



**Australian
Human Rights
Commission**

**Age and Disability Discrimination
Commissioner**

The Hon Susan Ryan AO

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Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

By email: eec.sen@aph.gov.au

Dear Members of the References Committee,

Senate inquiry into the operation, regulation and funding of private vocational education and training (VET) providers in Australia

As Age and Disability Discrimination Commissioner at the Australian Human Rights Commission (the Commission), I welcome the opportunity to make comments to the Education and Employment References Committee in relation to the above inquiry.

Introduction

1. Vocational education has traditionally been seen as a pathway for young people to obtain pre-service qualifications before they commence their working lives. This role remains vitally important. However, the nature of a typical working life is changing. Many Australians will experience several different careers in their lifetimes and that will require up-skilling and retraining.
2. As Australia experiences significant demographic change, many older people are seeking further qualifications and training to re-join or further contribute to the workforce. Proposed rises to the age pension age reflect the policy intention for people to continue working for longer. In addition, increased supports to the estimated 4 million people with a disability,¹ through the National Disability Insurance Scheme (NDIS), are opening up possibilities for participation. This expected increase in participation will require training. Given that people with disability are more likely to have completed lower-level qualifications such as those offered by vocational education and training (VET) providers, this inquiry is timely.² While the NDIS will provide supports that will enable people to engage in VET courses, VET providers will retain responsibility for assisting students with their educational attainment.³

3. The Commission urges the Committee to consider the importance of ensuring affordable access to quality and inclusive training to all as a fundamental building block of the VET system. This means encouraging and supporting service provision at VET providers to cater to diverse cohorts, including the customisation of courses and services.

Human rights framework

4. Australia's ratification of the *International Covenant on Economic Social and Cultural Rights*⁴ brings with it obligations to ensure that all citizens have the right to work and to access training programmes.⁵ The implementation of the right to work should include employment strategies that ensure 'equal access to... technical and vocational training, particularly for women, disadvantaged and marginalized individuals and groups'.⁶ In the Australian context, equal access to training for marginalized groups should include those who are likely to experience discrimination in the labour market.
5. This submission primarily focuses on older people and people with disability, however I also note the labour market disadvantage experienced by young people, women, people from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander people, and people living in rural and remote communities.
6. The *Convention on the Rights of the Child* requires that States progressively realise the right of every child to access education. This includes vocational education and accessible and accurate information and guidance on vocational education.⁷ As VET education can begin from the age of 15, it is important that younger people receive quality training at affordable costs, and that young people are not subject to exploitation or unsafe educational practices. As such it is imperative that regulatory regimes concerned with training and education for young people under 18 ensure relevant child safety standards, including relevant background checks, are met.
7. Older people in particular face age discrimination in employment and job search. One in ten businesses reported having an age above which they will not recruit – the average age is 50 years.⁸ For all discouraged job seekers, the most commonly reported main reason for not actively looking for work was that they were 'considered too old by employers' (33 per cent).⁹ Older people are also more likely to be without work for longer as 41 per cent of people aged over 50 on Newstart have been on the payment for more than two years (compared to 31 per cent of all Newstart recipients).¹⁰
8. People with disability also experience discrimination in seeking and maintaining employment. Negative employer and community attitudes concerning the capacity of people with disability can create barriers that lock people out of the workforce.¹¹ Considering that Australia ranks 21st out of 29 countries in employment participation rates for people with a disability¹², it is crucial that a strong human rights framework is the basis of inclusive governance processes in Australia's VET system.

9. The *Convention on the Rights of Persons with Disabilities* (CRPD) obliges States to 'safeguard and promote the realization of the right to work',¹³ and requires Australia to ensure that people with disability can access vocational training and adult education and lifelong learning on an equal basis as others.¹⁴
10. The UN Committee on the Rights of Persons with Disabilities in their concluding observations on the initial report of Australia¹⁵ recommended that Australia 'sets targets to increase participation and completion rates by students with disabilities in all levels of education and training'.¹⁶ Furthermore, they specifically recommended that Australia 'adopts initiatives to increase employment participation of women with disabilities by addressing the specific underlying structural barriers to their workforce participation'.¹⁷ Respecting the rights of people with disability to participate in VET courses by ensuring that governance frameworks are inclusive could assist Australia in implementing these recommendations.
11. To ensure that the right to training is implemented without discrimination, it would be appropriate to consider 'special measures to attenuate or suppress conditions that perpetuate discrimination'.¹⁸ This would mean facilitating special access or services for older people and people with a disability in VET services.
12. The *Age Discrimination Act 2004* and the *Disability Discrimination Act 1992* make it unlawful for an educational authority to discriminate against a person on the ground of the person's age or disability, respectively.¹⁹ The *Disability Standards for Education 2005* (Cth) clarify and make more explicit the obligations of education and training service providers under the *Disability Discrimination Act*.

Providing training to older people

13. The Commission has previously made recommendations relating to the role of TAFEs in providing training to older job seekers in the submission to the Committee for the Inquiry into Technical and Further Education in Australia in 2014.²⁰ Recommendations relating to strengthening TAFEs to ensure the provision of training to older people apply to all VET providers.
14. The Commission engaged with the South West Sydney Institute of TAFE (SWSi) on activities to attract mature age students and provide training linked to available jobs. SWSi has mechanisms to tailor their services to individuals' needs and possesses strong and visible ties with supportive stakeholders. SWSi held an all-day forum for over 50s job seekers, Pathways Back to Work, which was well-promoted and well-attended. There was no charge for participation, an important aspect in a region with many socially and economically disadvantaged residents. Post-event feedback identified that 81 per cent of the surveyed attendees had since enrolled in study or gained employment.²¹ VET providers, in conjunction with local employers and government programs, could use SWSi's experience as a template to hold their own events to attract job seekers with specific attributes to training opportunities.
15. In my 2014 Press Club speech, 'The Longevity Revolution – Crisis or Opportunity?',²² I put forward a proposal for a National Jobs Checkpoint Plan. This would be a nationally coordinated program to facilitate people at about age 50 to

get advice so that they could plan their next decades of work. A person would be able to access advice to find out what jobs are available, whether they need to change direction to continue working, and what skills they would need to do so. This systematic plan would require funding and promotion, and linkages between Government, industry and VET providers. Implementation of this plan would require VET providers to proactively tailor training delivery to older people who would like to retrain or up-skill. In addition, it would require VET providers to build relationships with local employers and employment service providers so that they are ready to provide the training required for jobs in their locality.

16. As Age Discrimination Commissioner, I receive representations from older Australians who wish to work, have looked for opportunities, but lack the financial resources to undertake the training required for the occupation to which they wish to transition. They report that they are ineligible for subsidised training as they have higher qualifications already, albeit in a different field. VET fee structures should be designed in such a way that the cost of training is not prohibitively high to facilitate these willing older workers to continue to train and contribute.

Providing training to people with disabilities

17. The Commission conducted a National Disability Forum in September 2014 to seek views of people with disability and associated stakeholders on key challenges facing people with disability. The forum (and associated national survey) focused specifically on the identification of priorities for improving employment outcomes for people with disability.²³
18. Respondents of the forum and preceding survey indicated that participation and inclusion in society along with work and employment were the top two issues currently facing people with disability.²⁴ Specifically they reported that there was a 'lack of funding and support for persons with disabilities to become job ready through TAFE and vocational education providers'.²⁵
19. With more choice in service provision for people with disability through the introduction of the NDIS, it will be important for VET reform to promote the importance of approaching students with a disability as individuals with choice, rather than as one group. A recent study by the National Centre for Vocational Educational Research highlighted the importance of considering that non-disability characteristics²⁶ will interact with a student's disability to impact on performance.²⁷ This correlates with a 2008 OECD review of Australia's VET processes which recommended that 'open competition should be accompanied by support measures designed to ensure that a good range of provision is accessible to all, including disadvantaged groups...'.²⁸
20. Noting that there is precedence for the development of National VET training strategies,²⁹ a coordinated national strategy should be developed to strengthen the Australian training sector's accessibility for people with disabilities. A stocktake of existing state specific resources could yield a strong basis for such a strategy and identify best-practice. Any strategy developed would need to be developed consistent with the *Disability Standards for Education 2005* (Cth).

21. Encouraging a commitment to the development of Disability Action Plans is one concrete measure that VET providers can undertake to put processes in place to ensure people with disability can participate on an equal basis as students that don't have a disability.

Training workers to provide greater availability of quality care services

22. As the population ages, the needs of the community are changing. We are currently experiencing and will continue to experience a dramatic increase in the need for care workers both in the age and disability sectors. The right to the enjoyment of the highest standard of physical and mental health, is contained in Article 12 of the *International Covenant on Economic Social and Cultural Rights*,³⁰ and Article 25 of the *Convention on the Rights of Persons with Disabilities*.³¹ The implementation of this right requires that care be **available** and of a satisfactory **quality**.

23. A failure to properly plan for aged care and disability services now could result in a reduction of the quality of care as the population ages further. This means building the workforce to ensure a sufficient quantity of services is available and ensuring that services are of a high quality by maintaining rigorous training standards. VET providers, with the direction of the Community Services and Health Industry Skills Council, have a fundamental role to play in shaping this workforce and ensuring that care workers have the skills to provide services that are respectful of human rights and dignity.

24. A sufficient quantity of services must be available. Increasingly, aged care workers come from other parts of the labour market, from second or third career moves, or from declining sectors. The workers in this sector are generally older than the national workforce; the median age for residential direct care workers is 48 years while for community direct care workers it is 50 years.³² The National Jobs Checkpoint Plan, mentioned above could encourage older people to undertake training in aged care, especially when transitioning from another industry.

25. Subsidised training in sectors in which there is need, could also grow this sector. The Commission has received representations from individuals who wish to train in aged care because it is a growth industry in their region but have been prevented from doing so because of prohibitively high fees for those who already have qualifications which preclude them from subsidised training. This approach is preventing the community from receiving the benefits of trained care workers who also have skills in other areas.

26. Aged care and disability services must be of a satisfactory quality and must be delivered with respect and dignity by appropriately skilled professionals.³³ High quality training is required for quality service delivery.

27. The 2013 Australia Skills Quality Authority (ASQA) report 'Training for aged and community care in Australia',³⁴ highlighted significant weaknesses in some training of care workers. The report provided a summary of the evidentiary basis to sentiments that I had heard in my role as Age and Disability Discrimination Commissioner: some training provided through VET is insufficient in preparing

workers for their role. This situation is untenable. It is undesirable for the trainees themselves, their employers or potential employers, and most importantly for the older people for whom they may end up caring. The provision of aged care of satisfactory quality by appropriately skilled professionals is fundamental to an aged care system that is consistent with human rights.³⁵ The ASQA provides a valuable service in strategically reviewing weaknesses in the VET system. This is an important role and should be strengthened.

28. The early childhood education and care sector also represent a significant area of growth and demand, with over one million children accessing early childhood services in Australia. This too presents considerable opportunities for younger and older people to train or retrain. Recent reforms to quality standards in this field require workers to hold higher qualifications than in the past. Preliminary findings by the Productivity Commission from the 2014 inquiry into Childcare and Early Childhood Learning show that there are widespread concerns in the sector about the quality of some training received by graduates who have undertaken an Early Childhood Education and Care qualification, particularly at the Certificate III and diploma level.³⁶
29. Anecdotal representations and some recent media reports highlight that some training providers are targeting vulnerable people, both young and older, by offering them courses that may be inappropriate at a high cost. High standards and comprehensive regulatory frameworks, including effective quality control processes, should be in place to protect vulnerable groups from undertaking costly inappropriate training.³⁷
30. In considering the regulatory regime of VET providers and the quality of education, I urge the Committee to keep in mind the potential human rights impact of training.

Embedding human rights into service provision through training

31. The Commission has been engaged in a range of activities focused on integrating human rights into the VET sector.
32. In 2012, in partnership with Ultimo TAFE Outreach, the Commission piloted an innovative Certificate IV in Human Rights Education and Advocacy for community development workers. The ten week course covered rights-based advocacy and empowerment, using human rights education to transform understandings of community work and to create a shift from welfare-based approaches to human rights-based approaches. In 2013, the Commission in partnership with the Social and Community Services Department, TAFE Granville College, South Western Sydney Institute, and with the support of the Western Sydney Community Forum, developed and piloted a Human Rights in Community Services skills set.
33. Over 100 community service learners and workers employed in or intending to work in the aged, multicultural, disability, refugee and mental health services sector participated in the skill set training. Of those participants an overwhelming majority (87 per cent) identified that this project increased their awareness of human rights in the community services sector in ways that were tangible and applicable.

34. Drawing on experience from the above mentioned training initiatives, the Commission is beginning work on the development of a human rights teaching resource which will assist VET providers to deliver human rights content to their students when delivering relevant units.

Concluding remarks

35. With the changing age demographic in Australia and the momentum of greater inclusion of people with disability continuing to build with the NDIS, this inquiry is timely. An approach to the VET system that is consistent with human rights requires particular attention to be paid to the needs of groups that are disadvantaged in the labour market such as older people and people with disability.

36. Given the higher numbers of people with disability accessing lower-level VET related qualifications, now is the time to ensure operational, governance and funding processes are inclusive. The Commission encourages a human rights approach to personalised supports and reasonable adjustment for people with disability. This will contribute to addressing negative attitudes which have been identified as creating significant barriers to seeking and maintaining employment.

37. Older people who wish to retrain should be able to access quality training. Encouragement to train in growth industries should be made accessible, especially to those transitioning from prior careers.

Please contact me or my adviser, Darryl Barrett
if you would like to discuss these matters further.

Yours sincerely

The Hon Susan Ryan AO
**Age Discrimination Commissioner and
Acting Disability Discrimination Commissioner**

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- ¹ The Australian Bureau of Statistics, Disability Characteristics. As at: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/3A5561E876CDAC73CA257C210011AB9B?opendocument> (viewed 15 January 2015).
- ² Griffin, T. and Beddie, F., *Researching VET and Disability At a glance*, National Centre for Vocational Education Research, 2011, p 3.
- ³ National Disability Insurance Scheme, *Mainstream interface: Higher Education and Vocational Education and Training*, 2014.
- ⁴ *International Covenant on Economic, Social and Cultural Rights*, 1966. At: <http://www.austlii.edu.au/au/other/dfat/treaties/1976/5.html> (viewed 31 July 2014).
- ⁵ *International Covenant on Economic, Social and Cultural Rights*, 1966, art 6(1)(2).
- ⁶ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 18, Article 6 of the International Covenant on Economic, Social and Cultural Rights*, UN Doc: E/C.12/GC/18, 6 February 2006, p 11. At: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f18&Lang=en (viewed 7 January 2015).
- ⁷ *Convention on the Rights of the Child*, 1991, article 28 (2)(b)(c)and (d) At: <http://www.austlii.edu.au/au/other/dfat/treaties/1991/4.html> (viewed 19 January 2015).
- ⁸ Australian Human Rights Commission, *Fact or fiction? Stereotypes of older Australians Research Report*, 2013. At: <https://www.humanrights.gov.au/publications/fact-or-fiction-stereotypes-older-australians-research-report-2013> (viewed 31 July 2014).
- ⁹ Australian Bureau of Statistics, 6220.0 - Persons Not in the Labour Force, Australia, September 2012. At <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6220.0> (viewed 27 March 2013).
- ¹⁰ 2013-14 Additional Estimates Hearings, Senate Community Affairs Committee, Social Services Portfolio, Questions 347 and 348, response to Senator Siewert.
- ¹¹ Australian Human Rights Commission, National Disability Forum 2014 – Summary of Survey Results. At: http://www.humanrights.gov.au/sites/default/files/document/publication/Disability2014_Survey_Results.pdf (viewed at 14 January 2014).
- ¹² PricewaterhouseCoopers, *Disability expectations: Investing in a better life, a stronger Australia*, 2011, p 3. At: <http://www.pwc.com.au/industry/government/publications/disability-in-australia.htm> (viewed 31 July 2014).
- ¹³ Office of High Commissioner for Human Rights, *Convention on the Rights of Persons with Disabilities*, (2008), Article 27(1). At <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx> (viewed 13 January 2015).
- ¹⁴ Office of High Commissioner for Human Rights, *Convention on the Rights of Persons with Disabilities*, (2008), Article 25(4). At <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx> (viewed 13 January 2015).
- ¹⁵ Committee on the Rights of Persons with Disabilities, Concluding Observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013). CRPD/C/AUS/CO/1 (2013). At http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2fCO%2f1&Lang=en (viewed 13 January 2015).
- ¹⁶ Committee on the Rights of Persons with Disabilities, Concluding Observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013) CRPD/C/AUS/CO/1 (2013) para 46. At http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2fCO%2f1&Lang=en (viewed 13 January 2015).
- ¹⁷ Committee on the Rights of Persons with Disabilities, Concluding Observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013) CRPD/C/AUS/CO/1 (2013), para 50. At http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2fCO%2f1&Lang=en (viewed 13 January 2015).
- ¹⁸ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc: E/C.12/GC/20, 2 July 2009, p 4. At: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f20&Lang=en (viewed 7 January 2015).
- ¹⁹ Age Discrimination Act (Cth) 2004, s26. As at: http://www.austlii.edu.au/au/legis/cth/consol_act/ada2004174/ (Viewed 15 January 2015); Disability

Discrimination Act (Cth) 1992, s22. As at:

http://www.austlii.edu.au/au/legis/cth/consol_act/dda1992264/ (Viewed 15 January 2015).

²⁰ Australian Human Rights Commission, Submission to Inquiry into Technical and Further Education in Australia, 4 February 2004. At: <https://www.humanrights.gov.au/submissions/inquiry-technical-and-further-education-australia> (viewed 15 January 2015).

²¹ South Western Sydney Institute of TAFE, *Final Report Pathways Back to Work Forum*, 2013, p 3.

²² Susan Ryan, 'The Longevity Revolution – Crisis or Opportunity?' *Speech by the Age Discrimination Commissioner, the Hon Susan Ryan AO, to the National Press Club*, 17 September 2015. At: <https://www.humanrights.gov.au/news/speeches/longevity-revolution-crisis-or-opportunity> (viewed 8 January 2015).

²³ Australian Human Rights Commission, National Disability Forum 2014 – Summary of Survey Results, (2014), p3. At: http://www.humanrights.gov.au/sites/default/files/document/publication/Disability2014_Survey_Results.pdf (viewed at 14 January 2014).

²⁴ Australian Human Rights Commission, National Disability Forum 2014 – Summary of Survey Results, (2014), p5. At: http://www.humanrights.gov.au/sites/default/files/document/publication/Disability2014_Survey_Results.pdf (viewed at 14 January 2014).

²⁵ Australian Human Rights Commission, National Disability Forum 2014 – Summary of Survey Results, (2014), p9. At: http://www.humanrights.gov.au/sites/default/files/document/publication/Disability2014_Survey_Results.pdf (viewed at 14 January 2014).

²⁶ For example age, sex, socio-economic background, prior educational status.

²⁷ Karmel, T. and Nguyen, N., *Disability and learning outcomes: How much does the disability really matter?*, National Centre for Vocational Educational Research, 2008, p10.

²⁸ Hoeckel, K., Field, S., Justesen, T. and Kim, M., *Learning for Jobs OECD Reviews of Vocational Education and Training Australia*, OECD November 2008, p6.

²⁹ National Vocational Education and Training E-learning Strategy 2012–2015:

<http://flexiblelearning.net.au/about/>

³⁰ The Australian Human Rights Commission, *Human Rights Approach to Ageing and Health - Respect and Choice* (2012). At 10.

³¹ <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>

³² Australian Government, Department of Health and Ageing, *The Aged Care Workforce, 2012 – Final Report, Executive Summary*. At <http://health.gov.au/internet/publications/publishing.nsf/Content/ageing-2012-nacwcas-executive-summary> (viewed on 23 July 2013).

³³ The Australian Human Rights Commission, *Human Rights Approach to Ageing and Health - Respect and Choice* (2012). At 10 to 11.

³⁴ Australian Skills Quality Authority, Australia Government, *Report: Training for aged and community care in Australia*, 20 September 2013. At piii <http://www.asqa.gov.au/about/regulatory-approach/strategic-reviews.html> (viewed 24 March 2014).

³⁵ The Australian Human Rights Commission, *Human Rights Approach to Ageing and Health - Respect and Choice* (2012). At 11.

³⁶ Productivity Commission, Draft Report, *Childcare and Early Childhood Learning*, July 2014, p.465. At <http://www.pc.gov.au/inquiries/completed/childcare/draft/childcare-draft.pdf> (viewed 20 January 2015)

³⁷ Micheal Atkin, 'Private training colleges accused of targetting low-socio economic areas with offer of free laptops', *ABC News Online*, 22 December 2014. At: <http://www.abc.net.au/news/2014-12-21/private-training-colleges-accused-of-targetting-poor-areas/5981752> (viewed 16 January 2014).