability Discrimination

27 February 2008

cc The Hon. Brendan O'Connor MP, Minister for Employment Participation