



**CHAMBER OF COMMERCE &  
INDUSTRY  
WESTERN AUSTRALIA**

**Submission to the House of Representatives Standing  
Committee on Education and Employment  
Inquiry into Mental Health and Workforce Participation  
October 2011**

## Introduction

1. The Chamber of Commerce and Industry of Western Australia (CCIWA) is the leading business association in Western Australia (WA).
2. It is one of the largest organisations of its kind in Australia, with a membership of over 6,500 organisations in all sectors, including:
  - manufacturing;
  - resources;
  - agriculture;
  - transport;
  - communications;
  - retailing;
  - hospitality;
  - building and construction;
  - community services; and
  - finance.
3. Most of CCIWA's members are private businesses, although CCIWA also has members in the not-for-profit sector and the government sector.
4. CCIWA members employ a significant number of employees:
  - (a) nearly 73 per cent, or over 4100 members employ up to 19 employees;
  - (b) 21 per cent or nearly 1200 members employ between 20 and 99 employees; and
  - (c) six per cent, or over 340 members employ over 100 employees.
5. CCIWA members are located in all geographical regions of WA.
6. CCIWA is also the direct employer of about 800 apprentices across WA as part of a Group Training Scheme operated by Apprenticeships Western Australia Pty Ltd, a wholly owned subsidiary of CCIWA.

## Background

7. On Thursday 24 February 2011, the Minister for Tertiary Education, Skills, Jobs and Workplace Relations, the Hon Chris Evans asked the House Standing Committee on Education and Employment to inquire into and report on mental health and workforce participation. The House Standing Committee sought input and feedback from stakeholders.
7. The launch of the Inquiry is underpinned by an objective to identify barriers to participation in education, training and employment; identify ways to enhance access and participation in education, training and employment; and identify strategies that allow stakeholders to respond to the needs of those with mental illness<sup>1</sup>.
8. CCI recognises that mental health is one of many challenging social issues that can have an adverse impact on an employee's personal and professional life.
9. Employers currently provide support and assistance to employees suffering from mental illness through general human resource management, supported by the employment framework under the *Fair Work Act 2009 (Cth)*, the *Disability Discrimination Act 1992 (Cth)* as well as relevant state Occupational Health and Safety legislation.
10. Many employers chose to provide support and assistance beyond that mandated by legislation such as employee assistance programs, counselling and peer support. These programs are designed to help employees cope with problems that adversely affect their lives.
11. Current regulations limit exposures by workers suffering from mental illness to discrimination or adverse action in the workplace. Protections and remedies are available to seek redress.
12. CCI submits that access to and participation in training, education and employment is a social issue that needs to be addressed via education, community awareness and greater support for employers employing people with mental illness.

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<sup>1</sup> Parliament of Australia, House of Representatives, Inquiry into Mental Health and Workforce Participation <http://www.aph.gov.au/house/committee/ee/mentalhealth/tor.htm>

## Current employer obligations

13. CCI submits that the current employment law framework provides adequate support and protection for employees suffering from mental illness.

14. **Personal/Carer's Leave**

15. The *National Employment Standards* (NES) set out under the *Fair Work Act 2009* (the Act), gives employees an entitlement to 10 days paid personal/carer's leave. Section 97 of the Act provides:

97. *Taking paid personal/carer's leave*

*An employee may take paid personal/carer's leave if the leave is taken:*

- (a) because the employee is not fit for work because of personal illness, or personal injury affecting the employee; or*
- (b) to provide care or support to a member of the employee's immediate family or a member of the employee's household, who requires care or support because of:*
  - (i) a personal illness, or personal injury, affecting the member; or*
  - (ii) an unexpected emergency affecting the member.<sup>2</sup>*

16. CCI submits that the current entitlement to personal/carers leave provides adequate support to those employees suffering from mental illness, allowing them to take time off from work during periods of ill health.

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<sup>2</sup> *Fair Work Act 2009* (Cth), s97.

17. **General Protections**

18. Part 3-1 of The Act provides protection to employees, as well as prospective employees in the following areas:

19. *To protect workplace rights;*

20. *To provide protection from workplace discrimination; and*

21. *To provide effective relief for persons who have been discriminated against, victimised or otherwise adversely affected as a result of contraventions of this part<sup>3</sup>.*

22. CCI submits that the current General Protections provisions are sufficient to protect an employee suffering from mental illness from discrimination.

**Individual Flexibility Arrangements**

23. The Act also provides the capacity for employees and employers to enter into individual flexibility arrangements (IFA's). Section 202 provides:

202. *Enterprise agreements to include flexibility term etc.*

*Flexibility term must be included in an enterprise agreement*

202(1). *An enterprise agreement must include a term (a flexibility term) that:*

(a) *enables an employee and his or her employer to agree to an arrangement (an individual flexibility arrangement) varying the effect of the agreement in relation to the employee and the employer, in order to meet the genuine needs of the employee and employer; and*

(b) *complies with section 203.*

*Effect of an individual flexibility arrangement*

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<sup>3</sup> Ibid s336

202(2). *If an employee and employer agree to an individual flexibility arrangement under a flexibility term in an enterprise agreement:*

- (a) *the agreement has effect in relation to the employee and the employer as if it were varied by the arrangement; and*
- (b) *the arrangement is taken to be a term of the agreement.*

202(3). *To avoid doubt, the individual flexibility arrangement:*

- (a) *does not change the effect the agreement has in relation to the employer and any other employee; and*
- (b) *does not have any effect other than as a term of the agreement.*

*Model flexibility term*

202(4). *If an enterprise agreement does not include a flexibility term, the model flexibility term is taken to be a term of the agreement.*

202(5). *The regulations must prescribe the model flexibility term for enterprise agreements.*<sup>4</sup>

The model flexibility term for agreements can be found in Schedule 2.2 of the *Fair Work Regulations 2009*.

- 24. CCI submits that IFA's are another means by which the current industrial relations legislation can assist employees who are suffering from mental illness.
- 25. The model flexibility clause provides that an employer and employee may make an agreement about when work is performed. This allows those experiencing mental illness to adjust their working hours by agreement with their employer to hours more suited to them.

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<sup>4</sup> Ibid, s202(1)-(5).

26. Notwithstanding the ability to make an IFA with the employer, employees suffering from mental ill health can enter into other flexibility arrangements such as working from home, reduced working hours or removing/substituting particularly stressful aspects of a job. Flexibility arrangements can also be utilised to allow employees suffering from mental illness to attend appointments, counselling and make any necessary arrangements.
27. The Australian Human Rights Commission (AHRC) recommendation of amending the NES to include the right to request flexible working arrangements to include people with disability is opposed by CCI<sup>5</sup>. CCI submits that employees suffering from mental illness already have the ability to request flexible working arrangements without the need for further regulation.

### **Other support mechanisms**

28. CCI submits that employer's have a vested interest in the health and well-being of their employees. Employer's can, and do, provide assistance to employees experiencing mental illness in many. Some strategies include:
- Employee assistance programs
  - Wellbeing programs
  - Mental health awareness programs
  - Mental health promotional activities.
  - Mental Health Peer Support Officers<sup>6</sup>
29. Examples of mental health awareness programs include SANE Australia's Mindful Employer Program<sup>7</sup>. The program provides support to employers via e-learning modules, consultancy and guides to help both employers and employees respond to mental illness in the workplace<sup>8</sup>.

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<sup>5</sup> Australian Human Rights Commission 'Inquiry into Mental Health and Workforce Participation' Submission to the House of Representatives Standing Committee on Education and Employment 9 May 2011

<sup>6</sup> Department of Education, Employment and Workplace Relations 'Employer Initiatives – Supporting the Recruitment and Retention of People with Mental Illness' September 2008

<sup>7</sup> SANE Australia [www.mindfulemployer.org/program](http://www.mindfulemployer.org/program)

<sup>8</sup> Ibid

30. As well as initiatives and programs designed to provide support for employees suffering from mental illness, there are Government bodies that provide services to those with a disability seeking employment such as Disability Employment Services. Disability Employment Services is able to provide ongoing support for those with disability in the workplace for as long as it is required<sup>9</sup>.
31. There are numerous training courses and publications available to employers that are designed to provide information on the statutory obligations to those suffering from mental illness. CCI provides training on managing sick leave in the workplace, general protections training and discrimination and harassment training.
32. CCI training courses and publications promote initiatives that employers can implement to provide support to those employees suffering from mental illness (see attachments)

## Recommendations

33. CCI submits that the most effective way to increase engagement of people suffering from mental illness is via increased resources allocated to employers and disability employment services. Research carried out by the Department of Education, Employment and Workplace Relations (DEEWR) identified a number of strategies that could increase engagement of those suffering from mental illness in the workplace<sup>10</sup>:
34. **Improved education and training for employers**, CCI supports improved education and training for employers, especially in the areas of how to support and manage an employee who is suffering from mental ill health. beyondblue recommends the implementation of workplace based training

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<sup>9</sup> Department of Education, Employment and Workplace Relations, Disability Employment Services <http://www.deewr.gov.au/Employment/Programs/DES/Pages/default.aspx>

<sup>10</sup> Department of Education, Employment and Workplace 'Use of the Workplace Modifications Scheme to assist the employment of people with mental illness' September 2008



programs to increase understanding of mental illness such as depression and anxiety and reduce stigma<sup>11</sup>.

35. **Changes to workplace environment**, An employer's obligation to provide reasonable adjustment in the workplace to accommodate those with a disability is already contained in the *Disability Discrimination Act 1992 (Cth)*. While acknowledging the obligation to provide reasonable adjustment is enshrined in legislation, CCI submits that modifying the workplace has the potential to substantially increase business costs.
36. **Training for job seekers with mental illness**, CCI submits that increased training for both job seekers and current workers suffering from mental illness can provide both groups of workers with increased skills that can help them attain and maintain a job.
37. **Access to wage subsidies**, Labour costs are a cause of concern for many businesses. For example, the CCI 'Cost of Doing Business' survey reported that wage costs were the most highly rated cost impact for business, with 88 per cent of respondents selecting wage costs as a key cost driver<sup>12</sup>. High labour costs, coupled with the unpredictable and episodic nature of mental illness presents a barrier for those suffering from mental illness from being engaged in the workforce. Wage subsidies provided to employers will help encourage the recruitment and retention of those suffering from mental illness by offsetting some of the costs incurred providing reasonable adjustment to the work environment, as well as alternative labour during periods of extended illness. The Australian Chamber of Commerce and Industry (ACCI) also recommends, among other strategies to engage people with a disability, that incentive payments increase to employers so as to make employing workers suffering from mental illness as cost neutral as possible<sup>13</sup>. CCI supports these initiatives (see attachments).

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<sup>11</sup> beyondblue 'Mental Health and Workforce' Submission, April 2011

<sup>12</sup> Chamber of Commerce and Industry WA, 'Cost of Doing Business', August 2011, page 12

<sup>13</sup> Australian Chamber of Commerce and Industry 'ACCI's Plan for the Employment of People with a Disability' ACCI Policy Review, Issue No 8, June 2008

38. **Greater training and resources for employment consultants,** Greater training and resources allocated to employment consultants can help lift the participation rates of those suffering from mental ill health. Research by DEEWR indicated that employment consultant's expertise and knowledge in mental health varies, with many expressing a desire to undertake specific training in the area.<sup>14</sup> Increased training and education of employment consultants may lead to an increase in the recruitment and retention of those suffering from mental ill health, as employment consultants will be able to better match candidates with employers. SANE Australia has recommended that better access to employment agencies and rehabilitation services will help people suffering from mental illness procure practical work skills<sup>15</sup>.

## Conclusion

54. CCI submits that while mental health has an impact at the workplace, the key to lifting engagement of those with mental illness is through increased employer support and education. Greater allocation of resources to job service providers is also needed to ensure that people suffering from mental illness are appropriately placed into employment.
55. The current provisions of the Act and the NES relating to personal/carer's leave, general protections and IFA's are broad enough to provide protection and support for those suffering from mental illness and as such, there is no need to make any amendments to the legislation.
56. Beyond legal obligations, there are many ways in which employers can, and do, assist employees suffering from mental illness that are simple and cost effective.
57. For the reasons outlined in this submission, CCI does not support the introduction of any further regulation to the current employment legal framework.

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<sup>14</sup> Department of Education, Employment and Workplace Relations '*Employer Initiatives – Supporting the Recruitment and Retention of People with Mental Illness*' September 2008

<sup>15</sup> SANE Australia '*Inquiry into mental health and workforce participation*' March 2011

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