



**VICTORIAN
WOMEN
LAWYERS**

SUBMISSION TO THE DEPARTMENT OF SOCIAL SERVICES

SUPPORTED EMPLOYMENT FOR PEOPLE WITH DISABILITY WITH HIGH SUPPORT NEEDS

**THE ROLE SAFETY LAWS COULD PLAY IN IMPROVING EMPLOYMENT & SAFETY
OUTCOMES FOR PEOPLE WITH DISABILITY**

Submitted by:	Victorian Women Lawyers Association Inc
Submitted via:	By email on 5 July 2025
Contact:	Sapphire Parsons & Casey Guilmartin Co-Chairs Victorian Women Lawyer Law Reform Committee Email: vwl@vwl.asn.au
Written by:	Victorian Women Lawyers Law Reform Committee Members (With special thanks to Jaimie Maree Harrison, Casey Guilmartin, and Sapphire Parsons)
Reviewed by:	Victorian Women Lawyers Voting Executive
Endorsement of law reform position by Australian Women Lawyers	<p>Australian Women Lawyers (AWL) endorses Victorian Women Lawyers' (VWL's) recommendations to strengthen workplace safety laws and anti-discrimination frameworks.</p> <p>AWL acknowledges the work of the VWL Law Reform Committee and the contributions of Women With Disabilities Australia.</p> <p>AWL joins with VWL and Women With Disabilities Australia in urging the Australian Government to develop and implement a time-bound strategy to phase out segregated employment and subminimum wages.</p> <p>Strengthening workplace safety laws and anti-discrimination frameworks is a necessary step in ensuring that women workers with disabilities transition to open, inclusive and accessible forms of employment on an equal basis.</p>
Endorsement of law reform position by Women With Disabilities Australia	Victorian Women Lawyers acknowledges the work of Women With Disabilities Australia and notes their endorsement of our recommendations to strengthen workplace safety laws and anti-discrimination frameworks. Other recommendations, views and language in this submission do not necessarily reflect Women With Disabilities Australia's views or positions.
Acknowledgements:	Victorian Women Lawyers also acknowledges the contributions of the Disabled Australian Lawyers Association, for their consultation on this Submission.

Submission

About Victorian Women Lawyers

Victorian Women Lawyers (VWL) is a voluntary association that promotes and protects the interests of women in the legal profession. VWL provides a network for information exchange, social interaction and reform within the legal profession and broader community of women lawyers.

Since 1996, VWL has advocated for the equal representation of women at all levels of the legal profession and has promoted the understanding and support of women's legal and human rights by identifying, highlighting and eradicating gender-based and sex-based discrimination, to achieve justice and equality for all women.

Details of our publications and submissions are available at www.vwl.asn.au.

Introduction

VWL welcomes the opportunity to provide input into the Australian Government's Department of Social Services consultation regarding supported employment for people with disability. We acknowledge the lived experience of people with disability who have informed and contributed to this submission.

We recognise that over half of Australians with disability are women, and that the rate of disability increases with age. Having a disability can affect a person's capacity to work and earn an income¹, and, particularly for women, can increase their risk of experiencing gendered violence², income insecurity and domestic violence³.

This submission aligns with the values and objectives of VWL by advocating for the equal representation and fair treatment of women within the legal profession and broader community. By addressing the barriers faced by women with disability in accessing meaningful employment, we are advocating for gender equality and human rights and are working towards the eradication of discrimination.

This submission reflects VWL's commitment to achieving justice and equality for all women⁴ by promoting women's ability to obtain economic independence in a safe, supportive, and inclusive work environment.

The Disabled Australian Lawyers Association has found that the Australian legal profession does not have a culture of celebrating people with disability or embedding inclusive practices. In facing the suite of structural and systemic barriers within the legal profession, disabled lawyers have survived and thrived, either through individual advocacy at a local level, or, frankly, by hiding in plain sight. We must ensure that disabled lawyers are afforded the same opportunities as their non-disabled colleagues to participate, develop skills, and progress in the profession⁵.

Central to this discussion is the idea that people with disability should have the same employment opportunities as people without disability, including access to safety at work, fair wages, career development and support services that cater to their individual needs.

Executive summary

This VWL submission mainly addresses questions (3) and (7) of the Government's Discussion Paper - "what additional actions do you consider are necessary to increase employment of people with high

¹ Australian Bureau of Statistics. (2022). Disability, Ageing and Carers, Australia: Summary of Findings, [Disability, Ageing and Carers, Australia: Summary of Findings, 2022 | Australian Bureau of Statistics](#).

² Safe Work Australia. (2023). Sexual and Gender-based Harassment Code of Practice, [Model Code of Practice - sexual and gender-based harassment](#).

³ Australia's National Research Organisation for Women's Safety. (2022). Economic security and intimate partner violence. [Economic security and intimate partner violence - ANROWS - Australia's National Research Organisation for Women's Safety](#).

⁴ Victorian Women Lawyers' Association Inc Rules of Association (2023).

⁵ Dalton, A., Alexander, E., Wade, N. (2022). No More Hiding in Plain Sight: The Need for a More Inclusive Legal Profession. Australian Lawyers Alliance, [Dalton, Abbey; Alexander, Ella; Wade, Natalie --- "No More Hiding in Plain Sight: The Need for a More Inclusive Legal Profession" \[2022\] PrecedentAULA 37; \(2022\) 171 Precedent 4](#).

support needs in open / inclusive settings” and “how could the benefits of supported employment settings be reflected in open employment settings”.

We recognise that disability discrimination is a key barrier to employment⁶. Approximately 40% of people with disability aged 15 to 64 working full-time (42%) and almost two thirds (62.5%) of those working part-time experience employment restrictions⁷. Between a third to half of people with disability⁸ who require workplace adjustments are not receiving them⁹.

In Australia, only 53.4% of people with disability are in the labour force, compared with 84.1% of people without disability. That is, approximately 47% of all working-age people with disability are not in the labour force¹⁰.

Women with disability are less likely to be participating in the labour force (51%) than both men with disability (56%) and women without disability (80%)¹¹. There are lower rates again for people with psychosocial disability (34%), intellectual disability (38%), as well as head, stroke or acquired brain injury (32%)¹².

For NDIS participants, 22% of working people with disability are employed in supported employment. The vast majority, 78%, work in open employment¹³.

We also note that whilst people with disability are under-represented in the Australian workforce, they are over-represented amongst people who have experienced workplace sexual harassment¹⁴. Women with disability are more likely than men with disability to have experienced workplace sexual harassment in the five years before 2022 (54 per cent and 38 per cent, respectively)¹⁵.

Safety regulations specifying mandatory controls for safety risks and hazards have been found to halve the rate of injury if they are complied with¹⁶.

We consider that there is a need for sustainable law reform that safeguards meaningful choice while increasing access to inclusive employment models. Because of this, our safety laws play an essential role in increasing the number of people with disability that are not only recruited into open employment settings, but also retained and promoted in these settings, on the basis that diverse workplaces are safer workplaces, and discrimination is a safety risk.

Amendments to our model safety laws that recognise that workplace discrimination and a lack of workforce and leadership diversity are key risk factors for gendered violence could place a positive, proactive, enforceable, safety obligation on all employers, to take reasonable steps to eliminate the risk of harm for people with disability.

⁶ Commonwealth of Australia. (2023). Final Report - Volume 3 - Royal Commission into Violence, Abuse, Neglect and Exploitation of People with disability - Nature and Extent of Violence, Abuse, Neglect and Exploitation, [Final Report - Volume 3, Nature and extent of violence, abuse, neglect and exploitation of people with disability](#).

⁷ Australian Bureau of Statistics. (2022). Disability, Ageing and Carers, Australia: Summary of Findings, [Disability, Ageing and Carers, Australia: Summary of Findings, 2022 | Australian Bureau of Statistics](#).

⁸ Office of the Australian Safety and Compensation Council. (2007). Are people with disability at risk at work? A review of the evidence. National Library of Australia, [Are people with disability at risk at work? \[electronic resource\] : a review of the evidence / Su Mon ... | Catalogue | National Library of Australia](#).

⁹ Commonwealth of Australia. (2023). Final Report - Volume 3 - Royal Commission into Violence, Abuse, Neglect and Exploitation of People with disability - Nature and Extent of Violence, Abuse, Neglect and Exploitation, [Final Report - Volume 3, Nature and extent of violence, abuse, neglect and exploitation of people with disability](#).

¹⁰ Australian Bureau of Statistics. (2020). Disability and the Labour Force. [Disability and the labour force | Australian Bureau of Statistics](#).

¹¹ Commonwealth of Australia. (2023). Final Report - Volume 3 - Royal Commission into Violence, Abuse, Neglect and Exploitation of People with disability - Nature and Extent of Violence, Abuse, Neglect and Exploitation, [Final Report - Volume 3, Nature and extent of violence, abuse, neglect and exploitation of people with disability](#).

¹² Commonwealth of Australia. (2023). Final Report - Volume 3 - Royal Commission into Violence, Abuse, Neglect and Exploitation of People with disability - Nature and Extent of Violence, Abuse, Neglect and Exploitation, [Final Report - Volume 3, Nature and extent of violence, abuse, neglect and exploitation of people with disability](#).

¹³ NDIS. (2025). Supported employment survey report, <https://www.ndis.gov.au/media/7639/download?attachment>.

¹⁴ Australian Human Rights Commission. (2022). Time for respect: Fifth national survey on sexual harassment in Australian workplaces, [Fifth national workplace sexual harassment survey](#).

¹⁵ Australian Human Rights Commission. (2022). Time for respect: Fifth national survey on sexual harassment in Australian workplaces, [Fifth national workplace sexual harassment survey](#).

¹⁶ Gun, R.T. (1993). The role of regulations in the prevention of occupational injury. Science Direct. <https://www.sciencedirect.com/science/article/abs/pii/092575359390006Y>.

Employers could be obliged to reduce discrimination and diversify their workforce by recruiting, retaining and promoting more people with disability, driving reform, where anti-discrimination laws have previously been limited in their effectiveness.

Stronger safety laws could also reduce the risk of women developing psychological disabilities, noting that depression is presently the leading cause of the non-fatal burden of disease for women in Australia¹⁷.

Safety regulations specifying mandatory controls for safety risks and hazards have been found to halve the rate of injury if they are complied with¹⁸.

Whilst important, anti-discrimination and equal opportunity laws have their limitations because they require the people with the least power and resources to seek to enforce them (the complainants). In addition, whilst they seek to guarantee freedom from discrimination, they do not guarantee safety.

We note and endorse Women With Disabilities Australia's advocacy for the abolition of segregated forms of employment and wage discrimination, which contravene Australia's obligations under Article 27 of the Convention on the Rights of Persons with Disabilities.

We echo Women With Disabilities Australia's urging of the Australian Government to develop and implement a national time-bound strategy to phase out segregated employment and subminimum wages, and transition workers with disability to open, inclusive and accessible forms of employment that ensure equal remuneration for work of equal value.

In this context, we support the broader private and Government sectors playing a larger role in increasing opportunities, earnings, and outcomes for people with disability in open employment¹⁹.

A human rights approach

VWL advocates for a human rights approach to increasing employment opportunities for people with disability, as provided for in the *Convention on the Rights of Persons with Disability (Convention)*.

Article 27(1) recognises the right of people with disability to work and gain a living by working freely in a chosen working environment that is open, inclusive, and accessible²⁰.

Working environments should appropriately accommodate the needs of the individual, providing a supportive environment free from harassment and discrimination and providing equal opportunities and equal remuneration for work of equal value.

Gender as a risk factor in the development of a disability

Gender is a recognised risk factor in the development of mental disorders. Depression is presently the leading cause of the non-fatal burden of disease for women in Australia. Despite all the evidence about the importance of gender, mental health policy in Australia is largely silent on the intersection with gender²¹. The high prevalence of mental distress amongst women of all ages is bound up in the totality of their experiences of social and economic inequality²². When examined by type of disability, persons

¹⁷ Duggan, M. (2016). Investing in Women's Mental Health: Strengthening the Foundations for Women, Families and the Australian Economy. Australian Health Policy Collaboration, [Investing in Women's Mental Health](#).

¹⁸ Gun, R.T. (1993). The role of regulations in the prevention of occupational injury. Science Direct. <https://www.sciencedirect.com/science/article/abs/pii/092575359390006Y>.

¹⁹ Inclusion Australia. Everyone can work - Employment pathways for people with intellectual disability. [1. What are the outcomes of open employment for people with intellectual disability? – Everyone Can Work](#).

²⁰ United Nations, Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, (entered into force 16 August 2008) art 27(1).

²¹ Duggan, M. (2016). Investing in Women's Mental Health: Strengthening the Foundations for Women, Families and the Australian Economy. Australian Health Policy Collaboration, [Investing in Women's Mental Health](#).

²² Duggan, M. (2016). Investing in Women's Mental Health: Strengthening the Foundations for Women, Families and the Australian Economy. Australian Health Policy Collaboration, [Investing in Women's Mental Health](#).

with a psychological condition reported the highest rate of employment restrictions (91% for mental illness and 88% for emotional / nervous conditions)²³.

There are also significant employment restrictions for people with invisible disabilities, for example 78% of those with chronic pain²⁴ face employment restrictions. People with chronic pain are more likely to be women and older, have long-term conditions, and report limitations to daily activities²⁵.

Within the legal profession, the Disabled Australian Lawyers Association has found that those with invisible disabilities make up some 90% of the disabled population and have not felt welcome to identify or disclose their disability for fear it could negatively impact on or even end their participation in the legal profession²⁶.

For people with disability who are currently employed, the most common source of discrimination is reported as being the discrimination they face in the workplace from their employers (40.2%) and work colleagues (37.7%). These rates have remained largely unchanged since 2018²⁷.

Within a workplace context, women are more likely than men to experience poor work-related psychological health outcomes because they are exposed to more psychosocial hazards, including work pressure, work-related bullying, harassment, and occupational violence than men²⁸. Work-related gendered violence can range in severity from comments and gestures through to sexual harassment, physical assault, verbal abuse, stalking, intimidation, threats, verbal abuse, ostracism, exclusion, discrimination and victimisation²⁹, sometimes overlapping with work-related bullying³⁰, and that it can lead to serious physical and psychological injuries, including anxiety, depression, acute stress disorder, PTSD, heart disease, physical injuries, immune deficiency and, in the worst cases, even suicide³¹.

Bullying and harassment are common tactics used to maintain the status quo of personal power or power distribution in workplaces³². Despite this, across Australia, apart from in Queensland, safety laws and regulations are silent on the control factors for harmful behaviour - some of the most essential controls being proactive steps to eliminate discrimination and increase workplace diversity, and diversity in leadership roles³³, which are essential to combatting work-related gendered violence³⁴.

²³ Office of the Australian Safety and Compensation Council. (2007). Are people with disability at risk at work? A review of the evidence. National Library of Australia, [Are people with disability at risk at work? \[electronic resource\] : a review of the evidence / Su Mon ... | Catalogue | National Library of Australia](#).

²⁴ Office of the Australian Safety and Compensation Council. (2007). Are people with disability at risk at work? A review of the evidence. National Library of Australia, [Are people with disability at risk at work? \[electronic resource\] : a review of the evidence / Su Mon ... | Catalogue | National Library of Australia](#).

²⁵ Australian Institute of Health and Welfare. (2020). Chronic pain in Australia, [Chronic pain in Australia, Data - Australian Institute of Health and Welfare](#).

²⁶ Dalton, A., Alexander, E., Wade, N. (2022). No More Hiding in Plain Sight: The Need for a More Inclusive Legal Profession. Australian Lawyers Alliance, [Dalton, Abbey; Alexander, Ella; Wade, Natalie --- "No More Hiding in Plain Sight: The Need for a More Inclusive Legal Profession" \[2022\] PrecedentAULA 37; \(2022\) 171 Precedent 4](#).

²⁷ Australian Bureau of Statistics. (2024). Statistics on discrimination, abuse and neglect, and social and community participation for people with disability, [Australian Bureau of Statistics Survey of Disability, Ageing and Carers 2022 - People with Disability Australia](#).

²⁸ Safe Work Australia. (2024). Psychological health and safety in the workplace, February 2024, Our Data, Your Stories, p 29, [data.safeworkaustralia.gov.au/sites/default/files/2024-02/Psychological-health-in-the-workplace_Report_February2024.pdf](#).

²⁹ WorkSafe Victoria. (2025). What is gendered violence - Guidance on gendered violence in the working environment. This includes examples, who is most at risk and how it affects people, <https://www.worksafe.vic.gov.au/what-gendered-violence>.

³⁰ WorkSafe Victoria. (2022). Work-related gendered violence including sexual harassment, [ISBN-Work-related-gendered-violence-including-sexual-harassment-2022-11.pdf](#).

³¹ WorkSafe Victoria. (2025). What is gendered violence - Guidance on gendered violence in the working environment. This includes examples, who is most at risk and how it affects people, <https://www.worksafe.vic.gov.au/what-gendered-violence>.

³² Potter, R. E., Dollard, M. F., Tuckey, M. R. (2016). Bullying & Harassment in Australian Workplaces: Results from the Australian Workplace Barometer Project 2014 / 2015. Safe Work Australia, [Bullying & Harassment in Australian Workplaces: Results from the Australian Workplace Barometer Project 2014/15](#).

³³ *Work Health and Safety (Sexual Harassment) Amendment Regulation 2024* (Qld).

³⁴ Safe Work Australia. (2023). Sexual and Gender-based Harassment Code of Practice, [Model Code of Practice - sexual and gender-based harassment](#).

Studies have found that work-related harmful behaviour, such as work-related bullying, which often overlaps with work-related gendered violence³⁵, is a significant predictor of the risk of disability retirement, particularly for women³⁶.

The important role that safety laws could play

The Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with disability (**Report**) considered that although people with disability held high hopes for the *Disability Discrimination Act 1992* (Cth) (**DD Act**), expecting it to bring about significant change, these expectations were not realised³⁷.

One of the main reasons for the limitations of disability discrimination laws is that protection from discrimination depends on a person's preparedness to make and pursue a complaint of disability discrimination against their employer or prospective employer (which they often do not do, given the significant power imbalances, and barriers to pursuing justice) thereby giving employers limited incentive to take proactive measures to prevent disability discrimination or increase equal employment opportunities³⁸.

Whilst the Report recommended amendments to strengthen the DD Act, including creation of a new, positive duty to take reasonable and proportionate measures to eliminate all forms of discrimination, including harassment and victimisation on the grounds of disability, there have been no amendments to the DD Act to reflect this so far.

In addition to this, recent reports, such as the Australian Human Rights Commission's 2022 Respect@Work Report also highlighted what we already know, that power imbalances and misuse of power related to gender inequality and other forms of discrimination and disadvantage, combined with specific workplace risk factors, continue to drive sexual harassment against people with intersecting identities, particularly women, people with disability, young people, Aboriginal and Torres Strait Islanders and those who identify as LGBTIQ+ who are significantly more likely than others to experience gendered violence such as sexual harassment in the workplace³⁹.

Work provides an essential opportunity for people to meaningfully contribute to their community, providing a sense of purpose and meaning, resulting in recognition of achievements and respect⁴⁰. Paid work also contributes to autonomy, offering financial security, so that people with disability can meet their needs and aspirations. Despite this, it is hard for paid work to be maintained if it is unsafe, and unequal.

Why are our safety laws the key to increasing employment opportunities

If key risk factors for work-related gendered violence include discrimination and a lack of diversity, both in the workplace and in leadership roles, then, by requiring employers to take proactive steps not only to eliminate discrimination, but also to recruit, retain and promote people with disability, our safety laws could be important in increasing the number of people with disability in open employment settings.

³⁵ WorkSafe Victoria. (2022). Work-related gendered violence including sexual harassment. [ISBN-Work-related-gendered-violence-including-sexual-harassment-2022-11.pdf](#).

³⁶ Nielsen, M., Emberland, J., Knardahl S. (2017). Workplace Bullying as a Predictor of Disability Retirement. National Library of Medicine, [Workplace Bullying as a Predictor of Disability Retirement: A Prospective Registry Study of Norwegian Employees - PMC](#).

³⁷ Commonwealth of Australia. (2023). Final Report - Royal Commission into Violence, Abuse, Neglect and Exploitation of People with disability - Executive Summary, Our Vision for an inclusive Australia and Recommendations, [First Progress Report](#).

³⁸ Commonwealth of Australia. (2023). Final Report - Royal Commission into Violence, Abuse, Neglect and Exploitation of People with disability - Executive Summary, Our Vision for an inclusive Australia and Recommendations, [First Progress Report](#).

³⁹ Australian Human Rights Commission. (2022). Time for respect: Fifth national survey on sexual harassment in Australian workplaces, [Fifth national workplace sexual harassment survey](#).

⁴⁰ Endeavour Foundation. (2018). Endeavour Foundation's submission in response to the Department of Social Services Discussion Paper, A Strong Future for Supported Employment, [Endeavour Redacted1.pdf](#).

Specifically regulating these safety controls for work-related gendered violence places the responsibility for preventing harm and eliminating discrimination in the hands of employers⁴¹. This approach shifts the focus from reactive response measures, claims and prosecutions, to proactive prevention, creating clear, strategic compliance and enforcement obligations, ensuring that those with decision-making power are held accountable⁴². Safety regulations specifying mandatory controls for safety risks and hazards have been found to halve the rate of injury if they are complied with⁴³.

The Boland Review further underscores the urgency of this issue, particularly for women who are especially vulnerable to psychosocial risks. Recommendation 2 calls for Safe Work Australia to develop criteria for the ongoing assessment of new and emerging hazards, ensuring that legislative updates and new Model Work Health and Safety Regulations are timely and effective⁴⁴.

The current gap in our workplace safety laws and regulations leaves women, especially those from high-risk groups such as women with a disability, not only vulnerable to violence at work⁴⁵ but also to trying to compete in an open employment market which does not recognise the important role that workforce diversity plays in reducing the risk of harmful behaviour for all workers.

Effective regulation must tackle intersecting factors and social structures that reinforce power imbalances and perpetuate inequalities. Violence and harassment are not only the results of power imbalances, but also tools used to reinforce them⁴⁶. Diverse workplaces are safer workplaces for all workers.

How does the risk of harm play out practically?

Almost one in five (19%) of people with a profound or severe limitation experience discrimination. Of the people with disability who experience discrimination in the labour force, the most common sources of discrimination are from their employer (40.2%) and work colleagues (37.7%)⁴⁷. In 2023 - 2024, the Australian Human Rights Commission (AHRC) received a total of 1,164 complaints under the DD Act⁴⁸.

Of the disability discrimination complaints to the AHRC, 13% related to physical disability, 21% related to mental health or psychosocial disability, and 15% related to neurological disability. Of these complaints, 29% were in relation to discrimination in employment. The outcomes of these complaints were that 335 were terminated after inquiry, with the majority being because there was no reasonable prospect of conciliation. A further 328 were discontinued, 125 were withdrawn, and 446 were conciliated⁴⁹.

In addition to discrimination risks, people with disability also face heightened risks of work-related sexual harassment. For example, whilst 1 in 3 people have been sexually harassed at work over the past 5 years (41% of women and 26% of men)⁵⁰, people with disability are more likely to experience work-related sexual harassment than people without disability (48% compared to 32%). Rates are higher for women with disability than for men with disability (54% compared to 38%)⁵¹.

⁴¹ Heap, L. S. (2023). Preventing gender-based violence and harassment at work: A study of the potential of new regulatory approaches. RMIT University.

⁴² Heap, L. S. (2023). Preventing gender-based violence and harassment at work: A study of the potential of new regulatory approaches. RMIT University.

⁴³ Gun, R.T. (1993). The role of regulations in the prevention of occupational injury. Science Direct. <https://www.sciencedirect.com/science/article/abs/pii/092575359390006Y>.

⁴⁴ Safe Work Australia. (2019). Review of the model WHS laws: Final report. <https://www.safeworkaustralia.gov.au/doc/review-model-whs-laws-final-report>.

⁴⁵ Parsons, S., and Haban-Beer, A. (2024). Safety Regulation for Primary Prevention of Gendered Violence. Australian Women Lawyers, p.5, <https://australianwomenlawyers.com.au/wp-content/uploads/2024/09/1-Australian-Women-Lawyers-Submission-31.7.24.pdf>.

⁴⁶ Heap, L. S. (2023). Preventing gender-based violence and harassment at work: A study of the potential of new regulatory approaches. RMIT University.

⁴⁷ Australian Bureau of Statistics. (2022). Disability, Ageing and Carers, Australia: Summary of Findings. [Disability, Ageing and Carers, Australia: Summary of Findings, 2022 | Australian Bureau of Statistics](#).

⁴⁸ Australian Human Rights Commission. (2024). Australian Human Rights Commission 2023 - 24 Complaint Statistics. [Annual Report 2023-24 | Australian Human Rights Commission](#).

⁴⁹ Australian Human Rights Commission. (2024). Australian Human Rights Commission 2023 - 24 Complaint Statistics. [Annual Report 2023-24 | Australian Human Rights Commission](#).

⁵⁰ Australian Human Rights Commission. (2022). Time for respect: Fifth national survey on sexual harassment in Australian workplaces. [Fifth national workplace sexual harassment survey](#).

⁵¹ Australian Human Rights Commission. (2022). Time for respect: Fifth national survey on sexual harassment in Australian workplaces. [Fifth national workplace sexual harassment survey](#).

As Australia has 14,547,800 workers, this would equate to a total of 4,364,340 workers that have experienced sexual harassment at work⁵².

Yet, in 2023-2024, the AHRC only received a total of 586 complaints under the *Sex Discrimination Act 1984* (Cth), of which 314 related to complaints of sexual harassment, 135 related to complaints of sex-based harassment, and 95 related to complaints of hostile workplace environments based on sex. Of these complaints, 209 were conciliated, 113 were discontinued, 79 were withdrawn and 207 were terminated or declined⁵³.

In effect, only 0.007% (less than 1%) of people experiencing sexual harassment may have made a claim to AHRC, and most of these claims never made it to Court because they were discontinued, withdrawn, declined, or terminated.

Even where the AHRC does have the capacity to initiate its own investigations, limited resourcing comparative to safety regulators is, again, restrictive. The Respect@Work reforms are not a panacea. Safety regulatory controls provide a better vehicle for enforcement.

To provide a picture on how safety reform could be more effective, in 2023, Comcare conducted 946 monitoring compliance inspections and investigations, 1239 compliance and enforcement activities, with 99% of inspections with corrective actions being subject to verification⁵⁴.

In Victoria alone, in the 2023-2024 reporting year, WorkSafe Victoria conducted 50,177 workplace visits, with 13,943 improvement notices issued⁵⁵.

This demonstrates the power of placing the obligation for compliance in the hands of employers.

Requiring employers to take proactive measures to improve workplace diversity

If the concept of ensuring safety was extended to include a workplace free from discrimination on the basis of disability (and other intersecting identities, such as gender, age, race, migration, LGBTIQ+ and ATSI status), employers could be required to not only seek to develop policies and procedures which promoted equal opportunities, but also to design their workplaces, equipment and systems of work in a manner that sought to eliminate discrimination.

Under s 21A of the DD Act, it is currently lawful for employers to discriminate against current or prospective employees on the ground of disability if, because of a disability, a person is unable to perform the inherent requirements of a job. An inherent requirement of any job is the requirement to be able to perform the job safely.

In addition, under State-based anti-discrimination law, such as s 86 of the *Equal Opportunity Act 2010* (Vic), an employer can lawfully discriminate against a person with a disability if the discrimination is reasonably necessary to protect their health and safety, or the health and safety of any person (including the public generally).

This is consistent with current safety obligations, for example, under s 20 of the *Occupational Health and Safety Act 2004* (Vic), for employers to eliminate risks to health and safety to far as is reasonably practicable.

⁵² Australian Bureau of Statistics. (2025). Labour Force, Australia. <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/feb-2025#:~:text=Back%20to%20top-Key%20statistics,employment%20increased%20to%2014%2C547%2C800>.

⁵³ Australian Human Rights Commission. (2024). Australian Human Rights Commission 2023 - 24 Complaint Statistics. [Annual Report 2023-24 | Australian Human Rights Commission](#).

⁵⁴ Australian Government - Comcare. (2023). Comcare Work Health and Safety Year in Review 2023. <https://www.comcare.gov.au/about/forms-pubs/docs/pubs/safety/WHs-Year-in-Review-2024.pdf>.

⁵⁵ WorkSafe Victoria. (2024). WorkSafe Annual Report 2023 - 2024. <https://www.parliament.vic.gov.au/4aa796/globalassets/tables-paper-documents/tables-paper-8713/worksafe-victoria-2023-24-annual-report.pdf>.

It is reasonable to then expect, that in seeking to eliminate the risk to health and safety of a person with a disability, an employer could simply refuse to employ a person with a disability, or seek to terminate their employment, or deny them a promotion, and it would be lawful for them to do so for safety reasons.

In effect, because current safety laws do not include a positive, proactive obligation for employers to seek to eliminate discrimination based on disability, they can lawfully discriminate against people with disability if doing so is necessary to eliminate risks to health and safety.

Despite this, safety⁵⁶ and anti-discrimination guidelines⁵⁷ currently recognise that strategies to reduce discrimination and inequality and to improve workplace diversity, and diversity in leadership roles play an essential role in reducing the risk of harmful behaviour.

Yet, except for Queensland⁵⁸, compliance is currently left to guidelines and codes of practice (termed “compliance codes” in Victoria) which do not impose minimum mandatory controls on employers. Instead, codes of practice are admissible “after-the-fact” in safety prosecutions, as evidence of what should have been known about hazards and risks and the means of controlling them.

In Victoria, failures to comply with compliance codes do not give rise to any civil or criminal liability. Instead, if an employer complies with a Victorian compliance code, they are taken to have complied with their safety duties under the *Occupational Health and Safety Act 2004* (Vic)⁵⁹.

Conversely, if an employer does not comply with safety regulations made under the *Occupational Health and Safety Act 2004* (Vic), this can give rise to penalties⁶⁰. This is important for proactive prevention.

Safety regulations specifying mandatory controls for safety risks and hazards have been found to halve the rate of injury if they are complied with⁶¹.

In 2024, Queensland safety regulations were amended to specifically require employers to consider workplace characteristics in the way that sexual and gender-based harassment are controlled, including any lack of diversity in the workplace generally or decision-making roles⁶².

Safety laws could, for example, recognise that taking reasonable steps to reduce discrimination and to recruit, retain and promote people with intersecting identities is an important part of reducing the risk of harmful behaviour in the workplace.

Focus on choice and control

We also recognise the importance of choice and control for persons with a disability, in line with article 3(a) of the Convention which recognises the inherent dignity and individual autonomy of individuals to make their own choices, as well as article 3(d), which promotes the acceptance of people with disability as part of human diversity⁶³.

It is essential that the barriers to sustainable open employment are removed, to support a full transition away from supported employment models like ADEs. The transition to open employment for all individuals with a disability must consider the needs and choice of each person.

⁵⁶ Safe Work Australia. (2022). Model code of practice: Managing psychosocial hazards at work. [model code of practice - managing psychosocial hazards at work 25082022 0.pdf](#).

⁵⁷ 15. Australian Human Rights Commission. (2023). Guidelines for complying with the positive duty. [Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#).

⁵⁸ *Work Health and Safety (Sexual Harassment) Amendment Regulation 2024* (Qld).

⁵⁹ *Occupational Health and Safety Act 2004* (Vic), ss 150 and 152.

⁶⁰ *Occupational Health and Safety Act 2004* (Vic), s 158.

⁶¹ Gun, R.T. (1993). The role of regulations in the prevention of occupational injury. Science Direct. <https://www.sciencedirect.com/science/article/abs/pii/092575359390006Y>.

⁶² *Work Health and Safety (Sexual Harassment) Amendment Regulation 2024* (Qld).

⁶³ United Nations, Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, (entered into force 16 August 2008) art 3(a), (d).

Employment retention

VWL supports the full transition away from subminimum wages for people with disability, recognising that phasing out subminimum wages will be helpful in fostering self-respect, self-esteem, and combating the unconscious bias associated with lower pay. This said, it is crucial that this transition is implemented with proper support structures in place.

We support the recommendation to end segregated employment by 2034 and consider that the impact of potential job losses in the supported employment sector could be mitigated via safety regulatory reforms which place a proactive obligation on all employers to seek to diversify their workforces to improve safety outcomes for high-risk groups, including women and people with disability by increasing recruitment, retention and promotion of these groups.

We also consider that the Australian Government and State and Territory Governments should adopt procurement policies that require large businesses and enterprises tendering for Government contracts to demonstrate targeted employment opportunities for people with disability, like the recent changes adopted via the *Workplace Gender Equality Amendment (Setting Gender Equality Targets) Act 2025* (Cth).

Further questions raised by the discussion paper

1. Is there any other existing work that is missing from the table at Appendix 3?

The table in Appendix 3 could benefit from more targeted initiatives for persons with intersecting identities, for example, First Nations people, women, people who identify as LGBTIQ+, migrants, refugees and asylum seekers, and persons from culturally and linguistically diverse communities who may experience greater risk of harm.

Employment programs that address multiple barriers (e.g., youth justice, regional employment, or mental health recovery) should be monitored for how they intersect with disability employment and contribute to inclusive outcomes.

Additionally, further details could be included about collaborations with local Government and social enterprises already demonstrating inclusive hiring models.

2. What is your ideal future state for the supported employment sector and employment of people with disability with high support needs?

The ideal future is that all people with disability can transition to open employment.

We would also like to see a commitment to continuous improvement and innovation in the open employment sectors, driven by ongoing research, evaluation, and feedback from individuals with disabilities and other stakeholders. This will ensure that progress does not stagnate.

3. What additional actions do you consider are necessary to increase employment of people with high support needs in open/inclusive settings?

As indicated above, we consider that our anti-discrimination laws have their limitations and have not delivered the reforms hoped of them. Safety laws and regulations could provide a more robust framework to reduce discrimination and recognise that workforce diversity is essential for safety. This will require those with the most power to drive reform.

Government procurement, giving priority to employers who can demonstrate compliance with targets to recruit, retain and promote people with disability could also play an important role in incentivising action (e.g., via policies or legislative reform).

We also recognise that a multi-faceted approach is necessary to increase employment of people with high support needs in open / inclusive settings to address potential barriers at multiple levels, including policy, workplace culture and support mechanisms.

Employers also require education and training around inclusive practices to ensure they are equipped to support individuals with high support needs to obtain and maintain employment in open settings.

Supported funding and subsidies to aid employers in making their organisations accessible for long-term career development for employees with a disability as well as recognition programs that highlight and reward organisations that demonstrate exemplary inclusive employment practises could also showcase best practice.

4. The Royal Commission recommended the development of a Plan or Roadmap to guide further reform in the supported employment sector. What would you like to see included in such a plan?

We would like to see the Plan include specific, measurable, achievable, relevant and time-bound (**SMART**) objectives. This plan should have a built-in review, be measured against performance indicators and the outcomes analysed to determine what worked and what didn't to inform the next iteration of reform.

The Plan should have mechanisms for ongoing consultations and feedback from stakeholders, and a mechanism by which this consultation can be incorporated into the Plan (either on an ongoing basis or recorded for the next scheduled review).

Specifically, we would like to see clear milestones for phasing out subminimum wages and transitioning to full award wages by 2034. The plan should address the concern for job loss for individuals with high support needs which was raised in the Fry Report and include representation from people with disability and disability representative organisations⁶⁴.

Specific strategies should be implemented for rural, remote, and regional communities to ensure equitable access to employment opportunities are available.

5. How could the sector best increase wages for people with disability while avoiding job losses?

a) Are there examples that currently exist that can be leveraged?

Additional pilot programs similar to the Tourism Local Navigators Pilot in alternative industries to understand how to aid employer understanding and address barriers encountered when recruiting, retaining and progressing employees and jobseekers with a disability.

Pilot programs could additionally be expanded to include self-employment pathways for individuals who may not find conventional workplaces suitable.

b) Are there new approaches that could be tested?

A pooled funding model combining NDIS supports, Disability Employment Services (DES) wage subsidies, and social impact investment to offset employer risk while transitioning to full wages.

Invest in career development and skills-based training for workers with disability to support sustainable, award-wage employment.

6. Do you see a role for workplaces which provide specialised employment opportunities for people with disability in the future? If so, what should these workplaces look like?

There may be a role for workplaces that provide specialised employment opportunities in the future; however, we support a transition to open employment.

Specialised employment settings should only serve as one option among many within a broader employment landscape and should not be relied upon as the default option for all individuals with disabilities seeking employment.

⁶⁴ Taylor Fry. (2023). Costing a Transition Away from subminimum wages, [Costing a transition away from subminimum wages](#).

Specialised employment settings should guarantee opportunities for skill development and career progression, providing full award wages.

7. How could the benefits of supported employment settings be reflected in open employment settings?

As indicated above, safety regulatory reform plays an essential role in improving outcomes for people with disability, recognising that discrimination is a safety risk, and diverse workplaces are safer workplaces.

Open employment settings should prioritise professionalism, safety, and inclusive cultural practices. This can be incorporated through ongoing job coaching, peer support, and task adaptation into mainstream employment settings where employers are supported to create job roles with built-in flexibility for varied productivity without compromising pay or conditions.

Peer mentoring programs led by employees with disability should be encouraged. This would foster understanding and promote an inclusive culture. Additional training and accreditation programs can be employed to build confidence and understanding.

Additional recommendations

1. Reforming safety laws and regulations to recognise that discrimination is a safety risk and that diverse workplaces are safer workplaces.
2. Training and education programs to support employers to develop inclusive practices to ensure organisations are equipped to support individuals with high support needs to obtain and maintain employment in open settings.
3. Explore intersectional initiatives that can address the unique needs of intersectional people with disability, including First Nations people, women, people who identify as LGBTIQ+, migrants, refugees and asylum seekers, and persons from culturally and linguistically diverse communities.
4. Investigate why past initiatives aimed to transition employees from supported employment to open employment have experienced low sustainable success.⁶⁵
5. Ensure the transition away from supported employment models acknowledges and meets the needs of individuals disability, mitigating negative impacts that could lead to job losses.
6. Prioritise employment options that are genuinely person-centred and flexible, emphasising choice and control.
7. Integrate supports between the NDIS, Disability Employment Services, and workplaces.
8. Introduce transitional funding for service providers to support fair pay implementation and a clear plan to phase out subminimum wages.
9. Prioritise a culturally safe and rights-based approach to employment, underpinned by co-design with people with disability stressing the importance of genuine choice, control and independence for individuals to choose the employment model that best suits their needs.

⁶⁵ Endeavour Foundation. (2018.) Endeavour Foundation's submission in response to the Department of Social Services Discussion Paper, A Strong Future for Supported Employment, [Endeavour Redacted1.pdf](#).