Reframing rights as obligations: Implications of ‘responsible citizenship’

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**Introduction**

Conditionality has always been a defining characteristic of Australia’s residualist welfare system where receipt of government payments or benefits is dependent on income. In the last ten years a second layer of conditionality has been added with those eligible for some payments being obliged to undertake specific activities deemed to be socially desirable. Unlike the traditional form of conditionality, the primary purpose of which is to act as a rationing device, this newer form of conditionality aims to change behaviour, to make the welfare recipient responsible for their own well-being. Thus, in this form of ‘responsible citizenship’, assistance from the state is no longer a right, but rather something that has to be earned.

Advocates of responsible citizenship argue that an emphasis on the rights of citizens leads to a culture of welfare dependency (Mead, 1997), whereas its critics point to structural barriers which cannot be overcome simply by an individual changing their behaviour (Whiteford, 2010:203; Millar & Ridge, 2009:118), or are critical of the particular values underlying responsible citizenship, in particular the valuing of paid employment over other forms of work such as care-work (Rose, 2000; Dean et. al., 2005:9). Others, such as Lister (2007:440), argue that participation is an important right because realisation of other rights depend on participation, but participation should not be used as a mechanism for modifying the behaviour of citizens who need support or assistance from the state (Lister, 2007:448). In other words, “there is a big difference between pushing people into functioning in ways you consider valuable and leaving the choice up to them” (Nussbaum, 2003:40).

The international human rights framework is quite explicit about the importance of choice. For example, the Convention on the Rights of Persons with Disabilities (CRPD) includes “the freedom to make one’s own choices” in its first General Principle. Similarly, Article 27 defines the right to work as “the right to the opportunity to gain a living by work freely chosen or accepted”. Australia is one of the signatories to the CRPD which was adopted by the United Nations General Assembly on 13 December 2006 and came into force on 3 May 2008. However by the time the Convention had come into force people with disability had become one of
the four target groups in the Commonwealth Government’s Welfare to Work reform package. The Welfare to Work reforms had been introduced to “increase workforce participation and reduce welfare dependence among working age income support recipients” (DEEWR, 2008:iv). Under these reforms, job seekers with disability in receipt of Newstart Allowance, Youth Allowance or Parenting Payment are required to actively look for work. Since 2006, Disability Employment Service (DES) agencies have experienced a decrease in the proportion of their traditional client base (voluntary clients with an intellectual disability) and an increase in the proportion of clients who have mutual obligations. By 2010, 65 per cent ofDES clients had mutual obligations, although this is not distributed evenly throughout the country with agencies operating in metropolitan areas reporting a higher percentage of mutually obliged clients than agencies operating in regional or rural areas (Nevile and Lohmann 2011:25).

Many of the agencies providing disability employment services were established in the mid-1980s in order to provide job seekers with an intellectual disability an alternative to supported employment in what was then known as “sheltered workshops”. Those involved in the sector believed that people with disability should have the opportunity to work in the open labour market. In that sense, the establishment of open employment services for people with disability was a response to the Disability Services Act 1986 and the associated review process which involved submissions and consultations from interest groups and individuals, especially people with disability, their families and services providers. The seven principles of the Act, which are designed to form the “basic yardstick” for the development of all services for people with disability, are expressed in terms of rights.

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1 To be eligible for the Disability Support Pension an individual needs a diagnosis and medical evidence supporting that diagnosis. Some individuals are not able to obtain a diagnosis and supporting evidence and end up on other payments such as Newstart Allowance where recipients are required to fulfill certain activity requirements such as looking for work. On the other hand individuals who are not required to look for work because of caring responsibilities or because they are not eligible for the means tested Disability Support Pension can, and do, volunteer to look for work through DES.
Initially agencies providing open employment services received block grant funding from the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), with policy responsibility transferred from FaHCSIA to the Department of Employment, Education and Workplace Relations (DEEWR) in October 2004. The transfer of policy responsibility to DEEWR marked the beginning of a gradual shift in administrative and funding arrangements with disability employment moving closer to the administrative and funding model that regulates mainstream employment services (Job Services Australia – JSA). JSA providers are funded by an outcome based model of funding that requires completion of services and achievement of outcomes before individual claims for payment are made, with future contracts dependent on an agency’s ranking relative to other agencies.

Using employment for persons with disability in the open labour market as an instrumental case, this paper asks what does the reframing of a social welfare program from a right to an obligation mean for service users’ ability to exercise their rights? Clearly for those such as Orton (2011:356) who believe that service users “should be allowed to refuse activation strategies with which they disagree”, the answer is obvious because any sort of compulsion denies the right “to make one’s own choices”. However, I believe the question deserves deeper examination. Rights do not exist independently of each other in that the exercise of one right may affect the exercise of other rights and a hierarchy of values determines which right takes precedence and in what circumstances. For example, in Australia the right to make one’s own choices does not extend to choosing to end your own life. Furthermore, obligations and rights are not discrete categories. For example, political participation is a fundamental political right, but in Australia where voting is compulsory, it is also a basic obligation of citizenship with penalties for non-compliance. Just as rights and obligations are socially constructed, so too is the hierarchy of values which means the hierarchy is subject to debate and challenge. This paper makes a contribution to the debate over the appropriateness of welfare conditionality by answering the question posed above from the perspective of what service users value.
The empirical data on what service users value was collected as part of an Australian Linkage Council Grant (LP0990530) which analysed the impact of new contracting arrangements on disability service providers and their clients. Fieldwork took place during the second half of 2010. Although DES clients are a diverse group of people ranging in age from school leavers to those approaching the age where they are eligible for the age pension, and whose disability could include an intellectual disability, a mental illness or a physical disability, a clear picture of what DES clients value emerged from one-on-one interviews and small focus groups with 73 job seekers and 124 staff from 27 Disability Employment Service provider agencies in inner metropolitan, outer metropolitan and regional locations in every State and Territory except the Northern Territory. Job seekers were asked to describe their interaction with the service provider agency (or agencies if they had had experience with more than one agency), the type of assistance provided by the agency and whether they thought other forms of assistance would help them find a job. The interviews and focus groups with service provider staff explored the changes that had taken place since the introduction of new contracting arrangements six to nine months earlier, the impact of these changes on how the agency operated and the nature of the services the agency was able to provide for their clients.

In examining the consequences of reframing disability employment services from a right to an obligation, this paper first identifies what it is that service users value as well as their views on participation requirements. It then discusses the constraints to the realisation of rights.

What service users value

Economic outcomes

The vast majority of job seekers valued economic outcomes – getting a job – and they placed a high value on receiving information or resources that would enhance their capacity to find a job.

[Agency X] has given me ideas about the different types of work I could do...In Job Club you get ideas about how to perform in job interviews, how to write applications, how to sell yourself.

I’ve done courses through [Agency Y] which is good...but I’ve got nothing out of them. I come here every Wednesday and look for work, but I mean I can do that on my computer at
Those in employment valued education and training if they thought it would help improve their work performance. For example, a young man who was working in IKEA was excited about the prospect of combining a retail services course at TAFE with his work at IKEA because he believed “it would benefit me with IKEA and other different retail positions.”

I wanted to do a TAFE course for such a long time, but didn’t know how to go about it. [Agency Z] has been able to help me…I get confused very easily but [Agency Z] explains things in ways that I can understand.

Under the initial block grant funding model, disability employment service providers were able to offer a greater range of assistance, focusing on life skills such as budgeting, or independent travel training and soft skills such as improvements in self-esteem and self-confidence, with less emphasis on employment or formal education outcomes. Under the current outcome based funding model, agencies have limited capacity to provide assistance which may not be seen as leading directly to employment and have to access alternate sources of funding or find ways to work within prescriptive guidelines.

We’ve got someone here that we knew, if she became physically active, that her pain would be better…and she would probably succeed in a placement, but we couldn’t justify it. Like there was no way DEEWR would ever accept it. “Why are you going to pay for her to get a membership to a swimming pool? That has got nothing to do with getting a job.” So we paid for a physio assessment and got the physio to recommend that water therapy would be beneficial (Manager, regional agency).

In another agency when staff noticed that many of their clients were not fit enough to maintain employment, “we got them into the Gym Buddies program and got some funding through Australian Youth Foundation…and we took them through a fitness program with a personal trainer” (CEO, outer metropolitan agency). The CEO noted that personal trainers are great because they are continually providing positive feedback – “that was good”, “oh you did so well” – and would like to provide these sort of programs for people who have been out of the workforce for many years so that they are able to participate in an activity where they receive “lots of positive feedback…because it does so much for their self-esteem.” Staff who work with disadvantaged job seekers know that “hard” outcomes such as getting a job are usually dependent on achieving “soft” outcomes such as improved self-confidence or self-esteem. Yet governments rarely reward achievement of these interim milestones.
which are difficult to quantify and seen as more subjective than “hard” outcomes (Nevile, 2010:537).

**Emotional outcomes**

Employment outcomes increased by 18 per cent after block grants were replaced by outcome based funding (ANAO, 2008:6). But does this mean that people with disability have a greater capacity to realize their right to employment now that service providers are more focused on employment outcomes? From the perspective of service outcomes, the answer is not clear because while clients valued economic outcomes, they also valued emotional outcomes. Clients said that they valued being treated “as a person, not a number” and valued agencies that “listened properly to what you require”, contrasting this to other agencies that “just put you in a job, any job”, or “didn’t want nothing to do with you [and] put you in a corner”. From client responses it was clear that while information was valued if it led to economic outcomes, being treated as an individual was valued for intrinsic rather than instrumental reasons.

We had a new case manager come over from JSA…and every client complained about this new case manager. Someone cornered me in the kitchen saying, “how do I get away from this person?” “Why?” “I’ve seen her three times and she hasn’t once asked me how I am” (EC focus group, metropolitan agency).

The Employment Consultant (EC) went on to explain that it had taken the new case manager two months to get away from the processing mentality that characterises JSA where ECs commonly have caseloads of 150 job seekers, and observed that, “she was a good case manager in JSA – lots of placements – but it doesn’t quite work that way in DES”. Being able to spend time getting to know clients as individuals is the major difference between past and current work practices. Many staff still believe they should be spending time with their clients but financial imperatives means that “to survive there’s a feeling that you have to actually just deal with as many people as you can as fast as you can” (EC, metropolitan agency).

The views of DES clients about what they value are consistent with other Australian and international studies. For example, Nevile (2008) found that those with experience of poverty place a high priority on choice and agency and receiving
information which will enhance their capacity to exercise choice and agency, but being treated with dignity and respect is at the top of their value hierarchy. Consequently, participation in decision-making processes is valued, not because someone else has decided that they have a ‘right’ to participate, but because they want their knowledge and expertise to be respected. While the outcome – participation – is the same, the basis for that participation is different (Nevile, 2008:15). While some DES clients welcome suggestions as to possible work options, others have a clear idea of what they are looking for and want staff to respect their knowledge and experience.

One thing I find wrong with [Agency B]...[is] you’ve got some of the younger folk and you tell them the idea of what you are looking for...[and] they will turn around and say, “no, that is what you are doing”. Now I have worked for 40 odd years. I know what I want...It’s that kind of thing that I find hard here.

Participation requirements

DES clients whose experience of disability employment services spans the change from a system designed for volunteers to one where the majority of clients have participation requirements believed “the old system was better...now there are more rules”. More rules means an increase in pressure to achieve targets, such as applying for a certain number of jobs each week. Some clients are not bothered by this pressure, seeing it as something they have to do “to get money off Centrelink”. Others resist the pressure, either overtly or covertly. Overt strategies include turning up to the employment services agency and saying, “I am only here because Centrelink told me I have to. Don’t talk to me. I’m just going to sit here for a while and then I will leave and you can’t do anything about it” (EC, inner metropolitan agency). Covert strategies tend to focus on sabotaging employment opportunities, for example, by turning up for an interview in bare feet, or ringing an employer about a vacancy and saying, “look I have a bad back and I can’t walk, but I want to apply for this job” (Manager, inner metropolitan agency). Many others want to work but find the process of looking for work stressful, particularly if it exacerbates existing conditions such as depression or anxiety.

Maybe I shouldn’t say this, but I suppose I can understand because Centrelink put pressure on you to get a job, I can understand why there are so many suicides, because you tend to get so depressed about sending out resume after resume and getting [rejection] letters back.

I know that since my father passed away it has been a bit of a roller coaster for me to be able to deal with the emotional stuff as well as having to look for work...I was stressed out because I was getting so many rejections. And that is part of the problem – dealing with the rejections.
In many cases agency staff are able to work with the job seeker to reduce the stress associated with looking for work. For example, a job seeker facing a group assessment process in order to secure a job felt very anxious about the whole process because “I am not very good with groups.” Agency staff explained what was going to happen and “I knew what was expected of me and there was no anxiety…[But] the day before the group assessment I rang and spoke to the case manager Lindsay and said, ‘I don’t know if I can do this, I am stressing’. She said to come in an hour early so we could go through it again. I did and she was ready and organised and Ryan came in and said he had done one last week and in an hour I was there and there was no stress. They took that away, and that’s what they have done the whole way through”. As a result the job seeker was able to perform well during the group assessment and was offered a position.

However in some cases staff capacity to respond appropriately is constrained by the rules governing participation requirements. For example, a job seeker who became distressed as a result of having to attend an interview was provided with on-going counseling and agency staff worked with the job seeker to increase her confidence in interview situations, but “quality assurance auditors were horrified that she, that very day, was attending another interview. She didn’t have a choice, unfortunately” (Senior Manager, metropolitan agency).

Other staff believed that with the introduction of participation requirements the program had become a lot harsher – “they come to a place like this, they are intimidated, they are frightened, it is too rough for them and we’re taking away their options” (Manager, inner metropolitan agency). Some job seekers agreed that the new system “makes life even harder for people who already have difficulties.”

Why should people who want to work be hurt because of the minority who want to abuse the system? Everyone is put in the one box.

The discussion of what service users value suggests that the majority of DES clients are more concerned about how they are obliged to participate (that is, more rules and a lack of flexibility in responding to those rules) rather than the fact that are obliged to
look for work. While service users value information and resources that will help them find work, being treated as an individual with dignity and respect is even more important. In the case of disability employment services, agency capacity to respond to each job seeker as an individual is constrained by the combination of a complex, prescriptive and constantly changing administrative system and a funding structure that encourages agencies to focus attention on job seekers who are more work ready.

**Constraints**

*Administrative requirements*

In the lead up to the introduction of the new contract, the government promised a reduction in the administrative burden placed on service providers so that they can devote more resources to assisting job seekers find and maintain a job. However staff reported that they now had to spend more time, not less, meeting Departmental reporting requirements as well as keeping up to date with constantly changing guidelines. For example, agencies get paid when clients achieve certain outcomes, one of which is when a client commences employment. To lodge a job and claim an outcome fee, employment provider staff need a sound understanding of the guidelines governing job placement, outcomes and documentary evidence. Over the past two years agencies have had to deal with twelve policy changes and ten policy clarifications in the guidelines relating to job placement, outcomes and documentary evidence. These guidelines represent three out of a total of 44 sets of guidelines (DEA,2012:12).

While Australia’s policy response to unemployment is largely focused on supply side strategies, there is some recognition of structural barriers, particularly within disability employment services. For example, disability service providers are expected to work with local employers to overcome any reluctance they might feel about employing a person with disability. Many agencies work hard cultivating and maintaining relationships with local employers, but just as the complex and prescriptive nature of the current contract diminishes agency capacity to respond to each job seeker as an individual, it also makes it more difficult for agencies to maintain good relationships with employers. For example, employers who try to do
the right thing by their employees by letting them go home when they are finding it
difficult to work their full number of hours, are caught by rules concerning allowable
breaks which state that if clients are unable to work their required number of hours
over a certain period of time, employers do not receive a wage subsidy for those
clients. One staff member responsible for developing and maintaining relationships
with employers summed up the current situation as “a bit of a nightmare”.

It is very ‘this is how it is going to be’. There is not a lot of flexibility. Not that you used the
flexibility to do the wrong thing, but there was a little bit more flexibility to take in the reality
of individual lives and what happens. This contract is hard (Marketer, regional agency).

The increased amount of staff time devoted to administration, as opposed to direct
service delivery, is one of the reasons staff now have less time than in the past to get
to know their clients as individuals. Another reason is the change to a demand based
system which occurred when the cap was removed from disability employment
services in 2008.

\textit{Funding structure}

In mainstream employment services the move to a demand based system occurred
five years earlier in 2003. At this time the majority of JSA job seekers had
participation requirements and service providers were unable to regulate the number
of clients referred to their agency. However the government did not compensate
providers for this increase in financial risk through funding mechanisms and JSA
providers responded by seeking larger contracts in order to spread the financial risk
(Fowkes, 2011:8). DES providers now share this increased financial risk and like
mainstream employment service providers, are being forced to adopt a “high volume/
low margin” business model which requires agencies to ration resources. Agencies
which provide a range of different programs and are prepared to cross-subsidise open
employment services are better able to meet the costs associated with administrative
complexity and increased financial risk while still maintaining service standards, but
even these agencies do not feel that they will be able to do this indefinitely. The
consequence, according to a CEO of a large organisation providing open employment
services, has been “larger and larger organisations…[while] the smaller ones and
specialist agencies fade away” The CEO believes that if this trend continues “the
one-on-one support that is provided by the small niche organisations [will] basically disappear”.

The financial pressure generated by an increase in the number of clients agencies are obliged to assist has been exacerbated by changes to the funding structure with more weight given to employment rather than pre-employment outcomes, as well as the fact that it is now harder for agencies to achieve the more heavily weighted employment outcomes. Under the previous contract agencies received service fees which covered the work they did in finding someone a job and a four week outcome fee. An additional outcome fee was payable if a client sustained their employment for 26 weeks. Under the current contract agencies receive a smaller service fee and no longer receive a four week outcome payment as the majority of payments (60%) are linked to the 13 week and 26 week outcomes which means that if, for whatever reason, clients lose their job at 12 weeks, “you are not going to get anything for it, that’s it – you have missed the boat” (Manager, metropolitan agency). The structure of a funding system where the majority of payments are conditional upon realisation of employment sustained over time frames can create perverse outcomes if agencies respond to the financial incentives by focusing their attention on job seekers who are more likely to achieve employment outcomes, a practice known as cherry picking or creaming. On the other hand, high initial payments provide incentives for parking; that is, where providers fulfill certain minimum requirements in order to receive the initial payment and then make little or no effort to assist job seekers.

The incentives for agencies to engage in creaming and parking (risk selection) will always be higher in market based models (Bonvin,2008:372) and certainly, risk selection has characterised, and continues to characterise, the employment services sector in Australia (see for example, Productivity Commission,2002;xxxviii; Murray, 2006:29-38; Marston and McDonald,2006:8; Bredgaard and Larsen,2008:347; Fowkes,2011:8; Nevile and Lohmann,2011:28). DEEWR’s response to risk selection has been to introduce tighter controls over the circumstances under which agencies can claim an outcome fee. While this is one of the main reasons for the complexity of the administrative system, risk selection is most likely to be eliminated by a funding
structure that spreads the rewards across a larger number of outcomes, including interim milestones which reward increased capacity on the part of job seekers to achieve final outcomes. Providing an initial payment with outcome payments relatively evenly split between interim milestones and final outcomes provides an incentive for agencies to continue working with every client, not just those deemed most likely to achieve final outcomes.

DEEWR has identified a small number of interim milestones (which the Department calls “pathway outcomes”) such as completion of education courses, but does not reward achievement of important, capacity building soft skills. Furthermore, the funding attached to these pathway outcomes is limited compared to the funding attached to final outcomes and the rules surrounding payment of pathway outcomes such as education mean “there is not much incentive to claim an educational outcome – there is no money in it” (CEO, metropolitan agency). For example, education outcomes only apply to courses that are delivered over two semesters and many DES clients are more interested in doing shorter, more practical courses such as work related certificates or licences, or TAFE courses which run for six months (one semester). When staff at a metropolitan agency looked at all the courses offered at the nearest TAFE they identified 17 out of 499 courses that might be of interest to their clients and of those 17 some were being “crammed into a semester and a half, so they don’t qualify anyway” (Senior Manager, outer metropolitan agency).

Agency capacity to assist their client achieve educational outcomes is also constrained by the lack of funding for educational aids. While the government provides up to $30,000 to modify a work site once a client has a job, much smaller sums of money are not available to clients participating in education. As a senior manager in a specialist ID agency explained,

> [t]he workplace modification program only applies to employment. If [our clients] were in employment we could buy them little spell checkers, we can get a [dictation software] computer program, but if you are in educational training, there is no money attached to it. You can’t go and get the technology assistance that these individuals need to complete the courses.

Although TAFE and trade schools are supposed to have their own programs in place to assist students with disability, employment provider staff see very little concrete
application of policy rhetoric, with fully supported TAFE courses in a wide range of trades not offered unless enrolments reach a certain minimum number (EC, metropolitan agency). Consequently DES clients often struggle in mainstream courses to complete their educational qualifications.

A lot of our guys would love to do apprenticeships…[and] they might be able to do the first year and the second year, but by the time they get to the third and the fourth, that is when they start to fall over…They are struggling with the learning path because they were struggling with that in school. Trade schools don’t provide enough of that disability emphasis to say, ‘you can do it verbally’, or ‘you can do it using assisted technologies’. So we don’t have a lot of success with that (Senior Manager, specialist ID agency).

Financial pressure can also affect agency capacity to maintain or expand the outreach or marketing activities which are aimed at volunteers. For many agencies their traditional client group is job seekers with an intellectual disability who come to the agency through direct registrations; that is, they are not referred by Centrelink but choose to come because they have heard about the agency or have had contact with the agency while still at school and want help in finding open employment. Under current administrative arrangements, job seekers assessed as having a work capacity of zero to seven hours a week are not eligible for the Employment Support Service – instead they are eligible for the Disability Support Pension. However agencies are able to assist job seekers assessed as having a work capacity of zero to seven hours a week if they come into the program through direct registration. Therefore any reduction in agency capacity to maintain the networks which result in direct registrations may limit the opportunity to work in open employment for people with higher levels of disability.

**Conclusion**

This paper began with the question, what does the reframing of a social welfare program from a right to an obligation mean for service users’ ability to exercise their rights? In the case of disability employment services it is clear that service users’ ability to exercise their right to be treated as an individual with dignity and respect and their right to have the opportunity to participate in open employment is not directly affected by being obliged to participate. However the way in which service users are obliged to participate does have a significant impact on service users ability
to exercise their rights. Agency capacity to deliver flexible, individualised assistance – something that both government and service users want – is constrained by the complex and prescriptive administrative system within which they have to operate and a funding structure that rewards the quantity of employment outcomes with no consideration given to the quality of the process that produces the desired outcomes.

In a recent speech, the Minister for Workforce Participation, Kate Ellis, noted that [w]ithout access to paid employment many people with disability risk life on the margins of our community…High quality employment services are critical to increasing workforce participation and raising productivity in this country…We should demand that people with disability have access to the very best possible services (Ellis, 2012).

The fact that under the current system, 60 per cent of all DES clients do not achieve any employment outcome (DEEWR, 2011:5) indicates that the current system is far from “the best possible”. I would argue that “the best possible” system is one that facilitates, rather than constrains, service users’ ability to exercise their rights and this can be done by ensuring that administrative and funding systems reflect the values of services users. Some social welfare programs are implemented in ways that reflect the values of service users, but rarely when programs are entirely dependent on government funding (Nevile, 2009:84-86). At the top of service users’ value hierarchy is their desire to be treated with dignity and respect, to be listened to and participate in decision-making processes because they have knowledge and expertise relevant to what is being decided. However, when service users talk about the desire for their knowledge and expertise to be respected, they are not talking about dominating decision-making processes to the exclusion of all other interests (Nevile, 2008:8). Thus administrative and funding systems that allow service users to be involved in decision-making processes requires funding departments to relinquish some, but not all, of the control they currently exercise over the actions of service providers and service users, since, as Bonvin (2008:373) argues, to be truly responsible, individuals must be involved in the decision-making process.

References


