SUBMISSION BY PETER VINEY TO THE PRODUCTIVITY COMMISSION'S INQUIRY INTO MENTAL HEALTH
4 April 2019

This submission:

1) identifies at A (A1 – A21) below a significant and highly reputable body of Australian and international research, statistics, reviews and related documents which show:

    a) good work is good for mental health, but not all work is good work (A11 and A22);
    b) the substantial economic and related employment disadvantage faced by people with a mental illness in Australia and throughout the OECD, including very high levels of unemployment and underemployment (see A1, A3, A4, A5, A6, A7, A8, A11 and A13);
    c) the very high human and community costs and the very high direct and indirect costs to the Australian economy arising from the high levels of unemployment and underemployment of people with mental illness in Australia. Direct costs being a loss of potential economic production and indirect costs include the health and welfare costs arising from failing to realise the potential of people with mental illness to realise the health and financial benefits of good work see (see A1, A3, A4, A5, A6, A7, A8, A11 and A13);
    d) Australian data confirms people with mental illness, along with older Australians, experience employment related discrimination at high levels (see A7);
    e) Australians with mental illness experience high levels of stigma and discrimination, including when seeking employment (recruitment) and remaining in employment (retention). (see A1, A2, A7, A8, A14, A17 and A18);
    f) the complexities of disclosure of health information in recruitment and work generally (A1, A2, A7, A8, A14, A17, A18, A19, A20 and A21);
    g) disclosure of a mental illness in recruitment and work more generally is a major issue for Australians and people throughout the OECD (and presumably throughout the world). In that context it is of fundamental significance that Australia has not followed the much stricter disclosure UK and USA laws designed to reduce adverse prejudice in recruitment and work. It is also of fundamental significance that Australian Commonwealth, State and local government recruitment practices seek disclosure which in many circumstances would be unlawful in the UK and the USA (see A18, A19, A20 and A21) ; and
    h) the importance of public sector leadership in modelling good work and recruitment practices (A11 and A12);

2) identifies characteristics of 'good work' including reasonable (ie non excessive) working hours and work environment (see A9, A11, A12, A14, A15, A16 and A17 in particular);

3) identifies the importance of part-time and self-employment opportunities as options for people living with mental illness (see A3 and A7 in particular); and

4) identifies key examples of government recruitment practises which are likely to be discriminatory in substance and/or involve unlawful discrimination. See **B (**Examples of discriminatory online job application forms used by public sector agencies and local government) below.

A. AUSTRALIAN AND INTERNATIONAL REVIEWS, STATISTICS AND RESEARCH

A1. Department of Education, Employment and Workplace Relations (DEEWR), Employer attitudes to employing people with mental illness, September 2008

(*https://docs.jobs.gov.au/documents/employer-attitudes-employing-people-mental-illness*):

Extracts:

> *While a minority of employers, notably HR managers of large organisations, were aware and understanding, employers tended to be overwhelmed by the range of perceived barriers in regard to employees with mental illness.*
>
> *The 'unknowns' of mental illness were highly off-putting to senior executives, but employers considered these barriers to be even more off-putting to direct managers and co-workers.*
>
> *Employers expressed specific concerns that employees with mental illness could be disruptive (at worst dangerous), or could cost the organisation in terms of time, resources and lost business. The cover-all term 'mental illness', and the words 'mental' and 'illness', all had highly negative connotations for employers, including associations that specifically reinforced misleading assumptions about the unsuitability of people with mental health conditions as employees.*
>
> *A widespread and deep misperception was that people with mental illness are incapable, unpredictable and unreliable.*
> *...*
>
> *Employers' responses indicate that a minority of employers (one fifth or fewer) would be willing to give people with schizophrenia, psychosis or addiction problems an employment opportunity. About twice as many would be willing to consider employing a person experiencing anxiety or depression.*
> *Employers were reluctant to consider employing people with mental health conditions even though almost all the respondents claimed that their industry was experiencing staff or skills shortages.*
>
> *This research uncovered a wide range of perceived barriers to employing people with mental illness, in regard to both recruitment and retention, including expected negative impacts on the organisation and expected resistance from managers and co-workers. Many of the barriers identified by employers were based on misperceptions that could be addressed through education.*
> *...*
>
> *On the negative side, prejudices about mental health conditions can mean that having mental illness in itself is considered a liability. The research uncovered that in many cases a person is not considered to be the best candidate, because their mental illness factors worked against them.*
>
> *If there were three applicants, one with mental illness, you'd probably choose one of the others. (CEO, construction, medium, regional)*

A2. Rethink Mental Illness. *People with mental illness face a 'locked door' to employment..* 27 July 2017 (*https://rethink.org/news-views/2017/7/employment-report*).

Extract:

> *Today, (27 July), Rethink Mental Illness has released new findings which reveal that people with mental illness are facing a 'locked door' of prejudice and misunderstanding from employers, which is keeping them out of the workplace, even when they feel well enough and ready to return to work.*
>
> *The Government has committed to reducing the number of people with mental illness who are unemployed. But Rethink Mental Illness' new figures show the barriers facing them in the workplace even when they are well enough to work.*
>
> - ***68% of people who can hire staff would worry someone with severe mental illness wouldn't fit in with the team***
> - ***83% of would worry that someone with severe mental illness wouldn't be able to cope with the demands of the job***
> - ***74% would worry that someone with severe mental illness would need lots of time off***
>
> *Only 43% of all people with mental health problems are in employment, compared to 74% of the general population. For some conditions the employment rate is even lower - 8% of people with schizophrenia are currently in work. This is despite the two thirds of people with mental illness who were unemployed saying they wanted to work or are looking for work.*
>
> *The new survey of 500 people with hiring responsibilities shows over half (54%) of bosses wouldn't know how to support someone with a severe mental health condition, like schizophrenia, at work.*
>
> *However 56% would be more likely to employ someone if they felt better equipped to support them, for example through training.*
>
> *Brian Dow, Director of External Affairs at Rethink Mental Illness said,*
>
> > *"These figures show us that the vast majority of managers still have cold feet when it actually comes to employing people with mental illness.*
> >
> > *"No wonder many people with mental illness feel like they're pushing against a locked door when it comes to employment. Prejudice and confusion are keeping people who are well enough and want to work out of employment.*
> >
> > *"Employing people with mental illness is not as fraught or complex as people seem to think. Often the adjustments people need are easy and don't cost anything, like flexible working, quiet areas and well being plans."*

A3. ABS 4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings, 2015.

Extracts:

Employment
Disability can impact on a person's opportunities to participate in the labour force. In 2015, one in four (25.0%) people aged 15 to 64 years with psychosocial disability (living in households) were employed, compared with just over half (57.3%) of people of the same age with a disability other than psychosocial, and 78.8% of people without disability.

The level of unemployment for people with psychosocial disability was also significantly higher (7.5%) than for people with a disability other than psychosocial (4.5%) and for people without disability (4.4%).

The likelihood of people being employed full-time also varied depending on the type of disability people had. Of the people with a psychosocial disability, 8.1% had a full-time job, compared with 34.4% of people with other types of disabilities and 53.8% of people with no disability.

The differences are not as great when looking at part-time employment, with 16.5% of people with a psychosocial disability having a part-time job, compared with 22.9% of people with other disabilities and 25.1% of those with no disability.

A4. ABS 4433.0.55.006 - Disability and Labour Force Participation, 2012

Extracts:

OCCUPATION AND INDUSTRY
Almost one-fifth (19.9%) of working-age people with disability who were employed in 2012 worked as professionals, followed by labourers (15.2%) and clerical and administrative workers (14.1%). The distribution of people across different occupations is similar for people with and without disability with the exception of Labourers, who had a significantly higher proportion of people with disability (15.2%) compared with those without (9.0%). However, there was some variation of occupations according to the type of disability. For example, almost one-half (44.3%) of employed people with intellectual disability were working as labourers, such as packers and product assemblers or cleaners and laundry workers, in 2012, while one-fifth (20.4%) of employed people with a physical disability were in professional occupations, such as school teachers or midwifery and nursing professionals.

Both people with and without disability had similar distributions across industry groups. Some industries had a higher than average (9.3%) disability prevalence rate, particularly Agriculture, forestry and fishing (15.0%), Administrative and Support Services (12.7%) and Health care and social assistance (12.3%).

People with disability who were working were more likely to run their own business (11.6%), and/or work from home (33.7%), than employed people without disability (8.8% and 28.4% respectively). Such situations may enhance the flexibility of working arrangements, making it easier for people with disability to participate in the labour force.

ASSISTANCE NEEDED

Employers and disability employment service providers may need to make special arrangements to ensure that employees with disability have a suitable environment in which to work. In 2012, 10.3% of employed people with disability required some type of special work arrangement such as being provided with special equipment or being allocated different duties.

The type of disability influenced whether assistance was needed in the workplace and the kind of assistance required. Employed people with an intellectual or psychological disability were likely to require special working arrangements, with nearly one-quarter (24.7% and 20.3% respectively) receiving assistance, such as a support person to assist or train them on the job.

UNEMPLOYMENT
As with the labour force participation rate, the unemployment rate varied among disability groups and the severity of a person's disability. People with sensory or speech disability had the lowest unemployment rate (7.7%). Conversely, people living with psychological or intellectual disability had the highest unemployment rates (20.4% and 20.0% respectively).

The amount of time unemployed people with disability had been looking for work was longer than people without disability.
...

PEOPLE NOT IN THE LABOUR FORCE
In 2012, of people aged 15-64 years with disability, 47.3% were not in the labour force, that is they were neither employed nor actively looking for work. This is significantly higher than people without disability (17.5%).
...

People with a psychological disability were less likely to be in the labour force (29.1%) than people with sensory or speech impairment (56.2%).

HOURS WORKED
...
Among the five disability groups, psychological and intellectual disability have greater association with fewer working hours. Almost one-third (32.9%) of people with psychological disability who worked, usually worked no more than 15 hours, followed by people with intellectual disability (30.7%).

A5. OECD (2015), *Mental Health and Work: Australia*, OECD Publishing, Paris.

Extracts:

... despite the strong performance of the Australian labour market (relatively little affected by the global economic and financial downturn compared to other OECD countries) people with mental health problems experience great difficulty in finding jobs and performing well in the workplace.

The employment gap between people [in Australia] who have mental health problems and those who do not is about 20 percentage points – a gap wider than in any of the other eight OECD countries that have been reviewed. People affected by mental ill- health are also three times more likely to be unemployed than those who

have no mental health problems and are overrepresented in all benefit schemes. And even when they do have jobs, they often struggle with more and longer periods of sickness absence and underperformance at work. (pp 15-16).

A6. OECD (2014), *Mental Health and Work: United Kingdom*, OECD Publishing, Paris

Extracts:

Mental ill-health has become a major driver for labour market exclusion in the United Kingdom. Each year, mental ill-health costs the economy an estimated GBP70 billion, equivalent to 4.5% of GDP, through lost productivity, social benefits and health care. Mental disorders have become the most common reason for a disability benefit claim, accounting for almost 38% of all new claims. But mental illness is also widespread among workers and the unemployed and those receiving other social benefits, in particular income support and housing benefit. At the same time, people with a mental illness face a considerable social disadvantage, reflected in a large employment gap and an unemployment rate which is double the overall rate for those with a moderate mental disorder and four times the overall rate for those with a severe mental disorder. Taken together these labour market disadvantages culminate in very high income poverty risks for people suffering from mental ill-health, higher than in other OECD countries. (p 13)

A7. Australian Human Rights Commission (AHRC), *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, 2016.

Extracts:

Commissioner's Foreword
International comparisons by the OECD show Australia lagging behind similar countries in terms of employment of older people and people with disability. The disturbing reality is that labour force participation for people with disability in Australia has changed little over the past twenty years. As well as having a negative impact on individuals, such low participation remains a persistent public policy problem. The Inquiry has drawn on multiple sources of evidence and found that employment discrimination against older people and people with disability is systemic and acts as a significant barrier to workforce participation. It requires response at multiple levels.
...

The Inquiry also learned there is a pervasive lack of understanding among employers of the range, type and impact of different disabilities, and a perception that workplace adjustments are costly and difficult.
...

4.1 Prevalence of employment discrimination against people with disability
Disability discrimination in employment occurs in Australia and is an ongoing barrier to workforce participation. Quantitative data presented here includes information from the Australian Bureau of Statistics (ABS), state and territory anti-discrimination and equal opportunity agencies, the Fair Work Ombudsman and other data provided

to the Inquiry through submissions. The information consistently confirms that people with disability experience discrimination at high levels.
...

5.5 Self-employment
The issue of self-employment for people with disability was raised on a number of occasions with the Inquiry.

The Inquiry heard that the benefits of self-employment for a person with disability include a sense of independence and autonomy, financial independence, flexibility and the chance to use skills, qualifications and experience. The Inquiry argues that a pathway into self-employment should be simple and accessible.

A8. Waghorn, G. & Lloyd, C. (2005). The employment of people with mental illness. Australian e-Journal for the Advancement of Mental Health, 4(2), Supplement. (https://research-repository.griffith.edu.au/bitstream/handle/10072/55035/72284_1.pdf)

Extracts:

Abstract
People with a mental illness are among the most socially and economically marginalised members of the community. They experience high levels of unemployment and non- participation in the labour force. Unemployment has a number of negative effects including the loss of purpose, structure, roles and status and a sense of identity which employment brings. Employment enables social inclusion in the wider community and is an important way that people with a mental illness can meaningfully participate in the wider community.
...

2. The impact of mental illness on employment
2.1 Reduced labour force participation and unemployment
Recent Australian population surveys provide evidence of career disadvantage among people with mental illness. For example, from the Australian Bureau of Statistics (ABS) Survey of Disability, Ageing and Carers, 1998 [3,28-31] found that 75% of people with psychotic disorders and 47.1% of people with anxiety disorders did not participate in the labour force. These levels represent 3.8 times, and 2.4 times respectively, the 19.9% non-participation by healthy Australians aged 15-64 years.

2.2 The impact of anxiety disorders on employment
Anxiety and depression are prevalent in the community and together are found in approximately 5-10% of the population [32-36] at any time. Although anxiety disorders are among the most treatable mental disorders, in a recent national survey [26] 40.9% of people with anxiety disorders reported not receiving mental health treatment. Of those that receive treatment, not all received optimal treatment [37,38]. Anxiety disorders are associated with increased non-participation in the labour force, deflated employment trajectories (see Figure 1) and impaired work performance compared to healthy people [30,31,39]. People with anxiety disorders are also unlikely to receive appropriately intense employment assistance, because in the ABS survey mentioned, only 2.5% of persons with anxiety disorders reported receiving job placement assistance [31].

People with more severe forms of anxiety disorders such as obsessive compulsive disorder (OCD), panic disorder (PD), generalised anxiety disorder (GAD), and posttraumatic stress disorder (PTSD), may be particularly disadvantaged. These anxiety disorders commonly produce severe to profound employment restrictions. Treatment of these disorders can require specialised therapies (e.g. cognitive behaviour therapy, graduated exposure therapies, narrative therapy, motivational interviewing) in addition to usual psychiatric treatment [38]. However, the limited public funding and partial medical insurance coverage for specialised psychological treatments in Australia, means that these treatments may be too expensive for most people.

2.3 The impact of depression on employment

Depression, like anxiety, often remains untreated, and not all people treated for depression receive optimal treatment. In the SDAC 1998 [29], 56% of people with clinical depression received any form of professional treatment. Depression is known to cause absenteeism from work [39-42] and impair work performance when at work [40, 43-45]. People with depression also have reduced labour force participation, reduced working hours and may earn less than healthy workers [46]. In U.S.A. studies, more sick days were found lost from depression than any other health condition [41-42]. Furthermore, depression is associated with five times more work days impaired through presenteeism (present at work but not functioning as efficiently) than lost to absenteeism [39,44].

People with depression may have impaired motivation, impaired decision making, and a reduced capacity to initiate a particular course of action. Depression can be misunderstood by employers and vocational service providers as poor motivation for work generally, or when employed, as low motivation for working productively. Like those with psychotic disorders or severe anxiety disorders, people with dysthymia and major depression may need specialised treatment to reduce employment restrictions, and may need a relatively intensive and continuous form of vocational rehabilitation to help restore and maintain career pathways.
...

2.6 Employment restrictions among people with mental illness

At a population level [30] the most commonly reported employment restrictions among people with anxiety disorders are: restricted in the type of job (24.0%); need for a support person (23.3%); difficulty changing jobs (18.6%); and restricted in the number of hours (15.4%). A substantial proportion of people with anxiety disorders (23.3%), and 61.3% of people with psychotic disorders [3], report a need for a support person if participating in employment (see Table 3). The high proportions of people with anxiety disorders reporting employment restrictions (from Table 1: severe to profound 26.7%; mild to moderate, 36.9%; no employment restrictions 36.5%) indicate a need for services which can both reduce employment restrictions and help employers to accommodate these restrictions in the workplace.
...

4.2 Reducing workplace and community stigma

People with psychiatric disabilities experience considerable stigma and discrimination [76,85-86] from both employers and the general community. ...

Workplace adjustments

Adjustments for mental health are generally simple, practical and cost-effective. This is not an exhaustive list – employers should explore with the individual their specific needs and be as creative as possible when thinking about how to address these issues.

A9. Mental Health Commission (Western Australia), *Things you can do at work for your mental health*, 2017. (https://www.thinkmentalhealthwa.com.au/about-mental-health-wellbeing/ways-to-look-after- your-mental-health/workplace/)
Extracts:

Things you can do at work for your mental health
Many of us spend a big part of our day at work. This means that the workplace and our work can impact our mental health both positively and negatively.

Workplaces that promote mental health and wellbeing are places where everyone feels supported and able to do their best work, regardless of whether or not they have a mental health issue.

Work can positively impact our mental health and wellbeing by feeling connected, involved and gaining a sense of purpose. However, there are times when the workplace may adversely affect our mental health and ability to do our job.

Workplace Stress
Work-related stress or "job stress" occurs when someone feels that the demands of their role are greater than their abilities, skills or coping strategies. A certain amount of stress is a good thing, but when it becomes excessive and prolonged this can be a risk factor for developing mental health issues.
There are little things we can do to help our mental health and wellbeing at work as well as trying to find a positive work-life balance.

Managing your work role:
• limit extra working hours

A10. Heads up [Internet]. Australia: beyondblue and Mentally Healthy Workplace Alliance; n.d. At work [cited 2017 Oct] Available from:
https://www.headsup.org.au/your-mental-health/taking-care-of-yourself-and-staying-well/at-work

Extracts:

Strategies for managing your work role Limit working extra hours
...
Deadlines or intense periods of activity in our working environment can sometimes mean we can't stick to standard hours of work. It's when long hours becomes the norm rather than the exception that it can negatively impact our health.

Most employers and managers recognise the need for people to have reasonable levels of work intensity, to work a reasonable length of time (7.5 to 8 hours), and to only work longer and more intensely on certain occasions..

A11. Paul Farmer and Dennis Stevenson 'Thriving at work: The Stevenson Farmer review of mental health and employers', October 2017

(*https://www.gov.uk/government/publications/thriving-at-work-a-review-of-mental-health-and-employers*) **[NOTE: this report was commissioned by the UK Prime Minister and has been substantially accepted by the UK Government]**

Extracts:

The prevalence of common mental health problems appears to have increased slightly over the last two decades, with the biggest rises in anxiety and depression, particularly among younger women and older men. Many individuals do not get diagnosed and of those who have a diagnosed mental health condition, some choose not to disclose it because of the perceived stigma or fear of potential consequences. (p 15)

Many employers know they are missing opportunities to intervene early when employees are struggling, as the stigma of disclosing a mental health condition is still a significant barrier to employees seeking support. (p 29)

Only 11% of employees discussed a recent mental health problem with their line manager, and half of employees say they would not discuss mental health with their line manager. (p 29)

***The role of the public sector** (p 7)*
The [UK] public sector, which employs 5.4 million people, has a huge opportunity to lead the way. We believe the public sector is ideally placed to implement our recommendations, innovate and build the evidence base. (p 7)
…

***The role of Government** (p 7)*
The report sets out a series of areas where Government can use its influence and its purchasing and legislative power to encourage faster change:

- *Government can do more to make it simple for employers, through support and online information platform and joining up existing provision aimed at employees and employers.*
- *Government should consider exploring further the role of incentives and public procurement to drive implementation of the mental health core standards.*
- *We also suggest Government sets clearer expectations of employers through legislation, and makes Statutory Sick Pay more flexible to better support people with mental health problems to make voluntary phased returns to work where appropriate.*
- *There is a significant role for the NHS to support workplace mental health by ensuring support is accessible, high quality and fits around work.*
- *Government does more to prevent and end employer practices which contravene employment and equalities legislation.*

…

...we should make clear that our review has been underpinned by the well established academic evidence-base that good work is good for mental health, and we have considered the findings of the recent Taylor Review of Modern Working Practices in reaching our conclusions.

Good work consists of autonomy, fair pay, work life balance and opportunities for progression, and the absence of bullying and harassment. Good work can help prevent new mental health problems and support those with existing conditions to get on in work and thrive.

Additional Tables

Table A1 – Time Series of the employment rate of those with a long term health mental condition and the number in work

People with a long term mental health condition			
Year	Employment rate	Employment	Total
2017	44%	1.5m	3.4m
2016	40%	1.3m	3.3m
2015	37%	1.2m	3.1m
2014	36%	1.0m	2.9m
2013	32%	0.9m	2.6m
2012	29%	0.7m	2.4m
2011	26%	0.6m	2.3m
2010	27%	0.6m	2.2m
2009	25%	0.5m	1.8m
2008	24%	0.4m	1.8m
2007	23%	0.4m	1.7m

Note: Percentages rounded to the nearest 1 percent. Numbers rounded to the nearest 100,000

Source: Labour Force Survey Q2 (April-June)

A12. *Good Work: Taylor Review of Modern Working Practices* (July 2017)
(*https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf*)

Extract:

> *The prevalence of involuntary long hours in a job is also a factor. Working longer hours increases the risk of occupational illness (such as stress and mental health problems). A culture has also grown up of unpaid overtime, with a recent national study suggesting that roughly half of workers were not paid for overtime. (p 14)*

A13. House of Commons (2018). *People with disabilities in Employment*, Briefing Paper Number 7540. London: The Stationary Office.
(http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7540)

Extract:

There were 3.5 million people of working age (16-64) with disabilities in employment in April-June 2017, an employment rate of 49.2%. The employment rate for people without disabilities was 80.6% (p 4).

Employment (%) of people with disabilities by health condition (Age 16-64, April-June 2016) Source: UK Department of Work and Pensions and Department of Health, Work, health and disability green paper: data pack (p 9):

- *Mental illness, phobia, panics or other nervous disorders - 25.3%*
- *Depression, bad nerves or anxiety 42.0%*

A14. Kelk, NJ, Luscombe, GM, Medlow, SD, Hickie, IB (2009) Courting the blues: Attitudes towards depression in Australian law students and legal practitioners, BMRI Monograph 2009-1, Sydney: Brain & Mind Research Institute.

Extract:

- *56.0% of solicitors and 47.3% of barristers thought it likely their employer would discriminate against a person with depression (see Table 37);*
- *63.6% of solicitors and 43.8% of barristers identified moderate to very high levels of psychological distress with 31.0% of solicitors and 16.7% of barristers reporting high to very high levels of psychological distress (see Table 9);*
- *"[t]he study employed research instruments which have been widely used and validated both in Australia and overseas. The study revealed high levels of psychological distress and risk of depression in the law students and practicing lawyers who participated, when compared with Australian community norms and other tertiary student groups"; and*
- *"[p]articipants also revealed a number of attitudes and behaviours which imply a general reluctance to seek help for mental health issues. These include negative attitudes and stigmatizing views towards mental illness; the view that people with mental illness are likely to be discriminated against by people such as their employers and others ...".*

A15. P. Afonso, M. Fonseca and J. F. Pires, Impact of working hours on sleep and mental health, *Occupational Medicine*, 67, 5, (377), (2017).

ABSTRACT
The number of hours people are required to work has a pervasive influence on both physical and mental health. Excessive working hours can also negatively affect sleep quality. The impact at work of mental health problems can have serious consequences for individuals' as well as for organizations' productivity.

A16. OECD (2010), *Sickness, Disability and Work: Breaking the Barriers*. OECD Publishing, Paris, *https://doi.org/10.1787/9789264088856-en*.

A17. OECD (2007) *Sickness, Disability and Work (Vol. 2): Australia, Luxembourg, Spain and the United Kingdom*, OECD Publishing, Paris
http://www.oecd.org/els/emp/sicknessdisabilityandworkvol2australialuxembourgspainandtheunitedkingdom.htm

A18. House of Representatives Standing Committee on Education and Employment: *Work Wanted: Mental health and workforce participation*. June 2012.

(*https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ee/mentalhealth/report.htm*)

Extracts:

The stigma of mental ill health

1.64 The reforms in mental health and workforce participation policies and programs occur against a background that is slower to change, that is, the stigma associated with mental ill health.

1.65 Stigmatisation of mental ill health is based on ill-informed assumptions such as people with mental ill health have limited capacity or will to participate or they will be disruptive and dangerous.

1.66 Stigma can come from employers, colleagues, clinicians, family, friends and the wider community and, perhaps most debilitating of all, can manifest as self-stigma. One of the main adverse consequences of stigmatising people with mental ill health is an increased reluctance for them to disclose their mental health issues and associated needs.

Stigma in the workplace

'When you have a mental illness, employers think of you as a liability. Some of them think that you're likely to be an axe murderer.'

1.67 Negative and misinformed attitudes toward people with mental ill health create barriers to work by either preventing entry, or by making a person's time in the workplace more difficult than it would otherwise be.

1.68 Employers may be hesitant to engage an employee with mental ill health because of a sporadic work history or concern at potential management issues. Witnesses reported that disclosing mental ill health lowered the likelihood of selection for interview or appointment to the position. Stigma can also present during interviews. …

Disclosure

*1.86. Every interaction is considered a high risk event. Therefore, disclosure is a complex, personal decision, and witnesses insisted the decision to disclose must be made by the individual. Cases of nondisclosure remain 'very high' due to associated and perceived stigma among associates and colleagues. Self-stigma is another factor***.**

A19. Brohan et al.: Systematic review of beliefs, behaviours and influencing factors associated with disclosure of a mental health problem in the workplace. BMC Psychiatry 2012 12:11.

Synthesis of evidence
Question 3. Are employers less likely to hire an applicant who discloses a mental health problem

In eight of the ten included papers, applicants with mental health problems were rated as less employable than either a candidate with a physical disability or a candidate with no disability in the following circumstances:

1. An applicant with a mental health problem (depression) was rated as significantly lower in suitability than an applicant with no known disability
2. Applicants with depression were significantly less likely to be appointed compared with an applicant with a history of diabetes
3. Applicants with back injury were rated more favourably in terms of expected job performance than those with a mental illness
4. An applicant without a disability (single mother) received a significantly higher employability rating than the applicants with disabilities (acquired brain injury or schizophrenia). There was no significant difference between the two disability conditions in terms of employability
5. A wheelchair using applicant was 7 times more likely to be hired than an applicant with a mental health problem (on medication for anxiety and depression) [76]. Previously depressed candidates were rated significantly less favourably in terms of recommendation for hiring than those with no disability
6. There was a significant difference in positive responses (i.e. invitation to interview) for those who did not disclose a disability compared with those who disclosed depression
7. There was a significant difference in employers attitudes to employing people with mental disabilities compared with physical disabilities

A20. *Equality Act 2010* (UK) and Explanatory Notes

***Equality Act 2010* (UK)**
60 Enquiries about disability and health
(1) A person (A) to whom an application for work is made must not ask about the health of the applicant (B)—
(a) before offering work to B, or
(b) where A is not in a position to offer work to B, before including B in a pool of applicants from whom A intends (when in a position to do so) to select a person to whom to offer work.
…

(9) "Work" means employment, contract work, a position as a partner, a position as a member of an LLP, a pupillage or tenancy, being taken as a devil, membership of a stable, an appointment to a personal or public office, or the provision of an employment service; and the references in subsection (1) to offering a person work are, in relation to contract work, to be read as references to allowing a person to do the work.
(10) A reference to offering work is a reference to making a conditional or unconditional offer of work (and, in relation to contract work, is a reference to allowing a person to do the work subject to fulfilment of one or more conditions).

***Equality Act 2010* Explanatory Notes: Commentary on Section 60**
…
197. Except in the situations specified in this section, an employer must not ask about a job applicant's health until that person has been either offered a job (on a conditional or unconditional basis) or been included in a pool of successful candidates to be offered a job when a suitable position arises.
…

202. This is a new provision. The Disability Discrimination Act 1995 did not prevent an employer from making health- or disability- related enquiries of applicants for a

job, although it did make it unlawful to use the result of such enquiries to discriminate against a candidate because of his or her disability. This provision will limit the making of enquiries and therefore help to tackle the disincentive effect that an employer making such enquiries can have on some disabled people making applications for work.

A21: Americans with Disabilities Act (ADA) and The Illinois ADA Project

Americans with Disabilities Act Sec. 12112. Discrimination – see https://www.ada.gov/pubs/adastatute08.htm#12112d

The Illinois ADA Project, Frequently Asked Questions (FAQ) About Disability Disclosure Under the Americans With Disabilities Act (ADA)
The Illinois ADA Project provides information and training about the ADA to individuals, businesses, government agencies, and other organizations throughout Illinois and is funded by the Great Lakes ADA Center at the University of Illinois at Chicago. For more information about the ADA or the Illinois ADA Project, please visit, www.ADA-IL.org, or call (877) ADA-3601 (Voice) or (800) 610-2779 (TTY).

Introduction
Issues surrounding the disclosure of disability-related and medical information under the ADA are difficult for employers, employees, and job seekers. The Equal Employment Opportunity Commission (EEOC) is the government agency that issues employment regulations under the ADA. EEOC Guidance and ADA case law form the basis for this FAQ. A Resource List is provided at the end for your convenience. However, this resource material is intended as a guide and is not legal advice. For specific legal advice, an attorney should be consulted.

ADA Disability Disclosure Frequently Asked Questions (FAQ)
1. Question: When may an employer request disability related information?

Answer: The EEOC has divided the employment process into three stages. The amount of disability-related information that an employer may request depends on which stage of the employment process is involved. The three employment stages are:

A. Pre-Employment: An employer may not request any disability-related information or give any medical examinations prior to making a job offer to the applicant. Any question that may elicit disability-related information is prohibited. Therefore, information about the following may not be requested during this stage: medical conditions, history, or treatment; prescription medications; past sick leave; Worker's Compensation history; whether an individual receives Social Security benefits, or whether a reasonable accommodation is needed. In addition, an employer may not administer medical tests to job applicants, including personality tests.

B. After a Conditional Job Offer is Made: A "conditional job offer" is a job offer that is conditioned on the applicant successfully meeting the reasonable and legitimate physical and medical requirements of the job. Once an employer makes a job offer to a job applicant, the employer may require medical examinations before hiring and may ask wide-ranging questions that involve disability-related information. However, the information must be requested of

every applicant for that position. If an employer uses this information to disqualify a job candidate, the reasons behind the disqualification must not be discriminatory and must be "job-related" and "consistent with business necessity."

C. *Once An Employee is on the Job: Once an individual is on the job, the employer may only seek disability-related information if there is a "reasonable basis" for the employer to think that the employee: is unqualified to do the job; needs a reasonable accommodation; or poses a direct threat to the health or safety of the employee or others.*

2. Question: Must an individual with a disability disclose a disability when applying for a job or on the job?

Answer: An individual does not have to disclose a disability to an employer unless they have an immediate need for a "reasonable accommodation" under the ADA during the interview, application process, or while on the job. However, as noted above, after receiving a "conditional job offer" and in other limited situations, individuals may lawfully be asked disability-related questions. An applicant or employee should comply with an employer's lawful information requests promptly and accurately.

3. Question: Should an individual with a disability disclose the disability when applying for a job, after accepting the job, while on the job, or never?

Answer: That is a more difficult question and depends on the situation. Generally, the only situation where an individual is legally required to disclose a disability is when they are seeking a reasonable accommodation under the ADA. In almost all other situations, the decision to disclose is voluntary and a disability does not have to be disclosed unless a reasonable accommodation is needed. Due to the fact that there are still many prejudices and stereotypes connected with disabilities, many people choose not to disclose their disabilities unless necessary. It is important to remember that people with apparent disabilities are in a different situation than people with hidden disabilities.

However, there may be situations when disclosing a disability may be beneficial such as when the prospective employer will see the disability as a positive factor for hiring. For this reason, an individual should research the company before disclosing. Employers who may look positively on a disability include organizations that serve persons with disabilities, companies that receive federal grants, or companies that have a policy for hiring persons with disabilities. When in doubt about an employer's reaction to the disclosure, it is usually best not to disclose unless a reasonable accommodation is needed.

4. Question: If an employer notices that a job applicant or employee has a disability, what is the employer allowed to say regarding the disability, if anything?

Answer: When an employer notices that an individual has a disability and reasonably believes that the individual will need reasonable accommodations to apply for or to safely perform the essential functions of a job, the employer may ask certain limited questions. Specifically, the employer may ask whether the applicant would need reasonable accommodations, and if so, what type of accommodations

would be needed. However, the employer may not ask questions that are either unrelated to the functions of the job or relate to the applicant's underlying condition apart from the need for an accommodation.

5. Question: If a job applicant or employee chooses to disclose a disability to an employer, what may the employer ask about the applicant's disability?

Answer: Once an employer knows about an individual's disability, if the employer reasonably believes that an applicant may need a reasonable accommodation, the employer may ask whether an accommodation is needed, and if so, what type of accommodation will be needed. The employer's questions must focus on the reasonable accommodation, not the applicant's underlying condition. The employer's questions may not address reasonable accommodations unrelated to job functions. Any employer inquiry must be limited to determining the existence of an ADA disability and the functional limitations that require reasonable accommodation.

6. Question: May an employer ever inquire whether an accommodation is needed even if one is not requested?

Answer: If an employer is aware of a disability and a reasonable basis exists to believe that an accommodation is needed, (for example, if the employees work performance has been inadequate), an employer may inquire whether a reasonable accommodation is needed. Further, an employer may have a legal duty to investigate accommodations even if the employee does not request one. Employers are never required to accommodate a disability that they do not know about. For this reason, and because of the many legal liability issues connected to medical information, many employers prefer to limit the amount of medical information that is required.

7. Question: How should an individual disclose their disability when requesting a reasonable accommodation?

Answer: According to the EEOC, there are no "magic words" that must be used as part of a reasonable accommodation request. The EEOC states than when individuals decide to request an accommodation, they must let their employer know that they need a change at work for a reason related to a medical condition. The request need not be in writing, although that is usually recommended for the benefit of both the employer and the individual with a disability. An employer is allowed to ask for a restricted amount of disability-related information as it relates to the accommodation request. This information must be specifically limited to determining the existence of an ADA disability and the functional limitations that require reasonable accommodation. Employers are not entitled to seek a General Release of Information in response to an accommodation request.

If an individual's disability is not obvious or known to the employer, the employer may require documentation of the individual's disability and their need for a reasonable accommodation. For this reason, employees often find it helpful to submit the accommodation request with a brief doctor's report outlining the employee's disability and how the requested accommodation will enable them to do the essential functions of the job. To view a sample accommodation request letter, please visit:

http://www.equipforequality.org/resourcecenter/employment_sampleaccomodationletter.doc.

8. Question: What happens if an individual initially decides not to disclose a disability, but discovers later that they will need an accommodation?

Answer: An individual with a disability may request a reasonable accommodation at any time during the application process or during employment. The ADA does not prevent an employee with a disability from requesting a reasonable accommodation because they did not ask for one when applying for a job or after receiving a job offer. However, it may be in an employee's best interest to request a reasonable accommodation before performance suffers or other problems occur.

9. Question: If an employee has more than one disability, what should be disclosed?

Answer: An employee is only required to disclose a disability if the disability requires a reasonable accommodation. Therefore, an employee need not disclose any disability unrelated to a request for a reasonable accommodation.

10. Question: How can an employer determine whether an individual is able to perform the essential functions of a job?

Answer: An employer may ask an individual to describe or demonstrate how they would perform the essential job functions if this is done for all applicants of that position. In addition, an employer may ask this if the employer is aware of a disability, (for example if a person uses a wheelchair or has an apparent disability), and has a reasonable basis to believe that an accommodation is needed to allow the individual to perform the essential job functions or to remove or lessen a risk to the health or safety of the individual or others.

An employer may ask whether a job applicant can do the essential job functions with or without a reasonable accommodation. Both individuals with and without disabilities can answer this question without revealing disability information. However, in general, an employer cannot ask whether an accommodation is needed.

11. Question: What are the confidentiality requirements for medical information in the possession of the employer?

Answer: Under the ADA, employers must keep all information concerning the medical condition or history of their applicants or employees confidential. The information must be collected on a separate form and kept in a separate medical file, apart from an employee's personnel file. Only staff that needs to know the medical information, usually direct supervisors and managers, should know this information. If co-workers inquire as to why a colleague seems to have accommodations, a different work schedule, or what is perceived as preferential treatment, the employer may only explain that they are acting for legitimate business reasons or to comply with federal law. Laws other than the ADA may have confidentiality requirements as well. Some of these laws are: The federal Health

Insurance Portability and Accountability Act (HIPAA), Illinois AIDS Confidentiality Act, and Illinois Mental Health and Developmental Disabilities Confidentiality Act.

12. Question: May an employer disclose an employee's disability-related information for emergency evacuation procedures, for affirmative action purposes, or for federal reporting requirements without violating the ADA or other confidentiality requirements?

Answer: Although employers are generally required to keep an employee's medical information confidential, there are limited exceptions. An employer may tell first aid and safety personnel about an employee's disability if the disability might require emergency treatment. In addition, employers must provide relevant information when government officials are investigating compliance with the ADA. Finally, an employer may invite applicants to voluntarily self-identify themselves as individuals with disabilities for purposes of the employer's affirmative action program. However, the decision to self-identify must be voluntary, and an employer must keep the information disclosed confidential by keeping it on a separate form apart from the application.

Resource Information

1. The Equal Employment Opportunity Commission (EEOC), www.eeoc.gov, is the government agency that issues employment regulations under the ADA. The EEOC has provided ADA guidance in several documents including:

- *EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA); http://www.eeoc.gov/policy/docs/guidance-inquiries.html.*
- *ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations; http://www.eeoc.gov/policy/docs/preemp.html.*
- *EEOC Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities; http://www.eeoc.gov/policy/docs/psych.html.*

A22. TNS and beyondblue, *State of Workplace Mental Health in Australia,* 2019 (https://www.headsup.org.au/docs/default-source/resources/bl1270-report---tns-the-state-of-mental-health-in-australian-workplaces-hr.pdf?sfvrsn=6?utm_source=hu_hr2&utm_medium=email&utm_term=reportbutton&utm_content=mm_cta_1_jan2016&utm_campaign=headsup)

KEY FINDINGS

Mentally healthy workplaces are as important to Australian employees as physically safe workplaces, however workplaces are not meeting their expectations

- *91% believe mental health in the workplace is important (88% believe physical safety is important).*
- *Despite this, only 52% of employees believe their workplace is mentally healthy compared to 76% for physical safety.*
- *Only five in ten (56%) believe their most senior leader values mental health.*

Mentally unhealthy workplaces impact on employee behaviour

- *One in five Australians (21%) have taken time off work in the past 12 months because they felt stressed, anxious, depressed or mentally unhealthy.*
- *This statistic is more than twice as high (46%) among those who consider their workplace mentally unhealthy.*
- *Employees who believe their workplace is mentally unhealthy are unlikely to disclose within their workplace if they are experiencing a mental health condition, seek support from HR/management, or offer support to a colleague with a mental health condition.*

When mental health is valued by leaders, and appropriate resources are available in the workplace, there are real benefits to business

- *In workplaces that employees consider mentally healthy, self-reported absenteeism as a result of experiencing mental ill-health almost halves (13%).*

…

A mentally healthy workplace is one that protects and promotes mental health and empowers people to seek help for depression and anxiety, for the benefit of the individual, organisation and community. While creating a mentally healthy workplace is everyone's responsibility, mental health is a leadership issue, and change must start at the top. Business owners and organisational leaders play a critical role in driving policies and practices that promote mental health in the workplace. They have the capacity to positively influence workplace culture, management practices and the experience of employees.

…

Employers can reduce absenteeism by improving mental health in their workplace

Overall, 21% of employees report that they have taken time off work due to feeling mentally unwell in the past 12 months. The findings show that employees who consider their workplace mentally unhealthy are almost four times more likely to say they have taken time off work due to feeling mentally unwell in the past 12 months compared to those who describe their workplace as mentally healthy. Employees in mentally unhealthy workplaces are also more likely to have observed the symptoms of depression and anxiety among their colleagues. The research has identified clear differences between employee behaviour in mentally healthy workplaces and mentally unhealthy workplaces, including what employees would recommend someone experiencing depression or anxiety should do. These actions can broadly be categorised as either 'protective' or 'avoidance' in nature. In the context of this research, protective and avoidance behaviours have been defined as follows:

- *protective behaviours are positive and pro-active ways of seeking to improve mental health such as seeing a GP, talking to colleagues, family or friends and accessing support through the workplace.*
- *avoidance behaviours are the opposite - not seeking help or support, isolating oneself from colleagues, family or friends, and potentially using alcohol and other harmful drugs as a coping strategy.*

The survey found a significantly lower prevalence of protective behaviours in mentally unhealthy workplaces, and a higher prevalence of avoidance behaviours was evident. As a result, organisational leaders may not be aware that

employees in their workplace are experiencing depression or anxiety. In workplaces classified as mentally unhealthy:

- *employees are less likely to seek assistance for a mental health condition from their direct manager or human resources (where this exists)*
- *they are less likely to provide support to others • they are more likely to avoid disclosing an experience of depression or anxiety in the workplace, as well as in situations of career progression.*

B. Examples of discriminatory online job application forms used by public sector agencies and local government

This part of the submission, read with evidence of stigma and discrimination at A above, highlights the significance and extent of stigma and discrimination facing people with a mental illness when seeking employment.

The following requests for disability related information, including mental illness information, are part of online job application forms currently in use in the public and private sectors in Australia. The three examples below are from the Prime Minister's Department, the Western Australian Government - managed by the WA Public Sector Commission and the City of Stirling – being the most populous local government body in Western Australia (population of 210,208 (ABS: 2016 Census Quickstats)).

Example 1 (E1): Department of Prime Minister and Cabinet (PMC)

Relevant extracts from PMC online job application form:

> **Personal Details**
> [* Denotes a mandatory question]
>
> Do you have any health or wellbeing issues that may impact your ability to perform your work? *
> *The form requires the candidate to answer (Yes) or (No)*
>
> Do you have any current workers compensation claims? *
> *The form requires the candidate to answer (Yes) or (No)*
>
> **Workplace Diversity**
>
> We encourage applicants from all backgrounds to apply for positions, including people who identify as Aboriginal and/or Torres Strait Islander, people with disability, people from culturally and linguistically diverse backgrounds and people from the LGBTI community.
>
> We strive to cultivate a workplace where employees are able to bring their wholeselves to work. We encourage staff to consider a broad range of perspectives and support people with varying workstyles. This is reflected in our Inclusion and Diversity Strategy.
>
> We have Senior Executive Diversity Champions and employee networks to support women; people with disability; and for people who identify as Aboriginal and Torres Strait Islander or LGBTI; and for people from culturally and linguistically diverse backgrounds. Our Senior Executive Diversity Champions and employee networks work

to build workplace diversity and inclusive behaviour and promote fair and equitable treatment of all employees.

The information you provide below is used in an aggregated form for statistical purposes and (where relevant) to ensure that we can provide you with support during the recruitment process. We aim to ensure that fair, equitable and nondiscriminatory consideration is given to all applicants.

Do you identify as a person with a disability? *
The form requires a candidate to answer (Yes) or (No) or (Prefer not to answer)

Example 2 (E2): Government of Western Australia online job application form (administered by the Public Sector Commission of Western Australia for multiple departments and agencies).

Relevant extracts from WA Government online job application form:

The following declarations are NOT a barrier to being considered for employment but will assist us to take due care in assessing appropriate placement should you be the successful applicant.

To the best of your knowledge and belief, are you of sound health?
[*The form requires the candidate to answer (Yes) or (No)*]

If you are not of sound health, please provide details.
[*The form requires the candidate to answer (Yes) or (No)*]

Have you ever made a claim(s) for Workers' Compensation?
[*The form requires the candidate to answer (Yes) or (No)*]

Is the claim still current?
[*The form requires the candidate to answer (Yes) or (No)*]

Please provide details.
[*The applicant is required to provide details*]

Note: It is important to recognise that the Western Australian Government has recently recognised there are issues associated with these recruitment questions after being provided with similar information to that set out at **A** above (Australian and International Reviews, Statistics and Research). I am reliably informed that the WA Government is currently working on this matter.

Example 3 (E3): City of Stirling (CoS) online job application form

Relevant extracts from CoS online job application form:

2. Equal Employment Opportunity

Do you have an ongoing disability?
[*The form requires the candidate to answer (Yes) or (No) or (No Response)*]

The City is committed to making reasonable changes to our recruitment process and workplace where this is necessary to provide equal opportunity for people with

disability. Changes for this purpose are commonly referred to as "reasonable adjustments" . Do you require any reasonable adjustments (environmental or organisational) to enable you to equitably participate in the recruitment process or to perform the inherent requirements of the role you are applying for?
If you have selected yes, please provide details.
[*The form includes a box where details can be provided*]

Are you aware of any medical conditions or other factors relating to your health and/or physical fitness which may prevent you from performing the duties associated with the position you are applying for? Please note failure to disclose any relevant information relating to your health may impact upon any future claim to workers compensation (pursuant to s79 Workers Compensation and Injury Management Act 1981).
[*The form includes a box where details can be provided*]

Comments on E1, E2 and E3.

1. All 3 online forms do not allow an applicant to proceed without answering the questions. As such an applicant is essentially compelled to say "Yes" or "No" or "Prefer not to say" in E1 or "No response" (in E3) to health questions designed to identify if a person has a disability or has/or gas had a worker's compensation claim.

2. No undertaking is given that the answers to these health questions will not be provided to the selection panel and/or delegate. It is my understanding that the WA Government does provide this information to selection panels. The Commission would have to seek the information from PMC and the CoS.

3. The option to answer "Prefer not to say" or "No response" at the application stage is a somewhat insidious device because it prevents an applicant with a mental illness without raising a flag.

4. It is my understanding that E1, E2 and E3 would all be unlawful under UK and USA disclosure laws identified at A20 and A21 above.

5. This is the fundamental issue because information about mental illness (and other disabilities) where made part of the competitive selection process, brings into play the very serious stigma and discrimination against people with mental illness identified in **A** above (Australian and International Reviews, Statistics and Research).

6. It is also significant that applicants are not required to provide other information such as a police check prior to the completion of the competitive stages of the application process. This supports the contention that requesting information about mental illness, including through past worker's compensation claims, is unnecessary prior to the completion of the competitive selection component of the recruitment process. On this point, it is also of fundamental significance that much stricter UK and USA laws have both been operation for a significant number of years and there is no evidence of economic or other harm flowing from these stricter laws.