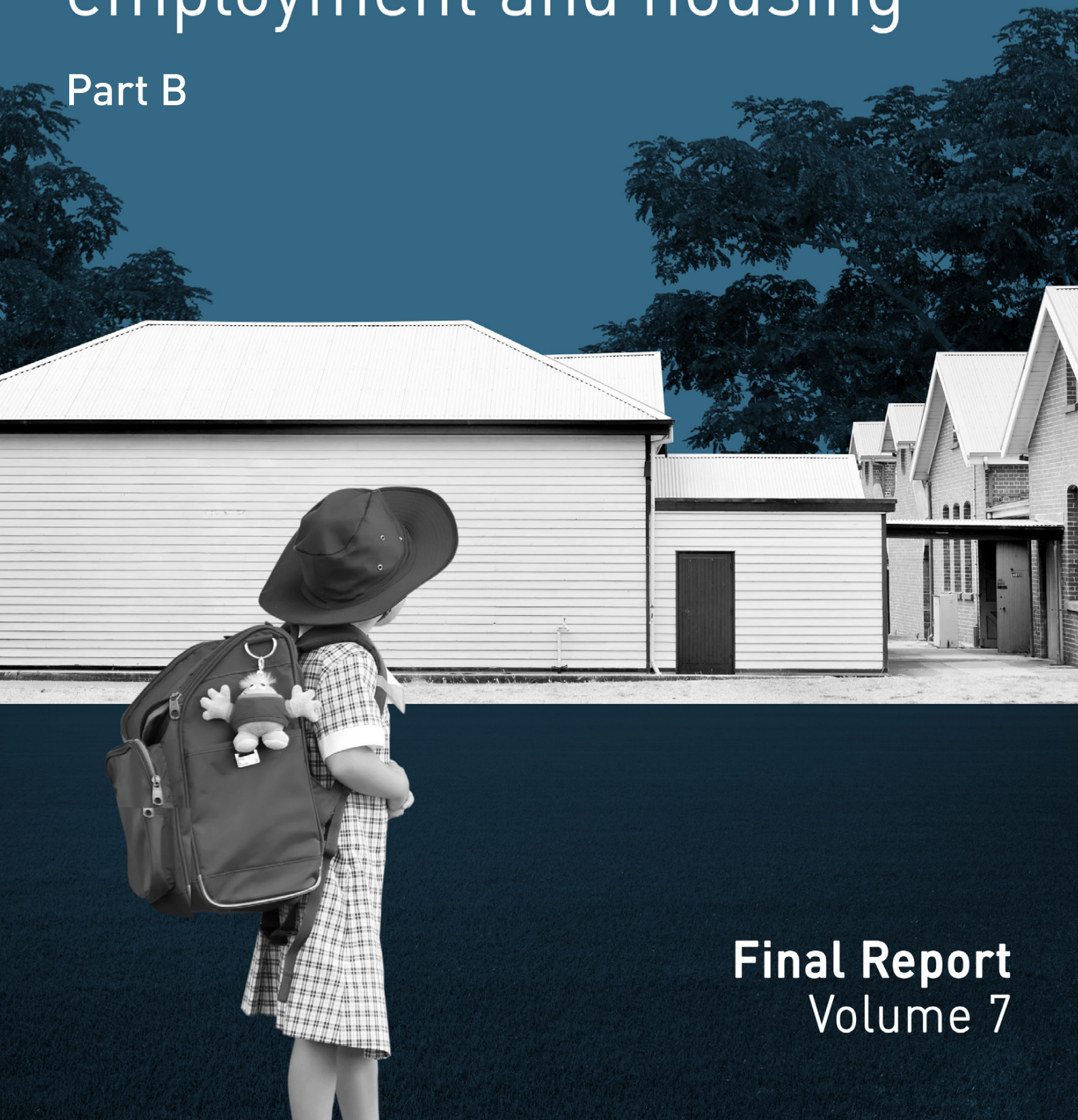




**Royal Commission**  
into Violence, Abuse, Neglect and Exploitation  
of People with Disability

# Inclusive education, employment and housing

## Part B



**Final Report**  
Volume 7

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September 2023

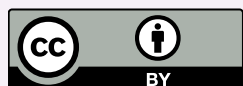
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# Acknowledgement of Country

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission) acknowledges Australia's First Nations peoples as the Traditional Custodians of the lands, seas and waters of Australia, and pays respect to all First Nations Elders past, present and emerging.

We recognise their care for people and country. In particular, we acknowledge the Traditional Custodians of the lands on which our offices are based: the Gadigal people of the Eora Nation where our Sydney office stands, the Jagera and Turrbal people as Traditional Owners and Custodians of the lands on which the city of Brisbane is located and the Ngunnawal and Ngambri peoples upon whose land the city of Canberra is located.

We pay our respects to all First Nations people with disability and recognise the distinct contributions they make to Australian life and to the outcome of this inquiry.

## Acknowledgement of people with disability

The Royal Commission acknowledges people with disability who fought and campaigned long and hard for the establishment of this Royal Commission.

We acknowledge the courage and generosity of people with lived experience of disability who shared their knowledge and experiences of violence, abuse, neglect and exploitation with the Royal Commission. Their contributions to the Royal Commission have been indispensable in framing recommendations designed to achieve a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.

### Content warnings

This report contains information about violence, abuse, neglect and exploitation that may be distressing to readers.

The report contains first-hand accounts of violence, abuse, neglect and exploitation. As a result, some direct quotes in the report may contain language that may be offensive to some people.

First Nations readers should be aware that some information in this report may have been provided by or refer to First Nations people who have passed away.



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# Final Report

## Volume 7

### Inclusive education, employment and housing

#### Part B

\*Due to the size of this Volume, it has been broken into four parts. The Table of contents can be found in the *Summary and recommendations* part of this Volume.



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## 6. Open and inclusive employment

### Key points

- The opportunity to work, earn a living and participate as an economic citizen is a key component of an inclusive Australia and a core human right.
- However, people with disability experience systemic barriers to obtaining and retaining open employment.
- It is important to ensure fairness, justice and accountability for people with disability who experience violence, abuse, neglect or exploitation in employment settings.
- Sustained and determined action is required by everyone, not just governments, to address barriers to employment for people with disability and realise their human rights to work.
- In relation to open employment, we have identified five broad areas where action is needed:
  - The Australian Government must set a strong strategic direction to ensure the inclusion of people with disability in open employment.
  - The Australian Government must reform the Disability Employment Services program to make it fit for purpose.
  - There should be a determined focus on increasing opportunities for people with disability in public sector employment across Australia.
  - The procurement power of governments should be leveraged to encourage inclusive employment practices in the private sector.
  - There should be greater regulatory coordination and legislative clarity to support people with disability and employers to understand their rights and obligations.
- The role of Australian Disability Enterprises and other supported employment settings is discussed in Chapter 7.



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## 6.1. Introduction

The opportunity to work, earn a living and participate as an economic citizen is a key component of an inclusive Australia. It has flow-on effects for a person's ability to access services, support themselves and their family, realise life aspirations, achieve financial security and enjoy their human rights. Employment can give people a sense of purpose and personal development, foster social connection and community and create opportunities.<sup>1</sup> These outcomes can act as safeguards against violence, abuse, neglect and exploitation.

Employment is also about human rights. Article 27 of the *Convention on the Rights of Persons with Disabilities (CRPD)* recognises:

the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.<sup>2</sup>

Article 27(1) provides that States Parties shall safeguard and promote the realisation of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation. The non-exhaustive list of steps that States Parties should take relating to the right to work include to:<sup>3</sup>

- prohibit disability discrimination with regard to all matters concerning all forms of employment, including recruitment, continuance of employment and career advancement
- protect the rights of people with disability, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, and safe and healthy working conditions, including protection from harassment, and the redress of grievances
- employ people with disability in the public sector
- promote the employment of people with disability in the private sector through appropriate policies and measures
- ensure that reasonable accommodation is provided to people with disability in the workplace.

In a report prepared for the Royal Commission, *The United Nations Convention on the Rights of Persons with Disabilities: An assessment of Australia's level of compliance*,<sup>4</sup> Emeritus Professor Ron McCallum AO described article 27 in the following terms:

Article 27 of the *CRPD* is a lengthy provision, however, from its opening words its essence is plain. It obliges governments to prevent discrimination in employment and also to make places of work inclusive and fully accessible to persons with disabilities. As Dr Marianne Schulze put it, 'employment for persons with disabilities is essentially a non-discrimination and an accessibility issue'.<sup>5</sup> [Citations omitted]



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In Professor McCallum's assessment:

Australia is complying with article 27 of the CRPD, even though its employment programs have not succeeded in altering the labour force participation rate of persons with disabilities. Given Australia's low rate of employment for persons with disabilities, much more must be done to improve open labour market outcomes. It is further suggested that the Government continue to establish pathways to transition employees of [Australian Disability Enterprises] into the open labour market. Ultimately, what remains is a change of attitudes towards persons with disabilities in the workforce by employers, employees and the general community.<sup>6</sup>

In Public hearing 22, 'The experience of people with disability working in Australian Disability Enterprises', Ms Debbie Mitchell PSM, Deputy Secretary of Disability and Carers at the Australian Government Department of Social Services (DSS), said article 27 'guides everything we do in developing policies for people with disabilities'.<sup>7</sup>

The rights of workers and safe conditions of work have been the subject of international law and human rights, including by the International Labour Organisation.<sup>8</sup> The right to work, and to just and favourable conditions of work, are also recognised in the *International Covenant on Economic, Social and Cultural Rights*.<sup>9</sup>

During our inquiry, we held four public hearings that examined issues relating to employment and economic participation for people with disability:

- Public hearing 9, 'Pathways and barriers to open employment for people with disability'
- Public hearing 19, 'Measures taken by employers and regulators to respond to the systemic barriers to open employment for people with disability'
- Public hearing 21, 'The experience of people with disability engaging with Disability Employment Services'
- Public hearing 22.

People with disability appearing at these hearings gave evidence about their experiences of seeking employment and working in both open and segregated settings, and the significant barriers they faced. We also received a wide range of information on the employment experiences of people with disability. This information was from responses to the *Employment issues paper*, private sessions, submissions and community engagements, and commissioned data and research reports.

## Chapter overview

This chapter sets out the key barriers to open employment experienced by people with disability. It includes our views and recommendations for addressing these barriers and increasing the opportunities for people with disability in open or mainstream employment settings.

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By ‘open’ or ‘mainstream’ employment settings, we are referring to work settings where people with disability and without disability are employed. This is used in contrast to segregated settings, such as Australian Disability Enterprises (ADEs), which are focused exclusively on employing people with disability. ADEs are examined in Chapter 7.

While this chapter focuses on employment, we acknowledge that some people with disability are not able to work. As Mr Dylan Alcott AO, 2022 Australian of the Year, said in Public hearing 31, ‘Vision for an inclusive Australia’:

your worth as a person is not tied to your job ... for those people that can’t work, they need the funding and the support so they can be themselves and make choice and control over their lives. But for the people that can work or want to work, they deserve the choice to work. Not saying you have to get a job, but they deserve the choice like everybody else to get out there and find employment.<sup>10</sup>

The Royal Commission received significant evidence and information demonstrating the systemic barriers to employment for people with disability. The impact and persistence of these barriers is demonstrated by the significantly lower labour force participation rates for people with disability compared with people without disability.

## Workforce participation of people with disability

Data most recently collated by the Australian Bureau of Statistics in 2018 demonstrated a labour force participation rate of 53 per cent for people with disability aged 15 to 64,<sup>11</sup> compared with 84 per cent for people without disability.<sup>12</sup> The participation rate for people with disability has not changed substantively since 1993.<sup>13</sup> The Australian Government has acknowledged that the percentage of people with disability in the workforce did not increase between 2009 and 2018.<sup>14</sup>

In Public hearing 19, the Royal Commission collected data on three public sectors – the Australian Government (specifically the Australian Public Service Commission (APSC) and four Australian Government departments or agencies), and the governments of Victoria and the Northern Territory. It also collected data on 12 large private sector employers, across a range of industries and sectors, that participated in Public hearing 19.<sup>15</sup> These private sector organisations collectively employed approximately 485,672 people.<sup>16</sup> Of the 10 employers that provided data on the number of employees with disability, only 1.15 per cent (3,929) of all employees identified as people with a disability in the employers’ human resources (HR) systems.<sup>17</sup> For the majority of the large private sector employers who participated in Public hearing 19, people with disability comprised less than 1 per cent of total employees at an organisation according to official HR records.<sup>18</sup>

Labour force participation rates for people aged 15 to 64 are particularly low for people with psychosocial disability (34 per cent), intellectual disability (38 per cent), and head injury, stroke or acquired brain injury (32 per cent).<sup>19</sup> Labour force participation rates are also low for women with disability (51 per cent) and First Nations people with disability (45 per cent).<sup>20</sup>

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Additionally, people with disability are more likely to be unemployed than people without disability, and are more likely to be unemployed for longer than 12 months.<sup>21</sup> Detailed data on labour force participation, employment rates and the experiences of people with disability in open employment can be found in Volume 3, *Nature and extent of violence, abuse, neglect and exploitation*.

We consider that low labour force participation and systemic barriers to employment for people with disability persist notwithstanding various government strategies, policies and programs over many years to address the situation. Economic security, including jobs, featured as a priority area in the National Disability Strategy 2010–2020. Its successor, Australia’s Disability Strategy 2021–2031 (ADS), has ‘Employment and Financial Security’ as one of the seven Outcome Areas.<sup>22</sup>

## Achieving inclusive employment for people with disability

The systemic barriers experienced by people with disability in obtaining and retaining open employment have also been the subject of several past inquiries and reports.<sup>23</sup> This includes the *Willing to work: National inquiry into employment discrimination against older Australians and Australians with disability*, Final report, published by the Australian Human Rights Commission in 2016 (*Willing to work* report).<sup>24</sup>

At Public hearing 19, Dr Graeme Innes, the former Disability Discrimination Commissioner, said he had not seen positive change arising from the *Willing to work* report or reports from similar inquiries.<sup>25</sup> He described the 53–54 per cent rate of employment for people with disability over the past 30 years as ‘abysmal’.<sup>26</sup> Dr Innes argued that the participation of people with disability in both public and private sector employment should reflect the rate of people with disability in the general population.<sup>27</sup> He thought this could be achieved ‘but there has to be a whole lot of change actually occur rather than be discussed’.<sup>28</sup>

Governments and employers in Australia must address this situation to achieve a more inclusive society in Australia. An essential element of inclusion is for people with disability to live, learn, work and engage alongside people without disability. An inclusive Australia is one where people with disability know they belong and are respected, valued, safe and able to contribute.<sup>29</sup> Mr Oliver Collins, a young lawyer and founding member of the Diverse Abilities Network in Queensland, gave evidence in Public hearing 9 on what inclusion meant to him. As explained by Mr Collins, who passed away following the hearing:

Every person has a variety of different experiences and perspectives, and we all add a different value to our work – not a different amount of value. I hope we can get to the point where everybody is just viewed as an individual and is appreciated for being unique.<sup>30</sup>

To achieve this vision of an inclusive society, Australia’s objective must be to respect, protect and fulfil the rights of people with disability to work on an equal basis with others. People with disability must have the opportunity to make a living by work freely chosen or accepted.

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They must be able to work in environments that are open, inclusive, accessible and free from violence, abuse, neglect and exploitation.<sup>31</sup> All governments must be persuaded to take effective action to employ people with disability and ensure equal participation of all people with disability. Attitudes must be changed in businesses and the wider community to ensure organisations across Australia employ people with disability and build inclusive workplaces.

## Opportunities and challenges

Major policy changes by governments have created challenges for, but also provided opportunities to improve, the employment prospects for people with disability. We consider that the introduction of the National Disability Insurance Scheme (NDIS) has created greater opportunities for NDIS participants to be supported into employment and given greater flexibility in the support they might receive and the settings in which they can receive it.

Commissioners Bennett, Galbally, McEwin and Ryan observed that deeper, structural changes are also shaping the broader economy. These include Australia's ageing population; advances in digital technology; the impact of increased automation on roles previously undertaken by people with disability; and the need for a more highly skilled workforce. The nature of work is also changing, and more people now work in part-time, short-term and casual jobs or are self-employed.

The COVID-19 pandemic has also highlighted the possibilities and opportunities for a more flexible approach to work, including remote work. This flexibility, along with improved technology, can minimise the impact of daily barriers for people with disability, such as the lack of accessible transport and buildings.

Projections from the Australian Government National Skills Commission indicate that in the biggest four industries, close to 770,000 new jobs will be created by November 2026.<sup>32</sup> The majority of these positions will be within growth industries such as health care and social assistance; accommodation and food services; education and training; and professional, scientific and technical services.<sup>33</sup>

Recent Australian Government Treasury analysis of Australian Bureau of Statistics data has found that the number of Australians in jobs grew by 234,000 (or 1.7 per cent) between May and November 2022. There were 99,000 additional workers in construction, while employment in both the retail and the accommodation and food services sector grew by 40,000 over the same period.<sup>34</sup> Governments are also seeking opportunities for more onshore manufacturing of trains and pharmaceuticals.<sup>35</sup>

These opportunities have occurred in the past but the unemployment rate for people with disability has increased while remaining stable for people without disability.<sup>36</sup> People with disability should be getting a fair share of these additional opportunities.

This chapter sets out the systemic barriers which need to be addressed to build inclusive workplaces and create better pathways to employment for people with disability.

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## 6.2. Barriers to open employment

In submissions following Public hearing 9, Counsel Assisting submitted:

the totality of the evidence supports the Royal Commission finding there are systemic barriers experienced by people with disability in obtaining and retaining employment in the open labour market.<sup>37</sup>

We agree people with disability experience systemic barriers to obtaining and retaining open employment in four main areas:

- attitudinal barriers
- physical and environmental barriers
- organisational barriers
- structural barriers.

These barriers to open employment were explored in detail in Public hearing 9, which focused on the experiences of people with disability, and in Public hearing 19, which focused on the responses of employers and regulators to the system barriers identified in Public hearing 9.

Representatives of some of the large private sector employers who participated in Public hearing 19 generally accepted the existence of systemic barriers to employment for people with disability.<sup>38</sup> Private sector organisations referred to a range of actions taken to address or eliminate those barriers. These actions included offering specialised and targeted recruitment programs,<sup>39</sup> offering mentorships and traineeships,<sup>40</sup> providing training for employees and recruiters including on disability awareness,<sup>41</sup> the development of policies including those relating to reasonable adjustments,<sup>42</sup> membership of networks and committees to share and develop resources,<sup>43</sup> and enhancements to employee platforms to make them more user friendly and accessible.<sup>44</sup> There was also some recognition that large private sector employers are well placed to create employment opportunities for people with disability.<sup>45</sup>

The Australian Government acknowledged the information before it ‘indicate[d] that barriers to employment for people with disability are varied and complex’.<sup>46</sup> Australian Public Service Commissioner, Mr Peter Woolcott AO, said employing people with disability in the Australian Public Service (APS) ‘benefits not only people with disability but the APS as a whole’.<sup>47</sup> He highlighted ‘clear business benefits ... from greater innovation and flexibility to a workforce that builds and retains strong corporate knowledge’.<sup>48</sup>

Mr Scott Connolly, the Australian Council of Trade Unions Assistant Secretary, agreed that barriers to open employment exist.<sup>49</sup>

Following Public hearings 9 and 19, Counsel Assisting detailed the barriers to employment for people with disability. We adopt Counsel Assisting’s characterisation and analysis of the barriers in the sections that follow.

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## Attitudinal barriers

Attitudinal barriers are the discriminatory beliefs about, stigmas against and behaviours towards people with disability that may operate as barriers to obtaining and retaining open employment. People with disability may experience negative attitudes about their capacity to work from colleagues, customers and members of the community. The impact of these negative attitudes can include lower expectations, lower workforce participation rates and poorer work conditions for people with disability.

In 2009, the National People with Disabilities and Carer Council, on behalf of the Australian Government, published the report *Shut out: The experience of people with disabilities and their families in Australia* (*Shut out* report). This report showed employer attitudes posed the biggest barrier to employment for people with disability.<sup>50</sup>

### Low expectations of and misconceptions about people with disability

Assumptions by employers, and the broader community, that people with disability do not want to work or are not capable of working can create lower expectations of people with disability. These misconceptions can also perpetuate a perception of lower productivity in the workplace.

In Public hearing 9, Mr Michael Pini gave evidence, including about his experiences as Assistant Commissioner, Tax Counsel Network at the Australian Taxation Office. Mr Pini contrasted his experiences interacting in the broader community with his experience working as a senior executive in the public service. He said people outside of work were ‘surprised’ when he told them he worked, and even more surprised when he told them he worked full time.<sup>51</sup>

Ms Suzanne Colbert, then CEO of the Australian Network on Disability, said ‘most employers don’t think that they have work that is relevant and suitable for people with disability’.<sup>52</sup> In her view, this was because employers cannot imagine it.<sup>53</sup> For example, they cannot imagine how a blind person could make a great lawyer or how a deaf person could be excellent at customer service.<sup>54</sup>

Employers can also operate under the ‘common misconception that hiring a person with disability will result in the need to make significant, and potentially costly, changes to the workplace’.<sup>55</sup> In Public hearings 9 and 19, we heard about the Employer Mobilisation Project commissioned by the Department of Jobs and Small Business on behalf of the Collaborative Partnership for Improving Work Participation. The aim of this research was to ‘understand employer behaviours, attitudes and intentions with respect to the employment of people with disability’.<sup>56</sup> The project found employers view ‘red tape hurdles’ around worksite requirements, modifications and adjustments as a barrier to integrating people with disability into their workplace.<sup>57</sup> This is despite data that an overwhelming majority of working age people with disability participating in the labour force do not require additional support and modifications<sup>58</sup> and experience fewer workplace incidents.<sup>59</sup>



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Ms Dani Fraillon, CEO of Get Skilled Access, told us she knew of many examples of employers that believed they were doing the right thing by not hiring someone with perceived medical or accessibility needs.<sup>60</sup> Ms Fraillon said employers often did not realise that a conversation with the person could alleviate their concerns about occupational health and safety.<sup>61</sup>

## Discriminatory attitudes, behaviours and ableism

Discriminatory attitudes, behaviours and ableism can create barriers in the recruitment process and in the workplace for people with disability.

In Public hearing 9, Mr Oliver Hunter gave evidence about his experiences as a young person with disability looking for work. Mr Hunter was told by the head of a university campus that he would not be able to do a particular role. He was told this the day before his interview for the position. This attitude was based on an assumption about Mr Hunter's physical disability.<sup>62</sup> 'Riley' also described being excluded from interviews or not making it to the next round of interviews when they disclosed their back problem to the prospective employer.<sup>63</sup>

These discriminatory attitudes and behaviours can continue in the workplace. Witnesses at our public hearings recounted being yelled at and clapped in their face to get their attention.<sup>64</sup> Others saw their colleagues ridiculed for having a disability.<sup>65</sup>

Professor Anne Kavanagh and Dr Alexandra Devine gave evidence at Public hearing 9 in their capacity as academics at the University of Melbourne. They spoke about the Improving Disability Employment Study, which gathered information about the experiences of participants to examine factors that promote and impede sustainable and meaningful employment for people with disability.<sup>66</sup> Dr Devine said close to 40 per cent of participants reported experiencing discrimination when looking for a job or in the workplace.<sup>67</sup> Dr Devine told us participants considered discrimination as a 'key barrier to employment'.<sup>68</sup>

## Disclosing disability in the workplace

Discriminatory attitudes can make it difficult for people with disability to decide whether to tell an employer or prospective employer about their disability. If they choose to do so, it can be difficult to navigate how and when to raise it. People with psychosocial or episodic disability, often referred to as 'invisible disability', may face a choice between disclosing their disability and experiencing discrimination, or concealing their disability and not having access to adjustments.<sup>69</sup>

At Public hearing 9, Dr Ben Gauntlett gave evidence in his capacity as the Disability Discrimination Commissioner. He spoke about the ongoing need to balance disclosure and privacy issues in the workplace, particularly in relation to accessing adjustments.<sup>70</sup> In Public hearing 9, 'Taylor' described their experience of disclosing they have autism.<sup>71</sup> Although Taylor disclosed their disability and sought adjustments in previous job interviews, they said they would be unlikely to do so again. As a person with an invisible disability, they thought any 'potential benefits of disclosure are not worth the risk' of discrimination.<sup>72</sup>



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Employers also expressed concerns about asking employees to identify themselves as a person with disability, or made it clear that disclosure was entirely voluntary.<sup>73</sup> For example, a representative of Woolworths said:

We respect the privacy of our team members and the personal decision team members make whether to disclose personal information.<sup>74</sup>

Concerns about disclosure of disability in the workplace can often lead to a disparity between the data recorded in the human resources systems of organisations, where the person is easily identifiable, and data that is collected through anonymous surveys.<sup>75</sup> This can create barriers to accurate data collection, which is explored later in this chapter.

Evidence in Public hearing 19 demonstrated that anonymous surveys tended to show a higher proportion of people with disability in an organisation.<sup>76</sup> Dr Robin Banks, a legal practitioner and former Tasmanian Anti-Discrimination Commissioner, told us people with disability feel unsafe openly disclosing their disability, fearing discrimination.<sup>77</sup> Ms Melissa Donnelly, National Secretary of the Community and Public Sector Union (CPSU), said employees may not be comfortable identifying their disability to their employer because ‘they are concerned they will face discrimination of some kind’.<sup>78</sup>

Ms Christina Ryan, CEO and founder of the Disability Leadership Institute, made the point:

[w]hen people know they are valued for their disability and they are not simply a number that is helping percentages, they have a reason to be openly disabled in their workplace.<sup>79</sup>

In contrast, some employers suggested there is less need to disclose disability as workplaces become more inclusive.<sup>80</sup>

In response to Counsel Assisting’s submissions following Public hearing 19, the Australian Government said employers should take steps to support a workplace culture that encourages safe disclosure.<sup>81</sup>

## Impact of attitudinal barriers on people with disability

The impact of negative attitudes on people with disability can be profound. In Public hearing 9, Mr Collins said he felt ‘like there is a greater amount of pressure on people with disabilities because the attitude is still that we are a burden’.<sup>82</sup> In Public hearing 29, ‘The experience of violence against, abuse, neglect and exploitation of people with disability from culturally and linguistically diverse communities’, Mr Joe Monteleone described how being Deafblind meant he continued to be considered a risk at work, despite his performance and experience.<sup>83</sup>

The low expectations of others can, in turn, lower the self-expectations of people with disability. Mr Collins described how people with disability often grow up with the pressure that ‘we are not supposed to aim for the same things’, which can lead to ‘self-sabotage’.<sup>84</sup>

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Attitudinal barriers can be compounded for people with disability when they experience negative attitudes based on reasons, such as First Nations status, ethnicity, age, sex, or sexual or gender identity.

We heard how employers can help address the impact of these attitudinal barriers by encouraging staff ‘to bring their whole self to work’, by gearing recruitment processes towards inclusivity and accessibility, and regularly checking in on their employees’ needs.<sup>85</sup>

## Physical and environmental barriers

Physical barriers can prevent people with disability from seeking and staying in employment. These barriers include:

- physically inaccessible buildings and workplaces
- working environments that are unsuitable for people with psychosocial, cognitive and/or episodic disability
- inaccessible communication methods.

Access is a fundamental requirement for participation and inclusion in the workplace. The right to access all aspects of society on an equal basis with others is a cross-cutting right set out in the *CRPD*.<sup>86</sup> In Volume 6, *Enabling autonomy and access*, we discuss accessibility for people with disability to vital supports and services. These include information and communications, support for decision making, disability advocacy and health care.

## Physical inaccessibility

The ability to physically access a workplace, move around the space, and use equipment and facilities is a key aspect of enabling people with disability to gain and maintain employment.

Accessibility and perceived accessibility of different types of work and workplaces can inform early career planning by people with disability. In Public hearing 9, Dr Beth McNally explained her choice to study psychology was influenced by her hope that it would provide opportunities that were not limited by her accessibility requirements.<sup>87</sup> Mr Collins had a similar experience. He believed law ‘would be an ideal career’ as it involved a lot of computer work.<sup>88</sup>

The physical inaccessibility of environments can also be an immediate barrier to recruitment. If an advertised job is in a building that is not accessible, people with disability may be less likely to apply. This means they are excluded from the outset and the employment options available to them are further limited.<sup>89</sup> In Public hearing 9, Jess Mitchell, then a Youth Storytelling and Development Officer at Children and Young People with Disability Australia, recounted how an inaccessible room for an interview training session prevented a young person using a wheelchair from participating in the interview.<sup>90</sup>

When people with disability obtain open employment, the accessibility of the physical environment can promote inclusion and enable them to succeed in their role or it can perpetuate systemic exclusion and neglect. It can also significantly affect how they interact and participate in

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the workplace. Dr McNally described her experience of working in a building where she had to travel six levels in a lift to access the bathroom and was unable to use the kitchen facilities. This affected her productivity and prevented her from doing daily things that were straightforward for her colleagues.<sup>91</sup>

## Inaccessibility for people with psychosocial, cognitive and episodic disability

We heard that people with psychosocial, cognitive or episodic disability can face challenges in accessing flexible and inclusive work environments.

In evidence provided in Public hearing 9, 'Jamie' described living with an acquired brain injury and the 'difficulty focusing on a task and understanding non-verbal communications in order to understand social situations'.<sup>92</sup> Jamie explained this means 'it can take a little longer for people, such as potential employers, to really get to know me'.<sup>93</sup>

Mr Edward Sianski gave evidence that his son Yuri's mental health would benefit from employment, particularly because of the social aspects of work. However, Yuri would require an employer who understands that his illness ebbs and flows, and who could provide instructions and supervision.<sup>94</sup>

In Public hearing 31, Mr Harry Sillett gave evidence on behalf of Vanguard Laundry (Vanguard), a not-for-profit commercial laundry and social impact program. Vanguard has prioritised the inclusion of more than 120 people with psychosocial disability and people who have experienced various forms of disadvantage.<sup>95</sup> These employees are supported by Vanguard's social impact program, which includes work experience, practical supports such as flexible working hours, and support for a person to transition to a career in a different industry if they choose.<sup>96</sup> Employees who access these supports are integrated into Vanguard's staff, and all staff members are paid full award wages.<sup>97</sup>

Vanguard demonstrates how workplaces can be designed to enable people with psychosocial disability to thrive in employment.

## Environmental barriers

Environmental barriers to employment include a person's life circumstances, how they get to work and where they live. These barriers can affect the accessibility of employment opportunities more broadly. In Public hearing 9, Dr Gauntlett said:

employment is directly affected by other aspects of a person's life, whether that be their housing, their access to personal care, their education, their ability to access transport, and their ability to be safe where they live.<sup>98</sup>

Evidence at public hearings specifically identified transport accessibility as a barrier. In Public hearing 9, Dr McNally described how travelling to, and the location of, the workplace could

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be limiting and are frequently deciding factors in applying for jobs.<sup>99</sup> Professor Kavanagh highlighted issues around the accessibility of, and access to, housing and transport as examples of ‘very important non-vocational barriers’.<sup>100</sup>

The limited availability of accessible jobs in regional and remote areas can also be a major barrier for people with disability in those areas.

## Organisational barriers

Organisational barriers relate to the way in which a workplace functions. Examples of organisational barriers include inaccessible systems and recruitment processes, lack of appropriate support services and refusal to make adjustments. Evidence provided in Public hearing 9, described below, demonstrated how people with disability can face organisational barriers when preparing to enter the workforce, applying for jobs and during employment.

### Preparing to enter the workforce

The link between education and employment was a key theme of evidence presented during Public hearing 9. People with disability told us how inaccessible or discriminatory experiences at school impacted their education and early job opportunities. Ms Pamela Darling did not participate in work experience when she was at school even though she ‘always wanted to work’.<sup>101</sup> She felt her experiences at school were because ‘they assumed I couldn’t do anything’.<sup>102</sup> Transitions from school to work are discussed in Chapter 3 of this volume, ‘Overcoming barriers to safe, quality and inclusive education’.

In Public hearing 9, Mr John Baxter reflected on his years of job seeking as a First Nations person living in regional communities.<sup>103</sup> He considered his limited access to education and ‘many years of voluntary work and little other employment history’ may have affected the way potential employers viewed his applications.<sup>104</sup>

We also heard about the need for more opportunities for part-time work and on-the-job training for young people with disability preparing to enter the workforce. Ms Catherine McAlpine, CEO of Inclusion Australia, referred to a research project by the Centre for Social Impact, which highlighted the benefits of a ‘work-based learning’ model for people with intellectual disability.<sup>105</sup> Ms Alpine said research ‘indicates that placement in a job, then on-the-job training, results in higher rates of open employment outcomes’.<sup>106</sup>

### Applying for jobs

#### Recruitment processes

People with disability can face barriers when applying for work. For a prospective employee or an employee seeking a promotion or transfer within the workplace, a key source of information about a job, the workplace and the employer is likely to be the job advertisement.

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For a person with disability, the form and content of a job advertisement or application may be a key factor in their decision to apply for the job.<sup>107</sup> If the advertisement is inaccessible, for example, not in Plain English/Easy Read or accessible by screen readers, it can exclude people with disability from being able to apply for the job at the outset.<sup>108</sup>

Failure to offer and provide adjustments during the recruitment process can also exclude people with disability. In Public hearing 19, we heard that only four of the 12 private sector employers who gave evidence made the availability of adjustments explicit in all job advertisements.<sup>109</sup> For example, Australia Post has an inclusive website that ensures all job advertisements reference the availability of adjustments, including at the recruitment stage, and identify the inherent requirements of the particular role.<sup>110</sup> Private sector employers in Public hearing 19 otherwise made clear that they would make an adjustment available to a person if the person identified what they needed.<sup>111</sup> These are useful measures. However, Counsel Assisting observed this approach puts the onus on the employee who may have little or no knowledge about whether adjustments are required.<sup>112</sup>

In Public hearing 9, Taylor described their experience participating in a public sector interview that included a 'robo' interview. A 'robo' interview is a timed, pre-recorded video interview. This involved the interviewee recording a video of their interview on their own device for the recruiters to view later. Taylor requested adjustments for the interview, including that the interviewer provide feedback and prompting if further detail was required. Taylor was not contacted by anyone before the interview to discuss their request. Taylor did not receive their adjustments because it was not possible to do so in the automated, online interview format.<sup>113</sup>

In their response to Counsel Assisting's submissions following Public hearing 21, the Australian Government provided information about a pilot project being undertaken by DSS. The pilot project was instigated in accordance with Priority Area 1 of the Employ My Ability Associated Plan in order to 'lift employer engagement, capability and demand by challenging bias and misconceptions around recruitment of people with disability'.<sup>114</sup>

While the Australian Government submissions point to a positive example, we agree with the observation of Counsel Assisting in submissions following Public hearing 19<sup>115</sup> that there appears to be little evidence of recruitment policies and practices, in either the public or private sectors, being evaluated for embedded biases or indirect disability discrimination.<sup>116</sup> The increasing systematisation of recruitment, such as Taylor's example of a 'robo' interview, raises concern in this regard.<sup>117</sup>

## **Inherent requirements of the particular employment**

The inherent requirements of employment or a particular job are the qualifications, skills, tasks, and the way in which tasks must be performed, that are essential for the job, having regard to the nature of the employer's organisation or business.<sup>118</sup> At the application stage for a particular role, any prospective or existing employee may need to know what the inherent requirements will be. Being unable to perform the inherent requirements of a particular job has legal consequences.

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An employer may lawfully refuse to employ or promote a person with disability, or may terminate the person's employment, if the person is unable to perform the inherent requirements of the job.<sup>119</sup> An employer will not be found to have discriminated against a person (under the *Disability Discrimination Act 1992* (Cth) (*DDA*)) or to have taken adverse action against a person (under the *Fair Work Act 2009* (Cth) (*FWA*)) in these circumstances.

Section 21A of the *DDA* provides an exception to a claim of discrimination where an aggrieved person, such as a prospective or existing employee, is unable to carry out the inherent requirements of the particular work (including promotion or transfer to particular work), even if the employer has made reasonable adjustments for the person.<sup>120</sup> Under the current approach, a 'reasonable adjustment' is an adjustment to be made by a person, unless making the adjustment would impose an unjustifiable hardship on the person.<sup>121</sup>

Section 342 of the *FWA* sets out the circumstances in which a person takes adverse action against another person. Adverse action means refusing to employ an employee or a prospective employee, dismissing an employee, injuring an employee in employment, altering the position of an employee to their prejudice and discriminating between the employee and other employees of the employer.<sup>122</sup> Section 351(2)(b) of the *FWA* provides adverse action does not apply if action is taken because of the inherent requirements of the position concerned. The employer bears the onus of proving the employee could not perform the inherent requirements of the particular position.<sup>123</sup> This exception can apply even if the employer has an 'honest but mistaken belief that the employee could not perform the inherent requirements'.<sup>124</sup> The inquiry is directed to when the adverse action was taken and, unlike the *DDA*, it is not relevant that the employee later proves an ability to do the inherent requirements. Section 351 of the *FWA* does not contain any correlative duty on employers or prospective employers to make reasonable adjustments.<sup>125</sup>

Despite their importance, an employer has no legal obligation to identify the inherent requirements of a job in an advertisement. There is also no obligation to inform any applicant about whether workplace adjustments will be considered or made in any job advertisement. Furthermore, there is no legal obligation to design a job in a way that assumes workplace adjustments might be required by the employee performing the role. An employer cannot, however, misrepresent the nature of work to be performed or the terms and conditions of employment.<sup>126</sup>

The current approach employers take to describe inherent requirements can act as a barrier to employment in numerous ways. The barriers can include:

- discouraging people with disability applying for roles, either due to the way inherent requirements are described or because of particular inherent requirements listed<sup>127</sup>
- discouraging people with disability applying for roles due to a lack of clear and accessible information about the job or inherent requirements of the job<sup>128</sup>
- failing to encourage employers to engage in discussions with prospective or existing employees regarding adjustments or job design.<sup>129</sup>

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In Public hearing 9, Ms Colbert from the Australian Network on Disability said unclear inherent requirements can make it 'very hard for people with a disability to know whether they could actually perform that role'.<sup>130</sup> During Public hearing 19, Ms Ryan from the Disability Leadership Institute told us inherent requirements identified by employers may not reflect what is required in practice:

we see, for example, positions advertised and at the bottom it says you have to have a degree in X. That degree is not necessarily what you need to do this job. You need expertise and knowledge in that field.<sup>131</sup>

We also heard evidence about job advertisements that listed 'inherent requirements' that were not actually inherent to the work concerned. This has the potential to exclude candidates with disability. Ms Donnelly, from the CPSU, told the Royal Commission she was aware of some CPSU members who had experienced 'artificial barriers' to recruitment in the sense that inherent requirements for the job in practice restricted the opportunities for people with disability.<sup>132</sup> An example from a CPSU member survey was provided by Ms Donnelly in her evidence at Public hearing 19. A 'planner role' advertised by the National Disability Insurance Agency (NDIA) listed inherent requirements that included being able to 'address vehicle problems' and 'walk over uneven terrain'.<sup>133</sup>

A recurring issue was a requirement for a drivers licence. In Public hearing 9, Jamie gave evidence he had been unsuccessful in obtaining a paid position at an organisation where he had been volunteering because he was unable to obtain a drivers licence. Jamie continued to volunteer at the organisation and stated, 'I am left feeling as though I was exploited'.<sup>134</sup>

The characterisation of the inherent requirements of a role can pose a barrier to continued employment following a workplace injury. Mr Connolly from the Australian Council of Trade Unions gave evidence that 'workers compensation systems positively oblige employers to retain workers on modified duties' following an injury for a particular period of time known as the 'protected period'.<sup>135</sup> Mr Connolly told us:

In many cases, a reasonable adjustment has ostensibly been made during the 'protected period', yet upon the expiry of that period the employer asserts that there are inherent requirements associated with the pre-injury role (which were waived without any practical difficulty during the protected period) that the employee cannot fulfil and therefore must be dismissed.<sup>136</sup>

Mr Connolly noted this 'presents a real barrier to continued employment and can sever long term ties to workplaces'.<sup>137</sup>

Counsel Assisting observed that the private employers' policies and procedures provided as part of Public hearing 19 contained little substantive information about inherent requirements.<sup>138</sup> Some policies did no more than describe the statutory test.<sup>139</sup> Kmart and Australia Post provided some guidance about inherent requirements that was specific to roles for which they were recruiting.<sup>140</sup> Substantive information might include how the requirements are determined and assessed, the relationship with work health and safety requirements, and when and how adjustments should be made to enable a person to perform the inherent requirements.



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Employers are not obliged or encouraged to discuss with employees how workplace adjustments can ensure a person with disability is hired and able to thrive in a particular role. As Ms Banks reflected, 'it is not an inherent requirement [of a job] to do it the way it's always been done necessarily'.<sup>141</sup>

We agree with Counsel Assisting's observations that working out inherent requirements can be difficult in practice.<sup>142</sup> We also agree inherent requirements can be designed or described in a way that reflect attitudinal barriers (as detailed above) and assumptions about how work should be performed. Employers should consider their approach to describing the inherent requirements of a role and facilitate a greater focus on job design and adjustments. This would be mutually beneficial. It would ensure people with disability are encouraged to apply for all roles for which they have the appropriate qualifications and skills. It would also guarantee employers have access to the full cohort of potential candidates for a job.

## During employment

### Employers need knowledge, skills, leadership and resources to support people with disability

A strong theme of the evidence before the Royal Commission was the importance of employers having the knowledge, skills, leadership and resources to support people with disability. In Public hearing 9, Taylor observed that the experience of employees with disability is heavily dependent on the goodwill of their direct line manager. This can vary considerably. Taylor said, '[i]f you have a manager who is supportive of your needs, you are much more likely to progress in your career and have a good experience overall'.<sup>143</sup> Ms Colbert said large organisations need an 'authorising environment' for hiring people with disability. This requires a 'clear message from the top' and 'commitment' from senior leadership to be an organisation that is accessible and inclusive.<sup>144</sup>

In Public hearing 9, we heard from representatives of the National LGBTI Health Alliance (the Alliance), now known as LGBTIQ+ Health Australia. The Alliance recognised it is often left to the person with disability to educate others in the workplace and this responsibility is 'incredibly tiresome'.<sup>145</sup> The Alliance developed the EmployableQ Toolkit after recognising many of its member organisations lacked resources that would enable them to engage with and employ LGBTIQ+ people with disability.<sup>146</sup>

### Employers failing to provide adjustments or flexible work arrangements

In Public hearing 19, witnesses told us of the need for greater education and support for employees with disability to request and receive workplace adjustments. There is also a need to improve employer awareness of their legal obligations to make adjustments and to help them navigate their compliance.<sup>147</sup>

In Public hearing 9, Mr Baxter told us workplaces often poorly manage information about adjustments. This can result in employees needing to have 'awkward or difficult discussions'

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on multiple occasions if their supervisory structure changes.<sup>148</sup> The onus often ‘falls at the feet of the person with disability’<sup>149</sup> to share information about their disability and prompt the discussion with their employer about workplace adjustments.<sup>150</sup>

During Public hearing 19, Dr Innes stated:

Many people with disability find it difficult to have a conversation with a potential or actual employer about the reasonable adjustments that they may need. When this reticence is coupled with an employer who does not actively engage on the topic, which in my experience, is the majority, a significant barrier for the person with disability in gaining or maintaining employment is created.<sup>151</sup>

Dr Gauntlett spoke about how a young person may not know what adjustment they need or what to ask for. Therefore, it would be beneficial for the employer to initiate regular discussions about what is available.<sup>152</sup>

A representative from Medibank explained that they only became aware during the hearing that Medibank’s adjustment policy was inconsistent with the *DDA*. Medibank’s policy was to provide adjustments where it was ‘reasonably practicable’ to do so as opposed to in accordance with the legislative test of unjustifiable hardship. Medibank accepted that its policy needed to be changed to be in line with the *DDA*.<sup>153</sup> The concept of unjustifiable hardship and its relationship to disability discrimination law is examined in detail in Volume 4, *Realising the human rights of people with disability*.

Three employers who gave evidence to the Royal Commission in Public hearing 19 –NAB,<sup>154</sup> the DSS,<sup>155</sup> and the NDIA<sup>156</sup> – described having a proactive approach to informing prospective or existing employees about the availability of adjustments or enquiring whether employees needed adjustments. For example, the DSS recognised the important role of managers engaging with their staff ‘about the support they may require to perform their role to the best of their ability’.<sup>157</sup> The DSS described having regular catch-ups during which managers ask staff members what they need to do their job.<sup>158</sup>

Mr Cody Skinner gave evidence about feeling ‘discriminated and disincluded’ in his position as a disability support worker. His boss told him he was breaking a work health and safety rule by taking out his hearing aids to shower clients.<sup>159</sup> When Mr Skinner asked whether the organisation could do deaf awareness training or find alternative technology for him to use, his boss told him, ‘[w]e do not have time for that, we are focusing on your job’.<sup>160</sup>

During Public hearing 29, witnesses from the Deaf community spoke about engaging interpreters in the workplace through the Commonwealth Employment Assistance Fund (EAF).<sup>161</sup> Due to funding limits, Deaf employees who use the EAF are forced to be selective about when to use interpreters.<sup>162</sup> This can lead to workplaces being less willing to employ deaf people because they perceive they might need to subsidise any additional interpreter costs.<sup>163</sup> We have been unable to cost a proposal to increase the funding for interpreting through the EAF. However, the Australian Government should consider this issue further because of its impact on employment opportunities and career progression for people who are deaf or hearing impaired.

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## Lack of career progression, accessible learning and development opportunities, or access to challenging and meaningful work

Once employed, people with disability can continue to experience barriers to their success and wellbeing at work, and their opportunities for promotion or progression.

Mr Baxter spoke about his job in a government business enterprise where he worked for five or six years but was never offered the opportunity to progress or advance.<sup>164</sup> He endeavoured to undertake additional training and move between offices. However, he felt his yearly reviews were 'more based on what I could not do, as opposed to what I could do and what I had achieved to that point'.<sup>165</sup>

Dr McNally, who gave evidence in Public hearing 9, also spoke of her concern that her disability 'will negatively impact [her] career progression into the future'.<sup>166</sup> She worried the barriers she faced now will be 'exacerbated in these senior roles – making [her] not only less likely to secure such a position but also less likely to flourish'.<sup>167</sup> Dr McNally said having someone within employer organisations 'who could speak to people with disability about their career progression opportunities and how the organisation may be able to facilitate this' would be 'so valuable'.<sup>168</sup>

## Structural barriers

Policies, systems, government programs and legislation are examples of structures that can create barriers to employment for people with disability. We have identified the lack of coherence and connections between government programs such as the Disability Employment Services (DES) program and the Disability Support Pension as structural barriers. The complexity of the legislation that aims to protect people with disability who experience discrimination in the workplace is also a structural barrier.<sup>169</sup>

## Disability Employment Services

### Overview of the Disability Employment Services program

The DES program is the Australian Government's primary program for assisting people with disability to find and retain open employment.

Providers of Disability Employment Services are called DES providers. DES providers are a mix of large, medium and small for-profit and not-for-profit organisations.<sup>170</sup> As of 31 January 2023, there were 97 DES providers providing Disability Employment Services across 3,565 sites.<sup>171</sup> DES providers operate in each Australian state and territory.<sup>172</sup>

DES providers help DES participants with:<sup>173</sup>

- job readiness – for example, preparing a resume
- finding a job – for example, contacting employers and preparing participants for interviews

- 
- keeping a job – for example, advising employers on how to support employees with disability.

DES participants undertake a Job Capacity Assessment or Employment Services Assessment in order to access the DES program. They may be assessed as having employment benchmark hours of 8, 15, 23 or 30 hours per week.<sup>174</sup> Employment benchmark hours are the number of hours a participant must work each week, on average, to achieve their outcome. Outcomes are employment milestones achieved by the participant that result in a payment for the provider.<sup>175</sup>

The DES program is divided into two streams:<sup>176</sup>

- The Disability Management Service stream is for job seekers with disability, or who have an injury or health condition, and require assistance to find a job and occasional support in the workplace to keep a job.
- The Employment Support Service stream is for job seekers with permanent disability who need help to find a job and who need regular and ongoing support in the workplace to keep a job.

As of 31 January 2023, around 42 per cent of participants were in the Disability Management Service stream, and 58 per cent in the Employment Support Service stream.<sup>177</sup> Additionally, of the 271,761 participants:<sup>178</sup>

- 5.4 per cent were referred to, but had not commenced, the program
- 26 per cent had been suspended from the program
- 69 per cent had commenced the program.

Across both the Disability Management Service stream and the Employment Support Service stream, the top three categories of 'primary disability' reported as at 31 January 2023, were physical, psychiatric and autism.<sup>179</sup>

DES providers are funded by the DSS to provide services to DES participants.<sup>180</sup> DES providers receive payments for providing services, including Service Fees, Outcome Fees and Ongoing Support Fees. The framework for funding and payments will be explored further below.

## Participant demographics

As at 31 January 2023, there were 271,761 DES participants. This cohort included those who identified as culturally and linguistically diverse (19 per cent), First Nations people (7.4 per cent), refugees (4.9 per cent), homeless people (7.4 per cent) and ex-offenders (8 per cent).<sup>181</sup>

In the 2021–22 financial year, most DES participants were in metropolitan areas (68 per cent), followed by regional centres (9.9 per cent), large rural towns (8.5 per cent), medium rural towns (4.9 per cent), small rural towns (8.4 per cent) and remote communities (0.7 per cent).<sup>182</sup>

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## Costs of the Disability Employment Services program

The total program expenditure on the DES program in the 2019–20 financial year was approximately \$1.2 billion.<sup>183</sup> Program expenditure during the 2020–21 financial year was approximately \$1.25 billion.<sup>184</sup> During the 2021–22 financial year it increased to approximately \$1.35 billion.<sup>185</sup> These timeframes covered a revision in the outcome and program structure, and periods of lockdowns due to the COVID-19 pandemic.

Even if a DES participant is successfully placed in employment, not all placements are long term or full-time. Between June 2021 and June 2022, the number of DES participants decreased by 6.2 per cent from 315,926 to 296,485.<sup>186</sup> In the 2021–22 financial year, the number of DES employment placements was 107,439.<sup>187</sup> Placements are categorised according to whether participants were placed for up to 13, 26 or 52 weeks. In the 2020–21 and 2021–22 financial years, the DSS's targets were 40 per cent, 30 per cent and 20 per cent for 13-week, 26-week and 52-week placements, respectively.<sup>188</sup> These targets were all met in both periods.<sup>189</sup>

The target of 20 per cent for 52-week placements means if approximately 105,000 people are placed, only 21,000 can expect to be placed permanently (that is, for 52 weeks or more). This suggests that while roughly a third of people accessing the DES program receive a placement, not many DES placements are sustained long term.

## Regulation of Disability Employment Services providers

The operation of the DES program is governed by the DES Grant Agreement (which incorporates the DES Service Guarantee and the Code of Practice) and the DES Guidelines.

DES providers are regulated by the DSS. DES providers must be certified against the National Standards for Disability Services (National Standards) in order to comply with the DES Grant Agreement and *Disability Services Act 1986* (Cth).<sup>190</sup>

## Reform of the Disability Employment Services program

The DES program was introduced by the Australian Government in 2010 to amalgamate two earlier programs that focused on disability and rehabilitation.

Since its inception, a number of inquiries and reports have criticised the DES program for its failure to improve employment outcomes for people with disability.<sup>191</sup> Following these, the Australian Government enacted major reforms in 2018.<sup>192</sup> Key changes to the DES program at that time included allowing participants to choose their service provider, expanding access to education supports, allowing people to voluntarily enter the DES system and adjusting how outcome payments were structured.

A Star Rating model was introduced to DES as part of the 2018 program reforms. On a yearly basis, each DES provider receives a Star Rating from 1 to 5 based on the following two Key Performance Indicators:<sup>193</sup>

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- efficiency (how long it takes to achieve an employment outcome)
  - effectiveness (how many employment outcomes are achieved and the duration of employment, including where ongoing assistance is required).

Star Ratings are calculated by the DSS and are intended to be used by employers and participants, amongst others, 'to assess the comparative performance of different providers in their local area'.<sup>194</sup> The Star Ratings system, and Key Performance Indicators against which DES providers are assessed, are discussed below.

In 2020, the DSS commissioned the Boston Consulting Group to prepare the *Mid-term review of the Disability Employment Services (DES) Program* (DES Mid-term Review). The DES Mid-term Review assessed the efficacy and efficiency of the DES system following the 2018 reforms.<sup>195</sup>

The DES Mid-term Review identified that between June 2018 and March 2020, despite increased expenditure on the DES program by 48 per cent and provider caseloads rising by 46 per cent, employment outcomes achieved for participants increased only by 8 per cent.<sup>196</sup> The DES Mid-term Review also found that 'the probability of a participant finding employment after any given period on the DES program has declined by around 12 [to] 14 per cent since the July 2018 reforms'.<sup>197</sup>

The DSS acknowledged that the DES Mid-term Review found that, while the 2018 reforms had some positive results, overall, the program was not meeting its objectives efficiently and effectively. The DSS noted:

The review found many people with disability felt they were being placed into jobs that did not match their skills and interests, or jobs with limited opportunities for career development or to maximise their earning potential. Employers and participants found systems hard to navigate, including the process of selecting a provider.<sup>198</sup>

The Australian Government is developing a new Disability Employment Support model (new DES model) that will replace the current program from 1 July 2025.<sup>199</sup> The DSS undertook public consultation on how the new DES model can best help people with disability prepare for work, find and keep a job, and progress their careers. The DSS released a consultation report on 8 August 2022, summarising the feedback received from public consultation.<sup>200</sup> The DSS said it will continue to undertake consultation with key stakeholders 'to inform final details for the new model', including 'testing ideas' and 'discussing implementation issues'.<sup>201</sup>

The Australian Government said immediate adjustments will be made to improve the quality of DES services prior to the implementation of the new DES model in July 2025.<sup>202</sup> In December 2022, the DSS released a draft *Quality Framework for the Disability Employment Service* discussion paper. The consultation period ended on 13 March 2023. The draft framework is discussed below.

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## Experiences of people with disability using the Disability Employment Services program

Structural issues with the design and implementation of the DES program were a common theme in responses to the *Employment issues paper* and during Public hearings 9 and 21.

We heard people with disability had negative experiences while engaging with DES providers. Issues include a lack of appropriate support and failure to provide person-centred services, with participants placed in jobs that did not match their skills, interests or abilities. We heard about structural issues in funding arrangements. We also heard about a lack of knowledge and professionalism in the DES sector; inaccessible information; inadequate responses to complaints of violence, abuse, neglect and exploitation; lack of incentives to provide quality services; and poor client outcomes. These are explored in turn below. Many of these issues were illustrated by the 'Mzia' case study in Public hearing 21.



## Public hearing 21: ‘Mzia’ case study<sup>203</sup>

Public hearing 21 examined a case study involving ‘Mzia’, a participant in the DES program.<sup>204</sup> Mzia lives with Attention Deficit Hyperactivity Disorder.

Mzia began working when she was 14 years old. After leaving high school, Mzia had many different jobs, including working in cafés and restaurants. Despite wanting permanent employment, she had mostly been in casual work. She had not had a permanent job for about 25 years.

In 2019, Mzia entered the DES program and became a client of the DES provider AimBig.

AimBig operated a program known as BusyBeans, through which DES participants were trained and worked in a café environment or an office as in-house baristas. Mzia was employed as a DES participant in the BusyBeans program as a barista trainer from June 2019 to March 2020. She was responsible for teaching other DES participants how to be baristas.

Public hearing 21 examined Mzia’s experiences in the BusyBeans program run by AimBig. Mzia gave evidence about:

- not understanding who her employer was due to information being provided by different entities
- not receiving a proper induction or any training
- the lack of policies, procedures, safety measures and proper facilities to enable her to train participants
- feeling like there was a conflict of interest because her job coach was also her colleague
- feeling that she and the other participants were not given appropriate post-placement support, despite requests for support and assistance
- not receiving a position description, being paid under the wrong award and not being able to progress into a permanent role.

Commissioners made 11 findings about the BusyBeans program. In relation to Mzia, the findings included:

- Mzia was not provided with appropriate post-placement support during certain times.
- There was a conflict between AimBig’s dual roles as Mzia’s DES provider and ‘host’ employer through the BusyBeans program.
- AimBig did not have appropriate processes in place to manage this conflict.
- AimBig’s complaint-making and resolution process was not made clear to Mzia.

- AimBig did not take appropriate action in response to concerns raised by Mzia as a participant after November 2019.
- The services AimBig provided to Mzia were inadequate and Mzia suffered consequences.

We also found that appropriate post-placement support was frequently not available to other participants in the BusyBeans program at certain times. At times, support was provided by people with no formal qualifications or experience supporting people with disability. Further, participants were not adequately trained to support future employment after the program.

We made three recommendations about the BusyBeans program. This included a recommendation to apologise to Mzia and make appropriate redress.

## Failure to provide person-centred services

We heard in public hearings, and from information received, that some DES providers do not take a person-centred approach to assisting people in finding and maintaining employment. Some fail to recognise the interests, skills, education and intersectional identities of participants and the barriers experienced by them.

For example, Mr Dominic Hồng Đức Golding told us that despite graduating with two university degrees, his DES provider placed him in an entry-level hospitality role. This role was unrelated to his qualifications and involved cleaning dishes and standing for long periods of time, which caused back pain and muscle cramps related to his cerebral palsy.<sup>205</sup>

In Public hearing 9, we heard how the support delivered by DES providers can vary. Ms Kalena Bos said one DES provider told her she would not be able to work at a fabric and craft store as it would be 'too hard' for her. This was despite her completing work experience at the same store.<sup>206</sup> Ms Bos changed to a new DES provider who spent time getting to know her and discovered her interest in clothes.<sup>207</sup> Ms Bos's provider helped her successfully apply and interview for a job with Kmart.<sup>208</sup> Ms Bos loves her job and feels like 'my new job has changed my life'.<sup>209</sup>

## Structural issues in funding arrangements

As set out above, DES providers can receive payments in the form of Service Fees, Outcome Fees and Ongoing Support Fees.

Outcomes are employment milestones achieved by the participant that result in a payment for the provider.<sup>210</sup> Outcomes are measured and Outcome Fees are paid at four, 13, 26 and 52 weeks if the participant has worked, on average, their employment benchmark hours over the relevant period.<sup>211</sup> DES providers are rewarded for placing participants in roles by being paid Outcome Fees.

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In Public hearing 9, we heard from Dr Lisa Stafford, Senior Lecturer at the Queensland University of Technology, who explained the practices of ‘churn’, ‘creaming’ and ‘parking’ associated with marketised outcome-based service models like the DES system.<sup>212</sup> She said the practice of ‘creaming’ prioritises unemployed individuals who are most job ready and most likely to get a job.<sup>213</sup> In contrast, the practice of ‘parking’ involved DES providers not actively working with people with more complex issues who are furthest away from being ready to be placed.<sup>214</sup> The phenomenon of young people with disability being ‘churned’ through the system refers to them being stuck in a cycle of unemployment, volunteerism and casualisation.<sup>215</sup> We understand this can lead to participants cycling through activities and providers without achieving long-term results.

Some participants may also be eligible for Ongoing Support Fees. When the participant has achieved a 26-week outcome, an Ongoing Support Assessment is completed to determine their ongoing needs. If a participant is classified as requiring ongoing support, they will be funded for Flexible Ongoing Support, Moderate Ongoing Support or High Ongoing Support.<sup>216</sup> As of 31 July 2022, 10.7 per cent of Employment Support Service stream participants were reported as being in the Ongoing Support phase,<sup>217</sup> though no data is publicly available on the level of funded support they were receiving.

The Mzia case study demonstrated other structural issues in the funding arrangements under DES. The case study illustrated how a DES provider paid labour hire companies to employ DES participants while those participants participated in a program operated by the DES provider.<sup>218</sup> We found this was an artificial arrangement to the extent it was ‘cast as an ongoing employment placement’.<sup>219</sup> We accepted the program was intended to provide participants with an opportunity to develop skills that would allow them to obtain ongoing, sustainable employment.<sup>220</sup> However, participants were ‘not adequately trained to support future employment opportunities’.<sup>221</sup>

## **Lack of knowledge and professionalism in the Disability Employment Services sector**

Evidence heard at public hearings and in submissions we received suggest that many DES staff members lack essential knowledge and understanding to perform their roles satisfactorily. Responses to the *Employment issues paper* described the experiences of people with disability with DES consultants who lacked specialised disability knowledge or failed to act in clients’ best interests.<sup>222</sup> For example, the Western Australian Association for Mental Health said that most DES providers do not require their consultants to have disability-specific qualifications.<sup>223</sup> We heard this includes an understanding of disability, human rights and employment rights, as well as cultural competence.<sup>224</sup> Inclusion Australia noted in their submission to the Royal Commission that:

DES providers need to have more expertise or experience to address the employment needs of people with an intellectual disability and their families. There is a lack of training or understanding of evidence-based practice for people with an intellectual disability to support them into work, or help them keep a job.<sup>225</sup>

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Disability awareness is crucial to ensure participants receive appropriate and person-centred employment services. In Public hearing 21, Mr Simon Green, a representative of the Youth Disability Advocacy Service, gave evidence that DES staff members often do not understand the specifics of a person's disability and access needs in the workplace.<sup>226</sup>

This lack of disability experience and training was examined in Public hearing 21. As mentioned above, Mzia was placed as a barista trainer to train participants with disability to be baristas. This was despite her having no formal qualifications and very little experience working with people with disability.<sup>227</sup> Mzia was not provided with any formal disability awareness or human rights training while in this role.<sup>228</sup>

We also heard in submissions that people who experience intersecting forms of discrimination do not feel supported by their DES provider. A First Nations man with disability told us that trying to engage with a DES provider was the 'biggest insult' of his life. He said DES providers 'have no experience or training or background with whether it be cultural or whether it be criminal or whether it be disability'.<sup>229</sup> A report prepared for the Royal Commission concluded that 'cultural safety' and 'trauma informed' have 'become terms that are used by services but are not fully understood and applied'.<sup>230</sup>

## **Inaccessible information about rules, rights and complaints mechanisms**

People with disability told the Royal Commission that information provided by DES providers, including about rules, rights and complaints mechanisms, is inaccessible and difficult to understand.

There are six National Standards for Disability Services against which the DES Grant Agreement requires DES providers to be certified.<sup>231</sup> Standard 4, 'Feedback and complaints', emphasises the importance of:<sup>232</sup>

- clear and regular communication about how to provide feedback, including how to make a complaint
- the use of feedback and complaints to continuously drive service improvements
- regular, proactive and inclusive feedback systems
- effective complaints management and resolution
- transparent dispute management
- access to independent information, support, advice and representation to ensure people are able to provide feedback or make a complaint.

Ms Mija Gwyn, from the Youth Disability Advocacy Service, described how young people with disability accessing the DES program are not provided with adequate information about their rights, how to raise complaints and how to respond to exploitation or abuse.<sup>233</sup> Ms Darling recommended information about the DES program be provided in Easy Read or picture formats to ensure it is accessible for people with intellectual disability.<sup>234</sup>

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## Responding to violence, abuse, neglect and exploitation

Participants can make complaints about the DES program, including about incidents of violence, abuse, neglect and exploitation, through their DES provider and the Complaints Resolution and Referral Service. However, DES participants with disability have told us about unsatisfactory experiences when making complaints through these channels.<sup>235</sup>

The Commissioner's report on Public hearing 21 found AimBig's complaints and resolution process was not made clear to Mzia or explained in a way that enabled her to understand to whom complaints should be made.<sup>236</sup>

In its submission in response to the *Employment issues paper*, Women With Disabilities Australia explained the DES Code of Practice 'provides no information in relation to the prevention of, or response to, violence and abuse in DES services'.<sup>237</sup>

## Lack of incentive to provide quality services

Under the existing framework, three Key Performance Indicators are in place to 'underpin performance' of DES providers:<sup>238</sup>

1. **Efficiency:** with the aim of minimising the average times taken by Providers to achieve employment outcomes for their Participants.
2. **Effectiveness:** with the aim of maximising the numbers of outcomes achieved by Participants, as well as the number of Participants maintained in employment where assistance is required.
3. **Quality:** with the aim of maximising the delivery of high quality, individualised Employment Services.

The DSS stated:

The Star Ratings measure performance with respect to efficiency and effectiveness. The [G]rant [A]greement, the Service Guarantee and the Code of Practice underpin quality.

However, while the Star Ratings are a measurement tool, the Service Guarantee and Code of Practice are statements of requirements – not measurement mechanisms.<sup>239</sup>

The DES Grant Agreement, and the DES Service Guarantee within it, set out how a DES provider must deliver services to DES participants.<sup>240</sup> The DES Service Guarantee, which must be 'prominently' displayed and made available to potential participants and employers,<sup>241</sup> sets out the standards and services a participant should expect from their DES provider.<sup>242</sup> DES providers must also comply with the Code of Practice included in the DES Grant Agreement.<sup>243</sup> As discussed earlier, the DES Grant Agreement requires that providers are certified against the National Standards. This certification occurs through yearly surveillance audits. However, DES providers are not required to meet any standalone criterion for quality services under the National Standards.<sup>244</sup>

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In Public hearing 21, Ms Mitchell gave evidence that non-compliance with the DES Service Guarantee is monitored and actioned through three mechanisms: performance improvement plans, compliance improvement plans and targeted/ad hoc desktop monitoring.<sup>245</sup> It is not clear whether these mechanisms are enforced in response to reports or complaints of poor quality.

Ms Mitchell acknowledged that quality is not directly assessed under the Star Ratings system,<sup>246</sup> but gave evidence that the 26- and 52-week outcomes are an indicator of quality outcomes for participants.<sup>247</sup> Ms Mitchell conceded that outcomes may not be a measure of quality 'on the way through' but are a measure of quality.<sup>248</sup>

We agree with Counsel Assisting's submission that participants should have a more accurate understanding of the quality of service they are likely to receive when choosing a DES provider. This includes how they will be supported 'on the way through' to achieving an employment outcome.<sup>249</sup> Failure to directly assess quality more systematically means participants are not fully informed about the DES provider they are choosing, effectively undermining a participant's right of choice and control.<sup>250</sup>

We acknowledge the Australian Government's submission that the external auditing process includes an assessment of DES providers against the 'Quality Management principles which underpin all six National Standards'.<sup>251</sup> We also note the Australian Government will consider 'whether and if so how performance, including quality, can better be assessed' under the new DES model.<sup>252</sup>

The Australian Government has since released the discussion paper on a draft *Quality Framework for the Disability Employment Service*, which outlines the proposal for a new DES Quality Framework. This comprises five 'Quality Elements' with associated quality indicators, measurement and monitoring mechanisms, and support measures.<sup>253</sup> The 'Quality Elements' are participants' rights, quality of services, provider capability and governance, feedback and complaints, and formal assurance.<sup>254</sup>

The discussion paper proposes that each 'Quality Element' be individually measured and rated for each DES provider, feeding into a 'Quality Assessment' rating. Providers would receive detailed 'Quality Scorecards' to guide continuous improvement. The overall 'Quality Assessment' rating would be publicly available alongside the Star Ratings to better support making an informed choice of DES provider.<sup>255</sup>

## Impact of ineffective employment services

The cumulative impact of poor service and support from some DES providers can be distressing and disheartening for people with disability seeking to enter and maintain work in open employment.

The sister of a woman with intellectual disability told us that the DES provider's 'lack of care and communication was really hurtful to [her] sister – made her think that she was not worthy or capable of employment'.<sup>256</sup> In her response to the *Employment issues paper*, she explained that her sister's negative experience with multiple DES providers exacerbated her anxiety.<sup>257</sup>

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The consequences of these experiences can be far-reaching and can discourage people from engaging with the DES system and seeking open employment in the future. A submission by Aspergers Victoria said that a lack of understanding by employment agencies and ongoing difficulties with job-seeking are traumatising. It can result in people with Asperger's syndrome withdrawing from the job market or ending up on the DSP due to mental health problems.<sup>258</sup>

## Disability Support Pension

The Disability Support Pension (DSP) is the primary Australian Government income support program for people with disability.

### Overview of the Disability Support Pension

Operating under provisions of the *Social Security Act 1991* (Cth), the DSP provides income support for people with disability who are assessed as being unable to work for at least 15 hours per week due to permanent physical, intellectual or psychiatric impairment.<sup>259</sup> People need to meet both non-medical and medical rules to access the DSP, and recipients are subject to commitments including regularly reporting income.<sup>260</sup> Those who earn income may receive a part pension dependent on their level of income.<sup>261</sup> As at 26 June 2020, approximately 660,000 people aged 16 to 64 received the DSP.<sup>262</sup>

The Australian Government Senate Standing Committee on Community Affairs *Inquiry into the purpose, intent and adequacy of the Disability Support Pension* (Senate Inquiry) found that the percentage of DSP recipients reporting income from employment has declined in recent years, from 8 per cent in 2017–18 to 6.9 per cent in 2019–20.<sup>263</sup>

Recipients of the DSP can also get a Pensioner Concession Card.<sup>264</sup> A Pensioner Concession Card can provide access to cheaper health care, medicines and other discounts.<sup>265</sup> In certain circumstances, people with disability who are no longer eligible for the DSP can still access the Pensioner Concession Card for up to 12 months.<sup>266</sup>

### Income and asset tests for the Disability Support Pension

DSP recipients can engage in paid employment and still receive a partial or full pension. However, income support payments are reduced or stopped as a person's earnings increase through either higher wages or working more hours.<sup>267</sup>

For example, as at April 2023, a DSP recipient who was a single person aged 21 years and over could earn up to \$190 per fortnight without impacting their pension. After reaching \$190 per fortnight, their pension would be decreased by 50 cents for every additional dollar earned up to the income cut-off point.<sup>268</sup> The income cut-off point for a single person aged 21 years and over was \$2,318 per fortnight.<sup>269</sup> This is known as the income test.



### Disability Support Pension income test example (as at April 2023)

If a single person aged 21 years and over earns \$590 a fortnight, they are earning \$400 more than the current \$190 per fortnight limit at which the pension starts to be reduced.

Their DSP will be reduced by 50 cents for every dollar earned over \$190 per fortnight. As they are earning \$400 over \$190 (that is, \$590 minus \$190), their DSP will be reduced by \$200 per fortnight.

The full rate of the DSP is \$1,064 per fortnight. This includes the pension supplement (a regular extra payment to help with utility, phone, internet and medicine costs for certain recipients of DSP) and energy supplement (an extra payment to help with energy costs).<sup>270</sup>

This person's total earnings for the fortnight would be:

$$\$590 \text{ (wage income)} + \$1,064 \text{ (DSP)} - \$200 \text{ (DSP reduction)} = \$1,454.$$

The DSP is also subject to an assets test. If the recipient receives a full pension and their assets are more than the 'limit for their situation', their pension will reduce. If the recipient receives a part pension and their assets are more than the 'limit for their situation', their part pension will be cancelled.<sup>271</sup>

If a DSP recipient earns above the income cut-off point in a fortnight, they will not be paid the DSP for that particular fortnight.<sup>272</sup> If a recipient works 30 or more hours a week and their income goes above the cut-off point for more than six fortnights in a row (which would occur if a person were to receive at least the minimum wage), their DSP can be suspended for up to two years.<sup>273</sup> Participants who work in an Australian Disability Enterprise (ADE) are exempt from the 30-hours-a-week rule.<sup>274</sup> If a person has their DSP suspended and subsequently needs to reduce their hours of work because of their disability, they can return to the DSP within two years without having to make a new claim. In addition, when having their payment suspended after returning to work, the person retains access to the Pensioner Concession Card for 12 months.<sup>275</sup> If a person works beyond this two-year suspension period and wishes to receive the DSP again, they will need to reapply.<sup>276</sup>

We heard evidence about a number of structural barriers arising from the interaction between the DSP and earnings from employment. These included:

- the potential reduction or loss of the DSP and associated benefits as a result of employment or increased hours of work. This can lead to some people with disability choosing not to increase their hours at work or seek a pay rise in order to retain access to the DSP and associated benefits.<sup>277</sup>
- confusion and concern about the impact of employment on benefits such as DSP. This confusion and concern can impact decision making regarding employment and can lead to decisions being made without adequate or correct information.<sup>278</sup>

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- the complexity of reporting arrangements for income which may be seen by some as a disincentive to seek employment or change employment arrangements.<sup>279</sup>

## Concerns about the Disability Support Pension and income from employment

Due to the impact of the income test detailed above, people who earn more money through employment may have their DSP payment reduced.

We heard that the relationship between increases in hours and income and the tapering of the DSP is commonly misunderstood and, at times, deliberately obfuscated by employers. Employers sometimes use an employee's access to the DSP to justify the payment of low wages.

In his evidence for Public hearing 9, Jamie stated:

During my employment with various ADEs, many would attempt to justify paying me extremely low wages for the stated reason that they were seeking to ensure that I would not lose my Disability Support Pension (permanently blind).<sup>280</sup>

'Mahdi' was born in Afghanistan and his first language is Dari.<sup>281</sup> In Public hearing 22, Mahdi told us he asked his ADE about increasing his pay but was told 'if we pay you more you will lose your Centrelink payments'. Mahdi thought this was incorrect and that his DSP would not be affected by his income as he received the 'blind pension'.<sup>282</sup>

'Marc' gave evidence at Public hearing 22 that he considers his wage should be higher because of his ability.<sup>283</sup> However, he is concerned about the impact on his DSP of any pay increase because his wage alone would not be enough for him to live on.<sup>284</sup>

In Public hearing 9, Ms McAlpine from Inclusion Australia agreed with the proposition that the effective tax rate and tapering of the DSP could act as a positive disincentive not to earn money.<sup>285</sup> Ms McAlpine strongly made the point that people are 'still better off' in paid employment but agreed that doing so while on the DSP leads to additional complexity.<sup>286</sup>

In Public hearing 22, Ms Mitchell provided analysis about the impact of changed wage rates (and, therefore, changed earnings) on the DSP. This analysis showed that, in all scenarios, a person would have a better financial outcome in employment than if they were receiving the DSP alone.<sup>287</sup> Ms Mitchell expressly stated this information was provided as she was:

concerned when people with disability were reluctant to increase their working hours and their ability to learn and perhaps move into more open employment if they thought it was going to be prohibitive around their Disability Support Pension.<sup>288</sup>

In Public hearing 9, Dr Gauntlett said it is important to give people with disability the opportunity to try employment without fear.<sup>289</sup> In its submission to the Royal Commission, Queensland Advocacy Incorporated argued the DSP should act as a 'constant safety net' that allows people with disability to build their skills and enter open employment without the fear of losing income.<sup>290</sup>

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Both the *Willing to Work* report and the 2015 report prepared by the Reference Group on Welfare Reform to the Minister for Social Services, *A New System for Better Employment and Social Outcomes*, noted the complexity and lack of clarity within the welfare system fuel concerns by welfare users about real and perceived risks of gaining or increasing employment.<sup>291</sup>

The Senate Inquiry made a series of recommendation in relation to the DSP. Recommendation 22 provided that:

The committee recommends that the Australian Government considers reforming the income test for recipients of the Disability Support Pension to better support individuals facing structural barriers to participating in the workforce, and to better recognise the fluctuating nature of a person's ability to participate in paid employment due to their impairment.

The committee envisages that such reforms could, amongst other things, raise the income thresholds at which the Disability Support Pension payment is reduced, and lower the rate which it is reduced once this threshold is reached.<sup>292</sup>

The Senate Inquiry also recommended that Services Australia provide better and more accessible information and resources to people with disability on the rules and requirements surrounding the DSP.<sup>293</sup>

## Barriers faced by people enforcing legal rights

There are two key pieces of legislation relating to the rights of people with disability in employment: the *DDA* and the *FWA*.<sup>294</sup>

The *DDA* is one of many laws prohibiting forms of discrimination. It operates alongside the *Australian Human Rights Commission Act 1986* (Cth) (*AHRC Act*). The *AHRC Act* sets out the AHRC's powers to receive, investigate and conciliate complaints about alleged acts of unlawful discrimination.<sup>295</sup> In addition to complaints, the *DDA* confers other functions on the AHRC and the Disability Discrimination Commissioner.<sup>296</sup>

The *DDA* defines 'disability' broadly to include past, present, future and imputed disability, and also defines concepts of 'direct' and 'indirect' disability discrimination.<sup>297</sup> The *DDA* is discussed in further detail in Volume 4.

The *FWA* sets out minimum entitlements, regulates modern awards and enterprise agreements, and provides remedies if an employee is subject to unfair dismissal, adverse action, unlawful termination and bullying. It also contains provisions authorising the payment of subminimum wages for people with disability. Rights provided under the *FWA* may be enforced by the Fair Work Commission (FWC) and, in some circumstances, by courts. The *FWA* also establishes and sets out the functions and responsibilities of the Office of the Fair Work Ombudsman (FWO).<sup>298</sup>

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Numerous complaints mechanisms are available to a person with disability who has a complaint about discrimination in the workplace. These include both internal (within a particular organisation) and external (such as through the FWO) processes.

People with disability identified a range of barriers to accessing legal protections, making complaints and seeking remedies when they experienced discrimination. Some issues identified in evidence, submissions and other material before the Royal Commission were general and affect all people attempting to navigate the legal system. These include the length of the process,<sup>299</sup> the imbalance between complainants and respondents in accessing legal representation<sup>300</sup> and the negative impacts on the employment relationship from making a complaint.<sup>301</sup> While these issues are not confined to people with disability, we acknowledge their importance to people with disability faced with complex complaints systems. We also acknowledge how such issues can be amplified or compounded for people with disability, because general protections can fail to accommodate the unique discrimination, marginalisation and exclusion experienced by people with disability.

We acknowledge the work currently being undertaken as part of the AHRC *Free and Equal: A reform agenda for federal discrimination laws*.<sup>302</sup> It is appropriate for the issues set out above to form part of broader civil justice reform including that currently being considered by the AHRC. Any consideration should take account of the particular experience of people with disability. Any reform process should consider how people with disability can be involved through co-production and co-design.

## Knowledge of rights and legislative frameworks

A lack of knowledge about the nature of rights in employment, and the legislation which underpin them, may mean people with disability are not able to access the legal frameworks designed to protect their rights.

Dr Gauntlett expressed concern that the *DDA*:

as it operates at a practical level is not as effective as we would have hoped, and that people with disability do not know what their rights are in certain situations, and that they are required to bear the burden of enforcing those rights.<sup>303</sup>

At Public hearing 19, we heard evidence from Ms Kairstien Wilson, the Principal Legal Practitioner and CEO of the Association of Employees with Disability Legal Centre. She stated her clients 'generally do not know about their rights under the law (discrimination law or under the [FWA]) or at a specific workplace'.<sup>304</sup>

While noting the important role of specialist lawyers and community legal centres, we heard people with disability and their advocates often lack information about the appropriate laws or the agencies responsible for enforcing their rights. The current systems involve a mix of Commonwealth, state and territory laws and agencies that make it difficult for non-lawyers to know where best to pursue a complaint or seek a legal remedy.<sup>305</sup> As a result, people with disability and their advocates can be confused by the different options for pursuing a legal remedy to address unfair or discriminatory treatment.<sup>306</sup>

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Confusion is also caused by:

- the different time limits that apply to lodging complaints or applications to enforce rights under the *FWA*, *DDA* or state and territory anti-discrimination legislation<sup>307</sup>
- a lack of awareness of limitation periods for bringing other applications or claims, and how they differ between different pieces of legislation<sup>308</sup>
- the different standards of proof applying under various enactments.<sup>309</sup>

## Barriers associated with enforcing rights

Even when people with disability know their rights and can navigate the relevant legislation, they may be reluctant to pursue legal action due to the risks associated with enforcing them.

Dr Innes gave evidence that very few people with disability ‘have lodged *DDA* complaints because they are disempowered by that process, feel that their chances of success are not high, or are just not aware of the legislation’.<sup>310</sup> Nonetheless, as we explain in Volume 4, the number of complaints made under the *DDA* is steadily increasing.

We also heard of concerns relating to the financial burden and potential for adverse costs orders when pursuing complaints in the courts. This can be a particular deterrent for people with disability if they are in a disadvantaged financial position.<sup>311</sup> Ms Wilson said the risk of an adverse costs order is a key consideration for her clients in deciding whether to bring an action at all.<sup>312</sup>

Submissions and responses to the *Employment issues paper* highlighted that navigating legal frameworks can be exhausting, emotionally draining and financially unviable.<sup>313</sup> Ms Colbert from the Australian Network on Disability described disability discrimination law as ‘passive’ and said the discrimination experienced by people with disability looking for employment can be ‘absolutely corrosive ... emotionally wearing, exhausting and tiring’.<sup>314</sup>

Under the *DDA*, the employee has to prove the employer has engaged in unlawful discrimination. Generally, if there is a relevant exception, the employer has to prove the exception applies. An employer wishing to rely on a statutory defence to a claim of discrimination generally has the burden of establishing the defence (for example, demonstrating that an adjustment would impose an ‘unjustifiable hardship’ on the employee.<sup>315</sup>) However, evidence pointed out employers have a ‘monopoly on knowledge and evidence’ relating to such matters.<sup>316</sup> Later in this chapter we recommend amendments to the exceptions under the *DDA* to clarify their operation.

Volume 4 outlines our recommendations in relation to the *DDA*. Recommendations aimed at addressing the *FWA* are contained in section 6.3 of this chapter.

The evidence also addressed additional obstacles particularly experienced by people with disability seeking redress or remedies for infringement of their rights. These obstacles are encountered when people with disability complain of unfair or discriminatory treatment because of disability, either to the organisation or to an external body such as a court, tribunal or ombudsman. Recommendations that aim to address these issues are set out in section 6.3 of this chapter.





Image 7.1 Artwork by David Croxley created at a Victorian engagement (Horsham)

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## 6.3. Recommendations to improve pathways to open employment

As explained, attitudinal, physical and environmental, organisational and structural systemic barriers prevent many people with disability from obtaining and retaining open employment. The Australian Government has acknowledged these barriers and is committed to efforts to eradicate them.<sup>317</sup>

Addressing these barriers will require sustained and determined action by all segments of Australian society. We have identified five areas where action should be focused.

First, the Australian Government has a major role to play in setting strategic direction to ensure progressive realisation of the right to work and to address systemic barriers. This is not to exempt the broader community, including private and non-government sector employers, from responsibility. While we make recommendations relating to the strategic role of the Australian Government in relation to promoting rights and protections for people with disability in Volume 4 and Volume 5, *Governing for inclusion*, we briefly discuss their impact on people with disability in employment below.

The second area concerns the DES program. This program is a critical tool for employing people with disability.

The third area focuses on increasing public sector employment, a goal recognised in article 27(1)(g) of the *CRPD*. These recommendations are targeted at the Australian Government and state and territory governments and aim to remove attitudinal, environmental and organisational barriers to the employment of people with disability within the public sector.

The fourth area relates to social procurement. We recommend all governments should use social procurement to encourage organisations to adopt inclusive practices.

The final area concentrates on the system of regulatory coordination and legislation designed to protect people with disability from discrimination in the workplace. The recommendations aim to support both prospective and existing employees with disability and to ensure employers understand their obligations and responsibilities.

We note these recommendations concern open employment. We set out separate recommendations in relation to employment in ADEs in Chapter 7.

## Strategic policy and legislative reform

We acknowledge the work of the Australian Government to date, including initiatives arising from the Jobs and Skills Summit held in September 2022. Nevertheless, we consider the Australian Government can develop a bold strategy for increasing the employment of people with disability in all workplaces across Australia. It can do this in two ways. First, it can improve the capacity of Australia's Disability Strategy 2021–2031 (ADS) to provide increased



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employment opportunities for people with disability. Second, it can support enactment of legislation to provide stronger rights-based protection for people with disability, including in relation to employment.

## Australia's Disability Strategy 2021–2031

The Australian Government has said the ADS:

is a commitment to create an inclusive community and speaks to Australia's national aspirations to enshrine and elevate the ideals of respect, inclusivity, and equality. It is an aspirational road map pointing the way ahead and represents the national commitment to enabling every Australian to meet their potential, to achieve, to have a fair go and to have real choices.<sup>318</sup>

The ADS has a strong policy focus on employment, among other areas.<sup>319</sup> This reflects what people with disability nominated as important to them in the engagement process preceding finalisation of the ADS.<sup>320</sup>

Targeted action plans have been developed under the ADS to progress actions against specific priority areas.<sup>321</sup> The Australian Government and state and territory governments have released an Employment Targeted Action Plan identifying specific actions that governments can take to improve paid employment outcomes for people with disability.<sup>322</sup> The Australian Government also released Employ My Ability, the national Disability Employment Strategy. Employ My Ability is an Associated Plan that supports the implementation of the ADS and represents a 10-year commitment to improving employment opportunities for people with disability.<sup>323</sup>

Volume 5 further discusses the ADS and makes a recommendation regarding reviewing the ADS to ensure it reflects issues raised and recommendations made by the Royal Commission.

## Legislative reform

The Australian Government can also push forward significant change in the employment context for people with disability by adopting the recommendations made in Volume 4. Volume 4 recommends adoption of an Australian Disability Rights Act and changes to the *DDA*, which together would create a paradigm shift for the rights of people with disability in the workplace.

The proposed Disability Rights Act would provide a new legal framework for disability rights protection in Australia, strengthening implementation of rights recognised in the *CRPD*. Among other reforms, the legislation will create a requirement that Commonwealth entities consult people with disability in certain circumstances, and provide enforceable remedies when rights are breached. It would also establish an obligation on public authorities to act compatibly with the rights in the Act (including the right to non-discrimination and equality before the law), and to give proper consideration to those rights when making decisions.

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The proposed amendments to the *DDA* would also introduce a standalone duty on employers and others to make adjustments for people with disability, except where they cause unjustifiable hardship. As Counsel Assisting has submitted, the absence of a standalone statutory duty contributes to misunderstandings about entitlements to workplace adjustments.<sup>324</sup> A standalone legal obligation which removes any reference to ‘reasonableness’ will clarify and strengthen the obligation of all employers to provide adjustments for their employees with disability. The proposed amendments will contribute to addressing attitudinal, physical, organisational and structural barriers to adjustments and inclusion in the workplace. The proposed amendments are set out in Chapter 4 of Volume 4.

## Reforming the Disability Employment Service program

As noted above, the DES program is the Australian Government’s primary program for assisting people with disability to find and retain open employment. As such, it has the potential to be the greatest tool in increasing the participation of people with disability in open employment. In Public hearing 31, Mr Alcott reflected on his time as Australian of the Year in 2022. Mr Alcott described a ‘real thirst’ among corporate Australia, government and big employers to learn and do better.<sup>325</sup> The DES program should support the capacity and willingness of employers throughout Australia to employ more people with disability.

As explained, the DES program is currently not meeting the needs of people with disability and employers. However, there is evidence the DES program has the potential to lead people with disability to meaningful long-term employment and careers. For example, in Public hearing 9, we heard from Mr Rohan Fullwood and Ms Bos that the DES program has been life-changing and supported them to obtain and maintain jobs they love.<sup>326</sup>

The following recommendations should inform the development of the new DES model that will replace the current program from 1 July 2025.<sup>327</sup>

### Providing more person-centred services

#### Develop the new Disability Employment Services model using inclusive design

The goal of the DES program should be to achieve employment outcomes for all DES participants. The DES program should be tailored to a participant’s personal circumstances, career aspirations and level of education. As Mzia said in Public hearing 21, the DES program needs to suit the person, rather than forcing people to suit the program.<sup>328</sup>

In Public hearing 31, we heard how services can be designed to adapt to each individual, using inclusive design principles.<sup>329</sup> Inclusive design is based on three principles: recognising diversity and uniqueness; using inclusive processes and tools; and considering broader beneficial impact.<sup>330</sup> These principles can be readily applied to the development and implementation of the new DES model.

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Applying the first principle, it is important to recognise people with disability are not a homogenous group. Dr Manisha Amin, CEO of the Centre for Inclusive Design, uses the concept 'edge users' to describe individuals who sit outside an organisation's targeted 'mainstream user'. The 'edge' is defined as a mismatch between a person and the service.<sup>331</sup> Reform to the DES program should identify the 'edge users', appreciating that each 'edge user' will have different needs. The 'edge users' in the DES program are those participants who are likely to encounter the most barriers to obtaining employment.

In applying the second principle, the identified 'edge users' must be part of the design team for the new DES model and be paid for their time. These participants should be engaged in co-design of the new model. Involvement should begin at the research and testing phases and continue throughout all design, development, implementation and review phases. This approach will ensure the new DES model is flexible enough to meet the needs of the diverse cohort of participants it must serve.

Thirdly, the broader beneficial impact of the design of the DES program must be considered, applying the maxim of 'solve for one and extend to many'.<sup>332</sup> The DSS should monitor the impact of the DES program for all users, including 'edge users', to ensure the program achieves employment outcomes for all DES participants. The DSS should also consider the broader impacts of an improved DES program for all employers.

## Factors to consider in developing the new Disability Employment Services model

The process for redesigning a new DES model must recognise that, for most people with disability, getting a job is not a single 'destination' but an extended process that can last years. Many past reports explained that support for people with disability must start at school.<sup>333</sup> After schooling ends, the support provided to participants under the new DES model needs to be agile. This is so the support provided can be more extensive at times and more tapered at others, depending on the needs of the DES participant at a particular time. The ultimate objective of the DES model should be supporting people with disability into long-term jobs and careers of their choice.

This process should start with developing a deep understanding of a DES participant's interests. This may involve periods of work experience, which should be prioritised to occur in open employment settings. In consultation with the participant, the next phase may involve some 'on-the-job' or formal training, or both, with appropriate adjustments and employment supports to assist the participant in the workplace.

### Customised employment

Customised employment is a flexible process that is designed to meet the needs of the employee with disability and the employer. It brings together the strengths, interests and skills of an employee and matches these capabilities with an unmet or unaddressed need in an employer's business.<sup>334</sup> We heard throughout this inquiry that customised employment approaches can be effective in supporting people with disability to enter and progress in open employment.<sup>335</sup>

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The customised employment approach begins with the DES program working with the DES participant, and their formal and informal supports, to consider their experience, needs, preferences and areas of interest. This is followed by a process of identifying potential customised jobs by working directly with employers. When a job has been customised or developed for the DES participant, they are supported with on-the-job training followed by ongoing support as required.<sup>336</sup>

Customised employment is viewed as a collaborative process that encourages the DES participant to explore different work types and interests with support from the DES provider as needed. This allows both the DES participant and DES provider to respond flexibly to changing circumstances and adjust their planning accordingly.

We acknowledge customised employment approaches – including personalised client assessment, individualised job development and placement, intensive job site training and support, and ongoing support – are time and resource intensive.<sup>337</sup> Funding for customised employment is currently available only through individual NDIS plans. Both advocacy groups and DES providers have noted that customised employment approaches could only be widely implemented in the DES system with additional funding and support to engage in all stages of the process.<sup>338</sup>

## **Flexible funding arrangements**

In developing the new DES model, the DSS should consider how funding arrangements can facilitate flexible employment supports, such as customised employment, which allow the DES provider to adapt their services to respond to the interests, skills and needs of the DES participant.

Funding arrangements must be designed to support ongoing employment outcomes of DES participants. Arrangements should prioritise rewarding outcomes that represent progress towards obtaining long-term work rather than the existing approach which sees the payment of Outcome Fees for 13-week, 26-week or 52-week placements. The model must remove any incentives towards churning, creaming or parking of participants.

## **Extending eligibility under the new Disability Employment Services model**

Currently, people with disability who are assessed through a Job Capacity Assessment or Employment Services Assessment as being unable to work a minimum of eight hours a week are generally not eligible for the DES program.<sup>339</sup> In Public hearing 21, we heard from Mr Rick Kane, CEO of Disability Employment Australia, the peak body for DES providers. Disability Employment Australia has described the eight-hour benchmark as ‘outdated and inflexible’, and said benchmark hours do not accurately reflect the capacity and interests of the person.<sup>340</sup>

In designing the new DES model, the Australian Government should review the eight-hour benchmark requirement for eligibility to access the DES system with a view to remove the requirement. This would better facilitate the chance for all people with disability to work in open employment, regardless of their assessed hours of future work capacity.

Numerous responses to the *Employment issues paper* called for a new approach to determining eligibility for the DES program, including the removal of the eight hour benchmark requirement.<sup>341</sup> Equally, submissions in response to the DSS consultation on the new DES model reflected the desire of people with disability, their representatives and DES providers to facilitate access to open employment supports.<sup>342</sup>

### **Recommendation 7.16 Priorities for inclusion in the new Disability Employment Services model**

The Australian Government Department of Social Services should ensure that the design of the new Disability Employment Services model:

- is developed using inclusive design principles, and co-designed by people with disability who are employed as paid members of the design team
- adopts customised employment models as a core component of service provision
- ensures funding arrangements facilitate flexible employment supports, such as customised employment, and support the progress of Disability Employment Services participants in achieving employment goals and long-term employment outcomes
- considers options to remove the requirement for a person to have a minimum future work capacity of eight hours a week in order to access the Disability Employment Services program, to facilitate access for all people with disability to the new model.

## **Knowledge and professionalism in the Disability Employment Services sector**

The new DES model must be implemented by competent DES providers and staff. In Public hearing 21, we heard about the consequences of participants being supported by unqualified or inexperienced staff members, for example the long-term impact on Mzia's mental health.<sup>343</sup> Mr Kane told us reform of the DES program should include further skills enhancement for DES staff.<sup>344</sup> Similarly, Inclusion Australia suggested that:

Staff working in DES need to have a minimum level of qualifications, including employment specialisation, as well as access to ongoing professional development in evidence-based practice, from specialist DES providers.<sup>345</sup>

We cannot say based on the evidence available to us that all or most staff in DES providers are unqualified or lack training. However, improvements in the overall quality of services require attention to be directed to the qualifications and experience of staff members who deliver those services.

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There are various requirements under the DES Grant Agreement, Code of Practice and Service Guarantee, as well as the National Standards, regarding the skills and qualifications of DES providers' staff. For example, the Code of Practice requires DES providers to commit to delivering quality employment services, including by '[e]nsuring staff have the skills and experience they need to provide quality and culturally sensitive services to job seekers, employers and local communities'.<sup>346</sup>

Standard 6 of the National Standards, on service management, is intent 'to ensure that services are managed effectively and efficiently'.<sup>347</sup> It provides that:

Support for organisational learning and skills development is considered integral to a culture of quality service delivery and continuous improvement. This includes support and training for staff and volunteers.<sup>348</sup>

The first indicator of practice for Standard 6 is that 'frontline staff, management and governing bodies are suitably qualified, skilled and supported'.<sup>349</sup>

The DSS should take a leadership role in developing education and training resources for DES staff, who should be adequately trained to provide services that are culturally sensitive and tailored to the needs of the participant. They should be able to help participants understand information about the DES program, employment opportunities, human rights and complaint mechanisms.

Staff in DES providers should be trained to actively engage employers in the DES program, including small to medium-sized enterprises, non-government organisations, and public and private sector organisations. Staff should be supported to understand the industry they are placing participants in, to facilitate customised employment opportunities and to provide ongoing support to employers.

Resources should be co-designed by people with disability and involve consultation with advocates, employers and DES providers.

Requiring the DSS to prepare quality training resources would reduce the regulatory burden on DES providers. Some DES providers do not necessarily have the capacity to develop these training resources themselves. Providers who are already delivering training in-house can continue to do so provided they address the critical areas identified.

### **Recommendation 7.17 Develop education and training resources for Disability Employment Services staff**

The Australian Government Department of Social Services should develop a suite of accessible education and training resources for providers of Disability Employment Services to upskill their staff.

Resources should be co-designed by people with disability and involve consultation with advocates, employers and Disability Employment Services providers.

Resources should address the gaps we have identified, including in:

- disability awareness
- cultural competence
- human rights
- customised employment
- employer engagement
- Disability Employment Services guidelines and procedures.

## **Improving quality in Disability Employment Services**

In August 2022, the DSS announced it had undertaken a performance assessment of the DES program. As a result of the assessment the DSS announced ‘around 6 per cent of DES services will be discontinued for poor quality and a lack of achieving outcomes’.<sup>350</sup> This affected a ‘total of 52 providers with eight providers having all services completely discontinued’.<sup>351</sup>

In announcing the outcome of the performance assessment, the Minister for Social Services stated ‘[t]here is a need to refocus efforts to improve the quality of providers, particularly following concerns highlighted by the [Royal Commission]’.<sup>352</sup>

The DSS subsequently published the draft Quality Framework for the Disability Employment Service described earlier.<sup>353</sup> We note the consultation period on the draft framework ended on 13 March 2023. In developing the final framework, we suggest that any information, surveys or complaint mechanisms be accessible. This should include being available in Easy Read formats and different languages. In addition, complaint mechanisms should be accessible, easy to understand and developed in accordance with the recommendations in Volume 12, *Beyond the Royal Commission*.

## **Increasing public sector employment for people with disability**

Article 27 of the *CRPD* provides that States Parties should take appropriate steps to realise the right to work, including ‘to employ persons with disabilities in the public sector’.<sup>354</sup>



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Consistent with article 27, governments across Australia should take steps to increase the number of people with disability employed in the public sector. Further, we consider the public sector, as a major employer in Australia, should lead the way in employing people with disability and should model best practice inclusion for other workplaces. The CRPD Committee has also affirmed that where States Parties are employers, they 'should take a more rigorous approach to inclusion'.<sup>355</sup>

Similarly, the *Shut out* report indicated the Australian Government should lead the way and increase public sector participation rates.<sup>356</sup>

## Elements of best practice

In submissions following Public hearing 19, Counsel Assisting identified key elements strategies should contain to make them most effective in increasing employment for people with disability. Key elements of best practice include:<sup>357</sup>

- involving people with disability in strategy design. Strategies designed by or with people with disability are more likely to be informed by lived experience; acknowledge the diversity of disability and the intersection between disability and other attributes; and be focused on practical implementation measures to address systemic barriers.
- ensuring policies are designed to work for the person with disability. This approach is different to policies being designed for the purpose of protecting or managing the employers' perceived risks or exposure to liability.
- effective implementation measures. This includes having designated leaders and people responsible for implementing the relevant strategy; disseminating the strategy in accessible formats; a commitment to fund and resource the strategy; regular training for all employees that is co-designed and delivered by people with disability; and measures to review, monitor, audit and evaluate the effectiveness of the strategy.
- competency frameworks for employees who recruit and manage people with disability
- specific measures to increase the number of people with disability joining and remaining in employment. These measures may include targets or quotas.

We agree with Counsel Assisting about these key elements. We consider these elements are relevant to the Australian Government and state and territory government strategies to increase the employment of people with disability in the public sector.

We have previously noted the Australian Government's commitment, as part of the ADS, to increase the employment of people with disability. Under the existing Employment Targeted Action Plan, state and territory governments have also committed to implementing a raft of initiatives, including settings targets, to increase public sector employment.<sup>358</sup> For example, the South Australian Government has committed to measures to 'attract, recruit and enable career progression for more people with disability in the South Australian Public Sector'.<sup>359</sup> However, some commitments under Australian, state and territory government plans do not provide information on how targets will be met or success measured.

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Some state and territory governments have established standalone public sector disability employment strategies or plans, providing clear roadmaps for achieving targets.<sup>360</sup> The *Victorian Government's Getting to Work: Victorian public sector disability employment action plan 2018–2025* sets targets for the employment of people with disability in the Victorian public sector.<sup>361</sup> It also sets out a range of actions and outcomes to retain and promote people with disability. The Victorian Government's approach is an example of good practice. It includes:<sup>362</sup>

- an Enablers Network, which is an employee-led association for people with lived experience of disability seeking to raise awareness of the rights of people with disability and to provide advice to government agencies on removing systemic barriers
- disability champions
- implementing disability awareness and confidence training for staff at all levels of the Victorian Public Sector
- a Victorian disability capability framework outlining the knowledge, skills and capabilities required for building disability confidence.

The Victorian Public Sector Commission set a target for 2020 of 6 per cent of employees identifying as living with disability. This target was to increase to 12 per cent for 2025.<sup>363</sup> Victorian Public Sector Commissioner, Mr Adam Fennessy PSM, told the Royal Commission that progress in achieving the targets is tracked through the annual anonymous People Matter survey. This survey showed that in 2020, 5.2 per cent of Victorian public service employees anonymously identified as having a disability.<sup>364</sup> This is compared to the Workforce Data Collection from 2020 which showed that 0.4 per cent of Victorian public service employees disclosed to their employer that they have a disability.<sup>365</sup>

Mr Woolcott, Australian Public Service Commissioner, told us in Public hearing 19 that, as of 31 December 2020, 4 per cent of APS employees disclosed to their employer that they have a disability, while 8.5 per cent reported having an ongoing disability in the anonymous 2020 APS Employee Census.<sup>366</sup> This is compared with the APS target of 7 per cent of employees having a disability.<sup>367</sup>

Elements of good practice are also found in other public sector disability employment strategies and plans. In Public hearing 19, we heard the Northern Territory Government's EmployAbility Strategy 2019–2022 includes disability confidence training and challenging unconscious bias training, and provides for a Disability Champion Network.<sup>368</sup>

We consider standalone central strategies, such as those to which we have referred, provide a useful and transparent roadmap for meeting objectives regarding public sector employment in respective jurisdictions.

## Targets, disaggregated targets and linked pathways

We agree with Counsel Assisting's submission following Public hearing 19 that the employment of people with disability requires a commitment to recruitment and retention.<sup>369</sup>

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Giving evidence in Public hearing 19, Dr Innes made a number of pertinent points about quotas and targets. Dr Innes said:

You can't be what you can't see, so we need to see people with disabilities employed in jobs. We need to see people with disabilities on our television screens, in our advertising, and out and about in the general population, and we are starting to see that now.<sup>370</sup>

Dr Innes told us:

It's a really well known maxim, it's demonstrated again and again, that what you don't count doesn't count; and if we don't develop strategies and then develop strategies to deliver on those targets, the situation over the last 30 years will continue where there will be a lot of talk but not much real action.<sup>371</sup>

We consider targets for recruitment and retention will assist with this commitment by providing clear, time-based and measurable goals. At the same time, we recognise targets are not a panacea for addressing labour force imbalances. General targets that focus on, for example, the overall proportion of employees with disability, will not necessarily benefit or achieve results for cohorts that experience the greatest levels of disadvantage and structural barriers, such as people with intellectual or cognitive disability. We recognise targets should not cause 'token appointments'.<sup>372</sup> We accept the Australian Government's submission that targets, without genuine cultural change within organisations, may result in a 'tick and flick' response.<sup>373</sup>

However, specific targets directed at increasing employment of particular cohorts can be a useful tool to provide measurable goals. For this reason, we support disaggregated targets for the employment of people with disability at entry, graduate and executive levels across the public sector. These targets ensure a focus on the inclusion of people with disability throughout the hierarchy of the public sector. Meeting those targets should be supported by clear employment pathways into the departments and agencies, and opportunities for career progression, including into leadership roles.

### **Specific targets for entry-, graduate- and executive-level employment**

We note in relation to proposed targets for entry and graduate employment that we received evidence and information that the transition from school to work is a major structural barrier. We also heard that providing work experience in open employment has significant positive impacts on employment prospects at that transition point.<sup>374</sup>

Similarly, graduate and internship programs that promote ongoing work opportunities with career progression can increase employment opportunities for people with disability who are new to the workforce.<sup>375</sup> For example, we heard that the number of applicants with disability selected to enter the Victorian Government public service graduate program increased threefold following the introduction of a specialised 'Disability Pathway' in 2019.<sup>376</sup> These programs can also build the skills and confidence of people with disability<sup>377</sup> and increase employers' understanding of their capabilities.<sup>378</sup>

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With regard to executive-level targets, we note that throughout our inquiry we heard about the importance of leadership in the workplace and having people with disability in senior roles.<sup>379</sup> In Public hearing 19, Ms Donnelly from the CPSU told us ‘increased investment in career development programs, mentoring and recruitment programs is urgently needed to improve the representation of employees with disability in senior APS roles’.<sup>380</sup>

Similarly, the Victorian Government’s action plan acknowledges the need to address ‘[l]ow numbers of senior employees with disability, despite equivalent qualifications’.<sup>381</sup> Under its Employment Targeted Action Plan, the Northern Territory Government has committed to ‘special measures in [a] recruitment pilot program targeting people with disabilities for vacancies that are mid-senior level mainstream roles’.<sup>382</sup>

### **Specific targets for employment of people with intellectual or cognitive disability**

We also support specific, disaggregated targets for the employment of people with intellectual or cognitive disability, who are less likely to be employed full-time than people with other types of disabilities.<sup>383</sup>

We have been told people with intellectual or cognitive disability struggle to find disability-inclusive employers that understand and respond to their needs.<sup>384</sup> In their submission to the Royal Commission, Inclusion Australia considered specific targets for people with intellectual disability.<sup>385</sup> They recommended that ‘each level of government set a target for employment of people with an intellectual disability in their public sector disability employment strategies’.<sup>386</sup>

We consider the public sector should play a role in increasing the employment of people with cognitive disability, while providing appropriate supports. Ms McAlpine gave evidence about the ‘place and train’ approaches that use hands-on, work-based learning as opposed to generalised pre-work training, which may not effectively transfer to a work setting.<sup>387</sup> We consider the public sector should adopt such approaches to increase the employment of people with cognitive disability within the public sector.

In Public hearing 19, we heard good practice examples of public service agencies such as Services Australia who have partnered with Specialisterne Australia to establish the Aurora Neurodiversity Program. This program provides employment opportunities lasting 12 to 18 months for people with autism.<sup>388</sup> A similar program, called RISE, was established by the Victorian Department of Health and Human Services. RISE enabled people with autism to enter Victoria’s public service and resulted in further promotions or secondment opportunities.<sup>389</sup>

### **Recommendation 7.18 Establish specific and disaggregated targets for disability employment in the public sector**

The Australian Government and state and territory governments should adopt specific and disaggregated targets to increase the proportion in the public sector of:

- employees with disability at entry and graduate levels
- employees with disability at executive levels
- employees with cognitive disability.

Public sector targets should be supported by:

- clear employment pathways into the relevant public services for each target cohort
- measures and programs to support the recruitment and progression of each target cohort
- provision of appropriate supports.

The Australian Public Service Commission and state and territory public service commissions should ensure these targets contribute to their existing overall employment targets for people with disability.

### **Setting agency and department targets for new joiners**

Mr Woolcott stated at Public hearing 19 that the current target of 7 per cent for the number of people with disability working in the APS represented the third attempt at a strategy to increase the number of people with disability working in the APS. He conceded that to date none of the strategies had 'moved the dial'.<sup>390</sup>

In light of this, Commissioners Bennett, Galbally, Mason, McEwin and Ryan recommend targets also be set at an agency and departmental level. In particular, we recommend that each department and agency within the Australian Public Service, and the public services of each state and territory, be required to set a target that 7 per cent of new hires are people with disability. These targets for new hires in each public service department or agency should continue to increase to 9 per cent by 2030 to be more representative of the disability working-age cohort.

This recommendation would sit alongside and contribute to the existing public sector targets and the recommendations for specific targets above, in two ways.

First, the recommendation would shift responsibility to individual agencies and departments to meet a target of 7 per cent of new hires being people with disability. This makes all agencies and departments more accountable for ensuring they are offering genuine employment opportunities and inclusive workplaces for people with disability.

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Having a direct target in place may encourage agencies to take more concrete steps to promote opportunities within their workplaces to people with disability, including during bulk recruitment rounds.

Second, the recommendation focuses specifically on new hires to an agency or department. New recruitment of employees with a disability is critical to achieving overall public sector targets. For example, the Australian Public Service Disability Employment Strategy 2020–25 sets an employment target for people with disability in the APS of 7 per cent by 2025 and recognises that recruitment is a critical component of achieving this target.<sup>391</sup>

### **Recommendation 7.19 Establish specific disability employment targets for new public service hires in agencies and departments**

The Australian Government and state and territory government departments and agencies should be required to set a target to ensure that a proportion of new public service hires to their respective workforce are people with disability.

The target should be at least 7 per cent by 2025.

The target should increase to at least 9 per cent by 2030.

While joining in Recommendation 7.19, the Chair and Commissioners Mason and Ryan note that people with intellectual disability or cognitive impairment are less likely to be employed full-time in open employment than people with other types of disabilities. People with cognitive disability want to work and earn at least the minimum wage, but struggle to find disability-inclusive employers who understand and respond to their needs. In their view, the public sector should take active measures to increase the employment of people with intellectual disability or cognitive impairment. Governments as employers are well placed to implement workplace-based learning, rather than generalised pre-work training which does not always effectively transfer to a work setting.

The Chair and Commissioners Mason and Ryan propose that each target (7 per cent and 9 per cent, respectively) incorporate a sub-target for the employment of people with intellectual disability. The sub-target should be determined by the relevant departments and agencies and be published on an annual basis. In the absence of a sub-target, departments and agencies will be likely to employ people with disability requiring fewer adjustments or supports.

## **The merit principle in public sector recruitment**

In Public hearing 19, Ms Christina Ryan, founder and CEO of the Disability Leadership Institute, raised the subject of how policies referencing ‘merit-based appointments’ may be disadvantaging the opportunities for people with disability to be appointed to, and progress within, the public sector.

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Ms Ryan described the concept of merit in recruitment as a 'trap'.<sup>392</sup> She considered that it does not result in diverse workforces. Ms Ryan said '[w]e need to discard merit as a recruitment criterion in favour of more holistic recruitment practices'.<sup>393</sup> Ms Ryan suggested that, in regards to certain positions, employers should 'look beyond formal qualifications' to 'competence to do the job'. She noted that people with disability may have different pathways to employment and less opportunities than other people.<sup>394</sup>

In Public hearing 19, Commissioners pursued the issue as to whether the merit principle was a barrier to people with disability progressing in the APS. The Australian Government provided detailed responses to questions about how public sector employees who are taking part in merit selection recruitment panels are briefed on balancing the APS Employment Principles in recruitment. These principles specify that the APS makes 'decisions relating to engagement and promotion that are based on merit'. The principles also require the APS to recognise 'the diversity of the Australian community and foster diversity in the workplace'.<sup>395</sup>

Commissioners consider there was a lack of clarity in the answers provided by the Australian Government about how public servants are briefed in balancing these principles. They believe the lack of clarity is sufficient to warrant a recommendation that the APSC should incorporate clearer directions in APS training and support. It should circulate such directions as appropriate to ensure that applicants for public sector positions are not disadvantaged due to confusion among recruitment panel members about the application of the merit principle and the importance of ensuring that the public sector reflects the community it serves.

### **Recommendation 7.20 Clarify the application of the merit principle in public sector recruitment**

The Australian Public Service Commission should incorporate clearer directions in Australian Public Service training and support on applying the merit principle in recruitment. Training and support materials should:

- specifically address the importance of having a diverse public sector workforce that reflects the community it serves
- provide guidance in considering the need for diversity in the application of the merit principle in recruitment.

## **Further views from Commissioners**

In addition to the above recommendations, Commissioners Bennett, Galbally, McEwin and Ryan consider more proactive and innovative approaches are needed to increase the employment of people with disability in the public sector. These approaches relate to affirmative measures and RecruitAbility.



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## Affirmative measures

The Australian Government advised, in response to questions on notice asked during Public hearing 19, that section 33 of the *Australian Public Service Commissioner's Directions 2022* sets out the 'affirmative measure – disability employment' (the disability affirmative measure).<sup>396</sup> The disability affirmative measure 'allows a particular job in the APS to be open only to persons who have a disability, or a particular type of disability'.<sup>397</sup> The Australian Government confirmed 'any role can be advertised as an affirmative measures position' and 'the role does not need to be disability related'.<sup>398</sup> It can be applied to ongoing (permanent), non-ongoing (temporary) and casual APS jobs, including senior-level vacancies. The use of the disability affirmative measure is a matter for individual agencies.<sup>399</sup>

The disability affirmative measure is designed to address the under-representation of people with disability in APS agencies.

It aims to:<sup>400</sup>

- promote the right to equality and non-discrimination in employment for people with disability
- acknowledge that all individuals have the right to employment and that some groups need additional support to achieve this right
- increase the number of people with disability employed in the APS
- assist agencies to meet the objectives of the APS Disability Employment Strategy.

The use of the disability affirmative measure is consistent with the *DDA* and the Australian Government's human rights obligations, including those set out in international conventions.

Commissioners Bennett, Galbally, McEwin and Ryan suggest that affirmative action measures should be used more frequently if no progress continues to be made in achieving a significant increase in the number of people with disability working in the APS or in the public agencies of the states and territories.

## RecruitAbility

RecruitAbility is one of the highest profile strategies within the APS for encouraging disability employment. RecruitAbility is one of two major methods relevant to recruitment for people with disability seeking employment in the APS,<sup>401</sup> the other being the disability affirmative measure discussed earlier.

Where a vacancy is advertised, applicants with disability may opt into the RecruitAbility scheme. Those who declare they have disability and meet minimum requirements of the job advertised will then be advanced to a further stage in the selection process, such as an interview.<sup>402</sup> Mr Woolcott agreed the aim of RecruitAbility is to make the recruitment pathway less complex for a person with disability.<sup>403</sup>

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Agencies advertising vacancies under RecruitAbility are encouraged to ask all job applicants, including those who have opted into RecruitAbility, if they require adjustments in the recruitment process.<sup>404</sup> Agencies also have a legal obligation to provide reasonable adjustments under the *DDA*, including during interviews and, should a RecruitAbility applicant be successful, in their new workplace.<sup>405</sup>

The RecruitAbility scheme was evaluated in 2016 two years after its implementation.<sup>406</sup> In the period between the pilot program in June 2013 to December 2016, public sector agencies advertised 7,039 RecruitAbility vacancies, representing 31.7 per cent of all APS vacancies.<sup>407</sup> Only 119 candidates who had used the scheme were successful; however, this may be an underestimate as some engagements and promotions were not recorded.<sup>408</sup>

The Australian Government submitted ‘the review found that RecruitAbility was operating largely as intended across the APS and made various recommendations to refine several key areas of the scheme to increase its take-up and effectiveness’.<sup>409</sup>

Both the 2016 *Willing to work* report and the 2019 *APS Disability Employment Strategy 2016–18 evaluation* (Wallis review) endorsed the utility of RecruitAbility as an affirmative measure and recommended extending the application of RecruitAbility to all APS positions.<sup>410</sup> The Wallis review demonstrated some recruiters and managers were not disability confident and lacked awareness of how to use RecruitAbility correctly.<sup>411</sup> The Wallis review recommended ‘clear guidance on the practical implications of participation in RecruitAbility and affirmative measures ... for different types of APS staff ... and contracted recruitment providers’.<sup>412</sup>

While the scheme may be making the recruitment process less complex for some APS applicants, Commissioners Bennett, Galbally, McEwin and Ryan are of the view that its impact on increasing the number of people with disability entering the APS has been very modest.

## Adjustments and supports

As highlighted in section 6.2, we found a lack of information about, and access to, adjustments is a key organisational barrier people with disability face when looking for work and during employment.

Many public sector entities already have adjustment policies in some form. Mr Woolcott acknowledged the importance of implementing an adjustments policy ‘to eliminate barriers so that a person with disability can have equal opportunity in employment’.<sup>413</sup> However, we consider people with disability would benefit from consistency in these policies. In submissions following Public hearing 19, Counsel Assisting noted, for example, there does not appear to be an adjustment policy covering the entire APS. As such, ‘the application of reasonable adjustments to recruitment and employment processes across APS agencies may lack consistency’.<sup>414</sup>

Adopting a common principles-based approach to adjustment policies will ensure a consistent approach to providing and managing adjustments across the public sector. At the same time, a principles-based approach (rather than detailed prescription) would provide flexibility for agencies to adapt their adjustment policies and procedures to fit their requirements.

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The common principles underpinning adjustment policies should address matters including:

- clear and accessible processes for staff to request adjustments
- timeframes for implementing adjustments and a process for review and seeking feedback on adjustments
- clear and accessible processes for making and responding to complaints relating to adjustments (including complaints about a refusal to provide an adjustment)
- clear policies on handling or sharing information about a person's disability or adjustments
- referrals to internal and external supports in relation to requesting and managing adjustments
- requirements to collect data on applications for, and implementation of, adjustments.

The common principles underpinning adjustment policies should be informed by the legislative reforms proposed in Volume 4, including the introduction of a standalone duty to make adjustments. The APSC is well positioned to lead this work, in partnership with state and territory public service commissions.

Volume 11, *Independent oversight and complaint mechanisms*, and section 6.3 of this volume set out recommendations for improving complaint pathways and experiences. Governments should ensure that their public sector complaints mechanisms for employees, including in relation to adjustments, comply with best practice outlined in that volume.

There is also merit in creating an APS-wide adjustment passport to ensure people with disability do not need to negotiate repeatedly for adjustments when their role, manager or work environment within the APS changes. We received evidence that adjustment passports are a valuable means of ensuring the portability of adjustments.<sup>415</sup> In Public hearing 19, the Victorian Public Service Commission, the APSC and APS agencies highlighted the benefits of adjustment passports as a means of ensuring the required adjustments for staff with disability are identified, understood and implemented.<sup>416</sup> Past reports and inquiries have similarly noted the utility of adjustments passports,<sup>417</sup> and have emphasised the importance of a formal rather than informal approach to adjustments.<sup>418</sup>

Consistent application is key to ensuring the effectiveness of an adjustment passport system in the APS. The Wallis review flagged the implementation of adjustment passports within the APS as a positive development,<sup>419</sup> but noted that each agency having their own version of the passport was a challenge.<sup>420</sup> In Public hearing 19, Mr Woolcott acknowledged the use of adjustment passports 'varies between agencies'.<sup>421</sup>

A standardised APS-wide adjustment passport is consistent with the positive outcome of trials to implement them in the United Kingdom.<sup>422</sup>

### **Recommendation 7.21 Introduce consistent adjustment principles and adjustment passports**

The Australian Public Service Commission should:

- a. lead the development of common principles to underpin adjustment policies for providing and managing adjustments in the public sector. This should occur in partnership with state and territory public service commissions. The principles should be used to inform Australian Government and state and territory government department policies and procedures on adjustments. The principles should include:
  - clear and accessible processes for staff to request adjustments
  - timeframes for implementing adjustments and a process for review and seeking feedback on adjustments
  - clear and accessible processes for making and responding to complaints relating to adjustments (including complaints about refusal to provide an adjustment)
  - clear policies on handling and sharing information about a person's disability or adjustments
  - referrals to internal and external supports in relation to requesting and managing adjustments
  - requirements to collect data on applications for, and the implementation of, adjustments.
- b. develop an Australian Public Service-wide adjustment passport to improve the ease with which people with disability can maintain and transfer their adjustments when moving within the Australian Public Service.

### **Improve accountability for public sector employment strategies**

As Counsel Assisting submitted following Public hearing 19, 'the need for [public sector] strategies and policies is not in issue. Rather, the issue is whether the strategies achieve their objectives and are effective'.<sup>423</sup> Strategies must be clear about who is responsible for their implementation. They must include strong accountability measures and provisions for ongoing evaluation and reform.

There are many ways to achieve these objectives of clarity, accountability and evaluation. For example, at the agency level, individual performance agreements of agency heads could include disability employment targets. The Western Australian Government's public sector employment plan, *People with Disability: Action plan to improve WA public sector employment outcomes 2020–25*, includes diversity targets for people with disability in both CEO performance agreements and annual reporting guidelines.<sup>424</sup>

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Clarity is needed in state and territory government strategies about the body or institution responsible for overall monitoring and implementation of the strategy. For example, the Victorian Government's *Getting to Work: Victorian public sector disability employment action plan 2018–2025* specifies that the Victorian Secretaries Board is accountable for overall implementation and monitoring of the plan.<sup>425</sup>

Our recommendations in Volume 5 are designed to help improve outcomes for people with disability through strengthening national disability policy governance.

This includes recommending that the Australian Government establishes an independent National Disability Commission. As part of its functions, the National Disability Commission should report on outcomes for people with disability. It would consider performances across jurisdictions, drawing from different sources such as reports on individual jurisdictional plans and strategies. This should include employment strategies and commitments.

To support this work, the Australian and state and territory public sectors should annually report information on their progress in meeting their employment targets, including the disaggregated targets recommended above.

The recommendations outlined below and in Volume 5 will increase oversight measures and improve accountability for outcomes under the Australian Government and state and territory government disability employment strategies. In order to ensure accountability, the annual reports of the Australian and state and territory public sectors should be published and made available in accessible formats.

### **Recommendation 7.22 Public reporting on public sector disability employment strategies and targets**

The Australian Public Service Commission and state and territory public service commissions should report annually on the progress of their public sector disability employment strategies, including progress against overall and disaggregated targets for increasing the percentage of employees with disability. These reports should be published and made available in accessible formats.

## **Procurement**

### **Using procurement to promote private sector action**

Government procurement was repeatedly raised in Public hearings 9 and 19 as a lever for governments to influence private and not-for-profit sector behaviour.<sup>426</sup> As major purchasers of goods and services, governments can exert market pressures through requirements in procurement policies and tendering arrangements.<sup>427</sup> Governments can include accessibility,

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disability inclusion, and adjustment policies as requirements or preferential factors in government procurement policy and tendering. This would motivate businesses to increase the employment of, and improve workplace conditions for, people with disability.<sup>428</sup>

In *General comment no. 8 (2022) on the right of persons with disabilities to work and employment*, the CRPD Committee recognised the value of public procurement measures as a way to increase employment of people with disability in the private sector.<sup>429</sup> This was echoed by disability organisations and advocates in our public hearings.<sup>430</sup> The Australian Federation of Disability Organisations and the Australian Network on Disability have also previously recommended to the Senate that government procurement should preference businesses that are owned by people with disability or have inclusive employment practices.<sup>431</sup>

In Public hearing 19, we heard that community-based organisations that work with the NDIA to deliver the NDIS (known as NDIS Partners in the Community) are required to work towards a target of at least 15 per cent of employees identifying as people with disability.<sup>432</sup> As of September 2021, people with disability accounted for 13 per cent of employees of all Partners in the Community, including 6 per cent of employees in early childhood partners and 17 per cent of employees in local area coordination businesses.<sup>433</sup>

An example is Victoria's Social Procurement Framework, which promotes government procurement of goods, services and construction directly from social enterprises, Victorian Aboriginal businesses or Victorian ADEs that pay 'award-based pay rates for all staff'.<sup>434</sup> Victoria's Social Procurement Framework takes a 'scalable' approach, meaning the value of the procurement determines the actions required on employment of people with disability. For example, under the Framework, it is recommended for procurement outputs from \$3 million to \$20 million in metropolitan areas, or from \$1 million to \$20 million in regional areas, that government buyers should 'ask suppliers to demonstrate inclusive employment practices for Victorians with disability in weighted framework criteria'.<sup>435</sup> For higher procurement outputs (from \$20 million to \$50 million), it is recommended that government buyers 'include performance standards on labour hours performed by Victorians with disability'. For procurement outputs above \$50 million, it is suggested that government buyers 'include targets for labour hours to be performed by Victorians with disability'.<sup>436</sup>

All Commissioners recommend that governments in Australia should adopt procurement policies that support and encourage employment of people with disability in open and inclusive settings.

Commissioners Bennett, Galbally, Mason and McEwin put forward a further recommendation on this point in Chapter 7. They recommend that all Australian Government and state and territory government disability employment procurement policies follow the Victorian Government's lead and require entities to pay all employees full minimum wages or above (see Recommendation 7.32).

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## Promoting accessibility through procurement policies

Government procurement contracts provide an opportunity to improve the accessibility of information and communication technology (ICT). This is through the use of mandatory minimum accessibility standards.<sup>437</sup> Establishing minimum accessibility standards for ICT reduces the need for adjustments or retrospective adaptations<sup>438</sup> and the pressure on people to disclose their disability.<sup>439</sup>

In 2016, Australia adopted AS EN 301 549:2016 – Accessibility requirements suitable for public procurement of ICT products and services (the ICT Standard).<sup>440</sup> This established a minimum standard to ensure websites, software and digital devices are accessible. In 2020, Australia adopted a revision to the ICT Standard (AS EN 301 549:2020 – Accessibility requirements for ICT products and services), which incorporated the current version of the international Web Content Accessibility Guidelines 2.1 (WCAG 2.1).<sup>441</sup> Although the 2020 revision was intended to expand the remit of the standard, it is voluntary and applied inconsistently across jurisdictions.<sup>442</sup> Australian Government agencies are currently only mandated to comply with the outdated Web Content Accessibility Guidelines 2.0 (WCAG 2.0).<sup>443</sup>

In Public hearing 19, Dr Innes said mandating accessibility standards would ‘drive the market to make their equipment accessible for people with disabilities’ because of governments’ purchasing power.<sup>444</sup>

Past reports and inquiries have also recognised the need for accessibility standards for ICT products.<sup>445</sup> The 2017 Australian Capital Territory *Inquiry into Employment of People with Disabilities* recommended that all procurement guidelines for ICT products purchased by the Australian Capital Territory Government should require accessibility features as a standard.<sup>446</sup> In 2019, the CRPD Committee recommended States Parties use public procurement measures to achieve its obligations under the *CRPD*.<sup>447</sup>

Overseas jurisdictions have adopted mandatory minimum accessibility standards for ICT procurement as a tool for addressing accessibility barriers to employment and to provide access to information more generally.<sup>448</sup>

Recommendation 7.23 aligns Australia with international practice by ensuring technology is accessible for government employees. This recommendation facilitates the inclusion of employees with disability in the public sector. It also motivates the private sector to comply with the standards in order to supply ICT technology to the public sector.<sup>449</sup> Integrating the updated WCAG 2.1 requirements in the ICT Standard would also provide a mechanism for updating the current mandate for Australian Government agencies which only requires compliance with WCAG 2.0.



### **Recommendation 7.23 Strengthen disability employment procurement policies**

The Australian Government and state and territory governments should adopt procurement policies that:

- a. favour businesses and entities able to demonstrate, in accordance with published criteria, they are providing employment opportunities for people with disability in open, inclusive and accessible settings, including people with intellectual disability or cognitive impairments.
- b. require all information and communication technology purchases to comply with the current Australian information and communication technology (ICT) accessibility standard (AS EN 301 549:2020 – Accessibility requirements for ICT products and services).

## **Improving the regulatory environment**

The final group of recommendations focus on the regulatory systems aimed at protecting people with disability from discrimination in the workplace. These recommendations seek to improve regulatory coordination to address issues facing people with disability in employment, update key definitions and provisions in the *FWA* to align with the *DDA* and to provide a return referral mechanism for complaints, and enhance data collection and reporting mechanisms, including in the private sector.

### **Disability Employment Rights Council**

We heard strong evidence that the perception that people with disability pose a work health and safety risk is a myth.<sup>450</sup> However, the Employer Mobilisation Research Project identified a 'liability and compliance mindset' as one of the key barriers to recruiting, supporting and making adjustments for people with a health condition or disability.<sup>451</sup> This highlights the work to be done in supporting employers to gain a better understanding of disability and how to accommodate disability in the workplace.<sup>452</sup>

Regulations related to inherent requirements, workplace adjustments and safety are interrelated and can be difficult to interpret and apply consistently.<sup>453</sup> This is particularly the case where an employer perceives a conflict between their obligations under anti-discrimination legislation and their duty to ensure the health and safety of all employees under work health and safety legislation. The Australian Government has recognised the complexity of these issues and the overlapping nature of jurisdictions in the context of reasonable adjustments, work health and safety, and legal obligations of employers.<sup>454</sup>

Currently, neither the anti-discrimination or work, health and safety legislative frameworks clarify how the various obligations on, and entitlements of, employees and employers should

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work together to achieve the dual purpose of a safe working environment and equal opportunity for employment. While information is available across a variety of sources, there is no central source setting out regulatory requirements that is well known and easily accessible to employers. A misunderstanding of the regulatory environment can lead to employers being hesitant to employ people with disability, as noted earlier in this chapter.

In addition, there are currently no mechanisms for regulators to ensure a consistent approach to the employment of people with disability who are subject to different, and at times competing, regulatory regimes.<sup>455</sup> The evidence in Public hearing 19 highlighted the need for closer and better cooperation between the regulators to improve outcomes for people with disability.

An example of regulators being brought together to facilitate cooperation is the Respect@Work Council.

In submissions following Public hearing 19, Counsel Assisting noted the AHRC's March 2020 report, *Respect@Work National Inquiry into Sexual Harassment in Australian Workplaces (Respect@Work)*. The *Respect@Work* report addressed the relationship between sexual harassment, discrimination and safety issues. To this end, Recommendation 14 in *Respect@Work* proposed a Workplace Sexual Harassment Council. Its objective is 'to improve coordination, consistency and clarity across the key legal and regulatory frameworks, to improve prevention and response to sexual harassment'. This recommendation was accepted by the Australian Government<sup>456</sup> and the Respect@Work Council was established. Members of the Respect@Work Council have reported on the benefits of a cross-sector coordinated regulatory approach to improving consistency and clarity across legal and regulatory frameworks.<sup>457</sup>

We accept Counsel Assisting's submission that the Australian Government should adopt a similar approach to the Respect@Work Council for the employment of people with disability.<sup>458</sup> In its response to Counsel Assisting's submissions, the Australian Government recognised the importance of collaboration and communication between regulators to better coordinate approaches to complicated legal and policy issues.<sup>459</sup> It indicated it was prepared to consider the approach suggested by Counsel Assisting.<sup>460</sup>

The Royal Commission recommends the Australian Government convenes a Disability Employment Rights Council (Council). The Council should provide a coordinated mechanism for existing policy and regulatory bodies to work together collaboratively. The purpose of the Council should be to bring together leaders across the sector to consider how legal and regulatory frameworks can be better used to improve outcomes for people with disability in the workplace and to provide expert advice to employers as appropriate on matters relating to the employment of people with disability. The objective of the Council should be to improve coordination, consistency and clarity:

- across the key legal and regulatory frameworks relevant to the employment of people with disability
- between regulatory bodies at all levels of government.

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The Disability Discrimination Commissioner is likely to be a suitable Council chair, but we make no formal recommendation to that effect.

Core membership of the Council should include representatives of existing bodies that are responsible for policies relating to employment, including:

- Fair Work Commission
- Fair Work Ombudsman
- Safe Work Australia
- workplace safety authorities
- workers' compensation authorities
- NDIA
- Comcare
- Australian Council of Human Rights authorities
- Disability Representative Organisations
- Disabled People's Organisations.

The Council should also have associate members to provide expertise and advice on specific issues that directly affect the rights of people with disability in the workplace. Associate members should include representatives from government, non-government, and independent organisations, including employer and union representatives.

The Council should collaborate with existing bodies, such as JobAccess, to provide information and guidance to key stakeholders such as employees, employers and organisations, including about:

- changes to the regulatory regime proposed in Volume 4 relating to strengthening the *DDA* and enacting an Australian Disability Rights Act
- any impacts on the regulatory regime resulting from our recommendations in this chapter and Chapter 7.

We anticipate the cost of the Council would be modest, as members will be drawn from existing bodies with their own funding and remuneration structures. Specific funding to allow for the attendance of Disability Representative Organisations and Disabled People's Organisations should be considered by the Australian Government.

The Australian Government should also consider whether the Attorney-General's Department would be able to provide secretariat support.

## Recommendation 7.24 Convene a Disability Employment Rights Council

The Australian Government should convene a Disability Employment Rights Council to improve coordination, consistency and clarity across regulatory bodies and frameworks to improve outcomes for people with disability in employment.

## Legislative amendments

### *Fair Work Act 2009 (Cth)*

The word ‘disability’ is not currently defined in the *FWA*. The expression ‘employee with a disability’ is defined by reference to the *Social Security Act 1991 (Cth)*.<sup>461</sup> The Royal Commission recommends ‘disability’ be defined in the *FWA*. The definition adopted should be the same as or consistent with the definition of ‘disability’ in the *DDA*. Having a consistent definition would help people enforce their rights under these interrelated pieces of legislation more easily.

Section 351(1) of the *FWA* states:

(1) An employer must not take adverse action against a person who is an employee, or prospective employee, of the employer because of the person’s race, colour, sex, sexual orientation, breastfeeding, gender identity, intersex status, age, physical or mental disability, marital status, family or carer’s responsibilities, pregnancy, religion, political opinion, national extraction or social origin.<sup>462</sup>

As noted above, adverse action means refusing to employ an employee or a prospective employee, dismissing an employee, injuring an employee in employment, altering the position of an employee to their prejudice, and discriminating between the employee and other employees of the employer.<sup>463</sup>

There are two aspects of section 351(1) of the *FWA* that are inconsistent with the *DDA*.

First, section 351(1) of the *FWA* does not use the definition of ‘disability’ in section 4 of the *DDA*. Consequently, the section applies only to adverse action of persons with ‘physical’ or ‘mental’ disability.<sup>464</sup> However, the *DDA* definition is ‘relevant context’,<sup>465</sup> and the manifestations of a person’s physical or mental disability may be included,<sup>466</sup> although authority on this point is inconsistent.<sup>467</sup> The employer must know the employee or a prospective employee has a physical or mental disability, and arguably the manifestations.<sup>468</sup> The protections in the *FWA* apply to a person who has a relevant disability at the time. It does not expressly extend to past, future or imputed disability.

Section 772(1)(f) of the *FWA* also refers to ‘physical’ or ‘mental’ disability. It provides an employer must not terminate an employee’s employment on the grounds of, amongst other attributes, ‘physical or mental disability’.<sup>469</sup>

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This limitation to physical or mental disability does not exist in the *DDA*. A person may be required to prove they have a disability when making a claim under the *DDA*, but not that they have a ‘physical or mental disability’.

Second, sections 351 and 772 of the *FWA* are subject to exceptions which are provided in the *DDA*.<sup>470</sup> For example, adverse action is permissible if one of the exceptions in section 351(2) or (3) apply. Section 351(2)(a) provides adverse action does not apply to action that is not unlawful under any antidiscrimination law in force in the place where the action is taken. The reference to ‘any antidiscrimination law in force’ is to all federal, state and territory discrimination laws.<sup>471</sup> This has the effect of the *FWA* operating differently from state to state. The further exception in relation to inherent requirements under section 351(2)(b) is discussed separately below.

These exceptions mean interpretation of the two pieces of legislation are interrelated. A person with disability must often consider their position under both pieces of legislation before deciding to initiate a claim or seek a remedy for adverse action or termination of employment.

The AHRC recommended the Australian Government amend the *FWA* to clarify the definition of disability and align it with the definition contained in the *DDA*.<sup>472</sup> We agree. This issue was also raised in the Australian Government’s recent consultation paper, ‘Updating the *Fair Work Act 2009* to provide stronger protections for workers against discrimination’.<sup>473</sup> One of the questions asked in the consultation was whether the Fair Work Act should be aligned with the *DDA* and include a definition of disability.<sup>474</sup>

We propose the reference to disability in sections 351 and 772 of the *FWA* should not be limited to physical or mental disability in a manner that makes it inconsistent with the *DDA*. The amendments to the *FWA* should:

- remove the limitation of physical or mental disability from references to disability in sections 351 and 772
- improve consistency between provisions of the *FWA* and the *DDA*.

### **Recommendation 7.25 Amend the *Fair Work Act 2009* (Cth)**

The *Fair Work Act 2009* (Cth) should be amended to:

- a. ensure the definition of ‘disability’ is consistent with the *Disability Discrimination Act 1992* (Cth)
- b. remove the words ‘physical and mental’ preceding ‘disability’ in sections 351 and 772.

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## *Disability Discrimination Act 1992 (Cth)*

We heard the way inherent requirements are described by employers can fail to account for adjustments that may assist a prospective or existing employee to carry out a role. We also heard inherent requirements can be discriminatory, build in unconscious bias and rely on the medical model of disability.

Section 21A of the *DDA* provides an exception to a claim of discrimination where a prospective or existing employee is unable to carry out the inherent requirements of the particular work.

The current approach to inherent requirements allows employers to use the exception in section 21A after considering whether making a reasonable adjustment for the person would enable the employer to perform the inherent requirements of the particular work. It does not require the employer to consult with the prospective or existing employee about how the inherent requirements of a role can be performed. This can disadvantage employees with disability.

This should be addressed by amending section 21A(2) to include additional factors that must be taken into account in determining whether a person with disability is able to carry out the inherent requirements of the particular work. These include the:

- nature and extent of any adjustments made
- extent of consultation with any person with disability concerned.

An employer would need to have regard to these factors to be able to rely on the exception under section 21A of the *DDA*.

Volume 4 outlines further proposed legislative amendments to the *DDA*.

### **Recommendation 7.26 Amend the *Disability Discrimination Act 1992 (Cth)***

Section 21A of the *Disability Discrimination Act 1992 (Cth)* should be amended to expand the factors to be considered in determining whether a prospective or existing employee would be able to carry out the inherent requirements of a particular role.

These factors include the:

- nature and extent of any adjustments made
- extent of consultation with any person with disability concerned.



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## Referral mechanism for complaints

In Public hearing 19, we heard about the important role the Fair Work Ombudsman (FWO) plays in providing information to employees and employers about their rights and obligations under the *FWA*. We also heard the FWO has two functions that allow it to bring prosecutions. It can either:

- bring proceedings in its own name to enforce the *FWA*,<sup>475</sup> or
- represent employees or outworkers in a proceeding if it considers representing them will promote compliance with the *FWA*.<sup>476</sup>

The FWO can seek a range of court orders that may provide redress for an individual or group of employees and may also include orders for civil penalties.

At Public hearing 19, the current Fair Work Ombudsman, Ms Sandra Parker PSM, explained her statutory functions.<sup>477</sup> These include to:

- promote and monitor compliance with the *FWA*<sup>478</sup>
- inquire into and investigate acts or practices that may be contrary to the *FWA*, a fair work instrument or safety net contractual entitlement<sup>479</sup>
- commence proceedings in a court or make applications to the FWC<sup>480</sup>
- refer matters to relevant authorities<sup>481</sup>
- in certain proscribed circumstances, represent employees who are party to proceedings.<sup>482</sup>

Ms Parker said vulnerable workers, such as workers with disability, have been identified as a priority cohort for the FWO because they need greater assistance and are at greater risk of exploitation.<sup>483</sup> Ms Parker noted the FWO prioritises complaints by workers with disability and other vulnerable workers. However, she said the number of inquiries from people who identify as persons with disability is low.<sup>484</sup>

The FWO will refer matters to other relevant authorities where, in the course of carrying out compliance or enforcement activities, it becomes aware of issues that are outside its statutory functions.<sup>485</sup> Ms Parker explained her office may refer particular inquiries or issues to other bodies, known as 'relevant authorities'. For example, a matter might be referred to the Australian Human Rights Commission if it relates to disability discrimination, to the FWC if it relates to unfair dismissal, or to state and territory human rights bodies.<sup>486</sup>

Ms Parker described this process of referral to other relevant authorities as the 'most effective and desirable approach in the majority of matters'.<sup>487</sup> However, she noted one additional element that would be beneficial was a 'return referral mechanism'.<sup>488</sup> Such a mechanism would operate where alternative dispute resolution has failed or where other bodies have determined it is not appropriate for the complaint to remain within their remit. The matter would be referred back to the FWO.<sup>489</sup> The mechanism would allow the FWO to review each returned referral to determine whether it meets the threshold for compliance and enforcement action by the FWO.<sup>490</sup>

Counsel Assisting's submissions following Public hearing 19 endorsed this proposal and suggested it should be the subject of further consideration by relevant regulatory agencies and the Australian Government.<sup>491</sup> The Australian Government supported 'further exploration on the establishment of a return referral mechanism between the AHRC and the FWO'.<sup>492</sup>

### **Recommendation 7.27 Enable a Fair Work Ombudsman referral mechanism**

The Australian Government should expand the functions of the Fair Work Ombudsman to allow a matter involving an employee with disability to be referred back to the Fair Work Ombudsman by relevant authorities if they:

- consider a complaint may be best addressed by the Fair Work Ombudsman
- have the complainant's consent to do so.

The referral mechanism should be available in instances where a matter was initially referred by the Fair Work Ombudsman to a relevant authority.

## **Other issues**

### **Data collection and reporting mechanism**

There is currently limited accurate public data available on either the proportion of people with disability working within Australian organisations or their career trajectories over time.<sup>493</sup> We consider the collection and analysis of workforce data at both an organisational and national level is an important prerequisite for identifying and addressing barriers to employment for people with disability.

In Public hearing 19, we heard about inconsistent approaches to collecting data on the number of people with disability in particular organisations, which can lead to inaccurate or incomplete data. Data collection can depend on a number of factors, including how disability is defined; at what points of employment an employee may be able, or is asked, to disclose their disability; and the manner of data collection.<sup>494</sup> Accurate data is essential for employers to know who their employees are, and to plan, evaluate and meet their obligations as employers.<sup>495</sup>

Data is also critical at informing action at a broader national level. In Public hearing 19, Ms Jennifer Westacott AO gave evidence in her capacity as the then CEO of the Business Council of Australia. Ms Westacott told us about the need for a 'national effort on data collection and reporting'. This would produce data to inform the 'total system change and total culture change'<sup>496</sup> required to meaningfully increase the recruitment of people with disability. She also emphasised the need for any approach to data collection and reporting to be 'co-designed with industry' to ensure the information obtained was fit for purpose and accurate.<sup>497</sup>

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Inadequacies in data collection limit what is known about the causes of deep and persistent disadvantages for people with disability in the workforce, and what policies or initiatives are proving effective to combat this.<sup>498</sup> In their response to questions taken on notice following Public hearing 19, the Australian Government stated that '[e]xpanding data collection and reporting processes' for people with a disability was not yet appropriate as part of its overall employment strategy because of:<sup>499</sup>

- challenges in collecting meaningful data, noting it is not mandatory for people to report their disability status and many choose not to
- the additional regulatory burden this would place on employers.

In response to Counsel Assisting's submissions following Public hearing 19, the Australian Government acknowledged that 'accurate data is important in ensuring that the efficacy of policies can be evaluated'.<sup>500</sup> However, it submitted that 'disclosing disability status should remain the choice of employees and employers should take steps to support a culture that encourages safe disclosure'.<sup>501</sup>

We acknowledge these challenges but we maintain accurate data is essential to inform the actions required to increase employment for people with disability. Our recommendations regarding the collection and use of data are set out in Volume 12.

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## Endnotes

- 1 Australian Human Rights Commission, *Willing to work: National inquiry into employment discrimination against older Australians and Australians with disability 2016*, Final report, April 2016 p 5; European Foundation for the Improvement of Living and Working Conditions, *Disability and labour market integration: Policy trends and support in EU member states*, Report, 2021, p 3; National Disability Insurance Agency, *NDIS Participant Employment Strategy 2019-2022*, p 9.
- 2 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 27(1).
- 3 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), arts 27(1)(a), 27(1)(b), 27(1)(g), 27(1)(h), 27(1)(i).
- 4 Ron McCallum, *The United Nations Convention on the Rights of Persons with Disabilities: An assessment of Australia's level of compliance*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2020.
- 5 Ron McCallum, *The United Nations Convention on the Rights of Persons with Disabilities: An assessment of Australia's level of compliance*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2020, p 129.
- 6 Ron McCallum, *The United Nations Convention on the Rights of Persons with Disabilities: An assessment of Australia's level of compliance*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2020, p 136.
- 7 Transcript, Debbie Mitchell, Public hearing 22, 13 April 2022, P-233 [14–15].
- 8 See, for example, International Labour Organization Constitution; *Employment Policy Convention* No. 122 (1964) (ratified by Australia in 1970), preamble; *Vocational Rehabilitation and Employment (Disabled Persons) Convention* No 159 (1983) (ratified by Australia in 1991).
- 9 *International Covenant on Economic, Social and Cultural Rights*, opened for signature 19 December 1966, 993 UNTS 3 (entered into force 3 January 1976), arts 6, 7.
- 10 Transcript, Dylan Alcott, Public hearing 31, 13 December 2022, P-64 [6–10].
- 11 Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Disability and the Labour Force, 2018*, Catalogue number 4430do010, 24 July 2019, Table 8.1.
- 12 Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Disability and the Labour Force, 2018*, Catalogue number 4430do010, 24 July 2019, Table 8.1.
- 13 Australian Bureau of Statistics, 4433.0.55.006 – *Disability and Labour Force Participation, 2012*, media release, Canberra, 5 February 2015.
- 14 Exhibit 19-39, 'Statement of Luke Mansfield', 26 October 2021, at [62].
- 15 Submissions of Counsel Assisting the Royal Commission following Public hearing 19, 7 January 2022 (revised 9 March 2022), p 22 [61].
- 16 Exhibit 19-0, DRC.9999.0096.0040, p 1.
- 17 Submissions of Counsel Assisting the Royal Commission following Public hearing 19, 7 January 2022 (revised 9 March 2022), p 29 [87]; Exhibit 19-000, DRC.9999.0096.0040, p 1.
- 18 Exhibit 19-0, DRC.9999.0096.0040.
- 19 Australian Institute of Health and Welfare, AIHW, *People with disability in Australia 2022*, Catalogue Number Dis 72, 5 July 2022, Employment supplementary data tables, Table EMPL5.
- 20 Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Disability and the Labour Force, 2018*, Catalogue number 4430do010, 24 July 2019, Table 8.1; Australian Bureau of Statistics, *Survey of Disability, Ageing and Carers: Aboriginal and Torres Strait Islander People with Disability*, 11 June 2021, Catalogue 4430DO090, Table 5.1.
- 21 Australian Institute of Health and Welfare, *People with disability in Australia 2022*, Catalogue Number Dis 72, 2022, p 340.
- 22 Australian Government Department of Social Services, *Australia's Disability Strategy 2021–2031*, December 2021, pp 7–8.
- 23 See, for example, Australian Safety and Compensation Council, *Are people with disability at risk at work? A review of the evidence*, Final report, 2007; National People with Disabilities and Carer Council, *Shut Out: The experience of people with disabilities and their families in Australia*, Final report, August 2009; Deloitte Access Economics for Australian Network on Disability, *The economic benefits of increasing employment for people with disability*, Final report, August 2011; Australian Chamber of Commerce and Industry, *Employ outside the box: The business case*

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- for employing people with disability, Final report, 2014; Business Council of Australia, *Recognising ability: Business and the employment of people with disability*, Final report, October 2015; Australian Human Rights Commission, *Willing to work: National inquiry into employment discrimination against older Australians and Australians with disability*, Final report, April 2016.
- 24 Australian Human Rights Commission, *Willing to work: National inquiry into employment discrimination against older Australians and Australians with disability 2016*, Final report, April 2016.
- 25 Exhibit 19-1, 'Statement of Graeme Innes', 30 June 2021, at [14].
- 26 Exhibit 19-1, 'Statement of Graeme Innes', 30 June 2021, at [13].
- 27 Transcript, Graeme Innes, Public hearing 19, 22 November 2021, P-20 [26–28].
- 28 Transcript, Graeme Innes, Public hearing 19, 22 November 2021, P-20 [31–32].
- 29 See, for example, Transcript, Summer Farrelly, Public hearing 31, 12 December 2022, P-19 [17–19]; Transcript, Margherita Coppolino, Public hearing 31, 14 December 2022, P-190 [11–13]; Transcript, Julia Hales, Public hearing 31, 16 December 2022, P-338 [36–41]; Transcript, Samarra Toby, Public hearing 31, 12 December 2022, P-31 [34–35].
- 30 Exhibit 9-14, 'Statement of Oliver Collins', 18 November 2020, at [47].
- 31 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 27.
- 32 National Skills Commission, *Employment outlook: Projecting employment to 2026*, March, 2022, p 1.
- 33 National Skills Commission, *Employment outlook: Projecting employment to 2026*, March, 2022, p 1.
- 34 Jim Chalmers MP, *Australia's world-beating jobs growth*, media release, 16 January 2023; Catie McLeod, 'Australia posts record-high jobs growth over six months, Treasury analysis shows', *News.com.au*, 15 January 2023.
- 35 See, for example, 'Announcing the Office of National Rail Industry Coordination', *Department of Industry, Science and Resources*, web page, 27 October 2022. <[www.industry.gov.au/news/announcing-office-national-rail-industry-coordination](http://www.industry.gov.au/news/announcing-office-national-rail-industry-coordination)>; Transport for NSW, *\$225m boost keeps regional rail manufacturing on track*, media release, 1 April 2022; Ed Husic MP, *New national lab boosts Australia's vaccine and drug sovereign capability*, media release, 11 August 2022.
- 36 Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Disability and the Labour Force, 2018*, Catalogue number 4430do010, 24 July 2019, Table 8.1; Australian Institute of Health and Welfare, *People with disability in Australia 2022*, Catalogue Number Dis 72, 2022, p 339.
- 37 Submissions of Counsel Assisting the Royal Commission following Public hearing 9, 5 March 2021, p 55 [245].
- 38 Transcript, Tristram Gray, Public hearing 19, 23 November 2021, P-137 [31–36]; Transcript, Vanessa Martin, Public hearing 19, 23 November 2021, P-137 [44] – P-138 [1]; Exhibit 19-10, 'Statement of Carmel Pelunsky', 15 June 2021, pp 1–2.
- 39 Exhibit 19-13, 'Statement of Alexandra Badenoch', 28 June 2021, at [34–38].
- 40 Exhibit 19-12.01, 'Statement of Keri Le Page', 24 June 2021, at [78c, d]; Exhibit 19-17, 'Statement of Androniki Kesoglou', 11 June 2021, at [24].
- 41 Exhibit 19-12.01, 'Statement of Keri Le Page', 24 June 2021, at [78j, k]; Exhibit 19-17, 'Statement of Androniki Kesoglou', 11 June 2021, at [24]; Exhibit 19-18, 'Statement of Sarah Kruger', June 2021, at [5].
- 42 Exhibit 19-10, 'Statement of Carmel Pelunsky', 15 June 2021, pp 15–16 [24]; Exhibit 19-18, 'Statement of Sarah Kruger', June 2021, at [6]; Exhibit 19-19, 'Statement of Meegan Marshall', 11 June 2021, at [4.4]. See also Exhibit 19-10.04, WGL.9999.0001.0137; Exhibit 19-18.03, ACC.9999.0001.0056\_E; Exhibit 19-19.03, RMI.9999.0001.0431.
- 43 Exhibit 19-9, 'Statement of Tristram Gray', 18 June 2021, at [28(c)]; Exhibit 19-10, 'Statement of Carmel Pelunsky', 15 June 2021, p 2 [5], p 15 [23], p 16; Exhibit 19-17, 'Statement of Androniki Kesoglou', 11 June 2021, at [24]; Exhibit 19-30, 'Statement of Susan Davies', undated, at [24].
- 44 Exhibit 19-34, 'Statement of Shelley Abrams', 15 June 2021, at [72].
- 45 Submissions by Kmart in response to Counsel Assisting's submissions in Public hearing 19, undated, [28].
- 46 Exhibit 19-39, 'Statement of Luke Mansfield', 26 October 2021, at [63].
- 47 Exhibit 19-31, 'Statement of Peter Woolcott AO', 11 June 2021, at [22].
- 48 Exhibit 19-31, 'Statement of Peter Woolcott AO', 11 June 2021, at [22].



49 Exhibit 19-6, 'Statement of Scott Connolly', 4 October 2021, at [22].  
50 National People with Disabilities and Carer Council, *Shut Out: The experience of people with disabilities and their families in Australia*, Consultation report, August 2009, p 38.  
51 Exhibit 9-15, 'Statement of Michael Pini', 9 December 2020, at [21].  
52 Transcript, Suzanne Colbert, Public hearing 9, 10 December 2020, P-356 [26–27].  
53 Transcript, Suzanne Colbert, Public hearing 9, 10 December 2020, P-356 [31].  
54 Transcript, Suzanne Colbert, Public hearing 9, 10 December 2020, P-356 [31–32], [36–37].  
55 Exhibit 9-24, 'Statement of Dr Ben Gauntlett', 3 December 2020, at [61].  
56 Exhibit 19-27, 'Statement of Natalie Bekis', 3 September 2021, at [51].  
57 Exhibit 9-22, 'Statement of Suzanne Colbert', 26 November 2020, at [56(b)].  
58 Exhibit 9-24, 'Statement of Dr Ben Gauntlett', 3 December 2020, at [61]; Australian Institute of Health and Welfare, *People with disability in Australia 2022*, Web report, July 2022, p 343.  
59 Transcript, Suzanne Colbert, Public hearing 9, 10 December 2020, P-358 [32–35].  
60 Transcript, Dani Fraillon, Public hearing 9, 11 December 2020, P-432 [46]–P-433 [3].  
61 Transcript, Dani Fraillon, Public hearing 9, 11 December 2020, P-432 [46]–P-433 [3].  
62 Transcript, Oliver Hunter, Public hearing 9, 8 December 2020, P-167 [32–41].  
63 Name changed to protect identity; Transcript, 'Riley', Public hearing 9, 10 December 2020, P-315 [31–35].  
64 Transcript, Cody Skinner, Public hearing 9, 7 December 2020, P-47 [26–36].  
65 Exhibit 9-20, 'Statement of "Riley"', 20 November 2020, at [17]; Transcript, 'Riley', Public hearing 9, 10 December 2020, P-321 [28–43].  
66 Exhibit 9-12.3, EXP.0059.0001.0116.  
67 Transcript, Alexandra Devine, Public hearing 9, 8 December 2020, P-189 [3–8].  
68 See also Exhibit 9-12, EXP.0059.0001.0130; Exhibit 9-12.03, EXP.0059.0001.0116.  
69 Transcript, Alexandra Devine, Public hearing 9, 8 December 2020, P-192 [35–40].  
70 Transcript, 'Taylor', Public hearing 9, 8 December 2020, P-138 [39]–P-40 [42]; Australian Centre for Disability Law, Submission in response to *Employment issues paper*, 28 October 2020, ISS.001.00409, p 6.  
71 Exhibit 9-24, 'Statement of Dr Ben Gauntlett', 3 December 2020, at [85].  
72 Name changed to protect identity.  
73 Exhibit 9-9, 'Statement of "Taylor"', 22 November 2020, at [21]; Transcript, 'Taylor', Public hearing 9, 8 December 2020, P-139 [47]–P-140 [2].  
74 See, for example, Transcript, Carmel Pelunsky, Public hearing 19, 23 November 2021, P-160 [35–41]; Transcript, Vanessa Martin, Public hearing 19, 23 November 2021, P-160 [47]–P-161 [3]; Exhibit 19-9, 'Statement of Tristram Gray', 18 June 2021, at [19]; Exhibit 19-12.01, 'Statement of Keri Le Page', 24 June 2021, at [8(b)(i)], [8c]; Exhibit 19-18, 'Statement of Sarah Kruger', June 2021, at [3(c)]; Exhibit 19-19, 'Statement of Meegan Marshall', 11 June 2021, at [2.10]; Exhibit 19-28, 'Statement of Meaghan Davis', 15 June 2021, at [14–15].  
75 Exhibit 19-10, 'Statement of Carmel Pelunsky', 15 June 2021, p 3.  
76 Exhibit 9-24, 'Statement of Dr Ben Gauntlett', 3 December 2020, at [84].  
77 Submissions of Counsel Assisting the Royal Commission following Public hearing 19, 7 January 2022 (revised 9 March 2022), [30, 32, 34].  
78 Transcript, Robin Banks, Public hearing 19, 22 November 2021, P-38 [20–30].  
79 Transcript, Melissa Donnelly, Public hearing 19, 23 November 2021, P-99 [26–30].  
80 Transcript, Christina Ryan, Public hearing 19, 26 November 2021, P-416 [14–16].  
81 Exhibit 19-30, 'Statement of Susan Davies', undated, p 2; Transcript, Susan Davies, Public hearing 19, 25 November 2021, P-363 [2–8]. See also Exhibit 19-19, 'Statement of Meegan Marshall', 11 June 2021, at [2.10], [2.11].  
82 Submissions by the Australian Government in response to Counsel Assisting's submissions in Public hearing 19, 14 February 2022, p 6 [21].  
83 Transcript, Oliver Collins, Public hearing 9, 9 December 2020, P-226 [12–13].  
84 Transcript, Joe Monteleone, Public Hearing 29, 25 October 2022, P-97 [25–27].  
85 Exhibit 9-14, 'Statement of Oliver Collins', 18 November 2020, at [46].  
86 Exhibit 9-17.02, LHA.9999.0001.0253.  
87 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), arts 3(6), 9.  
88 Transcript, Beth McNally, Public hearing 9, 8 December 2020, P-119 [15–16].



88 Transcript, Oliver Collins, Public hearing 9, 9 December 2020, P-224 [40–41].  
 89 YWCA Australia, Submission in response to *Employment issues paper*, 14 August 2020, ISS.001.00353, p 5.  
 90 Transcript, Jess Mitchell, Public hearing 9, 9 December 2020, P-215 [33–37]; Exhibit 9-13, 'Statement of Jess Mitchell', 27 November 2020, at [70].  
 91 Transcript, Beth McNally, Public hearing 9, 8 December 2020, P-126 [1]–P-127 [1].  
 92 Name changed to protect identity; Exhibit 9-25, 'Statement of 'Jamie'', 18 November 2020, at [5].  
 93 Exhibit 9-25, 'Statement of 'Jamie'', 18 November 2020, at [5].  
 94 Exhibit 9-7, 'Statement of Edward Sianski', 19 November 2020, at [21–22].  
 95 Exhibit 31-5, 'Joint Statement of Mark Gates and Harry Sillett', 6 December 2022, at [14], [17–18], [45].  
 96 Exhibit 31-5, 'Joint Statement of Mark Gates and Harry Sillett', 6 December 2022, at [33–42].  
 97 Exhibit 31-5, 'Joint Statement of Mark Gates and Harry Sillett', 6 December 2022, at [28].  
 98 Exhibit 9-24, 'Statement of Dr Ben Gauntlett', 3 December 2020, at [54].  
 99 Transcript, Beth McNally, Public hearing 9, 8 December 2020, P-121 [19–31].  
 100 Transcript, Anne Kavanagh, Public hearing 9, 8 December 2020, P-192 [1–5].  
 101 Exhibit 9-28, 'Statement of Pamela Darling', 20 November 2020, at [8].  
 102 Transcript, Pamela Darling, Public hearing 9, 11 December 2020, P-436 [30].  
 103 Exhibit 9-21, 'Statement of John Baxter', 4 December 2020, at [10–14], [19–22].  
 104 Exhibit 9-21, 'Statement of John Baxter', 4 December 2020, at [22].  
 105 Erin Wilson & Robert Campain, *Fostering employment for people with intellectual disability: The evidence to date*, Report prepared by the Centre for Social Impact Swinburne for Inclusion Australia, August 2020, pp 42–43.  
 106 Exhibit 9-4, 'Statement of Catherine McAlpine', 27 November 2020, at [83]; Erin Wilson & Robert Campain, *Fostering employment for people with intellectual disability: The evidence to date*, Report prepared by the Centre for Social Impact Swinburne for Inclusion Australia, August 2020.  
 107 Transcript, Suzanne Colbert, Public hearing 9, 10 December 2020, P-359 [46]–P-360 [2].  
 108 Exhibit 9-28, 'Statement of Pamela Darling', 20 November 2020, at [38]; Exhibit 9-017.01, LHA.9999.0001.0046, pp 146–47.  
 109 Exhibit 19-34, 'Statement of Shelley Abrams', 15 June 2021, at [29]; Exhibit 19-19, 'Statement of Meegan Marshall', 11 June 2021, at [5.10]; Exhibit 19-13, 'Statement of Alexandra Badenoch', 28 June 2021, at [63–65]; Exhibit 19-30, 'Statement of Susan Davies', undated, at [11].  
 110 Exhibit 19-30, 'Statement of Susan Davies', undated, at [11].  
 111 See, for example, Exhibit 19-17, 'Statement of Androniki Kesoglou', 11 June 2021, p 6; Exhibit 19-9.13, 'Supplementary statement of Tristram Gray', 29 October 2021, at [10]; Exhibit 19-10, 'Statement of Carmel Pelunsky', 15 June 2021, p 8.  
 112 Submissions of Counsel Assisting the Royal Commission following Public hearing 19, 7 January 2022 (revised 9 March 2022), [172].  
 113 Exhibit 9-9, 'Statement of 'Taylor'', 22 November 2020, at [9–12].  
 114 Submissions by the Australian Government in response to Counsel Assisting's submissions in Public hearing 19, 14 February 2022, p 18 [92].  
 115 Submissions of Counsel Assisting the Royal Commission following Public hearing 19, 7 January 2022 (revised 9 March 2022), [183].  
 116 Indirect disability discrimination is defined in s 6 of the *Disability Discrimination Act 1992* (Cth).  
 117 See also Transcript, Graeme Innes, Public hearing 19, 22 November 2021, P-28 [13–19].  
 118 Guidance for determining the inherent requirements of particular work can be found at: *X v Commonwealth* (1999) 200 CLR 177, pp 189-190 [37]; *Tropoulos v Journey Lawyers Pty Ltd* [2019] FCA 436, p 128 [293].  
 119 *Disability Discrimination Act 1992* (Cth) s 21A; *Fair Work Act 2009* (Cth), s 351(2)(b).  
 120 *Disability Discrimination Act 1992* (Cth) s 21A.  
 121 *Disability Discrimination Act 1992* (Cth) s 4.  
 122 *Fair Work Act 2009* (Cth) s 342(1) item 1(a)–(d).  
 123 *Shizas v Commissioner of Police* [2017] FCA 61, [128], [138].  
 124 *Western Union Business Solutions (Australia) Pty Ltd v Robinson* (2019) 272 FCR 547, p 586 [165].

125 We note the recent consultation which includes this issue: Australian Government Department  
of Employment and Workplace Relations, Updating the *Fair Work Act 2009* to provide stronger  
protections for workers against discrimination, Consultation paper, April 2023.

126 See *Fair Work Act 2009* (Cth) ss 357, 359; *Competition and Consumer Act 2010* (Cth) sch 2 s 31  
(Australian Consumer Law).

127 Transcript, Christina Ryan, Public hearing 19, 26 November 2021, P-418 [8–23]; Transcript,  
Cody Skinner, Public hearing 9, 7 December 2020, P-42 [11–21]; Australian Human Rights  
Commission, *Willing to work: National inquiry into employment discrimination against older  
Australians and Australians with disability 2016*, Final report, April 2016, pp 175–76.

128 Transcript, Suzanne Colbert, Public hearing 9, 10 December 2020, P-359 [46]–P-360 [2];  
Exhibit 9-16, ‘Statement of Rachel Kroes’, 26 November 2020, at [20(g)]; Exhibit 9-28,  
‘Statement of Pamela Darling’, 20 November 2020, at [38(a)].

129 Exhibit 19-2, ‘Statement of Robin Banks’, 23 June 2021, at [12]; Transcript, Jennifer Westacott,  
Public hearing 19, 23 November 2021, P-121 [44]–P-122 [5], P-122 [18–24].

130 Transcript, Suzanne Colbert, Public hearing 9, 10 December 2020, P-359 [46]–P-360 [2].

131 Transcript, Christina Ryan, Public hearing 19, 26 November 2021, P-418 [8–11].

132 Transcript, Melissa Donnelly, Public hearing 19, 23 November 2021, P-99 [33–37].

133 Transcript, Melissa Donnelly, Public hearing 19, 23 November 2021, P-99 [39–41].

134 Exhibit 9-25, ‘Statement of ‘Jamie’’, 18 November 2020, at [9].

135 Exhibit 19-6, ‘Statement of Scott Connolly’, 4 October 2021, at [17].

136 Exhibit 19-6, ‘Statement of Scott Connolly’, 4 October 2021, at [17].

137 Exhibit 19-6, ‘Statement of Scott Connolly’, 4 October 2021, at [17].

138 Submissions of Counsel Assisting the Royal Commission following Public hearing 19,  
7 January 2022 (revised 9 March 2022), [206]. See, for example, Exhibit 19-9.12,  
KMT.0001.0001.0204; Exhibit 19-30, ‘Statement of Susan Davies’, undated, p 5 [11].

139 See, for example, Exhibit 19-34.04, MED.0001.0001.0256, p 2 [1.2]; Exhibit 19-17.02,  
NAB.0001.0001.0032, p 1.

140 See, for example, Exhibit 19-9.12, KMT.0001.0001.0204; Exhibit 19-30, ‘Statement of Susan Davies’,  
undated, p 5.

141 Transcript, Robin Banks, Public hearing 19, 22 November 2021, P-43 [20–21].

142 Submissions of Counsel Assisting the Royal Commission following Public hearing 19,  
7 January 2022 (revised 9 March 2022), p 65 [199].

143 Transcript, ‘Taylor’, Public hearing 9, 8 December 2020, P-144 [14–15].

144 Transcript, Suzanne Colbert, Public hearing 9, 10 December 2020, P-347 [13–26].

145 Transcript, Hannah Morgan, Public hearing 9, 9 December 2020, P-271 [3–5].

146 Transcript, Nicky Bath, Public hearing 9, 9 December 2020, P-268 [42–47]; Exhibit 9-17.01,  
LHA.9999.0001.0046.

147 Exhibit 19-35, ‘Joint Statement of Emily Howie and Lauren Matthews’, 2 August 2021, at [27];  
Exhibit 19-2, ‘Statement of Robin Banks’, 23 June 2021, at [13]; Exhibit 9-8, ‘Statement of  
Beth McNally’, 1 December 2020, at [23–27].

148 Exhibit 9-21, ‘Statement of John Baxter’, 4 December 2020, at [42].

149 Exhibit 19-1, ‘Statement of Graeme Innes AM’, 30 June 2021, at [41].

150 See, for example, Name withheld, Submission, 20 August 2020; Name changed, private  
session, ‘Finnegan’; Name changed, private session, ‘Briana’; Exhibit 9-8, ‘Statement of  
Beth McNally’, 1 December 2020, at [21]; Exhibit 19-1, ‘Statement of Graeme Innes AM’,  
30 June 2021, at [41].

151 Exhibit 19-1, ‘Statement of Graeme Innes AM’, 30 June 2021, at [43].

152 Exhibit 9-24, ‘Statement of Dr Ben Gauntlett’, 3 December 2020, at [59].

153 Transcript, Shelley Abrams, Public hearing 19, 25 November 2021, P-385 [45]–P-386 [17].

154 Exhibit 19-17.04, NAB.0001.0001.0040, p 3; see also Exhibit 19-17.02, NAB.0001.0001.0032.

155 Exhibit 19-23.05, CTD.5000.0002.1167, p 1.

156 Exhibit 19-22.06, CTD.8000.0013.1681.

157 Exhibit 19-23.05, CTD.5000.0002.1167, p 1.

158 Exhibit 19-23.05, CTD.5000.0002.1167, p 1.

159 Transcript, Cody Skinner, Public hearing 9, 7 December 2020, P-45 [4–12].

160 Transcript, Cody Skinner, Public hearing 9, 7 December 2020, P-45 [9–11].

161 Transcript, Brett Casey, Public hearing 29, 24 October 2022, P-72 [23–30]; Transcript, Jen Blyth,  
Public hearing 29, 24 October 2022, P-72 [38]–P73 [2].

162 Transcript, Jen Blyth, Public hearing 29, 24 October 2022, P-72 [38–44].

163 Transcript, Jen Blyth, Public hearing 29, 24 October 2022, P-72 [40–44].

164 Transcript, John Baxter, Public hearing 9, 10 December 2020, P-336 [30]–P-337 [15].

165 Transcript, John Baxter, Public hearing 9, 10 December 2020, P-336 [30]–P-337 [15].

166 Exhibit 9-8, ‘Statement of Beth McNally’, 1 December 2020, at [61].

167 Exhibit 9-8, ‘Statement of Beth McNally’, 1 December 2020, at [61].

168 Exhibit 9-8, ‘Statement of Beth McNally’, 1 December 2020, at [62].

169 Submissions of Counsel Assisting the Royal Commission following Public hearing 9,  
5 March 2021, pp 40–41 [175–76].

170 ‘Disability Employment Services’, *Australian Government Department of Social Services*,  
web page. <[www.dss.gov.au/our-responsibilities/disability-and-carers/programmes-services/  
disability-employment-services](http://www.dss.gov.au/our-responsibilities/disability-and-carers/programmes-services/disability-employment-services)>

171 Australian Government Department of Social Services, *DSS DES Monthly Report - 31 January 2023*,  
Monthly report, January 2023, [Sheet 1, DES Summary Report].

172 ‘Disability Employment Services 2018 by ESA, Organisation, DES service type and  
Specialisation’, *Australian Government Department of Social Services*, web page.  
<[www.dss.gov.au/disability-and-carers-programs-services-disability-employment-services/  
disability-employment-services-2018-by-esa-organisation-des-service-type-and-specialisation](http://www.dss.gov.au/disability-and-carers-programs-services-disability-employment-services/disability-employment-services-2018-by-esa-organisation-des-service-type-and-specialisation)>

173 ‘Disability Employment Services’, *Australian Government Department of Social Services*, web  
page. <[www.dss.gov.au/our-responsibilities/disability-and-carers/programmes-services/  
disability-employment-services](http://www.dss.gov.au/our-responsibilities/disability-and-carers/programmes-services/disability-employment-services)>

174 Australian Government Department of Social Services, Disability Employment Services Outcome  
Guidelines, January 2023, p 24.

175 Australian Government Department of Social Services, Disability Employment Services Grant  
Agreement, Direction 10 – 1 July 2022, p 160, 162, 171.

176 ‘Disability Employment Services’, *Australian Government Department of Social Services*,  
web page. <[www.dss.gov.au/our-responsibilities/disability-and-carers/programmes-services/  
disability-employment-services](http://www.dss.gov.au/our-responsibilities/disability-and-carers/programmes-services/disability-employment-services)>

177 Australian Government Department of Social Services, *DSS DES monthly report – 31 January 2023*,  
Monthly report, January 2023, [Sheet 2, Current Caseload for DES table].

178 Australian Government Department of Social Services, *DSS DES monthly report – 31 January 2023*,  
Monthly report, January 2023, [Sheet 1, DES Current Caseload Summary].

179 Australian Government Department of Social Services, *DSS DES monthly report – 31 January 2023*,  
Monthly report, January 2023, [Sheet 1, Summary].

180 ‘Disability Employment Services’, *Australian Government Department of Social Services*,  
web page. <[www.dss.gov.au/our-responsibilities/disability-and-carers/programmes-services/  
disability-employment-services](http://www.dss.gov.au/our-responsibilities/disability-and-carers/programmes-services/disability-employment-services)>

181 Australian Government Department of Social Services, *DSS DES Monthly report – 31 January 2023*,  
Monthly report, January 2023, [Sheet 2, DES Current Caseload for Cohorts table].

182 Material obtained by the Royal Commission from Australian Government Department of Social  
Services in response to Cth notice, 31 May 2022, CTD.9999.0059.0008.

183 Boston Consulting Group for Australian Government Department of Social Services, *Mid-term  
review of the Disability Employment Services (DES) program*, Final report, August 2020 pp 5, 33;  
Australian Government Department of Social Services, *Annual Report 2021–22*, 2022, p 83.

184 Australian Government Department of Social Services, *Annual report 2021–22*, 2022, p 245.

185 Australian Government Department of Social Services, *Annual report 2021–22*, 2022, p 245.

186 Australian Government Department of Social Services, *Annual report 2021–22*, 2022, p 93.

187 Australian Government Department of Social Services, *Annual report 2021–22*, 2022, p 93.

188 Australian Government Department of Social Services, *Annual report 2021–22*, 2022, p 93.

189 Australian Government Department of Social Services, *Annual report 2021–22*, 2022, p 93.

190 Exhibit 21-7, ‘Statement of Debbie Mitchell’, 31 January 2022, at [11].

191 Australian Human Rights Commission, *Willing to work: National inquiry into employment  
discrimination against older Australians and Australians with disability 2016*, Final report,  
April 2016, p 205, 245–47; Reference Group on Welfare Reform to the Minister for Social  
Services, *A new system for better employment and social outcomes*, Final report, February 2015,

- p 152; Australian National Audit Office, *Management of agreements for Disability Employment Services*, Auditor-General Report No 45 2019-2020, 2020, p 7; Australian Civil Society CRPD Shadow Report Working Group, *Disability rights now 2019 - Australian civil society shadow report to the United Nations Committee on the Rights of Persons with Disabilities: UN CRPD Review 2019*, August 2019, p 38; Children with Disability Australia, *Post school transition; The experience of students with disability*, Final report, 2015, p 39; Australian Government Department of Social Services, *National Disability Employment Framework*, Consultation report, September 2015, p 2; Australian Government Department of Social Services, *New Disability Employment Services from 2018*, Discussion paper, 2016, pp 8–10.
- 192 Boston Consulting Group for Australian Government Department of Social Services, *Mid-term review of the Disability Employment Services (DES) program*, Final report, August 2020, pp 25–27.
- 193 Australian Government Department of Social Services, DES Star Ratings Methodology Advice V 1.2, August 2020, p 4.
- 194 Australian Government Department of Social Services, DES Star Ratings Methodology Advice V 1.2, August 2020, p 4.
- 195 Boston Consulting Group for Australian Government Department of Social Services, *Mid-term review of the Disability Employment Services (DES) program*, Final report, August 2020, p 5.
- 196 Boston Consulting Group for Australian Government Department of Social Services, *Mid-term review of the Disability Employment Services (DES) program*, Final report, August 2020, p 5.
- 197 Boston Consulting Group for Australian Government Department of Social Services, *Mid-term review of the Disability Employment Services (DES) program*, Final report, August 2020, p 49.
- 198 Australian Government Department of Social Services, *Inclusive, accessible, diverse: Shaping your new disability employment support program*, Consultation report, 2021, p 5.
- 199 Australian Government Department of Social Services, *Better support for people with disability 2023-23 October Budget*, facts sheets, undated, p 3; Australian Government Department of Social Services, *DES Quality Framework*, Discussion paper, December 2022, p 1.
- 200 Australian Government Department of Social Services, 'Inclusive. Accessible. Diverse: Shaping your new disability employment support program', Consultation report, August 2022.
- 201 'New Specialist Disability Employment Services Model', *Australian Government Department of Social Services*, web page. <[www.dss.gov.au/new-specialist-disability-employment-services-model](http://www.dss.gov.au/new-specialist-disability-employment-services-model)>
- 202 Australian Government Department of Social Services, *A draft Quality Framework for the Disability Employment Services Program*, Discussion paper, December 2022, p 1.
- 203 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report of Public hearing 21: The experience of people with disability engaging with Disability Employment Services: Mzia case study*, January 2023.
- 204 Name changed to protect identity.
- 205 Exhibit 9-10, 'Statement of Dominic Hồng Đức Golding', 23 November 2020, at [5], [12–13], [15].
- 206 Transcript, Kalena Bos, Public hearing 9, 7 December 2020, P-56 [37] – P-57 [27].
- 207 Exhibit 9-3, 'Statement of Kalena Bos', 20 November 2020, at [13–14].
- 208 Exhibit 9-3, 'Statement of Kalena Bos', 20 November 2020, at [15–19].
- 209 Exhibit 9-3, 'Statement of Kalena Bos', 20 November 2020, at [23–31].
- 210 Australian Government Department of Social Services, Disability Employment Services Grant Agreement, Direction 10 – 1 July 2022, p 70.
- 211 Australian Government Department of Social Services, Disability Employment Services Grant Agreement, Direction 10 – 1 July 2022p 133.
- 212 Transcript, Lisa Stafford, Public hearing 9, 9 December 2020, P-284 [19] – P-289 [5]; Exhibit 9-18.2, ISS.001.00355, pp 6–9.
- 213 Transcript, Lisa Stafford, Public hearing 9, 9 December 2020, P-285 [43] – P-286 [31]; Exhibit 9-18.2, ISS.001.00355, pp 6–7.
- 214 Transcript, Lisa Stafford, Public hearing 9, 9 December 2020, P-286 [37–43]; Exhibit 9-18.2, ISS.001.00355, pp 6–7.
- 215 Transcript, Lisa Stafford, Public hearing 9, 9 December 2020, P-287 [2–24], [30–41]; Exhibit 9-18.2, ISS.001.00355, pp 7–9.
- 216 Australian Government Department of Social Services, Ongoing Support Guidelines, September 2022, p 6.
- 217 Australian Government Department of Social Services, *DSS DES monthly report – 31 July 2022*, Monthly report, July 2022, [Sheet 1, DES Summary Report].



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- 218 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report of Public hearing 21: The experience of people with disability engaging with Disability Employment Services: Mzia case study*, January 2023, p 66 [278].
- 219 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report of Public hearing 21: The experience of people with disability engaging with Disability Employment Services: Mzia case study*, January 2023, p 71 [Finding 8].
- 220 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report of Public hearing 21: The experience of people with disability engaging with Disability Employment Services: Mzia case study*, January 2023, p 71 [294].
- 221 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report of Public hearing 21: The experience of people with disability engaging with Disability Employment Services: Mzia case study*, January 2023, p 86 [Finding 10].
- 222 See, for example, Children and Young People with Disability Australia, Submission in response to *Employment issues paper*, ISS.001.00490, pp 25–26.
- 223 Western Australian Association for Mental Health, Submission in response to *Employment issues paper*, ISS.001.00362, 14 August 2020, p 4 [3].
- 224 Exhibit 21-4, ‘Statement of Mija Gwyn and Simon Green’, 10 February 2022, at [65]; Transcript, Simon Green, Public hearing 21, 23 February 2022, P-25 [31–32]; Boston Consulting Group for Australian Government Department of Social Services, *Mid-term review of the Disability Employment Services (DES) program*, Final report, August 2020, p 61.
- 225 Inclusion Australia, Submission, 23 December 2022, SUB.100.03035, p 60.
- 226 Exhibit 21-4, ‘Statement of Mija Gwyn and Simon Green’, 10 February 2022, at [65–69]; Transcript, Simon Green, Public hearing 21, 23 February 2022, P-25 [31–33].
- 227 Exhibit 21-8, ‘Statement of ‘Mzia’’, 4 February 2022, at [15].
- 228 Exhibit 21-8, ‘Statement of ‘Mzia’’, 4 February 2022, at [82]; Exhibit 21-68, AIM.9999.0007.0015, pp 1–2 [3].
- 229 Name changed, private session, ‘Jarrah’.
- 230 Deloitte, *Options to improve service availability and accessibility for First Nations people with disability*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with disability, June 2023, p 76.
- 231 Australian Government Department of Social Services, National Standards for Disability Services, December 2013, p 7.
- 232 Australian Government Department of Social Services, National Standards for Disability Services, December 2013, p 17.
- 233 Transcript, Mija Gwyn, Public hearing 21, 23 February 2022, P-19, [29–38].
- 234 Exhibit 9-28, ‘Statement of Pamela Darling’, 20 November 2020, at [38b].
- 235 Name changed, private session, ‘Jacqui’; Name changed, private session, ‘Emmalynn’; Matthew McCarthy, Submission, 21 November 2019.
- 236 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report of Public hearing 21: The experience of people with disability engaging with Disability Employment Services: Mzia case study*, January 2023, p 3 [Finding 5].
- 237 Women With Disability Australia, Submission in response to *Employment issues paper*, 23 August 2020, ISS.001.00383, p 30 [5.27].
- 238 Australian Government Department of Social Services, *A draft Quality Framework for the Disability Employment Services Program*, Discussion paper, December 2022, p 5.
- 239 Australian Government Department of Social Services, *A draft Quality Framework for the Disability Employment Services Program*, Discussion paper, December 2022, p 5.
- 240 Exhibit 21-7, ‘Statement of Debbie Mitchell’, 31 January 2022, at [11].
- 241 Australian Government Department of Social Services, Disability Employment Services Grant Agreement, Direction 10 – 1 July 2022, p 74.
- 242 Australian Government Department of Social Services, Disability Employment Services Grant Agreement, Direction 10 – 1 July 2022, Annexure C2.
- 243 Australian Government Department of Social Services, Disability Employment Services Grant Agreement, Direction 10 – 1 July 2022, Annexure C1.
- 244 Transcript, Debbie Mitchell, Public hearing 21, 25 February 2022, P-280 [8–11].
- 245 Exhibit 21-7, ‘Statement of Debbie Mitchell’, 31 January 2022, at [20].
- 246 Transcript, Debbie Mitchell, Public hearing 21, 25 February 2022, P-281 [26–36].

247 Transcript, Debbie Mitchell, Public hearing 21, 25 February 2022, P-281 [35–39].  
 248 Transcript, Debbie Mitchell, Public hearing 21, 25 February 2022, P-281 [37–39].  
 249 Submissions of Counsel Assisting the Royal Commission following Public hearing 21,  
 8 April 2022, p 30 [90].  
 250 Submissions of Counsel Assisting the Royal Commission following Public hearing 21,  
 8 April 2022, p 30 [92].  
 251 Submissions by the Australian Government in response to Counsel Assisting’s submissions  
 in Public hearing 21, 5 May 2022, SUBM.0027.0001.0028, p 2 [6].  
 252 Submissions by the Australian Government in response to Counsel Assisting’s submissions  
 in Public hearing 21, 5 May 2022, SUBM.0027.0001.0028, p 2 [6].  
 253 Australian Government Department of Social Services, *DES Quality Framework*,  
 Discussion paper, December 2022, pp 6–16.  
 254 Australian Government Department of Social Services, *DES Quality Framework*,  
 Discussion paper, December 2022, p 8.  
 255 Australian Government Department of Social Services, *DES Quality Framework*,  
 Discussion paper, December 2022, p 20.  
 256 Name withheld, Submission in response to *Employment issues paper*, 13 August 2020,  
 ISS.001.00345, p 2.  
 257 Name withheld, Submission in response to *Employment issues paper*, 13 August 2020,  
 ISS.001.00345, p 2.  
 258 Aspergers Victoria, Submission in response to *Employment issues paper*, August 2020,  
 ISS.001.00377, pp 4–5.  
 259 *Social Security Act 1991* (Cth), pt 2.3; Australian Government Department of Social Services,  
 Submission to Senate Community Affairs References Committee inquiry into the Purpose, Intent  
 and Adequacy of the Disability Support Pension, July 2021, p 5; Australian Government Solicitor,  
*Report on the key elements of the legislative framework affecting people with disability*, Report  
 prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with  
 Disability, December 2020, p 194 [47].  
 260 ‘What your commitments are’, *Services Australia*, web page. <[www.servicesaustralia.gov.au/what-  
 your-commitments-are-for-disability-support-pension-dsp?context=22276](http://www.servicesaustralia.gov.au/what-your-commitments-are-for-disability-support-pension-dsp?context=22276)>  
 261 Australian Institute of Health and Welfare, *People with disability in Australia 2022*, Catalogue  
 number Dis 72, 2022, p 393.  
 262 Australian Institute of Health and Welfare, *People with disability in Australia 2022*, Catalogue  
 number Dis 72, 2022, p 393. ‘People with disability in Australia’, *Australian Institute of Health  
 and Welfare*, web page. <[www.aihw.gov.au/reports/disability/people-with-disability-in-australia/  
 contents/income-and-finance/income-support](http://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/income-and-finance/income-support)>  
 263 Senate Community Affairs References Committee, *Purpose, intent and adequacy of the Disability  
 Support Pension*, February 2022, at p 3 [1.16].  
 264 ‘Who can get a card’, *Services Australia*, web page. <[www.servicesaustralia.gov.au/who-can-get-  
 pensioner-concession-card?context=22006](http://www.servicesaustralia.gov.au/who-can-get-pensioner-concession-card?context=22006)>  
 265 ‘Pensioner Concession Card’, *Services Australia*, web page. <[www.servicesaustralia.gov.au/  
 pensioner-concession-card](http://www.servicesaustralia.gov.au/pensioner-concession-card)>  
 266 ‘Keep your pensioner concession card’, *Services Australia*, web page. <[www.servicesaustralia.  
 gov.au/pensioner-concession-card-if-you-get-disability-support-pension?context=22276 - :~:text=If  
 your DSP stops, you,nil payment period of DSP](http://www.servicesaustralia.gov.au/pensioner-concession-card-if-you-get-disability-support-pension?context=22276-:~:text=If%20your%20DSP%20stops%20you%2Cnil%20payment%20period%20of%20DSP%20)>  
 267 ‘Income test for pensions’, *Services Australia*, web page. <[www.servicesaustralia.gov.au/income-  
 test-for-pensions?context=22276](http://www.servicesaustralia.gov.au/income-test-for-pensions?context=22276)>  
 268 ‘Income test for pensions’, *Services Australia*, web page. <[www.servicesaustralia.gov.au/income-  
 test-for-pensions?context=22276](http://www.servicesaustralia.gov.au/income-test-for-pensions?context=22276)>  
 269 ‘Income test for pensions’, *Services Australia*, web page. <[www.servicesaustralia.gov.au/income-  
 test-for-pensions?context=22276](http://www.servicesaustralia.gov.au/income-test-for-pensions?context=22276)>  
 270 ‘Income test for pensions’, *Services Australia*, web page. <[www.servicesaustralia.gov.au/income-  
 test-for-pensions?context=22276](http://www.servicesaustralia.gov.au/income-test-for-pensions?context=22276)>  
 271 ‘Assets test’, *Services Australia*, web page. <[www.servicesaustralia.gov.au/assets-test-for-  
 pensions?context=22276](http://www.servicesaustralia.gov.au/assets-test-for-pensions?context=22276)>  
 272 ‘Income test for pensions’, *Services Australia*, web page. <[www.servicesaustralia.gov.au/income-  
 test-for-pensions?context=22276](http://www.servicesaustralia.gov.au/income-test-for-pensions?context=22276)>



273 'Working while you're getting the Disability Support Pension', *Services Australia*,  
web page. <[www.servicesaustralia.gov.au/working-while-youre-getting-disability-support-  
pension?context=22276](http://www.servicesaustralia.gov.au/working-while-youre-getting-disability-support-pension?context=22276)>

274 'Working while you're getting the Disability Support Pension', *Services Australia*,  
web page. <[www.servicesaustralia.gov.au/working-while-youre-getting-disability-support-  
pension?context=22276](http://www.servicesaustralia.gov.au/working-while-youre-getting-disability-support-pension?context=22276)>

275 'Working while you're getting the Disability Support Pension', *Services Australia*,  
web page. <[www.servicesaustralia.gov.au/working-while-youre-getting-disability-support-  
pension?context=22276](http://www.servicesaustralia.gov.au/working-while-youre-getting-disability-support-pension?context=22276)>

276 'Working while you're getting the Disability Support Pension', *Services Australia*,  
web page. <[www.servicesaustralia.gov.au/working-while-youre-getting-disability-support-  
pension?context=22276](http://www.servicesaustralia.gov.au/working-while-youre-getting-disability-support-pension?context=22276)>; 'Claiming again', *Services Australia*, web page. <[www.  
servicesaustralia.gov.au/claiming-again-disability-support-pension?context=22276](http://www.servicesaustralia.gov.au/claiming-again-disability-support-pension?context=22276)>

277 See, for example, Exhibit 22-4, 'Statement of 'Marc'', 1 April 2022, at [65–66]; Good Sammy  
Enterprises, Submission in response to *Employment issues paper*, 13 August 2020,  
ISS.001.00348, p 5.

278 See, for example, Transcript, Edward Sianski, Public hearing 9, 8 December 2020,  
P-110 [47] – P-111 [6].

279 See, for example, Exhibit 9-26, 'Statement of Deborah Fullwood', 23 November 2020, at [13].

280 Exhibit 9-25, 'Statement of 'Jamie'', 18 November 2020, at [20].

281 Name changed to protect identity.

282 Exhibit 22-0, 'Statement of 'Mahdi'', 1 April 2022, at [34].

283 Name changed to protect identity.

284 Exhibit 22-4, 'Statement of 'Marc'', 1 April 2022, at [65–66].

285 Transcript, Catherine McAlpine, Public hearing 9, 7 December 2020, P-86 [30] – P-87 [8].

286 Transcript, Catherine McAlpine, Public hearing 9, 7 December 2020, P-86 [46] – P-87 [8].

287 Exhibit 22-12.01, CTD.9999.0052.0008.

288 Transcript, Debbie Mitchell, Public hearing 22, 13 April 2022, P-236 [11–14].

289 Transcript, Ben Gauntlett, Public hearing 9, 11 December 2020, P-412 [46] – P-413 [3].

290 Queensland Advocacy Incorporated, Submission, 14 December 2021, SUB.001.01456, p 7.

291 Australian Human Rights Commission, *Willing to work: National inquiry into employment  
discrimination against older Australians and Australians with disability* 2016, Final report,  
April 2016, pp 236–37; Reference Group on Welfare Reform to the Minister for Social Services,  
*A new system for better employment and social outcomes*, Final report, February 2015, p 48.

292 Senate Standing Committee on Community Affairs, Parliament of Australia, *Purpose, intent and  
adequacy of the Disability Support Pension*, February 2022, Recommendation 22.

293 Senate Standing Committee on Community Affairs, Parliament of Australia, *Purpose, intent and  
adequacy of the Disability Support Pension*, February 2022, Recommendation 10.

294 Other key legislation include: *Discrimination Act 1991* (ACT), *Work Health and Safety Act 2011*  
(ACT); *Anti-Discrimination Act 1977* (NSW); *Industrial Relations Act 1996* (NSW);  
*Anti-Discrimination Act 1992* (NT), *Work Health and Safety (National Uniform Legislation)*  
*Act 2011* (NT); *Anti-Discrimination Act 1991* (Qld), *Industrial Relations Act 2016* (Qld); *Equal  
Opportunity Act 1984* (SA), *Anti-Discrimination Act 1998* (Tas), *Industrial Relations Act 1984* (Tas);  
*Equal Opportunity Act 1995* (Vic), *Industrial Relations Legislation Amendment Act 2021* (Vic);  
*Equal Opportunity Act 1984* (WA); *Industrial Relations Act 1979* (WA).

295 *Australian Human Rights Commission Act 1986* (Cth) ss 20–22.

296 *Disability Discrimination Act 1992* (Cth) 1992 pts 5, 6.

297 *Disability Discrimination Act 1992* (Cth) 1992 ss 4–6.

298 *Fair Work Act 2009* (Cth) ss 575–78.

299 Exhibit 19-3, 'Statement of Melanie Schleiger', 6 November 2021, at [54–55]; Exhibit 19-4,  
'Statement of Kairstien Wilson', 12 July 2021, at [34–36].

300 Exhibit 19-2, 'Statement of Robin Banks', 23 June 2021, at [32–33]; Exhibit 19-3, 'Statement of  
Melanie Schleiger', 6 November 2021, at [58–61].

301 Transcript, Kairstien Wilson, Public hearing 19, 22 November 2021, P-61 [45]–P-62 [3].

302 See Australian Human Rights Commission, *Free and equal: A reform agenda for federal  
discrimination laws*, Position paper, December 2021; Australian Human Rights Commission,  
*Free and Equal: a Human Rights Act for Australia*, Position paper, December 2022.

303 Transcript, Ben Gauntlett, Public hearing 9, 11 December 2020, P-402 [43–46].  
 304 Exhibit 19-4, ‘Statement of Kairstien Wilson’, 12 July 2021, at [13].  
 305 Exhibit 19-4, ‘Statement of Kairstien Wilson’, 12 July 2021, at [27]; Transcript, Robin Banks,  
 Public hearing 19, 22 November 2021, P-48 [38–44].  
 306 Exhibit 19-3, ‘Statement of Melanie Schleiger’, 5 November 2021, at [63].  
 307 Exhibit 19-4, ‘Statement of Kairstien Wilson’, 12 July 2021, at [15(b)], [20–23], [63].  
 308 Exhibit 19-4, ‘Statement of Kairstien Wilson’, 12 July 2021, at [20–22].  
 309 Transcript, Melanie Schleiger, Public hearing 19, 22 November 2021, P-67 [16–22];  
*Fair Work Act 2009* (Cth) s 361; *Disability Discrimination Act 1992* (Cth) ss 5–6.  
 310 Transcript, Graeme Innes, Public hearing 19, 22 November 2021, P-34 [12–14].  
 311 See, for example, Exhibit 19-3, ‘Statement of Melanie Schleiger’, 5 November 2021,  
 at [58–61]; Exhibit 19-2, ‘Statement of Robin Banks’, 23 June 2021, at [33]; Exhibit 19-4,  
 ‘Statement of Kairstien Wilson’, 12 July 2021, at [33].  
 312 Exhibit 19-4, ‘Statement of Kairstien Wilson’, 12 July 2021, at [33].  
 313 Blind Citizens Australia, Submission in response to *Employment issues paper*, 13 August 2020,  
 ISS.001.00347, p 12; Public Interest Advocacy Centre, Submission to the Australian Human  
 Rights Commission, Free and Equal: Anti-Discrimination Law Reform, Discussion paper,  
 8 November 2019, cited in Australian Human Rights Commission, Submission in response  
 to *Employment issues paper*, 24 September, ISS.001.00459 p 32 [132]; Name withheld,  
 Submission in response to *Employment issues paper*, 17 May 2020, ISS.001.00176, p 1;  
 Name withheld. Submission, 25 February 2020.  
 314 Transcript, Suzanne Colbert, Public hearing 9, 10 December 2020, P-360 [29–33].  
 315 See *Disability Discrimination Act 1992* (Cth) s 11(s).  
 316 Transcript, Melanie Schleiger, Public hearing 19, 22 November 2021, P-67 [15–16].  
 317 Submissions by the Australian Government in response to Counsel Assisting’s submissions  
 in Public hearing 19, 14 February 2022, p 3 [7].  
 318 Submissions by the Australian Government in response to Counsel Assisting’s submissions  
 in Public hearing 31, 9 March 2023, SUBM.0055.0001.0005, p 3 [6].  
 319 Australian Government Department of Social Services, Australia’s Disability Strategy 2021–2031,  
 December 2021, pp 7–8.  
 320 Submissions by the Australian Government in response to Counsel Assisting’s submissions in  
 Public hearing 31, 9 March 2023, SUBM.0055.0001.0005, p 2 [4].  
 321 Australian Government Department of Social Services, Australia’s Disability Strategy 2021–2031,  
 December 2021, p 39.  
 322 Australian Government Department of Social Services, Australia’s Disability Strategy 2021–2031,  
 Employment Targeted Action Plan, 2021, p 1.  
 323 Australian Government Department of Social Services, Australia’s Disability Strategy 2021–2031,  
 December 2021, p 40; Australian Government Department of Social Services, *Employ My Ability*,  
 December 2021, p 2.  
 324 Submissions of Counsel Assisting the Royal Commission following Public hearing 19, 7 January  
 2022 (revised 9 March 2022), [228–247], [416].  
 325 Transcript, Dylan Alcott, Public hearing 31, 13 December 2022, P-63 [27–28].  
 326 Transcript, Kalena Bos, Public hearing 9, 7 December 2020, P-59 [27–29]; Exhibit 9-3,  
 ‘Statement of Kalena Bos’, 20 November 2020, at [12–20], [31]; Transcript, Rohan Fullwood,  
 Public hearing 9, 7 December 2020, P-28 [41–44], P-31 [13–17], P-32 [3–7], P-33 [3–7].  
 327 Australian Government Department of Social Services, *A draft Quality Framework for the  
 Disability Employment Services Program*, Discussion paper, December 2022, p 1.  
 328 Transcript, ‘Mzia’, Public hearing 21, 23 February 2022, P-59 [8–33].  
 329 Exhibit 31-12, ‘Statement of Dr Manisha Amin’, 22 November 2022, at [25]; Transcript,  
 Manisha Amin, Public hearing 31, 15 December 2022, P-214 [35]–P-215 [7].  
 330 Exhibit 31-12, ‘Statement of Dr Manisha Amin’, 22 November 2022, at [27].  
 331 Exhibit 31-12, ‘Statement of Dr Manisha Amin’, 22 November 2022, at [16]; Transcript,  
 Manisha Amin, Public hearing 31, 15 December 2022, P-208 [21]–P-209 [3].  
 332 Exhibit 31-12, ‘Statement of Dr Manisha Amin’, 22 November 2022, at [27c].

- 
- 333 See, for example, Deloitte Access Economics for Queensland Department of Education, *Review of education for students with disability in Queensland state schools*, February 2017; Audit Office of New South Wales, Department of Education, *New South Wales Auditor-General Report: Supporting students with disability in NSW public schools*, Performance report, 12 May 2016; Select Committee, Parliament of South Australia, *Report of the Select Committee on Access to the South Australian Education System for Students with a Disability*, Report, 30 May 2017; Senate Education and Employment References Committee, Parliament of Australia, *Access to real learning: the impact of policy, funding and culture on students with disability*, January 2016.
- 334 National Disability Services, Submission in response to the *Employment issues paper*, 14 September 2020, ISS.001.00448, p 24.
- 335 Exhibit 9-4, 'Statement of Catherine McAlpine', 7 December 2020, p 32 [102–103]; Exhibit 22-7, 'Statement of Laurie Leigh and Kerrie Langford', 7 April 2022, p 34–35 [107]; National Disability Services, Submission in response to the *Employment issues paper*, 14 September 2020, ISS.001.00448, p 18; Scope Australia, Submission in response to the *Promoting inclusion issues paper*, 1 April 2021, ISS.001.00604, p 23; The Institute for Family Advocacy and Leadership, Submission in response to the *Promoting inclusion issues paper*, 9 June 2021, ISS.001.00676, p 5; Brotherhood of St Laurence, Submission, 14 April 2022, SUB.001.01877, p 6; Independent Advisory Council to the NDIS, Submission in response to the *Employment issues paper*, July 2022, ISS.001.00342, pp 9, 21–22; Jobsupport, Submission in response to the *Employment issues paper*, 19 August 2020, ISS.001.00378, p 19.
- 336 Paul Wehman, Josh Taylor, Lauren Avellone, John Kregel, Vivienne Riches, Renell Rodrigues & David Taylor, *A comprehensive review of evidence-based employment practices for youth and adults with intellectual and other developmental disabilities*, Rehabilitation Research and Training Center at Virginia Commonwealth University in Richmond, Virginia and Centre for Disability Studies, affiliated with the University of Sydney, Australia, Report commissioned by Jobsupport, 2020, p 3; National Disability Services, Submission in response to the *Employment issues paper*, 14 September 2020, ISS.001.00448, p 24; Erin Wilson & Robert Campain, *Fostering employment for people with intellectual disability: The evidence to date*, Report prepared by the Centre for Social Impact Swinburne for Inclusion Australia, August 2020, p 45.
- 337 Erin Wilson & Robert Campain, *Fostering employment for people with intellectual disability: The evidence to date*, Report prepared by the Centre for Social Impact Swinburne for Inclusion Australia, August 2020, p 46; Australian Federation of Disability Organisations, 'Position paper on the future of supported employment', 2018, p 13.
- 338 Good Sammy Enterprises, Submission in response to the *Employment issues paper*, 13 August 2020, ISS.001.00348, p 5; Down Syndrome Australia, 'Down Syndrome Australia Submission: New Disability Employment Services model', December 2021, p 6; The Institute for Family Advocacy and Leadership, Submission in response to the *Promoting inclusion issues paper*, 9 June 2021, ISS.001.00676, pp 33–35.
- 339 Australian Government Department of Social Services, Disability Employment Services Eligibility, Referral and Commencement Guideline V 1.9, April 2023, p 6.
- 340 Exhibit 21-5.02, DEA.9999.0001.0007, p 15.
- 341 See, for example, Independent Advisory Council to the NDIA, Submission in response to *Employment issues paper*, 12 August 2020, ISS.001.00342, p 21; National Disability Services, Submission in response to *Employment issues paper*, 14 September 2020, ISS.001.00448, p 5; Down Syndrome Australia, Submission in response to *Employment issues paper*, 30 September 2020, ISS.001.00469, p 7.
- 342 St Vincent de Paul, Submission in response to the shaping your new disability employment support program consultation paper, 28 January 2022, p 6; National Disability Services, Submission to Australian Government Department of Social Services New Disability Employment Support Model Consultation Paper, January 2022, p 6.
- 343 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report of Public hearing 21: The experience of people with disability engaging with Disability Employment Services: Mzia case study*, 17 January 2023, p 34 [127].
- 344 Exhibit 21-5, 'Statement of Rick Kane', February 2022, at [4b].
- 345 Inclusion Australia, Submission, 23 December 2022, SUB.100.03035, p 111.

346 Australian Government Department of Social Services, Disability Employment Services Grant Agreement, Direction 10 – 1 July 2022, p 196.

347 Australian Government Department of Social Services, National Standards for Disability Services, December 2013, p 21.

348 Australian Government Department of Social Services, National Standards for Disability Services, December 2013, p 21.

349 Australian Government Department of Social Services, National Standards for Disability Services, December 2013, p 22.

350 Amanda Rishworth, *Improving the quality of employment services for people living with disability*, media release, 21 August 2022.

351 Amanda Rishworth, *Improving the quality of employment services for people living with disability*, media release, 21 August 2022.

352 Amanda Rishworth, *Improving the quality of employment services for people living with disability*, media release, 21 August 2022.

353 Australian Government Department of Social Services, *A draft Quality Framework for the Disability Employment Services Program*, Discussion paper, December 2022, p 6.

354 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 27(1)(g).

355 Committee on the Rights of Persons with Disabilities, *General comment no. 8 (2022) on the right of persons with disabilities to work and employment*, advance unedited version, UN Doc CRPD/C/GC/8 (9 September 2022), [40].

356 National People with Disabilities and Carer Council, *Shut Out: The experience of people with disabilities and their families in Australia*, 2009, p 41.

357 Submissions of Counsel Assisting the Royal Commission following Public hearing 19, 7 January 2022 (revised 9 March 2022), [557–72].

358 Australian Government Department of Social Services, Australia’s Disability Strategy 2021–2031 Employment Targeted Action Plan, 2021, pp 8, 11, 18, 21, 23.

359 Australian Government Department of Social Services, Australia’s Disability Strategy 2021–2031 Employment Targeted Action Plan, 2021, p 23.

360 Victorian Public Sector Commission, *Getting to work: Victorian public sector disability employment action plan 2018–2025*, October 2018, pp iv, 9, 13, 17; Queensland Public Service Commission, *Disabling the barrier to employment in the Queensland public service*, 2018, p 4; Government of Western Australia, *People with disability: Action plan to improve WA public sector employment outcomes 2020–2025*, 2020, p 6; Government of the Northern Territory, *EmployAbility strategy 2018–2022*, 2018, p 8.

361 See, for example, Exhibit 19-32, ‘Statement of Adam Fennessy PSM’, 14 July 2021, at [120–49].

362 Victorian Public Sector Commission, *Getting to work: Victorian public sector disability employment action plan 2018–2025*, October 2018, pp iv, 9, 13, 17.

363 Transcript, Adam Fennessy, Public hearing 19, 25 November 2021, P-320 [30].

364 Exhibit 19-32, ‘Statement of Adam Fennessy PSM’, 14 July 2021, at [75].

365 Exhibit 19-32, ‘Statement of Adam Fennessy PSM’, 14 July 2021, at [74].

366 Exhibit 19-31, ‘Statement of Peter Woolcott AO’, 11 June 2021, at [34–35].

367 Transcript, Peter Woolcott, Public hearing 19, 25 November 2021, P-319 [40].

368 Exhibit 19-33.11, NTT.0005.0002.0050, pp 4, 13.

369 Submissions of Counsel Assisting the Royal Commission following Public hearing 19, 7 January 2022 (revised 9 March 2022), p 159 [570].

370 Transcript, Graeme Innes, Public hearing 19, 22 November 2021, P-26 [31–34].

371 Transcript, Graeme Innes, Public hearing 19, 22 November 2021, P-25 [38–41].

372 Transcript, Graeme Innes, Public hearing 19, 22 November 2021, P-25 [24–41].

373 Submissions by the Australian Government in response to Counsel Assisting’s submissions in Public hearing 19, 14 February 2022, p 17 [85].

374 Exhibit 9-13, ‘Statement of Jess Mitchell’, 27 November 2020, at [61]; Transcript, Pamela Darling, Public hearing 9, 11 December 2020, P-436 [30–42]; Transcript, Cody Skinner, Public hearing 9, 7 December 2020, P-39 [34–41]; Children and Young People with Disability Australia, Submission in response to *Employment issues paper*, 16 October 2020, ISS.001.00490, pp 12–14; Blind Citizens Australia, Submission in response to *Employment issues paper*, 13 August 2020, ISS.001.00347, pp 22–23; University of Sydney, Submission in response to *Employment issues paper*, 14 August 2020, ISS.001.00361, p 9.



- 375 Australian Human Rights Commission, *Willing to work: National inquiry into employment discrimination against older Australians and Australians with disability 2016*, Final report, April 2016, p 297; Erin Wilson & Robert Campain, *Fostering employment for people with intellectual disability: The evidence to date*, Report prepared by the Centre for Social Impact Swinburne for Inclusion Australia, August 2020, pp 44–45; Committee on the Rights of Persons with Disabilities, *General comment no. 8 (2022) on the right of persons with disabilities to work and employment*, advance unedited version, UN Doc CRPD/C/GC/8, (9 September 2022), [46–47].
- 376 Exhibit 19-32, 'Statement of Adam Fennessy PSM', 14 July 2021, at [205].
- 377 Transcript, Jennifer Smith-Merry, Public hearing 9, 10 December 2020, P-376 [38–43].
- 378 Transcript, Jennifer Smith-Merry, Public hearing 9, 10 December 2020, P-376 [38–43]; Transcript, Adam Fennessey, Public hearing 19, 25 November 2021, P-343 [9–10]; Committee on the Rights of Persons with Disabilities, *General comment no. 8 (2022) on the right of persons with disabilities to work and employment*, advance unedited version, UN Doc CRPD/C/GC/8, (9 September 2022), [45–46].
- 379 Transcript, Graeme Innes, Public hearing 19, 22 November 2021, P-26 [31–41].
- 380 Exhibit 19-7, 'Statement of Melissa Donnelly', 23 September 2021, at [21].
- 381 Victorian Public Sector Commission, *Getting to work: Victorian public sector disability employment action plan 2018–2025*, October 2018, p 6.
- 382 Exhibit 31-17.15, CTD.5000.0010.0388, p 29.
- 383 Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Disability and the Labour Force, 2018*, Catalogue number 4430do010, 24 July 2019, Table 8.1.
- 384 See, for example, Name changed, private session, 'Finnegan'; Name changed, private session, 'Aisha and Adalyn'.
- 385 Inclusion Australia, Submission, 23 December 2022, SUB.100.03035, pp 93–94.
- 386 Inclusion Australia, Submission, 23 December 2022, SUB.100.03035, p 94.
- 387 Transcript, Catherine McAlpine, Public hearing 9, 7 December 2020, P-88 [33–40].
- 388 Exhibit 19-15, 'Statement of Michael Nelson', 25 June 2021, at [44].
- 389 Victorian Government, Submission in response to *Employment issues paper*, 15 September 2021, ISS.001.00717, pp 39–40.
- 390 Transcript, Peter Woolcott, Public Hearing 19, 25 November 2021, P-334 [25].
- 391 Australian Public Service Commission, Australian Public Service Disability Employment Strategy 2020–25, 2020, pp 5, 12–14.
- 392 Transcript, Christina Ryan, Public hearing 19, 26 November 2021, P-416 [38–39].
- 393 Transcript, Christina Ryan, Public hearing 19, 26 November 2021, P-416 [47] – P-417 [2].
- 394 Transcript, Christina Ryan, Public hearing 19, 26 November 2021, P-417 [11–21].
- 395 Exhibit 19-67, CTD.9999.0048.0001, pp 1–4.
- 396 Exhibit 19-67, CTD.9999.0048.0001, p 8 [35].
- 397 Exhibit 19-67, CTD.9999.0048.0001, p 8 [35].
- 398 Exhibit 19-67, CTD.9999.0048.0001, p 8 [35].
- 399 Exhibit 19-67, CTD.9999.0048.0001, [37].
- 400 'Affirmative measure for recruiting people with disability: guide for applicants', *Australian Public Service Commission*, web page. <[www.apsc.gov.au/sites/default/files/2022-02/Affirmative%20measure-disability-A%20guide%20for%20applicants.pdf](http://www.apsc.gov.au/sites/default/files/2022-02/Affirmative%20measure-disability-A%20guide%20for%20applicants.pdf)>
- 401 'RecruitAbility', *Australian Public Service Commission*, web page. <[www.apsc.gov.au/working-aps/diversity-and-inclusion/disability/recruitability](http://www.apsc.gov.au/working-aps/diversity-and-inclusion/disability/recruitability)>
- 402 Transcript, Kate Eastman (Counsel Assisting), Public hearing 19, 25 November 2021, P-340 [10–17]; 'RecruitAbility', *Australian Public Service Commission*, web page. <[www.apsc.gov.au/working-aps/diversity-and-inclusion/disability/recruitability](http://www.apsc.gov.au/working-aps/diversity-and-inclusion/disability/recruitability)>
- 403 Transcript, Peter Woolcott, Public hearing 19, 25 November 2021, P-340 [16–19].
- 404 'RecruitAbility scheme: A guide for agencies', *Australian Public Service Commission*, web page. <[www.apsc.gov.au/node/545](http://www.apsc.gov.au/node/545)>
- 405 'RecruitAbility scheme: A guide for agencies', *Australian Public Service Commission*, web page. <[www.apsc.gov.au/node/545](http://www.apsc.gov.au/node/545)>
- 406 Exhibit 19-31.05, CTD.9400.0001.0025, p 1.
- 407 Exhibit 19-31.05, CTD.9400.0001.0025, p 1.
- 408 Exhibit 19-31.05, CTD.9400.0001.0025, p 1.

409 Exhibit 19-67, CTD.9999.0048.0001, p 4 [12].

410 Australian Human Rights Commission, *Willing to work: National inquiry into employment discrimination against older Australians and Australians with disability*, Final report, 2016, Recommendation 47; Australian Public Service Commission, *As One: Making it Happen – APS Disability Employment 2016-2019 Evaluation*, Evaluation report, November 2019, p 3, 73.

411 Australian Public Service Commission, *As One: Making it Happen – APS Disability Employment 2016-2019 Evaluation*, Evaluation report, November 2019, p 11.

412 Australian Public Service Commission, *As One: Making it Happen – APS Disability Employment 2016-2019 Evaluation*, Evaluation report, November 2019, p 73.

413 Exhibit 19-31, 'Statement of Peter Woolcott AO', 11 June 2021, at [122].

414 Submissions of Counsel Assisting the Royal Commission following Public hearing 19, 7 January 2022 (revised 9 March 2022), p 48 [148].

415 Transcript, 'Taylor', Public hearing 9, 8 December 2020, P 143 [7–11]; Transcript, Graeme Innes, Public hearing 19, 22 November 2021, P-25 [12–18].

416 Exhibit 19-32, 'Statement of Adam Fennessy', 14 July 2021, at [111.4]; Exhibit 19-20, 'Statement of Liam Page', 18 June 2021, at [101]; Exhibit 19-22, 'Statement of Hamish Aikman', 23 June 2021, at [63]; Exhibit 19-15, 'Statement of Michael Nelson', 25 June 2021, at [45(h)].

417 Meredith Edwards, Mark Evans, Carmel McGregor & Penney Upton, Institute for Governance and Policy Analysis, University of Canberra, *Doing it differently: Staff perceptions of the barriers to workplace participation experienced by public servants with disability in the Australian Public Service*, November 2016. p 22; Standing Committee on Health, Ageing, and Community services, *Inquiry into the employment of people with disabilities*, Report no. 2, August 2017, p 51.

418 Marlena Raymond, Jesse E. Olsen, Susan Ainsworth, Nuzhat Lotia, Raymond Harbridge & Alex Holland, Centre for Workplace Leadership, University of Melbourne, *Improving access and inclusion in employment for people with disabilities: Implementation of workplace adjustments in 'best-practice' organisations*, Research report, July 2019, p 2, 11.

419 Exhibit 19-31.03, CTD.9400.0001.0073, p 71.

420 Exhibit 19-31.03, CTD.9400.0001.0073, p 30.

421 Transcript, Peter Woolcott, Public hearing 19, 25 November 2021, P-347 [46]–P-348 [4].

422 Secretary of State for Work and Pensions & Command of Her Majesty, National Disability Strategy, July 2021, pp 49–50, 52; Scottish Government, *Employee passport: equality impact assessment*, 4 July 2022, p 4.

423 Submissions of Counsel Assisting the Royal Commission following Public hearing 19, 7 January 2022 (revised 9 March 2022), p 121 [423].

424 Government of Western Australia Public Sector Commission, *People with Disability: Action plan to improve WA public sector employment outcomes 2020–2025*, August 2020, p 12 [4.4].

425 Victorian Public Sector Commission, *Getting to work: Victorian public sector disability employment action plan 2018–2025*, October 2018, p 7.

426 Transcript, Graeme Innes, Public Hearing 19, 22 November 2021, P-29 [13–29]; Transcript, Christina Ryan, Public hearing 19, 26 November 2021, P-412 [26–35]; Transcript, Suzanne Colbert, Public hearing 9, 10 December 2020, P-363 [32–42].

427 Office of the United Nations High Commissioner for Human Rights, *Policy guidelines for inclusive Sustainable Development Goals*, 2020, p 30; Australian Human Rights Commission, *Human rights and technology*, Final report, March 2021, p 149; Bridging the Gap for the European Union, *Disability Inclusive Procurement: Guidance note*, March 2020, p 6; Exhibit 19-1, 'Statement of Graeme Innes', 30 June 2021, p 14 [88–90].

428 Transcript, Graeme Innes, Public Hearing 19, 22 November 2021, P-29 [13–29]; Transcript, Christina Ryan, Public hearing 19, 26 November 2021, P-412 [26–31]; Transcript, Suzanne Colbert, Public hearing 9, 10 December 2020, P-363 [32–42].

429 Committee on the Rights of Persons with Disabilities, *General comment no. 8 (2022) on the right of persons with disabilities to work and employment*, advance unedited version, UN Doc CRPD/C/GC/8 (9 September 2022), [42].

430 Transcript, Graeme Innes, Public Hearing 19, 22 November 2021, P-29 [13–29]; Exhibit 19-1, 'Statement of Graeme Innes', 30 June 2021, p 14 [88–90]; Transcript, Christina Ryan, Public hearing 19, 26 November 2021, P-412 [26–31].



- 431 Australian Federation of Disability Organisations, Submission to the Senate Inquiry into inclusive and accessible communities, April 2017, p 21; Australian Network on Disability, Submission to the Senate Community Affairs References Committee into the delivery of outcomes under the National Disability Strategy 2010–2020 to build inclusive and accessible communities, April 2017, p 10.
- 432 Exhibit 19-58, CTD.9999.0037.0002, p 2.
- 433 Exhibit 19-58, CTD.9999.0037.0002, p 2.
- 434 Victorian Government, Victoria's social procurement framework: Building a fair, inclusive and sustainable Victoria through procurement, 2018, p 12.
- 435 Victorian Government, Victoria's social procurement framework: Building a fair, inclusive and sustainable Victoria through procurement, 2018, p 19.
- 436 Victorian Government, Victoria's social procurement framework: Building a fair, inclusive and sustainable Victoria through procurement, 2018, p 19.
- 437 Fundación ONCE and the ILO Global Business and Disability Network, *An inclusive digital economy for people with disabilities*, 2021, p 37; Office of the United Nations High Commissioner for Human Rights, *Policy guidelines for inclusive Sustainable Development Goals*, 2020, p 30; Bridging the Gap for the European Union, *Disability Inclusive Procurement: Guidance note*, March 2020, p 6; Exhibit 19-1, 'Statement of Graeme Innes', 30 June 2021, at [88–90].
- 438 Australian Human Rights Commission, *Human rights and technology*, Final report, March 2021, p 149; William Tibben & Gunela Astbrink for the Australian Communications Consumer Action Network, *Accessible communications: Tapping the potential in public ICT procurement policy*, 2012, p 39.
- 439 Meredith Edwards, Mark Evans, Carmel McGregor & Penney Upton, the Institute of Governance and Policy Analysis, *Doing it differently: Staff perceptions of the barriers to workplace participation experienced by public servants with disability in the Australian Public Service*, Final report, November 2016, p 44.
- 440 Mathias Cormann, *Access to technology made easier*, media release, Perth, 22 August 2016; Standards Australia, Accessibility requirements for ICT products and services AS EN 301 549:2016, August 2016.
- 441 Standards Australia, Accessibility requirements for ICT products and services AS EN 301 549:2020, December 2020.
- 442 Vision Australia, Submission in response to the *Employment issues paper*, 14 August 2020, ISS.001.00350, p 36; Australian Communications Consumer Action Network (ACCAN), Submission, 26 June 2020, SUB.100.00789, p 5; Blind Citizens Australia, Submission in response to the *Employment issues paper*, 13 August 2020, ISS.001.00347, p 8.
- 443 '9. Make it accessible', *Australian Government Digital Transformation Agency*, web page. <[www.dta.gov.au/help-and-advice/digital-service-standard/digital-service-standard-criteria/9-make-it-accessible](http://www.dta.gov.au/help-and-advice/digital-service-standard/digital-service-standard-criteria/9-make-it-accessible)>
- 444 Transcript, Graeme Innes, Public Hearing 19, 22 November 2021, P-14 [88–90]; Exhibit 19-1, 'Statement of Graeme Innes', 30 June 2021, at [88–90].
- 445 Standing Committee on Health, Ageing and Community Services, *Inquiry into the employment of people with disabilities*, Report no. 2, August 2017, p 36 [3.71]; Australian Human Rights Commission, *Human rights and technology*, Final report, June 2021, pp 149; Community Affairs References Committee, *Delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities*, Final inquiry report, November 2017, p 41.
- 446 Standing Committee on Health, Ageing and Community Services, Legislative Assembly for the Australian Capital Territory, *Inquiry into the employment of people with disabilities*, Report no 2, August 2017, p 36.
- 447 Committee on the Rights of Persons with Disabilities, *General comment no. 8 (2022) on the right of persons with disabilities to work and employment*, advance unedited version, UN Doc CRPD/C/GC/8 (9 September 2022), [42].
- 448 *Rehabilitation Act 1973* (United States of America) s 508; *Public Sector Bodies Accessibility Regulations 2018* (United Kingdom) s 6; *European Standard for Disability Accessibility 2015* (European Union) EN 301 549 V3.2.1; *Accessibility Act 2019* (Canada) s 5; *Directive 2016/2102 on the accessibility of the websites and mobile applications of public sector bodies 2016* (European Union), pp 3 [21], 5 [37].
- 449 Vision Australia, Submission in response to *Employment issues paper*, 14 August 2020,

ISS.001.00350, p 36; Wayne Hawkins, 'Australia's missing accessible information and communication procurement policy', (2011), vol 61 (2), *Telecommunications Journal of Australia*, p 23.6; Australian Federation of Disability Organisations, Submission to the Senate Inquiry into inclusive and accessible communities, April 2017, p 11.

450 Transcript, Susan Weston, Public hearing 19, 24 November 2021, P-269 [1–12];  
 451 Transcript, Natalie Bekis, Public hearing 19, 24 November 2021, P-269 [14–16].  
 452 Exhibit 19-27.04, CTD.9200.0001.0193, p 8.  
 453 Transcript, Natalie Bekis, Public hearing 19, 24 November 2021, P-269 [18–29].  
 454 Submissions of Counsel Assisting the Royal Commission following Public hearing 19,  
 7 January 2022 (revised 9 March 2022), pp 33 [95], 118 [416]–119 [418].  
 455 Submissions by the Australian Government in response to Counsel Assisting's submissions  
 in Public hearing 19, 14 February 2022, p 21 [110].  
 456 Submissions of Counsel Assisting the Royal Commission following Public hearing 19,  
 7 January 2022 (revised 9 March 2022), p 199 [417].  
 457 Australian Government, 'Respect@Work', *Attorney General's Department*, web page.  
 <[www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/respect-at-work](http://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/respect-at-work)>  
 458 Submissions by the Australian Government in response to Counsel Assisting's submissions in  
 Public hearing 19, 14 February 2022, p 21 [110].  
 459 Submissions of Counsel Assisting the Royal Commission following Public hearing 19,  
 7 January 2022 (revised 9 March 2022), p 173 [629].  
 460 Submissions by the Australian Government in response to Counsel Assisting's submissions  
 in Public hearing 19, 14 February 2022, p 20 [104].  
 461 Submissions by the Australian Government in response to Counsel Assisting's submissions  
 in Public hearing 19, 14 February 2022, p 21 [112].  
 462 *Fair Work Act 2009* (Cth) s 12.  
 463 *Fair Work Act 2009* (Cth) s 351(1).  
 464 *Fair Work Act 2009* (Cth) s 342(1) item 1(a)–(d).  
 465 *RailPro Services Pty Ltd v Flavel* (2015) 242 FCR 424, pp 455–56 [112–114]; *Hodkinson v The  
 Commonwealth* (2011) 248 FLR 409, pp 442–44 [140–46]; *Jain v Special Broadcasting Service  
 Corporation* [2022] FedCFamC2G 814, [125–28].  
 466 *Western Union Business Solutions (Australia) Pty Ltd v Robinson* (2019) 272 FCR 547,  
 p 574 [113].  
 467 *Western Union Business Solutions (Australia) Pty Ltd v Robinson* (2019) 272 FCR 547, pp 563  
 [60], 565 [48], 578–81 [129–38]; *Shizas v Commissioner of Police* [2017] FCA 61, [121–22];  
*Construction, Forestry, Mining and Energy Union v Peabody Energy Australia Coal Pty Ltd* [2014]  
 FCA 394, [9].  
 468 *State of Victoria (Office of Public Prosecutions) v Grant* (2014) 246 IR 441, p 451 [51–52].  
 469 *RailPro Services Pty Ltd v Flavel* (2015) 242 FCR 424, p 459 [124].  
 470 *Fair Work Act 2009* (Cth) s 772(1)(f).  
 471 *Disability Discrimination Act 1992* (Cth) ss 21A, 21B.  
 472 See discussion of state discrimination laws and s 351 of the FWA in *McIntyre v Special  
 Broadcasting Services Corporation (t/as SBS Corporation)* [2015] FWC 6768, [28–29].  
 473 Australian Human Rights Commission, Submission in response to *Employment issues paper*,  
 24 September 2020, ISS.001.00459, p 38.  
 474 Australian Government Department of Employment and Workplace Relations, Updating  
 the *Fair Work Act 2009* to provide stronger protections for workers against discrimination,  
 Consultation paper, April 2023.  
 475 Australian Government Department of Employment and Workplace Relations, Updating  
 the *Fair Work Act 2009* to provide stronger protections for workers against discrimination,  
 Consultation paper, April 2023, p 6.  
 476 Transcript, Sandra Parker PSM, Public hearing 19, 26 November 2021, P-431 [28–31].  
 477 Transcript, Sandra Parker PSM, Public hearing 19, 26 November 2021, P-431 [33–35].  
 478 Exhibit 19-36, 'Statement of Sandra Parker PSM', 2 September 2021, at [16].  
 479 *Fair Work Act 2009* (Cth) ss 682(1)(a)–(b).  
 480 *Fair Work Act 2009* (Cth) s 682(1)(c).  
 481 *Fair Work Act 2009* (Cth) s 682(1)(d).  
 482 *Fair Work Act 2009* (Cth) s 682(1)(e).

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482 *Fair Work Act 2009* (Cth) s 682(1)(f).  
483 Exhibit 19-36, 'Statement of Sandra Parker PSM', 2 September 2021, at [34].  
484 Exhibit 19-36, 'Statement of Sandra Parker PSM', 2 September 2021, at [42–43].  
485 Fair Work Ombudsman, Compliance and Enforcement Policy, July 2020.  
486 Transcript, Sandra Parker, Public hearing 19, 26 November 2021, P-436 [41] – P-437 [2].  
487 Transcript, Sandra Parker, Public hearing 19, 26 November 2021, P-442 [9–10].  
488 Transcript, Sandra Parker, Public hearing 19, 26 November 2021, P-442 [33–35].  
489 Transcript, Sandra Parker, Public hearing 19, 26 November 2021, P-442 [39–44].  
490 Transcript, Sandra Parker, Public hearing 19, 26 November 2021, P-442 [44]–P-443 [3].  
491 Submissions of Counsel Assisting the Royal Commission following Public hearing 19,  
7 January 2022 (revised 9 March 2022), p 171 [622–23].  
492 Submissions by the Australian Government in response to Counsel Assisting's submissions  
in Public hearing 19, 14 February 2022, p 22 [115].  
493 See discussion in Submissions of Counsel Assisting the Royal Commission following  
Public hearing 19, 7 January 2022 (revised 9 March 2022), pp 35–39 [92–119].  
494 See, for example, Transcript, Christina Ryan, Public hearing 19, 26 November 2021, P-415  
[24–33]; Transcript, Jennifer Westacott, Public hearing 19, 23 November 2021, P-117 [36–38],  
P-118 [26–28].  
495 Submissions of Counsel Assisting the Royal Commission following Public hearing 19,  
7 January 2022 (revised 9 March 2022), p 38 [116].  
496 Transcript, Jennifer Westacott, Public hearing 19, 23 November 2021, P-118 [30–35].  
497 Transcript, Jennifer Westacott, Public hearing 19, 23 November 2021, P-118 [20–24].  
498 Submissions of Counsel Assisting the Royal Commission following Public hearing 19,  
7 January 2022 (revised 9 March 2022), p 39 [118].  
499 Exhibit 19-59, CTD.9999.0038.0002, pp 3–4 [17].  
500 Submissions by the Australian Government in response to Counsel Assisting's submissions  
in Public hearing 19, 14 February 2022, p 6 [21].  
501 Submissions by the Australian Government in response to Counsel Assisting's submissions  
in Public hearing 19, 14 February 2022, p 6 [21].



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## 7. Reforming Australian Disability Enterprises

### Key points

- As well as employment in the open labour market, people with disability can be employed in supported employment settings.
- Many supported employment settings are known as Australian Disability Enterprises (ADEs). ADEs are intended to employ people with disability with high support needs across Australia.
- These settings are sometimes described as ‘segregated employment’ because people with disability in these workplaces can be separated from people without disability and the broader community.
- Some people with disability choose to work in ADEs. For others, it may be presented as their only option for employment. This is because of several factors, including the systemic barriers to open employment examined in Chapter 6.
- People with disability working in ADEs often receive far less than the full national minimum wage under the supported wage system, although most also receive the Disability Support Pension.
- Commissioners put forward recommendations to support people with disability working in ADEs to move to more inclusive, open employment options where that is their choice. Commissioners also recommend that workers be paid at least 50 per cent of the minimum wage, moving to the full minimum wage by 2034.

### 7.1. Introduction

In the previous chapter, we considered barriers to, and recommendations for, open employment. In this chapter, we look at the experiences of people with disability working in Australian Disability Enterprises (ADEs) and the payment of subminimum wages. This chapter recommends ways to achieve more inclusive employment for people with disability.

Commissioners have a shared commitment to inclusive employment for people with disability. However, Commissioners Bennett, Galbally, Mason and McEwin have set out further views and recommendations in some areas, including on ADEs. These are highlighted where they appear in the text and recommendations.

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## Terminology

This chapter contains references to the terms ‘Australian Disability Enterprise’, ‘segregated employment’, ‘supported employment’, ‘open employment’ and ‘subminimum wages’.

Commissioners do not necessarily share the same understanding of the concept of ‘segregation’ and do not necessarily attribute the same significance to the word when used to describe particular settings. However, throughout this chapter we aim to use the expressions and language used by witnesses in hearings or provided in written materials.

In this chapter:

- ‘Australian Disability Enterprise’ or ‘ADE’ refers to an entity providing ‘supported employment services’ as defined in section 7 of the *Disability Services Act 1986* (Cth) (DSA).<sup>1</sup>
- ‘Segregated employment’ is used to describe a work setting that is exclusively for people with disability. This expression is used in contrast to ‘open’ or ‘mainstream’ employment settings. In the past ADEs have typically provided employment exclusively for people with disability.
- ‘Supported employment’ describes how employees working in an ADE or other settings are provided with ongoing additional assistance from support workers and managers to complete their work tasks. Supports provided to people with disability in ADEs and other settings to help them work are called ‘supported employment services’.<sup>2</sup>
- ‘Open’ or ‘mainstream’ employment settings refer to work settings where people with disability and without disability are employed. Supported employment services can also be provided in open employment settings. As discussed later in this chapter, this has given rise to a number of different settings in which supported employment is provided.

This chapter uses ‘subminimum wage’ to describe wages paid to people with disability that are under the national minimum wage and are determined by wage assessment tools or by reference to the ‘special national minimum wage’. There is a mechanism for determining the ‘special national minimum wage’ for employees with disability who are not covered by an award or agreement in the *Fair Work Act 2009* (Cth) (FWA).<sup>3</sup> The term subminimum wage is used by the Committee on the Rights of Persons with Disabilities (CRPD Committee).<sup>4</sup>

In Australia, there are legal mechanisms for paying a percentage of award wages to employees with disability who meet certain criteria by reference to assessments of their productivity and competencies. While this can occur both in open employment and ADEs, it is predominantly applied to employees with disability in ADEs. These wages, determined through wage assessment tools, are referred to by governments and some disability service providers as ‘supported wages’. We appreciate there are differing views on the different expressions used. In this chapter, we use the term ‘subminimum wage’ to describe a wage below the national minimum.



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‘Full minimum wage’ is used to describe the minimum adult wage payable under an award or agreement to employees in classifications covered by that award or agreement, or to the national minimum wage for employees who are not covered by an award or agreement. ‘Subminimum wages’ or ‘supported wages’ are distinguished from ‘full minimum wage’.

## A caveat

The Chair and Commissioner Ryan acquiesce in the use of the expression ‘segregated employment’ in Chapters 6 and 7 for the purpose of describing a work setting exclusively for people with disability, in contrast to a work setting that is not so limited. In doing so, however, they do not accept that describing a work setting exclusively for people with disability as ‘segregated’ implies that the setting **necessarily** causes harm to employees or **necessarily** exposes employees to a greater risk of violence and abuse than people with similar disabilities experience in other work settings.

Put another way, describing a work setting exclusively for people with disability as ‘segregated’ for the purposes of this chapter does not imply the setting is necessarily detrimental to the wellbeing of the employees.

As explained elsewhere in Chapter 1, whether a workplace exclusively for people with disability deserves to be characterised as ‘segregated’ depends on the particular circumstances of the workplace. Relevant circumstances include whether employees have chosen freely to be employed or to retain employment in that setting; whether the workplace encourages and supports employees transitioning to open employment; the measures in place to prevent and respond to violence or abuse in the workplace; the level of wages paid to employees; and the objectives of the workplace and the extent to which those objectives are achieved in practice.

## 7.2. Overview of Australian Disability Enterprises

Until recently, the main employment setting that offered ‘supported employment’ was an ADE.

ADEs provide segregated employment for people with moderate to severe disability who need significant support to work.<sup>5</sup> They are intended to provide employment opportunities to people with disability who are unable to gain work in open ‘mainstream’ workplaces and typically operate on a not-for-profit basis.<sup>6</sup> Workers with disability in these work settings are sometimes described as ‘supported employees’<sup>7</sup> or ‘clients’,<sup>8</sup> as distinct from staff, support workers or management who provide support to supported employees/clients.

While open employment and ADEs are distinct types of workplace settings, a person with disability can be paid a subminimum wage in both settings in certain circumstances.

Public hearing 22, ‘The experience of people with disability working in Australian Disability Enterprises’ examined the treatment of people with disability working in ADEs and the payment of subminimum wages in those settings.

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## Background to Australian Disability Enterprises in Australia

ADEs operate throughout Australia and largely employ people with Down syndrome and intellectual disability.<sup>9</sup> As at April 2022, there were 161 ADEs registered as National Disability Insurance Scheme (NDIS) providers.<sup>10</sup> ADEs are generally not-for-profit organisations.<sup>11</sup>

The work at ADEs typically involves manual labour. This includes warehousing (including operating forklifts and pallet jacks), 'picking and packing', gardening, construction/hardware services, manufacturing (including manufacturing flatpack furniture and assembling items), laundry/textile services, hospitality and cleaning.<sup>12</sup>

As Counsel Assisting noted in submissions following Public hearing 22, it is difficult to identify with precision the number of people with disability working in the approximately 161 ADEs in Australia.<sup>13</sup> The best available data comes from the NDIS. In the 2020–21 financial year, 17,232 NDIS participants (7 per cent) worked in an ADE.<sup>14</sup>

The modern industrial award for ADEs is the *Supported Employment Services Award 2020* (*SES Award 2020*). It permits the use of designated wage assessment tools to assess the productivity of employees with disability.<sup>15</sup> Employees are paid a percentage of the full award wage based on their assessed productivity level.

Most employees with disability working in ADEs are paid below the Australian minimum wage.<sup>16</sup> The Royal Commission heard evidence from a number of witnesses about being paid less than the minimum wage.<sup>17</sup> One witness described earning \$2.50 an hour from November 2019 to April 2022, which was approximately 12.5 per cent of the minimum wage, before his wage was raised to \$8.13 an hour.<sup>18</sup>

ADEs range in size, business focus and structure. Public hearing 22 examined the operations of one ADE, Bedford Phoenix Inc (Bedford). Bedford is a not-for-profit entity incorporated in South Australia. It is one of the largest ADEs in Australia, employing over 1,110 supported employees across 14 sites in South Australia.<sup>19</sup> Bedford employees work in a range of roles including packaging, manufacturing, commercial landscaping, commercial cleaning, hospitality, commercial laundry, administration roles and embroidery.<sup>20</sup> In 2020–21, Bedford received \$350,011 in funding from the Australian Government Department of Social Services (DSS) and \$12,766,371 in funding from the NDIS to support employees with disability (this excludes JobKeeper payments for the period April to September 2020).<sup>21</sup> We heard that the median average wage for supported employees at Bedford was \$5.48 per hour.<sup>22</sup>

## Legal and funding framework

Since the 1980s, the *DSA* has provided the framework for the funding and delivery of services to people with disability including in ADEs. The *DSA* states the Australian Government may deliver employment services for people with disability. This includes 'competitive employment training and placement services' (known today as 'Disability Employment Services', or 'DES') and 'supported employment services' (referring to 'ADEs').<sup>23</sup> More recently, there has been a

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move away from the use of the term 'ADEs' in favour of the term 'social enterprises'. This is intended to reflect their 'social purpose' of providing employment for people with disability.<sup>24</sup> However, this change in terminology does not necessarily alter the continuation of these businesses as workplaces that are exclusively for people with disability and in which employees are often paid subminimum wages.

Prior to 2004, funding to ADEs was provided through block grants.<sup>25</sup> Under block funding arrangements, governments directly funded service providers with lump sum payments to deliver support services.<sup>26</sup> From 2004 until the rollout of the NDIS in 2013, funding for ADEs was provided by the DSS through the Disability Employment Assistance (DEA) program. The DEA program was a case-based funding model. ADEs received funding for an agreed number of places, calculated on the basis of a supported employee's individually assessed support needs.<sup>27</sup> In addition to the case-based funding under the DEA program, ADEs were eligible to receive certain other funding.<sup>28</sup>

The Australian Productivity Commission's *Disability care and support* report, which recommended setting up the NDIS, determined the NDIS would have a 'strong employment focus'. It recommended that supported employment should be funded through the NDIS.<sup>29</sup>

During the rollout of the NDIS between 2013 and 2019, responsibility for the funding of employment supports provided to NDIS participants by ADEs gradually transferred from the DSS to the NDIS. When an ADE client became an NDIS participant, their case-based funding amount transferred to the NDIS. The DEA program ceased on 31 March 2021, as the majority of supported employees had transitioned to the NDIS and now receive funding to support their employment via their NDIS plan.<sup>30</sup>

Ms Gerrie Mitra PSM, General Manager, Provider and Market Division at the National Disability Insurance Agency (NDIA), explained in Public hearing 22 that 'under the previous funding structure, there were limited opportunities for a participant to explore the transition from an ADE into open employment'.<sup>31</sup> The NDIA announced a new pricing structure in October 2019 for NDIS participants who receive support on the job.<sup>32</sup> Transition to this new pricing regime was implemented from 1 July 2020 and completed on 31 December 2021.<sup>33</sup>

Ms Mitra described the change in funding as:

a first step in opening up employment opportunities for participants who require ongoing and more intensive support on the job than is available through other programs or is the responsibility of an employer for reasonable adjustment for an employee.<sup>34</sup>

The new pricing framework means that supports are no longer tied to employment being offered by a provider who is also the employer,<sup>35</sup> as was historically the case in ADE settings. Separating these roles is intended to give participants with more significant support needs new opportunities to explore work outside an ADE setting.<sup>36</sup> NDIS participants who are funded for 'supports in employment' may now choose to purchase support in a range of employment settings including private enterprise, not-for-profit, public sector, family business, self-employment and social enterprises.<sup>37</sup>

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Supports in employment through NDIS packages can include:<sup>38</sup>

- job customisation
- on-the-job training and intermittent support with daily work tasks
- direct supervision or group-based support to enable meaningful participation at work
- supports to manage disability-related behaviour or complex needs at work.

The new pricing framework represented a significant policy change for the supported employment sector. The Australian Government told us:

The change was a deliberate effort to ‘uncouple’ the prior funding arrangements which tied participants to working in an ADE if they needed more than reasonable adjustment in the workplace to be engaged and productive workers.<sup>39</sup>

## Regulation of Australian Disability Enterprises

In their capacity as employers, ADEs are subject to the same regulatory regimes as employers generally. The relevant statutory regimes include the *FWA*, relevant work health and safety laws, and federal, state and territory anti-discrimination laws, including the *Disability Discrimination Act 1992* (Cth) (*DDA*).

As NDIS providers, ADEs are subject to the *National Disability Insurance Scheme (Code of Conduct) Rules 2018* (Cth) (*NDIS Code of Conduct*) and *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* (Cth) (*NDIS Practice Standards*).<sup>40</sup> The *NDIS Practice Standards* set out the quality standards to be met by registered NDIS providers to provide supports and services to NDIS participants. The NDIS Quality and Safeguards Commission (NDIS Commission) has responsibility for overseeing compliance with the *NDIS Code of Conduct*.

Additional complaints mechanisms are available to people with disability who work in ADEs. All people with disability employed in an ADE can make complaints about the services they receive to the Complaints Resolution and Referral Service.<sup>41</sup> People with disability whose employment supports are funded under the NDIS may also make complaints about the quality or safety of the supports they receive from their service provider to the NDIA or the NDIS Commission.

## 7.3. The experience of people working in Australian Disability Enterprises

In Public hearing 22, we heard a range of views and experiences from people with disability working in ADEs, both positive and negative. We also heard from families, disability representative bodies and an ADE. We acknowledge there are strongly held views about the role of ADEs and segregated employment in contemporary Australia.

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Five key themes emerged from our consideration of ADEs in Public hearing 22:

- the application of human rights principles and the right to work
- the importance of work and the benefits of work for people employed in ADEs
- the exercise of choice and control in choosing an ADE work setting
- the vulnerability to, and experiences of, violence, abuse, neglect and exploitation of people with disability who work in ADEs
- the payment of subminimum wages.

## Human rights and the right to work

An issue raised throughout our inquiry was whether having workplaces where (supported) employees are primarily people with disability is a form of segregation that contravenes the human rights of people with disability. Different views have been expressed on this question.

Article 27 of the *Convention on the Rights of Persons with Disabilities (CRPD)* provides that States Parties recognise the ‘right of persons with disabilities to work, on an equal basis with others’, and notes:

this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.<sup>42</sup>

Emeritus Professor Ron McCallum AO noted in his research report that Australia ‘permits [ADEs] which were formerly known as ‘sheltered workshops’, to operate systems of segregated employment for persons with disabilities’.<sup>43</sup>

Article 27 does not expressly refer to or prohibit ‘sheltered workshops’ or ‘segregated work settings’ due to differing views among the parties during the drafting of the *CRPD*.<sup>44</sup> However, the CRPD Committee has subsequently expressed concerns about segregation in the labour markets of States Parties and called for a transition away from these settings.<sup>45</sup> In its 2019 Concluding Observations, the CRPD Committee recommended that the Australian Government:

Undertake a comprehensive review of Australian Disability Enterprises to ensure that they adhere to article 27 of the Convention and provide services to enable persons with disabilities to transition from sheltered employment into open, inclusive and accessible employment, ensuring equal remuneration for work of equal value.<sup>46</sup>

In September 2022, the CRPD Committee further reinforced its position in *General comment no. 8 (2022) on the right of persons with disabilities to work and employment (General comment no. 8)*, which sets out the view that segregated employment settings are inconsistent with the right provided in article 27(1) and have the potential to limit the rights of people with

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disability to 'choice, consent and freedom from coercion'.<sup>47</sup> *General comment no. 8* calls on all States Parties to phase out segregated employment by adopting 'concrete action plans, with resources, timeframes and monitoring mechanisms that ensure the transition from segregated employment to the open labour market'.<sup>48</sup>

Similar commentary has been advanced in the context of other human rights treaties. The *International Covenant on Economic, Social and Cultural Rights (ICESCR)* sets out the rights of all people to work and to just and favourable conditions of work.<sup>49</sup> The *ICESCR* is monitored by the Committee on Economic, Social and Cultural Rights (CESCR). In 1994, the CESCR issued *General comment no. 5* concerning the *ICESCR* and disability.<sup>50</sup> The CESCR said the right to work 'is not realised where the only real opportunity open to disabled workers is to work in so-called 'sheltered' facilities under substandard conditions'.<sup>51</sup>

The Australian Government does not accept the employment of persons with disabilities in alternative places of employment (such as ADEs) is inconsistent with the *CRPD*. Its submissions in response to Counsel Assisting's submissions following Public hearing 22 set out:

... Article 27 does not expressly prohibit segregated employment for people with disability. Rather, Article 27 provides that 'States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this **includes** the right to the opportunity to gain a living by work freely chosen or accepted in a labour market ...'

The ordinary meaning of the terms in Article 27, in particular the use of 'includes', suggests that alternative points of employment are not prohibited, provided that alternative points of employment are not the only form of work available. The Committee on Economic, Social and Cultural Rights supports this view. [Emphasis in original. Footnotes omitted.]<sup>52</sup>

Commissioners Bennett, Galbally, Mason and McEwin consider that the Australian Government's view of article 27 and its application to current policies is out of step with the intent of the *CRPD*. These Commissioners endorse the view expressed by Mr Gerard Quinn, UN Special Rapporteur on the rights of persons with disabilities, in his statement to the Royal Commission in Public hearing 31, 'Vision for an inclusive Australia'. In relation to segregated spaces generally, Mr Quinn said that '[e]nding segregation is ... urgent and a key goal of the *CRPD*'.<sup>53</sup>

The Chair and Commissioner Ryan accept that ADEs can create a heightened risk of violence and abuse. They also accept that ADEs could do more, under the new NDIS pricing framework, to encourage and support employees with disability to transition into open employment. However, the Chair and Commissioner Ryan do not agree that article 27 of the *CRPD* precludes people with disability, including people with intellectual disability or cognitive impairment, making a free and informed choice to be employed in an ADE or other setting that exclusively employs people with disability. The Chair and Commissioner Ryan appreciate issues that arise in ensuring that any choice is free and informed, including the role of supported decision making. They also appreciate and accept the need for ADEs to change their practices. But the Chair and Commissioner Ryan do not agree that article 27 denies people with disability the right to exercise choice and control in relation to the nature of their employment.



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## Benefits of a job and the opportunity to work

Some witnesses giving evidence at Public hearing 22 spoke of the positive experiences of themselves or family members while working at ADEs.<sup>54</sup> Some of these witnesses had been in continuous employment with ADEs for a significant period of time.

Mr Anthony Reid described the ADE where he works as friendly and a nice place to work.<sup>55</sup> Mr Philip Shoolman, who had experience working in open employment and at an ADE, reflected on where he would choose to work in the future:

when you're at the ADE, it's pretty easy. It's light. It's easy for someone of my age. Like, if you go to open employment, they're be a bit stricter and a bit harsher. So the ADE, I was happy there.<sup>56</sup>

'Marc' also told us about his experiences working in both open employment and in an ADE.<sup>57</sup> Marc worked at Bedford, and then worked in open employment for around six months until his employer advised there was no longer a job for him.<sup>58</sup> Marc told us he 'really enjoyed working' in open employment for that time.<sup>59</sup> He then returned to Bedford, where he continued to work at the time of the hearing. Marc explained:

I am not interested in looking at work outside of Bedford at the moment. I mostly enjoy my work at Bedford. I have a lot of friends, and it is good being in a different environment, rather than being at home and doing nothing. Also, I think it would be harder to come back to Bedford if I left again.<sup>60</sup>

'Kaite' said that her daughter 'Emilee' was excited and enthusiastic when she first started at an ADE, going to work every day and gaining a new set of friends.<sup>61</sup> Similarly, 'Gert' said that her son 'Frederic' liked the companionship at the ADE and the fact he had to get up and go to work just like his siblings.<sup>62</sup> His sister 'Springer' liked similar things about the ADE and felt it gave her a purpose in life.<sup>63</sup>

Bedford submitted:

ADEs remain a workplace **of choice** for many people with a disability because of the supportive environment they provide and knowledge they have of working with people with disabilities, along with the opportunities afforded to supported employees for growth, development and income. [Emphasis in original.]<sup>64</sup>

While some witnesses were positive about their work in ADEs, some also raised concern about their low levels of pay.<sup>65</sup> Others raised concern about the lack of opportunity and support for progression within the ADE or to transition out of the ADE.<sup>66</sup> For example, 'Tay' did not feel their wages were fair.<sup>67</sup> They felt they had demonstrated the skills to be paid at the maximum level for their classification.<sup>68</sup> 'Mahdi' felt that the wage he was offered was unfair.<sup>69</sup> He described ADEs as 'exploitation of workers with disability', adding that the low wages earned by people with disability who work in ADEs is 'some kind of discrimination'.<sup>70</sup> Marc considered his wage should be higher because of his ability. He also expressed concern as to the impact of his wage

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on the Disability Support Pension (DSP) because his income from Bedford would not be enough for him to live off if he did not have the DSP.<sup>71</sup> Mr Greg Tucker is committed to doing his work properly and likes to be challenged by hard work. Mr Tucker would like to earn the minimum wage but is a little bit scared to ask for a pay rise.<sup>72</sup>

## Choice and control

The third key theme that emerged from our consideration of ADEs is the exercise of choice and control in choosing an ADE work setting.

People with disability should have control and be able to freely choose where and how they work and who provides their supports. Our inquiry has shown that being able to exercise choice and control about working in an ADE can be affected by systemic and structural issues, including:

- a lack of information and support that is available to people with disability on transitioning from school to work and from an ADE to open employment or another ADE. This is particularly the case with the transition from attending a special school or unit where ADEs are introduced to students as their only working option (referred to by some as the 'polished pathway')
- the restricted eligibility to access the DES program
- the complexity of the NDIS and availability of supports in employment
- concerns about the impact of earnings on DSP entitlements
- the systemic barriers transitioning to open employment, as discussed in Chapter 6, 'Open and inclusive employment'.

A lack of support for decision-making can also limit choice and control, as we discuss in Volume 6, *Enabling autonomy and access*. In that volume, we explain how supported decision-making is vital for some people with disability, particularly people with cognitive and psychosocial disability, to exercise choice and control.

## Lack of information and support available to transition to open employment

### Transition from school to work

A number of the witnesses in Public hearing 22 spoke about the inadequacy of information and support they received when they or their family members were leaving school and moving into the workforce.

Mr Shoolman said the special school he attended did 'not really' prepare him for work or help him to decide what sort of work to get into.<sup>73</sup> Kaite recalled Emilee's school organised some work experience opportunities for her<sup>74</sup> but did not talk to Kaite about Emilee's transition from school to work.<sup>75</sup>

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These experiences are consistent with those described by representatives from Youth Disability Advocacy Service in Public hearing 21, 'The experience of people with disability engaging with Disability Employment Services'. They identified, as a systemic issue, that young disabled people are receiving inadequate career counselling and support when transitioning from school to work.<sup>76</sup>

ADEs can also be presented to young people with disability as their best or only employment option after completing education. In Public hearing 9, 'Pathways and barriers to open employment for people with disability', Ms Kit Owen-Turner said she had several meetings with the counsellors and transition team at her daughter Charlene's high school to explore how to achieve Charlene's aim of moving into higher education.<sup>77</sup> She considered that Charlene's school pushed for her to go to a day support program for people with disability instead.<sup>78</sup> Charlene completed work experience at the day program. Her work included packaging and delivery, which she did not enjoy.<sup>79</sup> After school, Charlene attended a social enterprise three days a week, which provided her with the opportunity to develop practical work experience skills and continue learning.<sup>80</sup>

Data shows people with intellectual disability are more likely to be unemployed or work in ADEs than to be employed in open employment. For example, 2020 data from the NDIS showed only 30 per cent of NDIS participants with intellectual disability aged over 25 were employed.<sup>81</sup> Of this group, 71 per cent were employed in an ADE, while only 13 per cent were in open employment in work that paid full wages.<sup>82</sup> Across the different NDIS categories of disability type, NDIS participants with intellectual disability or Down syndrome are the most likely to work in ADEs (71 per cent of NDIS participants over 25 with intellectual disability and 72 per cent of participants with Down syndrome).<sup>83</sup>

In Public hearing 24, 'The experience of children and young people with disability in different education settings', Ms Catherine McAlpine, CEO of Inclusion Australia, told us some ADE providers have established relationships with segregated schools. This makes it 'very easy' for students to transition from segregated school settings to ADEs or day programs.<sup>84</sup> One witness, 'Isabella', mother of 'Emerson', told us her son was chosen by his special school to participate in work experience at the local ADE.<sup>85</sup> Emerson was engaged in labelling and packaging items.<sup>86</sup> In Public hearing 22, Bedford acknowledged they rely on work experience programs with students from local schools as a primary source of recruiting new employees.<sup>87</sup> Chapter 3 of this volume, 'Overcoming barriers to safe, quality and inclusive education', considers data and research relating to the pathway from segregated education to ADEs.

## **Moving from Australian Disability Enterprises to open employment**

In Public hearing 22, we heard ADE employees are not provided with adequate information about the supports available to move to different work settings including open employment. For example, Gert said the ADE where Springer worked did not do anything to help her get into open employment.<sup>88</sup> Springer worked at the ADE for 23 years.<sup>89</sup> Kaite was not aware of any steps taken by the ADE where Emilee worked to assist her to transition to open employment.<sup>90</sup> Emilee worked at the ADE for more than 15 years.<sup>91</sup>

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Ms Mitra observed that in the past, 'ADEs perceived that they could not support a former employee to transition to another workplace'.<sup>92</sup> This perception is consistent with the view that ADEs had not traditionally been established, structured or funded with a primary or formal focus on transitioning people with disability into open employment settings.<sup>93</sup>

In contrast, under the new pricing framework as a result of the NDIS rollout, Ms Mitra explained 'it is expected that ADE providers support their employees to explore opportunities in open employment'.<sup>94</sup> The new framework 'not only makes this possible but actively encourages participants to consider and take up new employment opportunities'.<sup>95</sup>

Ms Mitra said the NDIS funds participants if they are seeking to change their job to another ADE or to open employment. The NDIS 'fund supports for capacity-building, we fund people to support them to look for those options, and we fund employment-related assessment and counselling'.<sup>96</sup>

This is also reflected in the NDIS *Supports in Employment Provider Handbook*. This notes funding may include 'skills development to transition from a current role to a new role either in the ADE or with a new employer'.<sup>97</sup>

Mr Myron Mann, CEO of Bedford, gave a different perspective. In his position as 'the CEO of one of the largest ADEs', Mr Mann said he was 'not seeing supports coming to ADEs to assist in transitioning to open employment'.<sup>98</sup> In its submission following Public hearing 22, Bedford argued that:

There is no evidence before the Royal Commission which supports the idea that ADEs are receiving funding through the NDIS to provide supports such as those Ms Mitra suggests to encourage participants to take up new employment opportunities. That makes sense, because workplace assessments designed to explore employment opportunities outside an ADE would not fall within the role an ADE plays. There are likely a multitude of organisations and allied health professionals who are well placed to undertake such assessments or implement such tools.

As for training for capacity development, whilst that might take the form of on-the-job training through an ADE (and of course, Bedford does provide such opportunities), again, an ADE is not the only, nor possibly the preferable, training organisation for specific funding for that purpose. That would depend entirely on the type of training sought.<sup>99</sup>

As noted by Counsel Assisting, there is a disparity between evidence on behalf of Bedford and evidence on behalf of the NDIA regarding the role of ADEs in supporting employees to transition to open employment. We agree with Counsel Assisting that this raises concerns about how well the ADE sector understands, is equipped, and is willing to use the new NDIS pricing framework to support NDIS participants to transition to open employment if they choose.<sup>100</sup> The evidence in Public hearing 22 from people with disability who work or have worked in ADEs and their families suggests very little has been done within that employment setting to support a transition to open employment.

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Commissioners Bennett, Galbally, Mason and McEwin also suggest there is a significant conflict of interest in expecting ADEs to support their supported employees to transition to open employment, especially as the most productive employees are likely to exit first.

## Restricted eligibility to access the Disability Employment Services program

As set out further in Chapter 6, a person with disability assessed as having a future work capacity of less than eight hours a week is generally ineligible for the DES program.<sup>101</sup> The DES program is the key government program designed to assist people with disability find work in open employment. We have received submissions in response to the *Employment issues paper* stating that people with disability assessed as having a future work capacity of less than eight hours should still be able to access supports to work in open employment.<sup>102</sup>

People with disability who are NDIS participants and have an employment-related goal in their plan can seek funding for ‘Supports in Employment’. These supports in employment are ‘primarily delivered in ADEs’,<sup>103</sup> although with the new pricing framework participants may choose to purchase support in other employment settings.<sup>104</sup> An NDIS participant can only access the DES program if they otherwise meet the DES eligibility criteria, including having a future work capacity of at least eight hours per week.<sup>105</sup>

The current limitations on eligibility for the DES program can impact on that person’s choice and control over their employment options. In Chapter 6, we recommend that the Australian Government considers options to remove the requirement for a person to have been assessed as having a minimum future work capacity of eight hours a week in order to access DES. This would help facilitate all people with disability being able to access the new DES model, if that is their choice.

## Complexity of planning and pricing under the National Disability Insurance Scheme

In Public hearing 22, Ms Mitra agreed with the suggestion that the NDIS ‘has a fair amount of complexity’.<sup>106</sup> She also accepted that one of the goals should be to ensure that participants are able to make decisions best suited to their needs.<sup>107</sup> She accepted this means the complexity has to be translated into concepts and information that can be understood by participants and enables them to navigate the system.<sup>108</sup>

Describing how NDIS funding encourages participants to take up new employment opportunities<sup>109</sup> (which may include transitioning to open employment), Ms Mitra referred to:

- employment-related assessment and counselling supports, which are intended to assist the participant to access tools and assessments to consider what kind of work they are capable of doing<sup>110</sup>
- workplace assistance supports, which could be used to assist job customisation for the different or new role.<sup>111</sup>

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Counsel Assisting submitted participants must be assisted to understand the funding allocated in respect of any applicable support categories.<sup>112</sup> This is necessary for participants to be able to exercise genuine choice and control and ensure they are able to use their NDIS funding to purchase the supports they need.<sup>113</sup> We agree.

A participant must understand the funding that has been allocated to their plan to make an informed decision about the services they will purchase from their provider.

NDIS participants should be provided with information that clearly distinguishes the purpose of 'supports in employment' funding (and the settings in which it can be used), separate to other types of funded support. The information should identify the component parts of 'supports in employment' funding and how these items have been calculated. This information should be provided in accessible formats.

## Concerns about the impact of higher wages on a person's Disability Support Pension

As discussed further in Chapter 6, witnesses expressed concerns about seeking higher wages or increased employment due to the possible impact it may have on their DSP and associated entitlements including the Pensioner Concession Card. This also includes concern about the impact of moving from segregated to open employment settings. While a person can have their DSP suspended for up to two years while working or earning over the threshold, people with disability have told us they are concerned that after two years, they would need to reapply.

These issues are particularly relevant for people with disability working in ADEs. As at 31 December 2020, 96 per cent of NDIS participants working in ADEs received the DSP.<sup>114</sup>

Normally, a person receiving the DSP who works for more than 30 hours per week on an ongoing basis no longer qualifies for the DSP and will have their DSP suspended.<sup>115</sup> However, special provisions and criteria apply to people with disability working in ADEs who receive the DSP. The Australian Government explained:

in recognition of the fact that employees of ADEs will receive wages in accordance with the SES Award which are lower than minimum wages payable in open employment, hours worked in an ADE are not counted towards the 15 or 30 hour thresholds. As such, a person may work more than 30 hours per week on an ongoing basis in an ADE and continue to receive the DSP, subject to the application of taper rates if their income exceeds a threshold of \$190 a fortnight.<sup>116</sup>

These special provisions also apply to people receiving subminimum wages under the Supported Wage System (SWS) in open employment.

We acknowledge the concerns expressed by witnesses. However, we agree with the observation of Counsel Assisting following Public hearing 22 that while accepting the legitimacy of these concerns, in some instances the concern may be based on inaccurate or incomplete information, including misunderstanding the special provisions for employees working under the SWS.<sup>117</sup>



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The analysis provided by Ms Debbie Mitchell PSM, Deputy Secretary of Disability and Carers at the DSS, regarding the impact of changed wage rates (and therefore changed earnings) on the DSP showed that in scenarios modelled the person earning an income through employment would have a better financial outcome than if receiving the DSP alone.<sup>118</sup> This was based on hypothetical scenarios and models outcomes for one potential cohort of the DSP recipient – a single person aged 21 years or older.

Concerns about losing access to the DSP or associated benefits, or having income payments reduced, may dissuade people with disability from seeking employment opportunities outside an ADE and to seek higher wages. Where these decisions are based on inaccurate or incomplete information, genuine choice and control are not being exercised. This may further suggest that DES organisations and ADEs need to be held accountable for providing inaccurate or incomplete information.

## Systemic barriers to transitioning to open employment

In addition to barriers identified above, a person with disability must also contend with the general attitudinal, physical, organisational and structural barriers to open employment discussed in Chapter 6. These may deter them from accessing open employment. Whenever a person with disability is discouraged or excluded from open employment because of these barriers and resorts to ADEs as an alternative, choice and control is compromised.

## Commissioners' views

People with disability should have opportunities to work in a range of different employment settings and should be free to choose where they want to work. However, we accept Counsel Assisting's submission that for some people with disability, their opportunities to work are currently limited to the option of working in an ADE.<sup>119</sup> This limited employment option compromises genuine choice and control. We also accept there is no one reason why options may be limited. It can be a cumulative effect of the above structural barriers, as well as the historical circumstances establishing ADEs and the wider systemic barriers to open employment identified in Chapter 6.

The Australian Government has acknowledged the importance of choice and control for people with disability. It has accepted the employment opportunities for some people with disability 'may currently be limited to working in an ADE'.<sup>120</sup>

## Vulnerability to and experiences of violence, abuse, neglect and exploitation in Australian Disability Enterprises

The fourth key theme in evidence concerned the vulnerability to, and experiences of, violence, abuse, neglect and exploitation by people with disability who work in ADEs.

While some people with disability working in ADEs have positive experiences, people with disability who work in ADEs can be exploited, and experience violence and abuse. We accept this can be true of any work setting. However, the question is whether the nature of ADEs

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heightens the risk of exposure to violence, abuse, neglect and exploitation compared to an open employment setting. We note Bedford submitted this was not the case, and that there was no foundation for this view.<sup>121</sup>

However, in our view several risk factors emerged in the evidence throughout this inquiry.

First, there can be a significant power disparity in the ADE workplace between employees and employers and supervising staff without disability. Following Public hearing 22, Counsel Assisting observed people with disability are often not included in decision-making affecting the workplace, and noted a lack of representation at a board and management level.<sup>122</sup>

We acknowledge the evidence of Mr Mann that Bedford 'actively sought Board members with a disability or a lived experience of disability when filling recent vacancies'.<sup>123</sup>

We acknowledge Bedford now has a current Board member 'with a lived experience [of disability] through a family member'.<sup>124</sup>

We accept there may be power disparities between employees and employers in any workplace setting.<sup>125</sup> However, the power disparity between employees and employers in ADEs is further complicated when ADEs have a dual role as employer and service provider. This can blur the responsibilities of employer and service provider, and ADEs may not prioritise the best interests of the employee with disability. The separation of these roles in other settings reduces this risk for people with disability.

A second risk factor raised related to work conditions generally, including physical and environmental conditions. In Public hearing 22, we heard that some ADE employees were required to work in unsafe settings including workplaces with poor heating and ventilation.<sup>126</sup> We were also told that both Springer and Emilee undertook personal care tasks for co-workers in their respective ADEs, including assisting co-workers to the bathroom,<sup>127</sup> which was not part of their jobs. In each case, the ADE was aware they performed that task, but said they did so voluntarily.<sup>128</sup> Even if done voluntarily, it clearly was not part of their job description and it appears neither Springer nor Emilee had the training and skills to perform the tasks safely.<sup>129</sup> We agree with Counsel Assisting that this exposed both the person providing the support and the person receiving the support to risk of harm.<sup>130</sup> Similar occurrences have been reported in submissions.<sup>131</sup>

A third risk factor concerned instances of violence and abuse in the workplace. For example, in Public hearing 22 we heard that Emilee and Tay had either seen or been subject to mistreatment at the ADE where they worked.<sup>132</sup> We received information during our inquiry of further examples of violence and abuse in ADEs.<sup>133</sup>

In Public hearing 22, Bedford acknowledged that incidents of yelling, physical abuse and inappropriate sexual conduct and harassment are extremely serious matters.<sup>134</sup> Mr Mann stated these incidents 'could and would' still be occurring at worksites operated by Bedford.<sup>135</sup> Bedford did not accept that violence of this nature in ADEs was inevitable.<sup>136</sup> In submissions following the hearing, Bedford explained some people with disability 'present with behavioural issues' at ADEs and there was a need for employers to be 'understanding of and flexible in responding to those issues'.<sup>137</sup> Bedford suggested:

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ADEs, with the significant oversight of the NDIS, have appropriate policies in place to ensure these employees are not ostracised or criminalised and instead are supported and encouraged while other employees are kept safe.<sup>138</sup>

We understand these submissions as referring to employee-to-employee violence. Bedford has also acknowledged that there are instances of ‘staff-to-employee’ violence, abuse, neglect and exploitation at Bedford.<sup>139</sup> Bedford has stated it has a ‘zero-tolerance approach towards staff members perpetrating violence or abuse towards clients’.<sup>140</sup>

A fourth risk factor concerned poor communication and provision of inadequate information. This includes not providing information in accessible formats<sup>141</sup> and not providing opportunities for employees, parents and carers to meet with the organisation and their employees.<sup>142</sup> For example, in Public hearing 22 Gert told us that the ADE where her daughter and son worked would ‘put notices up’ and ‘expect the supported employees to read them and take the information home to their parents and support people’. Gert said her son, Frederic, did not read and therefore was not always able to communicate this information. This was known to staff at the ADE and was brought up during meetings between parents and staff.<sup>143</sup> As a result, people with disability may not be aware (or fully aware) of relevant workplace information including their rights at work, or when and how they can raise concerns and enforce these rights.

Bedford suggested people in many industries may struggle to know what to do if they have a workplace concern, due to poor practices, language barriers or other issues. This was not, they suggested, an issue exclusive to ADEs. While accepting employees with disability may require greater assistance, Bedford suggested ‘there is nothing inherent about an ADE which heightens this risk as opposed to open employment’.<sup>144</sup>

We recognise that people with disability working in open employment may also lack access to information on their employment rights and complaint mechanisms. However, we disagree with Bedford’s suggestion that ADEs do not present a heightened risk of people being unaware of their rights and how to raise concerns. We note the FWC’s reflection as part of its 4 yearly review of the *Supported Employment Services Award 2010 (SES Award 2010)*:

The evidence makes clear that disabled employees working in ADEs are a vulnerable group, and are likely to require information, representation, consultation and assistance concerning workplace decisions which affect their interests to an extent that is far greater than for non-disabled employees.<sup>145</sup>

Volume 4, *Realising the human rights of people with disability*, explains how advocacy can be especially important for certain groups of people with disability to understand and exercise their human rights. This includes people with cognitive disability and people who live or work in settings such as ADEs or group homes. We also accept Counsel Assisting’s submission that ‘clear, timely communication is an essential feature of safeguarding against violence, abuse, neglect and exploitation’.<sup>146</sup> The environment of ADEs and other risks identified here makes accessible information about rights and making complaints particularly important.

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A further risk factor concerns legal protections for employees at ADEs. Counsel Assisting submitted there is limited legal protection for employees of ADEs, for example the limited oversight of the ADE employment environment by the Fair Work Ombudsman (FWO). Further, the external oversight of ADEs is largely the responsibility of the NDIS Commission. However, the NDIS Commission does not have the same enforcement and compliance powers as the FWO with respect to employment rights.<sup>147</sup>

Bedford and the Australian Government both rejected this submission.<sup>148</sup> Bedford considered that ADEs are subject to a greater level of oversight than would exist in an open employment setting.<sup>149</sup> It referred to the NDIS Commission as ‘an additional layer of oversight’ for ADEs.<sup>150</sup> The Australian Government considered ‘employees in ADEs have the same legal protections as all national system employees in Australia’.<sup>151</sup> In relation to the FWO it noted:

within the FWO’s broad remit, the FWO prioritises matters involving vulnerable workers, including workers with a disability ... [T]he FWO acknowledges that vulnerable workers, such as workers with disability, are in greater need of assistance and are at greater risk of exploitation.<sup>152</sup>

The FWO told us that between July 2018 and March 2021 it received 69,740 total requests for assistance covering all businesses and sectors.<sup>153</sup> Of those, 182 requests for assistance were received in relation to 62 ADEs through the FWO’s online and phone service.<sup>154</sup> Of those, 32 resulted in investigations.<sup>155</sup> The remaining 150 matters were resolved through education and the dispute resolution functions of the FWO.<sup>156</sup> In that same period, there were 43 investigations of ADEs.<sup>157</sup> In addition to the 32 arising from requests for assistance, 11 investigations arose from ‘proactive investigations as part of a campaign, involving 20 ADEs’.<sup>158</sup>

The FWO cites the ‘relatively low number of requests for assistance received from ADEs’ as one reason why it does not have a current or planned audit program relating to ADEs.<sup>159</sup> However, Counsel Assisting submitted that the number of requests was proportionately high in context, as 62 ADEs represent over a third of all employers in this cohort.<sup>160</sup> Bedford submitted that the ‘relatively high proportion of requests’ could be viewed as illustrative of the legal protections working, because employees in ADEs were reaching out for support and assistance from the FWO.<sup>161</sup>

Commissioners Bennett, Galbally and McEwin do not agree with the Australian Government position that ADE employees enjoy the same legal protections as others, given legislation enables the payment of subminimum wages to people with disability.

The Chair and Commissioners Mason and Ryan regard the issue of subminimum wages as a discrete issue and distinct from the broader question of whether ADE employees enjoy the same legal protection against violence, abuse and exploitation as other employees. They accept that ADE employees are covered by the same statutory regimes as other employees. However, legal protections are one thing; effective enforcement is another.

All Commissioners are concerned people with disability employed in ADEs experience more limited oversight and enforcement of legal protections in practice. Inadequate information

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provided to people with disability on their rights and complaints pathways, and a potential lack of support to exercise rights, make it harder for employees of ADEs to request assistance from the FWO and other safeguarding bodies.

In such circumstances, there should be greater emphasis on proactive investigations and audits by the FWO to ensure people with disability working in ADEs are enjoying the same rights as in other workplaces. This is particularly important given the NDIS Commission does not have the same enforcement and compliance powers as the FWO when it comes to employment rights.

All Commissioners are also concerned employees with disability in ADEs may find it harder to assert their rights under the *DDA*. An employee with disability claiming to have experienced direct discrimination in employment usually relies on a comparison between the treatment they experienced and the treatment an employee without the disability would have experienced. Commissioners agree with Counsel Assisting's observation that in settings such as ADEs, where comparable workers also have a disability, the comparative approach is problematic.<sup>162</sup> This can limit the legal protection available in practice for people with disability in ADEs. In Volume 4, we consider the 'comparator test' under the *DDA* in more detail and make recommendations for reform.

## Commissioners' views

The Chair and Commissioner Ryan consider there is no direct data that can be used to compare the experiences of employees with disability in ADEs and open employment settings of violence, abuse, neglect and exploitation. This makes it difficult to conclude definitively that people with disability experience more or less maltreatment in what have been described in this chapter as segregated employment settings.

The Chair and Commissioner Ryan consider the evidence is inconsistent with any suggestion that a person working in an ADE will **necessarily** be exposed to violence, abuse, neglect or exploitation. They also consider the evidence clearly establishes that some people with intellectual disability or cognitive impairment value the opportunity to be employed in a workplace exclusively for people with disability.

However, for the reasons given above, all Commissioners share the view that people with disability currently working in ADEs, particularly people with intellectual disability and cognitive impairment, may be at heightened risk of violence, abuse, neglect and exploitation, when compared with people with similar disability working in open employment with adjustments and supports. All Commissioners accept that if ADEs continue to operate, measures must be taken to eliminate that risk as far as possible.

Commissioners Bennett, Galbally, Mason and McEwin have further views on retaining, and providing government support for, ADEs that operate on a segregated employment model. These four Commissioners consider segregation is inherently harmful and what the Royal Commission has heard demonstrates that closed settings, including ADEs, definitively increase the risk of experiencing violence, abuse, neglect and exploitation. These four Commissioners consider that ADEs should, over time, phase out segregated employment practices and structures. This is explored further in section 7.5 below.

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Commissioners are not making specific recommendations on the risk factors present in ADEs. Those risks will be mitigated through the recommendations set out below. Further, the quality and safety of ADEs will be subject to the recommendations outlined in Volume 10, *Disability services*, and Volume 11, *Independent oversight and complaint mechanisms*, which will create improved oversight and complaint mechanisms.

## Subminimum wages

The fifth key theme is subminimum wages, which are a feature of working at an ADE. Subminimum wages can also be paid in open employment settings if they are permitted under the respective award or enterprise agreement.

As noted earlier, we adopt the term ‘subminimum wage’ in this section. We acknowledge the Australian Government has submitted that it is ‘technically incorrect’ to characterise wages paid in accordance with the SES Award, discussed further below, as ‘subminimum wages’.<sup>163</sup> They state wages that are paid in accordance with the SES Award, by definition, are wages paid in accordance with the legal minimum and are therefore not subminimum.<sup>164</sup> Bedford makes a similar argument, suggesting the use of the term could be interpreted as characterising the wages paid to supported employees as being something less than the required minimum.<sup>165</sup>

Subminimum wages can be paid to certain people with disability under the current framework. It is the fairness of the legal position that is in issue. For this purpose, we adopt the expression ‘subminimum wage’ to describe a wage below the national minimum. As noted earlier, the term subminimum wage is used by the CRPD Committee.<sup>166</sup>

## Determination of wages in Australia

The FWC is empowered by section 294 of the *FWA* to make a national minimum wage order for adults and a special national minimum wage for:<sup>167</sup>

- trainees, apprentices and junior employees
- employees to whom training arrangements apply
- employees with a disability.

From 1 July 2022, the national minimum wage for adults is \$21.38 per hour or \$812.60 per 38-hour week (before tax).<sup>168</sup> Employees cannot be paid less than the applicable minimum wage, unless they are subject to a special minimum wage.<sup>169</sup>

When the FWC seeks to determine a national minimum wage, it must establish a safety net of fair minimum wages and consider the following matters:<sup>170</sup>

- the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth
- promoting social inclusion through increased workforce participation



- relative living standards and the needs of the low paid
- the principle of equal remuneration for work of equal or comparable value
- providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and to employees with a disability.

## Employees with a disability and a special minimum wage

The *FWA* recognises three categories of workers that may be subject to lower than minimum award wages on the premise that these employees may not be as productive as adult employees. As set out above, they are juniors; employees to whom a training arrangement applies; and employees with disability.<sup>171</sup>

The reference to 'employees with a disability' in the *FWA* means a national system employee who is qualified for the DSP.<sup>172</sup>

The FWC has set special minimum wages that took effect from 1 July 2022.<sup>173</sup> There are different special minimums for employees with disability.

### Special national minimum wages<sup>174</sup>

Special national minimum wage 1 applies to an award or agreement free employee with a disability whose disability does not affect their productivity. Special national minimum wage 1 is:

- for an adult, \$812.60 per week, calculated on the basis of a week of 38 ordinary hours, or \$21.38 per hour.

Special national minimum wage 2 applies to an award or agreement free employee with a disability<sup>175</sup> who is:

- unable to perform the range of duties to the competence level required of an employee within the class of work for which the employee is engaged because of the effects of a disability on their productive capacity; and
- who meets the impairment criteria for receipt of the DSP.

An employer of an employee to whom special national minimum wage 2 applies must pay the employee a base rate of pay that at least equals special national minimum wage 2 (which is determined by reference to a table that depends on an assessment of the employee's productivity and then wage as a percentage of the national adult wage).

The effect of the special minimum wage 2 for employees with disability is a guaranteed minimum wage of \$95.00 per week.<sup>176</sup>

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## Australian Disability Enterprises and the wages framework

The *SES Award 2020* is the current award covering employers operating 'supported employment services' and their employees.

A 'supported employment service' is defined in section 7 of the *DSA* to mean:

services to support the paid employment of persons with disability, being persons:

- (a) for whom competitive employment at or above the relevant award wage is unlikely; and
- (b) who, because of their disabilities, need substantial ongoing support to obtain or retain paid employment.<sup>177</sup>

The *SES Award 2020* replaced the *SES Award 2010* following the FWC's 4 yearly review decision on the *SES Award 2010*.<sup>178</sup>

### Fair Work Commission review of the *SES Award 2010*

On 29 May 2017, the Full Bench of the FWC was constituted to hear and determine a number of applications to vary the *SES Award 2010* as part of the 4 yearly review of modern awards then being conducted pursuant to section 156 of the *FWA*. The main issue raised by those applications was the means by which minimum wage rates for employees with disability covered by the *SES Award 2010* should be determined.<sup>179</sup>

In conducting the review, the FWC was required to ensure the *SES Award 2010* achieved the modern award objective set out in section 134(1) of the *FWA*.

In April 2018, the FWC issued a statement in which it expressed provisional views concerning issues raised in its 4 yearly review decision. Among the 13 provisional views, the FWC found:

Supported employment covered by the [*SES Award 2010*] has a valuable and socially significant role in providing employment to primarily intellectually disabled persons for whom, at current or foreseeable levels of government support, the achievement and maintenance of open employment would not be viable. ADEs are able to employ disabled persons by adjusting their daily job tasks to suit their abilities, in circumstances where an equivalent open employment job role may not be able to be completed by a single ADE employee.<sup>180</sup>

It also found:

- The determination of wages for people with disability using the wage assessment tools prescribed in clause 14.4 of the *SES Award 2010* did not meet the modern awards objective in section 134(1) of the *FWA*, including because the tools 'produce different wage outcomes for persons performing equivalent tasks at equivalent levels of competency'.<sup>181</sup>
- The SWS did not represent an appropriate method for determining the wages of people with disability working in ADEs.<sup>182</sup>

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In its decision on 3 December 2019, the FWC stated that it did not consider that clause 14.4 of the *SES Award 2010* met the modern awards objective in section 134(1) of the *FWA*.<sup>183</sup> On 30 April 2020, the FWC amended the *SES Award 2010* by deleting all its contents and inserting new clauses and schedules.<sup>184</sup> The *SES Award 2020* came into effect on 18 June 2020.<sup>185</sup>

The *SES Award 2020*:

- sets out the ‘minimum rates of pay’<sup>186</sup>
- provides that an employee with disability will be paid such percentage of the rate of pay for their grade as specified in clause 15.2, as assessed under an approved wage assessment tool chosen by the ADE<sup>187</sup>
- provides classification definitions for grades 1 to 7<sup>188</sup>
- sets out the approved wage assessment tools, including the SWS.<sup>189</sup>

On 21 December 2022, the FWC issued its final decision on outstanding substantive issues in the 4 yearly review of the *SES Award 2020*. The determination varied aspects of the *SES Award 2020*, effective from 30 June 2023. This was intended to establish a ‘safety net of fair minimum wages for employees with a disability’ and a ‘relatively simple, comprehensible, stable and sustainable modern award wages structure for the ADE sector’.<sup>190</sup> In their determination, the FWC considered that for ADE employees, ‘social inclusion through participation in the workforce is the fundamental purpose, and not just the effect, of their employment’.<sup>191</sup> Further, the FWC considered that the variations would not ‘improve or diminish access to secure work’ but may ‘at least maintain and possibly improve access to secure work for persons with disability’.<sup>192</sup>

We do not analyse the changes to the *SES Award 2020* further here. The FWC has a duty to consider wage outcomes within the existing framework and whether it meets the modern award objective. Our inquiry is focused on the broader question of the fairness of the framework itself and the extent to which the framework treats people with disability unfairly.

## How wages are determined for people working at an Australian Disability Enterprise

Modern awards and enterprise agreements incorporate wage assessment tools under which employees with disability are paid a percentage of the minimum wage that would otherwise be applicable to their classification or grade.

A wage assessment is conducted with the employer, employee with disability and the employment services provider and nominee (if the employee has one). It occurs during the employee’s regular work day.<sup>193</sup> The assessor will look at information such as the employee’s job description, time spent on each duty, hours and days worked, break times and the level of supervision required.<sup>194</sup>

Approximately 5,200 SWS assessments are undertaken each year. This includes assessments for new employees and reviews for existing employees. Reviews are required to be undertaken one year after the initial review and, thereafter, within three years of the original assessment.

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A wage assessment may be reviewed at the initiative of the employee or the employer once every six months and not more than four times every three years.<sup>195</sup> Around 25 per cent of the SWS assessments undertaken each year take place in ADE settings.<sup>196</sup>

## Subminimum wages and the *Convention on the Rights of Persons with Disabilities*

In their submission in response to the *Employment issues paper*, the Australian Human Rights Commission (AHRC) argued that the rights of people with disability in the employment context recognised under international human rights law ‘are underpinned by the general principles set out in [a]rticle 3’.<sup>197</sup> These general principles include ‘respect of inherent dignity’ and ‘respect for difference and acceptance of persons with disabilities as part of human diversity and humanity’.<sup>198</sup>

The general principles in article 3 are also interpretative tools for the other principles and rights enshrined in the *CRPD*.<sup>199</sup> This includes article 27 of the *CRPD*, which sets out the ‘right of persons with disabilities to work, on an equal basis with others’.<sup>200</sup> It also includes article 5 of the *CRPD*, which outlines the obligations of States Parties in relation to equality and non-discrimination, including that States Parties shall prohibit all discrimination on the basis of disability.<sup>201</sup>

In their *General comment no. 8*, the CRPD Committee said the right to work is ‘fundamental’ and ‘forms an inseparable and inherent part of human dignity’.<sup>202</sup> The CRPD Committee has clearly stated that, in order to realise the rights in the *CRPD*, States Parties ‘need to apply the human rights model of disability’ under which impairments are ‘a valued aspect of human diversity and dignity’ and ‘must not be taken as legitimate grounds for the denial or restriction of human rights’.<sup>203</sup> In respect of article 27, the CRPD Committee has stated that ‘the right to just and favourable conditions of work requires that payment below the minimum wage on the basis of disability’ is not justifiable under any circumstance.<sup>204</sup>

In their *General comment no. 6*, the CRPD Committee specifically links the principles of article 5 to work and employment settings, as set out in article 27, noting that States Parties should:

Ensure that persons with disabilities are paid no less than the minimum wage and do not lose the benefit of disability allowances when they start to work.<sup>205</sup>

The AHRC has expressed similar views. It considers that the payment of lower than minimum wage because of a person’s disability, regardless of their work’s objective value, is inconsistent with the *CRPD*.<sup>206</sup> It stated that when capacity and productivity are applied through wage assessment tools to restrict access to the right to equal pay, there is a ‘discriminatory limit on the exercise of the right to work on an equal basis with others’.<sup>207</sup>

The AHRC’s submission in response to the *Employment issues paper* explained:

No other employees in Australia are permitted to be paid below-minimum hourly or weekly wages based on the profitability or viability of their own labour. The concept

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of determining the extent of a person's human rights based on work capacity or productivity has been considered by the CRPD Committee as a 'remnant of the medical approach to disability, superseded by the human rights-based approach'.<sup>208</sup>

This view was echoed by the Committee on Economic, Social and Cultural Rights, which said that people with disability 'must not suffer wage discrimination due to a perceived reduced capacity for work'.<sup>209</sup>

## Commissioners' views

We are guided by these principles of inherent dignity and respect in considering whether subminimum wages can be justified in a modern Australian employment context.

In our view, the payment of subminimum wages to people with disability is inconsistent with the principles of inherent dignity and respect for difference and human diversity that fundamentally underpin the *CRPD*. It is an affront to dignity to pay someone, who is as committed to their job as any other person (with or without disability), a subminimum wage. It is also inconsistent with the acceptance of disability as a valued aspect of human diversity and Australia's commitment to prohibit discrimination on the basis of disability. Our vision of an inclusive Australia is one where human rights are protected and people with disability live with dignity, equality and respect and fulfil their potential. Steps should be taken to achieve that vision by moving away from the payment of wages below the national minimum wage to people with disability.

A different approach to how work can be valued consistent with the objectives of article 3 of the *CRPD* is illustrated in the experiences of Mr Tucker and Mr Reid, who work at the Victorian Advocacy League for Individuals with Disability (VALID), as well as at an ADE. VALID's mission as an advocacy organisation 'is to promote and protect the human rights of people with an intellectual disability and to champion their rights as citizens to: Community Presence, Choice, Respect, Community Participation and Self Determination'.<sup>210</sup> VALID's commitment to a fair wage was illustrated in the experience of Mr Tucker and Mr Reid. They earn more pay for one day's work at VALID than they do for a day's work at their ADEs. Indeed, pay for one day's work at VALID exceeds the pay of working several days a week at their ADEs.<sup>211</sup>

## Addressing other justifications put forward for subminimum wages

We deal here with two arguments generally put forward in support of subminimum wages, which both rely on a more economic-focused approach. These are:

- some people with disability are less productive when compared to people without disability doing the same or similar type of work
- ADEs cannot afford to pay the minimum wage or higher award wages.

The relationship between income and the DSP is also often used to justify subminimum wages, on the basis that the DSP bridges the gap between the subminimum wage and the full minimum wage.<sup>212</sup>

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## Addressing the focus on productivity

Adopting the human rights approach set out above, we find little force in the productivity arguments that have been put forward to justify subminimum wages in the past. As a matter of principle, it is difficult to see how applying a productivity lens to one cohort of people on the basis of disability can be consistent with the General Principles and the right to work on an equal basis with others, as set out in the *CRPD*. As a matter of practice, applying such a lens can be influenced by negative assumptions about disability and issues with wage assessment tools.

In Public hearing 22, Ms Mitchell said:

An SWS productivity or pro-rata wage may only be used when it is clear that a person with disability is unable to work at full productive capacity compared to that of another employee without disability who performs the job at the performance standard. An employee's disability in itself does not justify a pro-rata award wage.<sup>213</sup>

This suggests there will be a definitive dividing line between those who cannot work at full productive capacity compared to those who can, and that a subminimum wage will only be used in circumstances where this differentiation is clear.

However, this does not take account of the negative assumptions people with disability face in the employment context. We have heard significant evidence about the impact of ableist attitudes towards people with disability seeking employment, which can lead to low expectations about the capacity of people with disability to work and perception of lower productivity in the workplace. The impact of these as a systemic barrier for people with disability seeking employment are discussed further in Chapter 6. There is a significant risk that these same ableist attitudes will impact assessments of whether a person can work at full productive capacity and so whether or not to use a wage assessment tool.

In Public hearing 9, Ms Pamela Darling described how some DES providers wanted her to work at an ADE for \$2.50 an hour.<sup>214</sup> She said no and subsequently obtained her 'dream job' working at the Council for Intellectual Disability.<sup>215</sup> There, she is paid for her work 'at an equal rate to my fellow workers at [the Council for Intellectual Disability] which makes me feel valued'.<sup>216</sup>

We heard examples of individuals working at ADEs for a subminimum wage and then transferring to open employment for a full minimum wage. 'Marc' and Mr Shoolman both described periods of working in open employment, for a full minimum wage, in between working at ADEs where their wages were set by reference to a wage assessment tool.<sup>217</sup> These examples raise questions about the assumptions that underpin an assessment that a person with disability is unlikely to be capable of earning a full wage.

A further issue is the complexity of the wage assessment tools used. We referred earlier to the findings of the FWC on the review of the *SES Award 2010*, which found that the determination of wages for people with disability using the wage assessment tools prescribed in the old *SES Award 2010* produced different wage outcomes for persons performing equivalent tasks at equivalent levels of competency.<sup>218</sup>



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This suggests wage assessment tools may not be a transparent, objective and accurate way to measure productivity. Indeed, this point was conceded by Bedford.

Bedford acknowledged that, due to the problems associated with the use of a wage assessment tool, there may be an increased risk of exploitation of employees with disability.<sup>219</sup> Bedford agreed this is why the FWC is considering the introduction of independent assessment as part of the wage tool trial,<sup>220</sup> but Bedford did not accept that the SWS was, in and of itself, exploitative.<sup>221</sup> Bedford said, however, that it 'did not stand in the way of reformation of the supported wage system'.<sup>222</sup>

In our view, a human rights approach is not consistent with relying on a productivity argument to justify the payment of subminimum wages to people with disability. It is inconsistent with the right set out in article 27 and the fundamental principles of dignity and respect articulated in the *CRPD*. An approach that effectively considers 'value' from a purely economic perspective fails to uphold the fundamental principles of the *CRPD*.

### **Addressing the capacity of Australian Disability Enterprises to pay full minimum wages**

The second economic argument put forward to justify subminimum wages is that ADEs cannot afford to pay the full minimum wage.

The FWC's 4 yearly review links the inability to pay higher rates with what is described as the 'different paradigm' in which ADEs operate compared to businesses in the general labour market:

The purpose of their existence is to provide employment opportunities for disabled persons who have restricted work capacity, typically on a not-for-profit basis. Accordingly, they seek only those business opportunities which will generate jobs capable of being filled by disabled persons, which necessarily limits the types of commercial activity they can engage in. Further, they do not arrange their workforces simply on the basis of a job structure that will allow the necessary work to be performed in the most productive and efficient fashion, and then recruit persons to fill those jobs. Rather, they create or tailor jobs in such a way that they are capable of being performed by a particular person with a particular disability or by persons with a class of disability.<sup>223</sup>

The FWC concludes that, arising from the 'low-productivity nature of ADE operations', ADEs cannot be financially sustained by commercial revenue alone and are dependent, to a large degree, upon government funding.<sup>224</sup> Consequently, 'the capacity of ADEs to respond to any significant change in minimum wages levels is far more restricted than for ordinary businesses'.<sup>225</sup>

In Public hearing 22, we heard from representatives from National Disability Services (NDS), Australia's peak body for non-government disability service organisations including ADE providers. NDS has 137 members who provide supported employment services.<sup>226</sup> They told us that most, if not all, supported employment services would be forced to cease their current operations if they were required to pay full minimum wages or above to their employees with disability.<sup>227</sup>

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No other business is allowed to pay employees less than the minimum wage because of capacity constraints. This justification does not prioritise the human rights of people with disability working in ADEs, and their entitlement to dignity and respect in the workplace.

Arguably, it is also based on a pre-NDIS conception of ADEs in their original format. The employment of people with disability in this environment had an unchanging quality that was not focused on skill or career progression. People with disability started work at an ADE and remained there, often for their entire working life. In that format, the ADE is both the employer and the provider of employment supports.

Commissioners Bennett, Galbally, Mason and McEwin consider this justification for subminimum wages is influenced by ableist views that people with disability are an economic and social burden on others, rather than seeing them as productive and as economic actors.

The unchanging nature of employment in ADEs is reflected in the type of work performed, often involving packaging and manual labour. Mr Shoolman, for example, said his work at the ADE was '[j]ust packing. Just doing packing, like all sorts of things in boxes'. His work was 'all the same'.<sup>228</sup> Similarly, Emilee has been doing packing and picking type jobs at an ADE for the past 17 years.<sup>229</sup> Springer and Frederic also did packaging work. The product they were packing might change, but the work itself did not.<sup>230</sup>

Despite the introduction of the NDIS and the separation of supported employment funding and employer, this approach has continued in some ADEs. This type of repetitive work is unlikely to foster progression or a career pathway within an ADE. It is also unlikely to lead to the acquisition of skills and experience that would translate to an open employment setting or allow employees to explore new skills, roles and areas of interest. The transition of ADEs into the NDIS and the new pricing framework encourage a different approach to supported employment, with a greater focus on participants taking up new employment opportunities.<sup>231</sup>

Mr Mann characterised the jobs created within ADEs under the previous funding model as 'low value add', 'high volume' jobs.<sup>232</sup> The shift to NDIS funding introduced what 'essentially is a professional services model'.<sup>233</sup> As a result of this change, he said Bedford is changing its operating model:

we're trying to change our business model from one that's all about jobs and any kind of a job – we're trying to create a business model that creates a true social enterprise which stands up on its own two feet and it's supported in the NDIS by the supports we provide to our employees.<sup>234</sup>

Bedford challenged the assumption that ADEs can only survive by paying subminimum wages:

Whilst of course a transition out of the supported wage system will require ADEs to make changes into more commercially sustainable business models, it does not follow that ADEs can only exist if the supported wage system continues.<sup>235</sup>

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Bedford is not alone in changing its business model. There are already examples of ADEs successfully transitioning to social enterprise models offering integrated employment on full minimum wage. Public hearing 23, 'Preventing and responding to violence, abuse, neglect and exploitation in disability services (a case study)', examined the disability service provider Australian Foundation for Disability (Afford). Ms Joanne Toohey, CEO of Afford, discussed how Afford is focusing on providing open employment pathways for its ADE employees:

One of the things we've been talking about is this – this move away from that sort of congregate employment environment. And so a number of our participants, I think as I alluded to yesterday, some of them are actually in management roles within the ADEs currently. And the goal is, in fact, about – is always about – trying to get through into open employment.<sup>236</sup>

These shifts are also reflected in the Industry Vision for the Supported Employment Sector developed by the NDS (NDS Industry Vision). The NDS Industry Vision envisages, by 2025, the supported employment sector offering comprehensive and diverse employment options for people with disability including transition to open employment, supported employment/social enterprise, supported open employment, open employment and self-employment.<sup>237</sup>

Writing in 2013, not-for-profit organisation Social Ventures Australia observed that many ADEs 'find themselves in a tough operating environment with low sales and a relatively high costs base'.<sup>238</sup> Yet they found having a 'social purpose' – providing employment opportunities for people with disability – does not mean that ADEs do not need to be commercially viable.<sup>239</sup> In order to compete in the new NDIS framework, they suggested ADEs 'need to become employers of choice to attract employees'.<sup>240</sup> The key to sustainability in the new operating environment is improved commercial viability, which they suggested may require changes in ADE operating models.<sup>241</sup>

## Subminimum wages and the Disability Support Pension

In its 4 yearly review decision to change the assessment tools used in ADEs, the FWC considered the interaction between subminimum wages and the DSP, stating:

We are of course proceeding on the basis that the affected employees are in receipt of the DSP, and this will operate in conjunction with the prescribed pay rate to ensure that the employee receives a total income that it [sic] socially acceptable in contemporary circumstances.<sup>242</sup>

In its December 2022 decision regarding the *SES Award 2020*, the FWC also found that 'regard must be had to the likely tapering rates of employees' DSP entitlements in some cases where wage increases are significant'.<sup>243</sup>

Counsel Assisting submitted the FWC's approach characterises the wages earned by people with disability who work in ADEs as 'supplemental' or an add-on to their DSP.<sup>244</sup>

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The Australian Government told us:

although the DSP is not intended to justify the payment of wages to ADE employees in accordance with the SES Award, the DSP does operate in such a way as to provide a significant safety net for persons working for ADEs and in that way ensures that there is no significant financial disparity between ADE employees and persons in open employment.<sup>245</sup>

The fact that a person with disability working in an ADE also receives the DSP should not be a justification for subminimum wages. For reasons of dignity, fairness and human rights, people with disability should be paid fairly for their work, independent of the availability of the DSP.

## Commissioners' views

Adopting the human rights analysis set out above, we conclude that people with disability working in ADEs experience unfair treatment compared to people without disability because of the very low wages they can be paid. The unfairness is not limited to the difference in monetary value. Low wages may impact one's financial security, quality of daily life and enjoyment of their human rights. The potential impacts of low wages on a person's wellbeing and self-worth are relevant to whether that person is being exploited.

We consider the continuation of a framework allowing for the payment of very low wages to people with disability is contrary to the core principles of inherent dignity and respect that underpin the *CRPD*.

The discussion about wage rates for people with disability working in ADEs is sometimes framed as a choice between ADEs paying full minimum wages to people with disability or ceasing to operate. In light of the evidence above, it is necessary to move away from this binary position, and to examine the potential for transition to full wages and any intermediary steps that can be taken to improve the immediate situation to provide for dignity and respect of people with disability earning very low wages.

In this context, we note there was broad consensus among the witnesses who appeared on behalf of peak bodies representing people with disability and ADEs about the need for better wage outcomes for people with disability. NDS supported the payment of wages in supported employment settings that either equated to the national minimum wage or exceeded it.<sup>246</sup> However, it opposed the blanket phasing out of pro rata wages and cautioned against this without appropriate measures to ensure employer viability and the prevention of job losses and business closures.<sup>247</sup>

Bedford recognised the importance of ensuring basic employment rights and real wages for people with disability, but submitted that ADEs 'are not fundamentally unable to provide these things'.<sup>248</sup>

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## 7.4. Recommendations for Australian Disability Enterprises and supported employment

In undertaking this inquiry, we must consider what governments, institutions and the community should do to promote a more inclusive society. A society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.

This *Final report* sets forward a vision for an inclusive Australia. A place where people with disability live free from violence, abuse, neglect and exploitation. Where their human rights are protected and they can live with dignity, equality and respect and fulfil their potential. Where disability is embraced as a part of human diversity and where people with disability have equal opportunities to live, learn, work and engage alongside people without disability.

As part of this vision, people with disability should have genuine choice and control over where and how they work. This should include a range of supported employment options in inclusive, open and community-facing settings. This may include ADEs, for as long as they exist, but should not be limited to ADEs. People with disability should be paid fair wages.

The evidence suggests this is not happening now. We have found, and the Australian Government accepts,<sup>249</sup> that for some people with disability, their choice of employment is limited to working in an ADE. They may not have the opportunity to work in other settings if they are interested in doing so. We have found the nature of work in an ADE can heighten the risk of exposure to violence, abuse, neglect and exploitation. We have also found people with disability working in ADEs can experience unfair treatment compared to people without disability because of the subminimum wages they are paid.

We have considered the evidence before us and adopted a human rights approach that protects, respects and fulfils a person's rights. While all Commissioners support a strong human rights approach, we differ in some of our views on the actions that should be taken.

All Commissioners recommend that the Australian Government develop a plan to support people with disability working in ADEs to move to more inclusive, open employment options, where that is their choice. However, Commissioners Bennett, Galbally, Mason and McEwin recommend a concrete timeline and pathway for ending all segregated employment for people with disability. Their further views and recommendations are set out in section 7.5.

All Commissioners recommend that the Australian Government raise subminimum wages for people with disability to at least half the minimum wage as a first step, with a commitment to move to full minimum wages by 2034 for all people with disability currently receiving subminimum wages. The Commissioners recommend the change is assessed within the next five years to determine its impact and inform the subsequent model and pathway to achieving full minimum wages by 2034.

All Commissioners agree that the recommendations put forward are not intended to prevent people with disability from choosing freely to work with others with disability. The Commissioners do not consider segregation occurs in spaces where people with disability choose to come together,

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share culture and values, and seek support for their individual needs. Nor do we consider segregation occurs in spaces where people with disability are encouraged and supported to engage with the broader community. These are the same choices available to people without disability.

However, our common view is that workplaces that have been specifically designed to separate people with disability from the community are not consistent with the goal of inclusion set out in the *CRPD* and Australia's Disability Strategy 2021–2031, and endorsed by this Royal Commission. No one should be limited or forced to work in such a setting. Instead, people with disability should receive supports for employment in inclusive workplaces that bring together people with and without disability on an equal basis and where employees engage with the broader community.

## Supporting transition to inclusive employment

Any plan to support people with disability to move into more inclusive employment will be underpinned by changes currently underway in the ADE industry. We recognise that ADEs have already undergone significant transformation and are continuing to evolve today. From their origins as sheltered workshops, many have adapted and improved their services in line with changing social attitudes on the rights and needs of people with disability. Most recently, ADEs have changed their services to align with the transition of funding to the NDIS and the new pricing framework.

This evolution of ADEs is consistent with the NDS Industry Vision, which envisages that by 2025 the sector will:<sup>250</sup>

1. Ensure widespread provision of supported employment as a best practice work option enabling significantly increased numbers of people with disability to participate in the economy
2. Promote and provide access to skill-building opportunities and career pathways for people with disability in a wide range of employment options and settings
3. Provide high quality employment conditions that reflect community expectations and industrial relations legislation for people with disability
4. Operate sustainable businesses producing high quality products and services which harness technology for the benefit of their employees with disability
5. Comprehensively report on the sector's social and economic impact so that supported employers and their commercial partners can demonstrate their contribution to building a more inclusive and equitable society.

The NDIA says it is collaborating with NDS to deliver:

sector-led communities of practice that will facilitate change in the employment provider market will contribute to transforming the traditional model of ADEs by sharing good practice, research findings and innovation.<sup>251</sup>



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The purpose of these ‘communities of practice’ is to operationalise the NDS Industry Vision for Supported Employment.<sup>252</sup>

The NDIA’s participant outcome report from 2020 suggests the change outlined in the NDS Industry Vision may already be underway. Between 2018 and 2020:<sup>253</sup>

- there was an 8 per cent decrease in the number of NDIS participants aged between 15 and 24 working in ADEs. For the same period, there was a 10 per cent increase in open employment at full award wages for this group
- there was a 13 per cent decrease in the number of NDIS participants aged 25 and over working in ADEs. For the same period, there was a 14 per cent increase in open employment at full award wages for this group.

However, there is more to be done. In particular, as noted earlier, data from the same report showed people with intellectual disability aged 25 and over are more likely to work in an ADE.<sup>254</sup>

According to Bedford, many ADEs are developing strategies with a ‘view to moving to a different wage system and offering a combination of business opportunities including the open employment sector’.<sup>255</sup> Bedford told us it still envisages a future with a ‘mix of both classic ADE and social enterprises but always where the individual retains the right of choice’.<sup>256</sup>

In its response to Counsel Assisting’s submissions for Public hearing 22, NDS told us it would be happy to work with stakeholders to ‘develop a transition plan and strategy to broaden employment opportunities with an emphasis on increasing the proportion of NDIS participants in open employment’.<sup>257</sup> We believe there is an appetite within the ADE sector to transition to more inclusive forms of supported employment.

## Factors to consider in developing a plan

In developing a plan to support people with disability working in ADEs to move to more inclusive, open employment options, where that is their choice, we do not assume that the only alternative to segregated employment is full open employment. There should be a variety of options. As described earlier, the NDIS envisage a range of supported employment opportunities being available under the new funding arrangements. During the ongoing transition of the ADE industry, there should be an increasing number of alternatives to workplaces designed exclusively for people with disability.

## Focus on choice and control for people with disability

The goal of transition should be to improve employment options as well as choice and control for people with disability over their employment opportunities.

All Commissioners recognise some ADE employees have said they wish to continue working in their current workplace and do not want to seek employment elsewhere. Our recommendations are not intended to remove the choice for people with disability to work together in settings that support community engagement and interaction.

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All Commissioners support ADEs to transition to more inclusive workplaces where people with disability receive at least the minimum wage and have the opportunity to interact with employees and customers without disability. This way, people with disability will continue to receive support for employment from their current provider but in more integrated settings. The evidence from Bedford, NDS and Afford demonstrates that there is interest and willingness within the sector to undertake this transformation.<sup>258</sup>

Commissioners Bennett, Galbally, Mason and McEwin support settings that ensure community engagement and interaction, such as micro-enterprises and small businesses. The settings must be inclusive and not discriminate on the basis of disability and the artificial construct of productivity assessments.

Commissioner Ryan considers that supported employment that involves groups of people with disability working together will continue to be the employment option of choice for people with disability over competitive open employment settings.

The Chair and Commissioners Mason and Ryan recommend that the Australian Government take measures to ensure that people with disability are not directed to employment in ADEs without being made aware of other options and being supported to decide whether to pursue those options. They also propose that people with disability, including people with intellectual disability or cognitive impairment, are employed in ADEs only if they made a free and informed choice to do so, with such decision-making support as they may require.

The Chair and Commissioners Mason and Ryan consider that if ADEs or other forms of employment exclusively for people with disability are to continue the following are necessary:

- People with disability should only work in that environment if they make a free and informed choice to do so. They should receive such support for their decision making as appropriate.
- As we recommend in Chapter 3 of this volume, the practice adopted by non-mainstream schools of directing students with disability to ADEs as their only option for employment should cease. Commissioners Bennett, Galbally and McEwin also agree with this point.
- Employees must receive workplace adjustments to help them perform the tasks for which they are employed, but also to enhance their vocational skills. The aim should be to support their ability to progress in that organisation or transition to another organisation, including in the open labour market. Commissioners Bennett, Galbally and McEwin also agree with this point.
- Employees should be encouraged and supported to regularly engage with other non-ADE workplaces and the broader community.
- Employees should be encouraged and supported to transition away from ADEs, recognising that employment in the open labour market is not necessarily the only alternative to ADEs. Commissioners Bennett, Galbally and McEwin also agree with this point.

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All Commissioners agree that choice only exists if there are alternatives. The Australian Government has said it is working to address barriers to open employment to ‘ensure that people with disability are given more opportunities to work in non-segregated environments should they choose to do so’.<sup>259</sup> We agree the transition away from segregated employment settings must be accompanied by action to increase opportunities in open employment, particularly for people with intellectual disability who are over-represented in segregated settings. The recommendations outlined in Chapter 6, as well as action to address the systemic barriers that constrain choice now, will assist in creating employment opportunities for people with disability.

The Commissioners also agree that people with disability working in ADEs should be supported throughout the transition with access to improved information about employment supports, opportunities in other settings, wages and the DSP.

The Commissioners recognise that the Australian Government provides a range of information about employment and the DSP in different formats and resource types.<sup>260</sup> However, the evidence we heard suggests concerns remain about the impact of increased wages and hours of work on a person’s DSP and associated entitlements. Lack of information and understanding about these issues may act as a deterrent to people exploring opportunities outside ADEs or seeking higher wages.

As part of the transition plan, the Australian Government should consider the interaction of the DSP and wages, including how to alleviate concerns relating to the DSP. Part of this should include funding an ongoing information campaign for employees with disability working in ADEs to provide access to information about the interaction between wages and the DSP. This should be delivered by Disability Representative Organisations which have demonstrated experience in developing and delivering education campaigns for people with disability. The Australian Government should also consider extending from two to five years the time period allowed for suspending DSP payments before needing to reapply. This would help ensure DSP recipients have greater ease and flexibility in maintaining or returning to their income support arrangements if they gain or increase employment.

Finally, people with disability, including people with intellectual disability, should be actively involved in developing the transition plan, using inclusive design principles. We recommend the Australian Government ensure consultation with and participation of people with disability and their representatives in developing and delivering the transition plan.

## Work with industry to support transition

The Australian Government should work closely with industry, as well as people with disability, in developing a plan to support people with disability to move towards more inclusive employment. As noted earlier, NDS has said it would be happy to work with stakeholders to develop a transition plan to increase the proportion of NDIS participants in open employment.<sup>261</sup> Bedford highlighted in its response to Counsel Assisting’s submissions that the ADE sector has extensive experience in delivering employment supports for people with disability and

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specifically for people with intellectual disability.<sup>262</sup> The Commissioners recognise the value of this knowledge. The Australian Government should work alongside the ADE sector to transform the settings in which services are delivered, consistent with the NDIS pricing framework and the NDS Industry Vision.

The Commissioners also recommend that the Australian Government work with industry to clarify the availability and application of NDIS supports for people with disability working in ADEs who wish to move to other workplaces. The different perspectives of Mr Mann and Ms Mitra in Public hearing 22 suggest further work is required to ensure NDIS providers and participants have a comprehensive understanding of the services that can be provided through NDIS funding.

The Australian Government should consider how the relevant funding categories can be used to allow ADE employees to explore different employment options while still receiving support in their current workplace.

## **Improve collaboration between the National Disability Insurance Scheme and Disability Employment Services**

NDS has noted further work is required to ensure employment supports are delivered cohesively through the NDIS and DES systems.<sup>263</sup> We heard there is a lack of integration between the two systems. The Commissioners recommend that the Australian Government consider how the NDIS and DES systems can provide complementary support for people with disability, and clarify the responsibilities of each system.

The upcoming DES reforms are an opportunity to improve integration between the supports provided through NDIS and DES providers. This should include ensuring that people with disability who are assessed as having a work capacity of less than eight hours a week are able to access supports to prepare for, find and maintain open employment.

All Commissioners note the current NDIS Participant Employment Strategy is due to conclude in 2023. In revising this strategy, the NDIA should build the capacity of Local Area Coordinators, NDIA planners and support coordinators to assist people with disability to achieve their employment goals. They should be equipped with an understanding of different employment options available to people with disability in integrated and open employment settings and the funding available to achieve employment goals. They should not default to describing ADEs as the only choice available. Similarly, DES providers should ensure they are focused on the range of open employment opportunities available, and understand how supports in employment funding can be used to support open employment goals.

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### **Recommendation 7.28 Improve information about wages and the Disability Support Pension**

The Australian Government should fund Disability Representative Organisations to deliver an information campaign for employees with disability in Australian Disability Enterprises. This campaign should provide information about:

- open employment, including wage conditions
- how receipt of the Disability Support Pension (DSP) interacts with a person's wages, including –
  - assistance with financial literacy materials
  - supports for individuals to calculate how changes to their DSP or wages impact their overall income and financial situation
- options for a person to suspend their DSP if they are earning above the threshold
- who to contact to ask questions or obtain further information.

This information should be available in a range of accessible formats.

### **Recommendation 7.29 Embed an 'open employment first' approach in the NDIS Participant Employment Strategy**

Following the conclusion of the NDIS Participant Employment Strategy in 2023, the National Disability Insurance Scheme (NDIS) should adopt an 'open employment first' approach in the next iteration of the strategy. The strategy should:

- ensure the development of employment goals in participants' NDIS plans considers employment in open and integrated employment settings as a first option
- provide training for Local Area Coordinators, National Disability Insurance Agency planners and support coordinators to build knowledge, resources and capacity to encourage participants to –
  - develop employment goals in open and integrated employment settings as a first option
  - identify appropriate supports available to achieve open employment goals

- establish a target to increase the proportion of participants in open and integrated employment settings
- build the knowledge and capacity of NDIS employment support providers to assist participants to –
  - transition from Australian Disability Enterprises to open and integrated employment settings
  - provide ongoing support in open and integrated employment settings.

### **Recommendation 7.30 Support the transition to inclusive employment**

The Australian Government Department of Social Services should develop a plan to support people with disability working in Australian Disability Enterprises (ADEs) to move to inclusive, open employment options in a range of settings.

The plan should incorporate:

- the option for people with disability to continue working in ADEs, with strong and appropriate safeguards, if that is their free and informed choice. Commissioners Bennett, Galbally, Mason and McEwin provide a recommendation to phase out ADEs by 2034 (Recommendation 7.32). They support this element of Recommendation 7.30 until ADEs are phased out
- action to increase employment opportunities in open and inclusive settings for people with disability (linking with Recommendation 7.29)
- improved information for people with disability about employment supports, opportunities in other settings, wages and the Disability Support Pension (linking with Recommendation 7.28)
- active consultation with people with disability, Disability Representative Organisations and Disabled People's Organisations Australia, and the adoption of inclusive design principles in developing and implementing the plan
- the Australian Government working with industry to support people with disability to access more inclusive, open employment options and to transform their segregated employment services to a more comprehensive service offering
- improved collaboration between the National Disability Insurance Scheme and Disability Employment Services to ensure different employment services work cohesively to deliver supports for people with intellectual disability and others.



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## Raising subminimum wages

A separate issue to the above plan is the payment of subminimum wages in ADEs.

As well as supporting people with disability to move to more inclusive, open employment, the Australian Government should develop measures to address the use of subminimum wage in ADEs.

We find the arguments put forward to justify subminimum wages cannot support the very low rates of pay for some people with disability.

The introduction of the NDIS in 2013 transformed the environment in which ADEs operate. ADEs need to be financially sustainable, viable businesses. This is implicit in the move to the new pricing framework and is accepted as part of the NDS Industry Vision. The argument that ADEs do not have financial capacity to pay minimum wages is an issue they need to address by revising their business models. It cannot be a reason to justify paying people with disability very low wages.

Further, the rates of pay for people in supported employment should not be determined after taking into account an entitlement to the DSP. The reward for services an employee receives should not be determined solely on an assessment of the economic value of those services. Other values should be considered. These include the dignity of the employee and the community's recognition of the importance of all people having an opportunity to work under conditions comparable, as far as possible, to those enjoyed by people without disability.

In our view, the continued payment of subminimum wages to people with disability does not properly reflect the principles of inherent dignity and respect for difference and human diversity that fundamentally underpin the *CRPD*. We have considered potential options to raise subminimum wages.

## Model and costing

The Royal Commission contracted Taylor Fry and the Centre for International Economics to model and cost recommendations for two options for raising and phasing out subminimum wages for people with disability. The options were provided in two reports:

- *Costing a transition away from subminimum wages* (Full Minimum Wage Report)
- *Costing a transition away from subminimum wages – subsidy for half minimum wage* (Half Minimum Wage Report).

In its modelling, Taylor Fry was asked to consider:

- the cost of a proposed wage subsidy (being a subsidy to support the full minimum wage in the Full Minimum Wage Report and half of the minimum wage in the Half Minimum Wage Report)

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- the cost and design of a Structural Adjustment Fund, which could be used to assist ADEs to transition to higher wages. Commissioners Bennett, Galbally, Mason and McEwin discuss the Structural Adjustment Fund in more detail in section 7.5 below.

The costings by Taylor Fry drew on Counsel Assisting's Submissions from Public hearing 22 and submissions in response from the Australian Government. The costings also considered ARTD Consultants' trial of the new, revised SWS assessment structure,<sup>264</sup> and scenarios provided by the DSS, to calculate total income for different hypothetical employees given welfare and income status.

The data and assumptions detailed in the Full Minimum Wage Report are relevant to costings in the Half Minimum Wage Report.

## Assumptions

The Taylor Fry modelling in both reports was based on four main assumptions:<sup>265</sup>

1. number of people currently on subminimum wages (in both ADEs and in the open labour market)
2. age and disability characteristics of the people working in ADEs and open employment
3. current wages and hours of people working in ADEs and open employment
4. extent to which minimum wage increases affect employment.

The first three assumptions are relatively uncontroversial and based on a range of relevant data sources.

The fourth assumption is described by Taylor Fry as 'by far the most important in the model, and unfortunately one of the most uncertain'.<sup>266</sup> It relates to the number of jobs that will be lost as a result of moving to higher wages. A low to moderate estimate means a large fraction of existing workers will retain employment if wages are raised, with the potential for a higher overall income to people with disability. A high estimate means that improvements in wages will come at a high cost, with more people losing their job and receiving little to no income in addition to government pensions.

Taylor Fry expressed this assumption as an 'elasticity', which is the percentage change in employment due to one percentage change in wage.<sup>267</sup> The elasticity includes both the effect of people being fired from an employer and businesses closing down in the face of higher costs.

Taylor Fry adopted an assumption of an employment elasticity of -0.5, with a large degree of uncertainty. The assumption means a 100 per cent increase in wages corresponds to a 50 per cent reduction in the number of people employed.<sup>268</sup>

A number of other assumptions were needed to complete the costing, including the impact of the 30-hour work test for the DSP. As set out earlier, a person receiving the DSP who works for more than 30 hours per week will no longer qualify for the DSP and will have their DSP

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suspended unless they are receiving a subminimum wage. Taylor Fry considered both scenarios under its costing: that the 30-hour rule is enforced for those who would now be receiving the minimum wage, and if the 30-hour rule was not enforced for that group.

## Subsidy options

Taylor Fry modelled two subsidy options:

1. raise all wages of people with disability to at least half the minimum wage (the Half Minimum Wage Option, which is detailed in the Half Minimum Wage Report)
2. raise all wages of people with disability to full minimum wage (the Full Minimum Wage Option, which is detailed in the Full Minimum Wage Report).

### The Half Minimum Wage Option

Under the Half Minimum Wage Option, a subsidy would lift employees to half the minimum wage on commencement of the option. Under this option, the subsidy amount would be maintained without tapering over the implementation period.<sup>269</sup>

Taylor Fry considered the impact of a subsidy to lift all employees with disability to at least half the minimum wage. In conducting the costing, Taylor Fry assumed the 30-hour rule does not apply (that is, people in the cohort do not lose eligibility for the DSP if they work this number of hours or more).<sup>270</sup> It found that the total subsidy payments over the implementation period would cost the government \$1.068 billion.<sup>271</sup>

However, compared to this subsidy total, tax revenue offsets are 4.5 per cent of this amount and DSP savings are 46 per cent. As such, 50 per cent of the subsidy cost to government would be offset by tax and welfare changes. This would mean a total net cost to the Australian Government of between \$55 million and \$63 million per year, totalling \$525 million over the whole implemental period.<sup>272</sup>

This modelling demonstrates that elevating all employees to 50 per cent of the minimum wage with an ongoing subsidy could occur as a first step. Taylor Fry found 'no one is expected to be worse off'.<sup>273</sup> They identified the average benefit to the individual is \$3,400 per person in the first year of the implementation period, growing to \$3,800 in the final year. Increases would be larger for those who are currently on lower wages.<sup>274</sup>

Commissioners consider the Australian Government should commit to implementing this approach as a first step while developing a longer-term plan to transition away from subminimum wages in all employment settings.

### The Full Minimum Wage Option

Taylor Fry also modelled the cost and impact of eliminating the use of subminimum wages and bringing all employees with disability to the full minimum wage. Taylor Fry modelled a number of different scenarios under the Full Minimum Wage Option.<sup>275</sup>

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The 'baseline' scenario costed adopted the baseline employment elasticity assumption of -0.5 and no 30-hour restriction for receipt of the DSP. The baseline scenario modelled the payment of a wage subsidy to cover the difference between an employee's wage and the full minimum wage. At the starting point, the Australian Government would provide a 100 per cent subsidy to address the gap between current wages and the full minimum wage. This would lift all employees to the full minimum wage immediately on commencement of the option. The subsidy would then taper down to 0 per cent over the implementation period.

In terms of job loss implications, Taylor Fry modelled the impact of its elasticity assumptions for baseline (-0.5), higher (-1.2) and lower (-0.2) scenarios. Under the baseline scenario, around three-quarters of employees receiving subminimum wages would lose their jobs if their wages were raised to the minimum wage. For the group with the highest wages, around one-third would lose employment if their wages were increased to the minimum wage. Across all three elasticity scenarios, the vast majority of lower-wage recipients (assessed as having 25 per cent productivity under the SWS assessment) were modelled to lose employment.

Taylor Fry also modelled the cost of the baseline scenario. This modelling assumed a baseline elasticity of -0.5 and that the 30-hour rule is not enforced for this cohort, as is currently the case. In total, 75 per cent of the cohort, or 15,500 people, would be worse off at the end of the transition period, primarily driven by job losses. Those who would be worse off would have, on average, \$7,800 less net income per year. The remaining 25 per cent would be better off and would be estimated to have on average \$5,400 more income per year by year 11 (allowing for welfare and tax changes).

The report found the overall cost of subsidy payments under the baseline scenario would be \$1.44 billion over the 11-year period, peaking at around \$400 million in the fourth year. In considering the cost of the subsidy, offset in tax revenue and welfare payment decrease, and additional job search and retraining costs, the report found the total cost to government across 11 years would be \$493 million.

These figures are based on assumptions that Taylor Fry acknowledges have a large degree of uncertainty. They are also based on the current state of affairs remaining in place for the 11 years of transition. Taylor Fry was, understandably, not able to quantify or consider the impact of the ongoing sector reform, the 'decoupling' of NDIS employment supports or the upcoming reforms to the DES system.

Taylor Fry modelled other scenarios for the Full Minimum Wage Option, based on adopting higher and lower employment elasticity assumptions, retaining or not retaining the 30-hour rule and not tapering the subsidy. These are set out in Appendix A.

## Commissioners' views

All Commissioners other than Commissioner Ryan consider the subminimum wages paid to some people with disability working in ADEs to be unacceptable.

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We understand the historical and economic circumstances, including the interaction between subminimum wages paid to people with disability and the DSP, that have led to the current situation. However, in our view neither an assessment of the economic value of work performed by employees, nor the capacity of employers to pay their employees full minimum wages, should be considerations in determining appropriate levels of remuneration for people with disability in employment, whether in ADEs or elsewhere. The minimum levels of remuneration must take into account the principles stated in the *CRPD*, particularly respect for the inherent dignity and independence of people with disability and acceptance of people with disability as part of human diversity and humanity.<sup>276</sup>

Australia's long-term objective should be to ensure all people with disability have opportunities to gain employment in the open labour market, earning no less than the minimum wage for their labour. This objective must necessarily encompass people with intellectual disability, who are currently most represented in ADE settings. It should also stand that wherever a person is employed, they should not be paid less than the minimum wage for their labour. This is consistent with the principles and rights in the *CRPD*.

Although the Chair and Commissioner Ryan agree that the level of subminimum wages paid to some people with disability to be unacceptable, they point out that policy making must take into account practical considerations. These include the cost of new schemes, since public resources are not inexhaustible. But the practical considerations include the need to ensure, so far as possible, well-intentioned reforms do not produce harmful unintended consequences for people with disability. In their view, the history of disability policy is replete with examples of reforms introduced in good faith to ameliorate hardship and injustice, which made things no better, and in some cases, as with deinstitutionalisation, arguably much worse. Reformers are therefore well advised to exercise caution and act on the most reliable empirical information available.

All Commissioners are concerned with significant job losses identified by Taylor Fry's modelling as a potential unintended outcome of the Full Minimum Wage Option. These job losses would particularly affect those people with disability with the highest support needs, who at the same time have the most barriers to open employment. Job loss in such circumstances would leave people financially worse off if they have to rely on the DSP alone. It would also have deeply negative consequences for a person's sense of self, purpose and social connection, particularly in circumstances where the loss is caused by actions beyond their control.

We should take steps in the direction of achieving the long-term objective of a minimum wage for all, but this should not be done in a way that would make it likely that many people with disability will be materially worse off by reason of the reforms.

All Commissioners consider the best option on the evidence is to adopt the approach of the Half Minimum Wage Option as a first step. We accept raising wages to 50 per cent of the minimum wage is not a perfect solution and should only be an interim measure. The Australian Government's longer-term objective should be to move to full minimum wages by 2034 for all people with disability currently receiving subminimum wages. The length of this transition period to full wages – effectively 11 years – allows for a measured approach to transition and provides sufficient time to monitor and review impacts and risks. We appreciate the transition

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to full minimum wages will need to account for a range of evolving or uncertain economic and environmental factors. Given this, it is reasonable and responsible to bring forward changes in stages to ensure decisions can be made based on the most reliable information and analysis.

Commissioner Ryan agrees that current wages that are less than half the full minimum wage are too low because they are not consistent with human dignity. He supports the recommendation to increase rates of pay for people with disability working ADEs but recognises that this will require a substantial subsidy from the Australian Government to these enterprises and possibly other employers who provide supported employment.

Commissioner Ryan sees value in rates of pay that allow people with disability to work at their own pace on a modified wage. Without modified wage rates, he is concerned that many working people with disability will not have employment in the future because in a highly competitive employment market they will not be offered work. As they do now, modified award rates for employees who receive the DSP enable thousands of workers with disability to achieve both employment and disposable incomes greater than the Australian minimum wage.

## Recommended three-stage approach

The first stage of our recommended approach is based on the Half Minimum Wage Option modelled by Taylor Fry.<sup>277</sup> This modelling assumes a 10-year implementation pathway, as follows:

- years 1–2: planning for implementation (2023–24 to 2024–25)
- year 3: commencement of wage change – implementation begins (2025–26)
- years 3–10: subsidy for employers, which does not taper (2026–27 to 2032–33)
- post transition (2033–34 onwards).

Under our recommended approach, people with disability would receive at least 50 per cent of the minimum wage from commencement of the reform (year 3). The Australian Government would pay a subsidy to employers to cover any difference between an employee's wage and 50 per cent of the minimum wage during this stage. Any person with disability earning above half the minimum wage would continue to do so (their wage would not be affected by this recommendation). The costs of this model were set out earlier.

This first stage would provide the greatest benefit to people with disability currently paid the least. Under this modelling, no person is expected to be worse off.<sup>278</sup> Any subsidy to ADEs should be conditional on ADEs demonstrating their commitment to supporting employees to move to more inclusive, open employment options where that is their choice.

The second stage should be an assessment of the Half Minimum Wage Option at the midway point of the transition period, around year 5 of the Taylor Fry model (that is, 2027–28). The results of the review should inform the third stage of the reform process, which is to develop a model and pathway to lift wages to 100 per cent of the minimum wage by 2034. While this model is being developed, the Australian Government should continue to pay a subsidy to ensure wages continue to have a floor of at least 50 per cent of the minimum wage.



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The Disability Reform Ministerial Council should undertake this review. This review is essential to test the accuracy of the underlying assumptions of the Taylor Fry model, and assess any unanticipated impacts associated with the new remuneration arrangements. The review will also need to take account of other changes and developments in the intervening five years, such as:

- developments in the ADE sector, including implementation of the NDS Industry Vision
- developments in supported employment offerings outside ADEs
- the impact of reforms implemented following the *Final report* of this Royal Commission, including in this chapter
- the reforms to the DES system
- the outcomes of NDIS employment participation strategies and other relevant strategies
- the latest data on workforce participation rates for people with disability in open employment and ADEs
- wage rates and trends in wages for people with disability in open employment and ADEs
- the views of people with disability, ADEs, industry bodies and other employers.

Undertaking this review at year 5 provides an early opportunity to assess impacts while also ensuring an appropriate period of time remains to develop a model to raise wages to 100 per cent of the minimum wage by 2034. Implementation of this model will form the third stage of this reform. We do not specify how full wages should be realised in this third stage, as by necessity it will be informed by the results of the five-year review.

### **Recommendation 7.31 Raise subminimum wages**

- a. The Australian Government should introduce a scheme to ensure that employees with disability are paid at least half the minimum wage. The scheme should include:
  - revision of the productivity-based wages calculation to accommodate the move to a new minimum amount of 50 per cent of the current minimum wage
  - a provision for the Australian Government to subsidise employers for the difference between the wages payable under the relevant award or enterprise agreement and the new minimum wage until 2034.
- b. A review of the scheme should be undertaken by the Disability Reform Ministerial Council after five years of operation.
- c. The Australian Government should use the results of the review to develop a model and pathway to lift minimum wages payable to employees with disability to 100 per cent of the minimum wage by 2034.

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## 7.5. Further findings and recommendations from Commissioners Bennett, Galbally, Mason and McEwin

We four Commissioners, being Commissioners Bennett, Galbally, Mason and McEwin, consider there is an obligation under international human rights law to:

- pay people with disability an equal minimum wage
- phase out segregated employment settings in Australia.

Our recommendations on subminimum wages are presented above. This section sets out our further findings and a recommendation on phasing out segregated employment settings in Australia.

### Further findings on segregated employment

#### The *Convention on the Rights of Persons with Disabilities* requires the elimination of segregated workplaces

It is clear from the CRPD Committee's *General comment no. 8* and its 2019 Concluding Observations in relation to various States Parties that it has concerns about conditions in segregated employment and has called for a transition away from these settings.<sup>279</sup> In its 2019 Concluding Observations, the CRPD Committee directed the Australian Government to:

Undertake a comprehensive review of [ADEs] to ensure that they adhere to article 27 of the Convention and provide services to enable persons with disabilities to transition from sheltered employment into open, inclusive and accessible employment, ensuring equal remuneration for work of equal value.<sup>280</sup>

Advocacy organisations and the AHRC told us the use of segregated models of employment is inconsistent with Australia's obligations under the *CRPD*. They have also suggested the failure to enshrine the right of people with disability to work on an equal basis with others should be considered discrimination, systemic exploitation and neglect.<sup>281</sup>

A position paper by a coalition of Disability Representative Organisations, provided as a submission to the Royal Commission, argues segregated settings are underpinned by ableism and a deficit model of disability. This sees people with disability as 'other' and prevents their full participation and inclusion in society.<sup>282</sup> The position paper contends that segregated systems are justified by 'ableist assertions and cloaked by the language of benevolent paternalism', which fails to preference the rights of people with disability.<sup>283</sup>

Dr Linda Steele, from the University of Technology Sydney, argues segregated employment began as a means of providing people with disability living in large-scale residential accommodation opportunities to participate in 'normal life'. With the shift to disability-inclusive policies built on participation, choice and control, the initial reasoning for segregated employment is rendered unnecessary and anachronistic.<sup>284</sup> Further, Dr Steele asserts that

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continual funding of ADEs through the NDIS is ‘perversely supporting segregation and community exclusion of people with disability, dressed up as furthering human rights and community participation’.<sup>285</sup>

On the basis of the above, we four Commissioners conclude there is an obligation on the Australian Government under international human rights law to phase out segregated employment settings in Australia.

### **The existence of Australian Disability Enterprises provides a default employment pathway for some people with disability, thus constraining genuine choice and control**

We agree many people with disability are not provided with support or information to find work in open employment. As a result, their opportunities to work are limited to working in an ADE. In addition to the systemic and structural factors set out earlier, we consider this lack of choice is also a result of:

- attending a segregated school or classroom<sup>286</sup>
- low expectations established in a segregated school
- limited work experience at school in open employment
- service providers of group homes are often the same organisations conducting day programs and ADEs and have a disproportionate influence on residents.

Lack of support for students with disability to transition between phases of school and from school to work were key themes in evidence at many hearings.<sup>287</sup>

We heard young people can be directed into ADEs, or other segregated settings such as day programs, for work experience, first jobs or following school. This can happen without them being offered alternative choices or options.<sup>288</sup> Some accounts suggested students with disability who attend special education settings are more likely to be encouraged to transition to other segregated settings such as day programs, ADEs and group homes. This has been described as the ‘polished pathway’<sup>289</sup> or ‘segregated pathway’.<sup>290</sup>

This was illustrated in the evidence of Ms Owen-Turner, Bedford and Emerson discussed earlier in this chapter. Similarly, at Public hearing 22, Mr Tucker spoke about the process of getting a job in an ADE while he was at his day service.<sup>291</sup> Gert told us her son Frederic attended a special education unit before high school. While at school, he did two to three weeks of work experience at an ADE and was offered a job there after school.<sup>292</sup>

Through submissions and private sessions, we heard that people with disability working in ADEs can find the type and range of work on offer is not meaningful or personally fulfilling, or does not relate to their skills, interests and abilities. Further, people working in ADEs can be denied opportunities to develop new skills and capabilities and to progress their career goals.<sup>293</sup> We four Commissioners consider this leads to neglected development of people with disability and further limits their choice and control.

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Evidence reveals only a very small proportion of people working in an ADE transition into open employment. In Public hearing 22, we heard from the NDIA that in the 2020–21 financial year, 295 NDIS participants self-reported as transitioning from an ADE to open employment,<sup>294</sup> out of the 17,232 NDIS participants who worked in ADEs in that period.<sup>295</sup> That represents 1.7 per cent. Past reports and submissions have suggested these low transition rates indicate that ADEs do not offer their employees with disability genuine opportunities to seek work in open employment if they choose.<sup>296</sup>

## People with disability in Australian Disability Enterprises experience mistreatment and poor outcomes

We have received information about many lived experiences of violence against, and abuse, neglect and exploitation of, people with disability in ADEs.<sup>297</sup>

We have been told people with disability working in ADEs experience violence, bullying and harassment perpetrated by other workers with disability, support workers and managers.

We four Commissioners consider these workplaces as they are currently designed are not safer for people with disability nor are they inclusive. People with disability are paid subminimal wages, are rarely permanent full-time employees and are rarely supported to develop and grow new work skills, progress their career or transition into open inclusive employment.

In Public hearing 22, Kaite told us her daughter Emilee had witnessed a colleague with a stutter being bullied by a supervisor who mimicked and imitated him in front of other workers with disability.<sup>298</sup> Kaite said the supervisor had also mocked two other employees with a stutter and told us ‘he picks on the lower functioning people’.<sup>299</sup>

People with disability have told us about dangerous temperatures in ADEs and a lack of air conditioning and heating, which places their health at risk.<sup>300</sup> In a submission, one person described how ‘we work in 3 big tin sheds ... no insulation in the walls or ceiling ... the inside temperature is +45 degrees’, resulting in workers experiencing heatstroke.<sup>301</sup>

We have also heard people with disability experience financial exploitation in ADEs including failure to provide adequate superannuation;<sup>302</sup> provision of inaccurate information about the interaction between subminimum wages in ADEs and the DSP;<sup>303</sup> and wage theft. For example, in Public hearing 22, Mr Reid told us when he had previously received a pay raise, the money was provided via a Myer-Coles gift card or cash instead of being displayed on his payslip or deposited into his account.<sup>304</sup>

In Public hearing 22, the FWO told the Royal Commission that 43 investigations had been undertaken into ADEs between 2018 and 31 March 2021.<sup>305</sup> In that same period, the FWO undertook three enforcement actions stemming from self-reported non-compliance by ADEs. A total of \$24,544,373.34 was recovered for approximately 6,477 employees.<sup>306</sup>

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## Australian Disability Enterprise environments and culture can be more conducive to abuse

Accounts provided in public hearing evidence and other sources have highlighted how some common factors in ADE settings can serve to exacerbate risks of violence against, and abuse and exploitation of, people with disability.

A recurrent theme was how power imbalances between workers and managers are barriers to identifying and reporting violence and abuse. Another theme was a lack of independent monitoring and oversight of these settings, which can contribute to the prevalence and severity of violence and abuse in segregated employment.

The NDIS Independent Advisory Council describes most ADEs and day programs as 'closed systems' in which people with disability:<sup>307</sup>

- have little contact with people other than those paid to provide support
- may not be aware of opportunities missed or boundaries of appropriate and inappropriate behaviour
- may not be able to identify persons who could sound the alarm when concerns arise.

Furthermore, people with disability who work in ADEs are more likely to be living in other closed and segregated settings, including group homes, than people with non-ADE employment. A large proportion of NDIS participants who are interested in paid work and reside in specialist disability accommodation and supported independent living (49 per cent in supported accommodation and 42 per cent in residential accommodation) have a job in an ADE. In contrast, 41 per cent of NDIS participants who are interested in paid work and live in a home owned by themselves or their families are in non-ADE employment.<sup>308</sup> Further, 30 per cent of NDIS participants interested in paid work who are in private rentals are in non-ADE employment.<sup>309</sup>

Queensland Advocacy Incorporated told us the perpetuation of ADEs and productivity-based wage assessment tools are 'archaic institutional approaches [that] perpetuate low expectations of and for people with disability and ignore their capacity to positively contribute to the workplace'.<sup>310</sup> They said that maintaining separate places of employment for people with and without disability will hinder the success of efforts to improve community attitudes.<sup>311</sup>

We have heard employees with disability in ADEs may be assumed to have reduced capacity to work and advance professionally, hindering their ability to develop skills and experience to transition to open employment. Ms McAlpine told us employees 'are framed as a burden and not contributors ... as learners and not teachers ... as cost and not benefits'.<sup>312</sup> She said such attitudes are informed by 'assumptions ... that have been in place for decades that haven't changed'.<sup>313</sup>

These themes are evident in submissions we have received. Your Say Advocacy Tasmania provided a case study of 'Amy', who had a goal to work in a customer-facing role at the ADE where she worked.<sup>314</sup> Amy was initially told the ADE would support her to do this, but it did not

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happen. Amy had to follow up with the ADE and when she did, she reported having been told she wasn't capable of it and that there was no point 'wasting everyone's time'. Amy accepted this and chose not to pursue it further.<sup>315</sup>

A support worker in an ADE told us about how the employees with disability he worked with were skilled workers who were 'trying to do a professional job, with no resources' and they were given 'nothing to aspire to'.<sup>316</sup>

People with disability have told us complaint processes are complex and inaccessible, and prevent employees from reporting their experiences, which allows mistreatment to continue. In Public hearing 22, Tay told us they had been bullied by a staff member at an ADE but didn't complain because they were 'scared of the repercussions' and 'didn't want to make things worse'.<sup>317</sup>

We have also received information that people with disability are not believed or supported when they report violence and abuse within ADEs. Your Say Advocacy in Tasmania told us about 'Sarah', who reported a sexual assault by an ADE manager.<sup>318</sup> She 'was not believed on the basis that she had agreed to go out to dinner with the manager, and so she was told that the conduct was consensual'.<sup>319</sup>

Ms McAlpine said Inclusion Australia has heard segregated employment settings can be very unsafe<sup>320</sup> and experiences of violence and abuse in these settings are often 'hidden':

because the ability and processes for a person with an intellectual disability to complain are almost non-existent. Now, when I say 'non-existent', it doesn't mean that there might not be complaint mechanisms, again, up on the walls. But people are routinely not listened to.<sup>321</sup>

## Further recommendations

We four Commissioners consider the reasons outlined above support the rationale for significant reform in this area. First, transform ADEs to social firms, the attributes of which are described below. Second, transition people with disability in ADEs to open employment settings over time according to their personal choice and preferences. Third, pay people with disability the full minimum wage in all employment settings, as set out above (see Recommendation 7.31).

We consider this reform is necessary to give greater effect to the rights of people with disability as described in the *CRPD* and to reduce violence, abuse, neglect and exploitation of people with disability. It will facilitate the genuine participation of people with disability in open employment and as part of their community. This in turn will enable the natural safeguards afforded by social connections, thereby lowering the risk of violence, abuse, neglect and exploitation present in institutional settings. Finally, the reforms will support genuine choice and control for people with disability.



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## Transformation of Australian Disability Enterprises

Counsel Assisting submitted there is a case for ending segregated employment for people with disability.<sup>322</sup> Inclusion Australia told us the continuation of ADEs in their current form is not an option.<sup>323</sup> We agree with these positions.

We consider segregated employment should cease through the:

1. transformation of ADEs as a model
2. transition of individuals in them to other forms of employment over a period of 11 years (until 2034).<sup>324</sup>

We acknowledge and accept that transition will take time. This is a responsible approach that allows for preparation and reform of open employment structures and settings. It also provides time to support the transition of individuals who choose to leave the ADE.

The first goal of transformation would be to reform ADEs to become social firms.

Social firms are businesses that prioritise social impact. They are designed to provide jobs to people facing barriers to employment, including those with disabilities, as well as other people in the employment market. These businesses pay award wages, which are meant to ensure that workers are paid a fair wage for their work.

We four Commissioners see several benefits for workers with disabilities when ADEs transform into social firms that pay award wages:

- First, it would allow them to earn a fair wage for their work, which would improve their financial stability and independence.
- Second, it would provide them with more opportunities to develop new skills and pursue different types of work.
- Third, it would give them a greater sense of dignity and pride in their work, as they would be recognised for their contributions and paid accordingly.
- Finally, it would contribute to building social connections and relationships with coworkers without disabilities.

Some workers may require additional training or support to successfully transition from ADEs to social firms. We consider that if implemented strategically, this can be managed with support and adequate resources. Moving from ADEs to social firms paying award wages and employing workers with and without disability will be an important step towards creating a more equitable and inclusive workforce.

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In our view, social firms have the following attributes:

- Employees with disability are paid at or above minimum wage and commensurate with their experience and skills.<sup>325</sup>
- Customised employment approaches and job matching link people with disability with roles that suit their interests, skills and experience.<sup>326</sup> This includes providing flexible work types and hours, and adapting tasks and responsibilities according to the individual employee.<sup>327</sup>
- Employees with disability are provided with opportunities to engage in professional development in areas of interest, including pursuing tertiary education.<sup>328</sup> A social firm also offers diverse areas of work in which people with disability can experience different roles, tasks and responsibilities and develop skills across multiple work types.<sup>329</sup>
- Clear and documented pathways for progression and promotion within the organisation are open to all employees.
- Support is provided for transition to other open employment settings through ongoing professional development planning. This is supported through relationships with local open employers to:
  - facilitate transition planning
  - provide support to both the employee with disability and future employer
  - assist local employers to adopt customised employment approaches.
- The workforce is diverse and people with disability are not the majority of employees.<sup>330</sup>
- People with disability participate in decision making and are represented at a leadership level, including in identified executive or board positions or through ongoing meaningful consultation with employees and their representatives where appropriate.
- The adoption of universal design principles allow the workplace, technology and equipment to be adapted or modified if required.<sup>331</sup> This includes adjustment policies that outline clear and accessible processes for staff to request adjustments, timeframes for implementation and secure policies for handling employee information.

We see the social firm model as distinct from the current conception of some ADEs as social enterprises. We consider the latter is often applied to ADEs that have not meaningfully changed their operating procedures from the original, segregated models of ‘sheltered workshops’ and/or still provide segregated forms of employment. Social enterprises often do not have the attributes of social firms set out above.

ADE workplaces and their staff, both with and without disability, are well placed to transition to a social firm model. The transition would require diversifying their employee cohort, strengthening relationships with other open employers, creating more flexible ways of working and paying award wages. At the same time, businesses can maintain the relationships and sense of community that employees with disability have told us they value in their workplace.<sup>332</sup>

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A necessary component to transforming ADEs into social firms is eliminating the subminimum wages paid to people with disability in these settings. We have already explained the recommended approach to raise subminimum wages to 50 per cent as a first step, with a commitment to reaching 100 per cent by 2034. As noted earlier, the Taylor Fry modelling considered the cost of a wage subsidy for people in ADEs to move to the Half or Full Minimum wage. We four Commissioners consider the overall cost identified in the Half Minimum Wage Option is a worthwhile use of government expenditure to address, as a first step, the significant issues in segregated employment that affect thousands of people with disability.<sup>333</sup>

## Funding

The Full Minimum Wage Report also outlined the design of a Structural Adjustment Fund to support transformation and transition of ADEs. The fund would provide ADEs with financial incentives and business supports to reorientate their business models and operations towards open employment models such as social firm models with the characteristics outlined above. This could include ‘business advice and planning, seed funding to develop new service or product offerings, funding for new capital costs and other development costs’.<sup>334</sup>

The key considerations for the Australian Government in establishing such a fund include:<sup>335</sup>

- the amount of funding required
- the extent to which this supports the transition of ADEs to a social firm model, including minimum wages for all employees
- design principles for the proposed fund
- evidence of the commitment and readiness of ADEs to change their business models.

The Full Minimum Wage Report said funding could be provided via two methods.<sup>336</sup> We outline our preferred method below.

A grant-based fund would set a target amount, such as \$20 million, to spend over a period of time, such as 10 years. The grant-based fund could be implemented by funding in increments in which second, third or fourth payments are only paid when targets are met. Examples of targets could be:

- establishing a mixed workforce of people with disability and people without disability (for example, 50 per cent of each cohort)
- paying award wages to all employees
- transitioning a percentage of employees with disability into open employment.

Caps could be imposed on minimum and maximum grant amounts.

Key to the administration of the grant program will be transparency, and each grant application will be subject to listed assessment criteria.

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We four Commissioners consider the key here is to ensure businesses meet criteria to receive each increment of the funding and are appropriately monitored to ensure change happens. This is a key lever to encourage transformation over time.

## Managing risk and incentivising reform

We believe there is no argument that can justify people with disability in Australia being the only Australians, aside from prisoners, not receiving the minimum wage.

As with any major social reform, we recognise there are potential risks.

The Taylor Fry modelling identified the risk of job losses and challenges to the viability of the current ADE model in the transition to higher wages under the Full Minimum Wage Option.<sup>337</sup> We have recommended a three-stage option instead of this model, which we see as managing many of the risks identified in that report. We also consider more broadly that risks can be managed in several ways.

The recommendation to raise subminimum wages set out above will not exist in a vacuum and must be supported by safeguarding measures. The suite of recommendations to transform ADEs and improve all employment opportunities for people with disability outlined earlier in this chapter will mean people with disability who currently work in these settings are supported. Implementation of these recommendations will also allow governments to identify and manage complexities over time. The recommendation adopts a 10-year implementation pathway, which is an extended transition period, giving businesses time to adapt and evolve.<sup>338</sup> The relatively slow speed of transition will enable monitoring of risks over time.<sup>339</sup>

ADEs are encouraged to undertake reform under this proposal. If they do not, they will likely be at a competitive disadvantage in the market and would struggle to remain viable.<sup>340</sup> One key measure, as outlined above, will be the Structural Adjustment Fund, which should impose conditions in line with the transformation required.

Another recommendation that would incentivise ADE reform would be a new approach to government procurement. We support the Australian Government and state and territory governments to develop and implement policies on procurement. We agree with Counsel Assisting that these policies should require preference be given to businesses that can demonstrate they provide employment opportunities to people with disability in open, inclusive and accessible settings and pay employees with disability at least the full minimum wage.<sup>341</sup> This expands upon Recommendation 7.23 set out in Chapter 6.

Further, recommendations to address segregation in education and progress inclusive education will reduce the number of people with disability moving from one segregated setting to another. As the skills and ambitions of young people with disability increase through a higher-quality education, recommendations to improve post-school transition support will also broaden the opportunities presented to them so they are not guided solely towards ADEs. These recommendations are set out in Chapter 3 of this volume.

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## Supporting people with disability to move from Australian Disability Enterprises to open employment

Transforming ADEs into social firms will allow for people with disability who have spoken in positive terms of their experience in ADEs to remain in these supportive settings. However, a key element of reform should also be to provide, when desired, the support people with disability need to transition from social firms to open employment. This part of the reform package is therefore focused on individual choice and control.

Social firms should not be the sole option presented to people with disability for employment, and information should be available that presents all options. People should be equipped with the knowledge to make choices.

With this in mind, we consider the School Leaver Employment Supports program under the NDIS should focus on providing NDIS participants with supports to transition to open employment.

We agree with the recommendation for an ongoing information campaign for all employees with disability, as set out earlier in this chapter (Recommendation 7.28). There should also be targeted gender, age and culturally specific measures to increase workforce participation.<sup>342</sup> Other recommendations to address the barriers to open employment will also be critical.

### A roadmap for inclusive employment

It is necessary to have strong governance frameworks in place to manage and monitor this reform. We agree with Counsel Assisting's submission that, while it is not appropriate for the Royal Commission to develop a transition plan, we can identify in a recommendation the core elements to guide the Australian Government.<sup>343</sup>

A key first step is that the Australian Government commit to transforming ADEs and eliminating subminimum wages for people with disability by 2034. The commitment should be made on the principles of:<sup>344</sup>

- equal access for people with disability to all opportunities for employment, starting with the Australian Public Service (APS) and state and territory public services<sup>345</sup>
- increased availability of jobs for people with disability, especially in:
  - Australian and state and territory public services,<sup>346</sup> supported by the payment of full minimum wages to all employees, consistent with the public sector acting as a model employer
  - non-government organisations that receive government grants
  - private companies that receive government procurement contracts

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- availability of evidence-based supports to facilitate job readiness, participation and ongoing development, particularly for people with intellectual disability<sup>347</sup>
  - better pathways to work for people with disability<sup>348</sup>
  - governance and accountability for system change.

In implementing this commitment, the Australian Government, in consultation with people with disability and their representatives, should establish a National Inclusive Employment Roadmap (Roadmap). The Roadmap should set out the roles, responsibilities, milestones and targets to implement our recommendations on transforming ADEs and supporting transition to open employment. We support the Roadmap adopting a staged and relatively slow approach to transition over an implementation period of 10 years. Taylor Fry found that the ‘transitional design will likely improve employment outcomes compared to an instantaneous switch’.<sup>349</sup> They contended that ‘while difficult to quantify, there is evidence around the effectiveness of staged transitions and wage subsidies more generally’.<sup>350</sup>

The Roadmap could be embedded in existing mechanisms such as:

- the NDIS Participant Employment Strategy, given that the vast majority of people who are employed in ADEs are NDIS participants
- the Employment Targeted Action Plan under the ADS
- Employ My Ability<sup>351</sup>
- policies led by the Australian Government Department of Employment and Workplace Relations.

Implementation of the Roadmap should be overseen by the Disability Reform Ministerial Council to ensure an Australia-wide, coordinated approach.

We consider it critical that the Disability Reform Ministerial Council review progress at regular intervals during the transformation timeframe to determine if further adjustments or interventions are required to achieve the reform of ADEs and removal of the subminimum wage. This includes the five-year review detailed earlier for the subminimum wage change. These reviews would involve assessing the effectiveness of the Structural Adjustment Fund and any supports needed to assist transition to full minimum wages by 2034. This review mechanism will be key to managing the risks of the reform program.

The goal at the end of the 11-year timeframe is for ADEs to operate in accordance with the social firm model and employ a diverse workforce including people with and without disability.



### **Recommendation 7.32 End segregated employment by 2034**

- a. Commissioners Bennett, Galbally, Mason and McEwin recommend the Australian Government Department of Social Services should develop and implement a National Inclusive Employment Roadmap to transform Australian Disability Enterprises (ADEs) and eliminate subminimum wages for people with disability by 2034.
- b. The National Inclusive Employment Roadmap should be centred on the following principles:
  - equal access for people with disability to all opportunities for employment, starting with the Australian Public Service and state and territory public services
  - increased availability of jobs for people with disability, especially in:
    - Australian and state and territory public services supported by the payment of full minimum wages to all employees, consistent with the public sector acting as a model employer. This recommendation would operate in advance of Recommendation 7.31 to raise all subminimum wages to the full minimum wage by 2034
    - non-government organisations that receive government grants
    - private companies that receive government procurement contracts
  - availability of evidence-based supports to facilitate job readiness, participation and ongoing development, particularly for people with intellectual disability
  - better pathways to work for people with disability
  - as set out in Recommendation 7.31, lifting wages to 50 per cent of the minimum wage, with all people with disability moving to the full minimum wage by 2034 (noting our expectation that the public sector, as a model employer, will pay full minimum wages to employees with disability before that time)
  - governance and accountability for system change.
- c. The National Inclusive Employment Roadmap should address:
  - the reform of ADEs to operate in accordance with the social firm model, providing open workplaces in which employees with disability can receive support in an integrated setting to undertake work tasks, develop skills and transition to further open employment
  - the establishment of a grant-based Structural Adjustment Fund to support increases in the minimum wage and achieve transformation targets in ADEs
  - support for people with disability to transition to open employment through programs such as the School Leaver Employment Supports program.

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- d. To support the National Inclusive Employment Roadmap as ADEs transform into social firms, government procurement rules should be amended to give preference to enterprises that can demonstrate they provide employment opportunities to people with disability in open, inclusive and accessible settings and pay employees with disability at least the full minimum wage at the time of the procurement process (this recommendation would operate in advance of the general recommendation to raise all subminimum wages to the full minimum wage by 2034).
  - e. The implementation of the National Inclusive Employment Roadmap should be monitored by the Disability Reform Ministerial Council.

## 7.6. Observations by the Chair and Commissioner Ryan

The Chair and Commissioner Ryan do not agree with all the reasoning in section 7.5, leading to Recommendation 7.32. For example, as we have explained, we do not understand article 27 of the *CRPD* to preclude people with disability making a free and informed choice to be employed in workplaces exclusively for people with disability. We consider it feasible for a person with disability to make such a choice, with such decisionmaking support as may be required. After all, the first general principle stated in article 3 of the *CRPD* is:

Respect for inherent dignity, individual autonomy including the **freedom to make one's own choices**, and independence of persons. [Emphasis added.]<sup>352</sup>

We also do not agree that workplaces exclusively for people with disability necessarily function in a manner that causes harm to or is detrimental to the wellbeing of their employees. In particular, it is not inevitable that all employees of such workplaces will experience greater levels of violence and abuse than experienced by people with similar disabilities employed in other settings. As explained earlier in this chapter, it is not uncommon for people employed by ADEs to derive considerable satisfaction from their work and from the relationships they establish in the workplace.

Having said that, we share the aspirations underlying Recommendation 7.32 and have supported most of the proposals incorporated in Recommendation 7.32. These include increasing employment opportunities for people with disability in the public sector; introducing or expanding procurement policies designed to increase employment opportunities for people with disability outside the public sector; developing a plan to support people working in ADEs to transition to open employment; improved information and support for people with disability concerning opportunities in other settings, wages and the DSP; active involvement of people with disability in planning to support ADE employees to move to open employment or seek other employment opportunities; and raising the minimum wage for all people with disability, including those employed by ADEs. We have no difficulty with a proposal that the Department of Social Services should develop and implement a plan to guide and manage the changes that should occur in the operation of ADEs and similar workplaces.

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We would not describe this process, however, as ending ‘segregated employment’. As we have explained in Chapter 1, not every workplace exclusively for people with disability should be characterised as ‘segregated’ in the pejorative sense in which that word is usually understood. Whether such a description is apt depends on the circumstances, in particular the manner in which the workplace operates and the training and support it provides to employees.

We consider that workplaces exclusively for people with disability may have a continuing, albeit diminishing, role to play in providing employment opportunities, especially for people with intellectual disabilities or cognitive impairments. Some people with disability may prefer to work in such a setting and exercise a free and informed choice to be employed there.

This does not mean that workplaces exclusively for people with disability will continue to operate as they have in the past. They will need to adapt to provide, among other things, better training and greater opportunities for employees to transition to open employment. If they can be transformed to operate in accordance with a ‘social firm model’, well and good. In any event, a workplace that pays appropriate wages, provides vocational training and supports employees to transition into the open labour force is very different from a traditional ADE.

We also register concern with two aspects of Recommendation 7.32 above.

Our first concern is with the recommendation that the public sector, acting as a model employer, pay full minimum wages to employees with disability, in advance of Recommendation 7.31 taking effect. We consider that this recommendation is inconsistent with the reasoning underlying the Recommendations in Chapter 7 concerning wages that should be paid to people working in ADEs or supported employment. We are concerned that if the recommendation were to be implemented, it will in practice act as a disincentive to employ people with intellectual disability. This is particularly the case if no specific target is set for the employment of people with intellectual disability in the public sector.

Our second concern is with the recommendation that government procurement rules should be amended to give preference to enterprises that pay employees with disability at least the full minimum wage at the time of the procurement process (again operating in advance of the general recommendation to raise all subminimum wages to the full minimum wage by 2034). We note that Recommendation 7.32(d) is not accompanied by a definition of ‘disability’, nor by an analysis of how such a policy might operate in practice. It is therefore unclear which employers would be likely to satisfy the procurement policy criteria. It is also unclear which people with disability would be likely to benefit. Recommendation 7.23(a), in Chapter 6, is sufficient to enable a policy to be developed incorporating clear and measurable objectives and after careful thought is given to identifying the people intended to benefit from the policy.

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## Endnotes

- 1 *Disability Services Act 1986* (Cth) s 7.
- 2 *Disability Services Act 1986* (Cth) s 7.
- 3 *Fair Work Act 2009* (Cth) s 294(4).
- 4 Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of Australia*, 22<sup>nd</sup> sess, UN Doc CRPD/C/AUS/CO/2–3, (15 October 2019), [49(b)].
- 5 National Disability Insurance Agency, *Employment outcomes for NDIS participants*, Report, December 2020, p 5; Exhibit 22-8, ‘Statement of Debbie Mitchell’, 31 March 2022, at [16].
- 6 Australian Government Solicitor, *Report on the key elements of the legislative framework affecting people with disability*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, December 2020, p 237 [39]; Ron McCallum, *The United Nations Convention on the Rights of Persons with Disabilities: an assessment of Australia’s level of compliance*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2020, pp 133–34.
- 7 See for example Exhibit 22-6, ‘Statement of Myron Mann’, 4 April 2022, at [19].
- 8 See for example Exhibit 22-6, ‘Statement of Myron Mann’, 4 April 2022, at [96].
- 9 National Disability Insurance Agency, *Employment outcomes for NDIS participants*, Report, December 2020, pp 45–46.
- 10 Exhibit 22-9, ‘Statement of Gerrie Mitra’, 1 April 2022, at [19].
- 11 National Disability Insurance Agency, *Employment outcomes for NDIS participants*, Report, December 2020, p 5; Exhibit 22-8, ‘Statement of Debbie Mitchell’, 31 March 2022, at [16].
- 12 Exhibit 22-7, ‘Statement of Laurie Leigh and Kerrie Langford’, 7 April 2022, at [45–46]; Exhibit 22-8, ‘Statement of Debbie Mitchell’, 31 March 2022, pp 6–7 [30].
- 13 Submissions of Counsel Assisting the Royal Commission following Public hearing 22, 19 July 2022, [6].
- 14 Exhibit 22-10, ‘Supplementary statement of Gerrie Mitra’, 6 April 2022, at [19].
- 15 *Supported Employment Services Award 2020*.
- 16 Submissions of Counsel Assisting the Royal Commission following Public hearing 22, 19 July 2022, p 5 [4].
- 17 Exhibit 9-25, ‘Statement of ‘Jamie’’, 18 November 2020, at [19]; Exhibit 22-0, ‘Statement of ‘Mahdi’’, 1 April 2022, at [19]; Exhibit 22-3, ‘Statement of ‘Kaite’’, 30 March 2022, at [36–37]; Transcript, ‘Gert’, Public hearing 22, 11 April 2022, P-38 [1]; Transcript, Greg Tucker, Public hearing 22, 12 April 2022, P-84 [17–18], [40–42]; Transcript, Anthony Reid, Public hearing 22, 13 April 2022, P-168 [41]; Transcript, Phillip Shoolman, Public hearing 22, 11 April 2022, P-19 [1–2], [13–21], P-22 [5–6], [34–35].
- 18 Transcript, Gregory Tucker, Public hearing 22, 12 April 2022, P-84 [14–46].
- 19 Exhibit 22-6, ‘Statement of Myron Mann’, 4 April 2022, at [19].
- 20 Exhibit 22-6.26, ISS.001.00509, pp 3–4 [5.3].
- 21 Exhibit 22-6, ‘Statement of Myron Mann’, 4 April 2022, at [23].
- 22 Exhibit 22-6, ‘Statement of Myron Mann’, 4 April 2022, at [66].
- 23 *Disability Services Act 1986* (Cth) s 7.
- 24 Exhibit 22-7, ‘Statement of Laurie Leigh and Kerrie Langford’, 7 April 2022, at [28].
- 25 Exhibit 22-8, ‘Statement of Debbie Mitchell’, 31 March 2022, at [12].
- 26 Australian Government Productivity Commission, *Disability care and support*, Final inquiry report, Report no. 54, vol.1, July 2011, p 151.
- 27 Exhibit 22-8, ‘Statement of Debbie Mitchell’, 31 March 2022, at [12], [40].
- 28 Exhibit 22-8, ‘Statement of Debbie Mitchell’, 31 March 2022, at [52–53], [58–59], [61–64].
- 29 Australian Government Productivity Commission, *Disability care and support*, Final inquiry report, Report no. 54, vol 1, July 2011, p 241.
- 30 Exhibit 22-8, ‘Statement of Debbie Mitchell’, 31 March 2022, at [13–14].
- 31 Exhibit 22-9, ‘Statement of Gerrie Mitra’, 1 April 2022, at [33].
- 32 Exhibit 22-9, ‘Statement of Gerrie Mitra’, 1 April 2022, at [33].
- 33 Exhibit 22-9, ‘Statement of Gerrie Mitra’, 1 April 2022, at [33].
- 34 Exhibit 22-9, ‘Statement of Gerrie Mitra’, 1 April 2022, at [34].

35 Exhibit 22-17, CTD.9999.0053.0001, p 4.

36 Exhibit 22-9, 'Statement of Gerrie Mitra', 1 April 2022, at [55].

37 Exhibit 22-17, CTD.9999.0053.0001, p 4.

38 Exhibit 22-17, CTD.9999.0053.0001, p 5.

39 Submissions by the Australian Government in response to Counsel Assisting's submissions in Public hearing 22, 15 August 2022, SUBM.0026.0001.0001, [16].

40 *National Disability Insurance Scheme (Code of Conduct) Rules 2018* (Cth); *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* (Cth).

41 'The Complaints Resolution and Referral Service', JobAccess, web page. <[www.jobaccess.gov.au/complaints/crrs](http://www.jobaccess.gov.au/complaints/crrs)>

42 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 27.

43 Ron McCallum, *The United Nations Convention on the Rights of Persons with Disabilities: An assessment of Australia's level of compliance*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2020, p 133.

44 Charlotte May-Simera, 'Reconsidering Sheltered Workshops in Light of the United Nations Convention on the Rights of Persons with Disabilities (2006)', (2018), vol 7 (1), *Laws* 6, p 9.

45 Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Germany*, 13<sup>th</sup> sess, UN Doc CRPD/C/DEU/CO/1, (13 May 2015), [49–50]; Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of China*, 8<sup>th</sup> sess, UN Doc CRPD/C/CHN/CO/1, (15 October 2012), [67–68]; Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of the Republic of Moldova*, 17<sup>th</sup> sess, UN Doc CRPD/C/MDA/CO/1, (18 May 2017), [48–49].

46 Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of Australia*, UN Doc CRPD/C/AUS/CO/2-3, (15 October 2019), [50(b)].

47 Committee on the Rights of Persons with Disabilities, *General comment no. 8 (2022) on the right of persons with disabilities to work and employment*, advance unedited version, UN Doc CRPD/C/GC/8, (9 September 2022), [53].

48 Committee on the Rights of Persons with Disabilities, *General comment no. 8 (2022) on the right of persons with disabilities to work and employment*, advance unedited version, UN Doc CRPD/C/GC/8, (9 September 2022), [82(i)].

49 *International Covenant on Economic, Social and Cultural Rights*, opened for signature 19 December 1966, 993 UNTS 3 (entered into force 3 January 1976), arts 6, 7.

50 Committee on Economic, Social and Cultural Rights, *General comment no. 5 (1994) on persons with disabilities*, 11<sup>th</sup> sess, UN Doc E/1995/22, (9 December 1994).

51 Committee on Economic, Social and Cultural Rights, *General comment no. 5 (1994) on persons with disabilities*, 11<sup>th</sup> sess, UN Doc E/1995/22, (9 December 1994), p 7 [21].

52 Submissions by the Australian Government in response to Counsel Assisting's submissions in Public hearing 22, 15 August 2022, SUBM.0026.0001.0001, [45].

53 Exhibit 31-3, 'Statement of Gerard Quinn', 12 December 2022, p 10. Commissioners Bennett, Galbally, Mason and McEwin note this was also supported by a number of Disability Representative Organisations in their September 2020 position paper: see Children and Young People with Disability Australia, Women With Disabilities Australia, National Ethnic Disability Alliance, Australian Federation of Disability Organisations, Inclusion Australia, Disability Advocacy Network Australia, First Peoples Disability Network Australia and People with Disability Australia, Submission, September 2020, SUB.100.01566.

54 Transcript, Anthony Reid, Public hearing 22, 13 April 2022, P-167 [39–40]; Transcript, Phillip Shoolman, Public hearing 22, 11 April 2022, P-25 [40–42]; Exhibit 22-4, 'Statement of 'Marc'', 1 April 2022, at [60]; Transcript, 'Kaite', Public hearing 22, 11 April 2022, P-65 [50], P-66 [4–5]; Transcript, 'Gert', Public hearing 22, 11 April 2022, P-36 [34–44].

55 Transcript, Anthony Reid, Public hearing 22, 13 April 2022, P-167 [39–40].

56 Transcript, Phillip Shoolman, Public hearing 22, 11 April 2022, P-25 [39–41].

57 Name changed to protect identity.

58 Exhibit 22-4, 'Statement of 'Marc'', 1 April 2022, at [12–16].

59 Exhibit 22-4, 'Statement of 'Marc'', 1 April 2022, at [15].

60 Exhibit 22-4, 'Statement of 'Marc'', 1 April 2022, at [60].



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- 61 Names changed to protect identities; Transcript, 'Kaite', Public hearing 22, 11 April 2022, P-65 [48] – P66 [6].
- 62 Names changed to protect identities.
- 63 Name changed to protect identity; Transcript, 'Gert', Public hearing 22, 11 April 2022, P-36 [28–44].
- 64 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [51.3].
- 65 Transcript, Gregory Tucker, Public hearing 22, 12 April 2022, P-85 [14] – P-86 [19]; Exhibit 22-4, 'Statement of 'Marc'', 1 April 2022, at [65–66].
- 66 Transcript, Gregory Tucker, Public hearing 22, 12 April 2022, P-80 [25–32]; Exhibit 22-5, 'Statement of 'Tay'', 5 April 2022, at [37–44].
- 67 Name changed to protect identity.
- 68 Exhibit 22-5, 'Statement of 'Tay'', 5 April 2022, at [23].
- 69 Name changed to protect identity; Exhibit 22-000, 'Statement of 'Mahdi'', 1 April 2022, at [19], [33], [37].
- 70 Exhibit 22-000, 'Statement of 'Mahdi'', 1 April 2022, at [42].
- 71 Exhibit 22-4, 'Statement of 'Marc'', 1 April 2022, at [65–66].
- 72 Transcript, Greg Tucker, Public hearing 22, 12 April 2022, P-85 [4–23].
- 73 Transcript, Phillip Shoolman, Public hearing 22, 11 April 2022, P-16 [36] – P-17 [5].
- 74 Transcript, 'Kaite', Public hearing 22, 11 April 2022, P-64 [1–5].
- 75 Transcript, 'Kaite', Public hearing 22, 11 April 2022, P-64 [24–27].
- 76 Transcript, Mija Gwyn, Public hearing 21, 23 February 2022, P-20 [18–19]; Exhibit 21-4, 'Statement of Mija Gwyn and Simon Green', 10 February 2022, at [71].
- 77 Exhibit 9-19, 'Statement of Kit Owen-Turner', 23 November 2020, at [5].
- 78 Exhibit 9-19, 'Statement of Kit Owen-Turner', 23 November 2020, at [6–7].
- 79 Exhibit 9-19, 'Statement of Kit Owen-Turner', 23 November 2020, at [6].
- 80 Exhibit 9-19, 'Statement of Kit Owen-Turner', 23 November 2020, at [11–17].
- 81 National Disability Insurance Agency, *Employment outcomes for NDIS participants*, Report, December 2020, p 30.
- 82 National Disability Insurance Agency, *Employment outcomes for NDIS participants*, Report, December 2020, p 46.
- 83 National Disability Insurance Agency, *Employment outcomes for NDIS participants*, Report, December 2020, pp 45–46.
- 84 Transcript, Catherine McAlpine, Public hearing 24, 8 June 2022, P-222 [42–47].
- 85 Names changed to protect identities.
- 86 Exhibit 24-15, 'Statement of 'Isabella'', 21 May 2022, at [68]; Transcript, 'Isabella', Public hearing 24, 8 June 2022, P-192 [30–46].
- 87 Transcript, Myron Mann, Public hearing 22, 12 April 2022, P-145 [40–48].
- 88 Transcript, 'Gert', Public hearing 22, 11 April 2022, P-37 [22–25].
- 89 Exhibit 22-2, 'Statement of 'Gert'', 31 March 2022, at [4].
- 90 Transcript, 'Kaite', Public hearing 22, 11 April 2022, P-67 [47] – P-68 [5].
- 91 Exhibit 22-3, 'Statement of 'Kaite'', 30 March 2022, at [3].
- 92 Exhibit 22-9, 'Statement of Gerrie Mitra', 1 April 2022, at [38].
- 93 Exhibit 22-6, 'Statement of Myron Mann', 4 April 2022, at [86].
- 94 Exhibit 22-9, 'Statement of Gerrie Mitra', 1 April 2022, at [38].
- 95 Exhibit 22-9, 'Statement of Gerrie Mitra', 1 April 2022, at [38].
- 96 Transcript, Gerrie Mitra, Public hearing 22, 13 April 2022, P-211 [15–47].
- 97 Exhibit 22-17, CTD.9999.0053.0001, p 4.
- 98 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [41].
- 99 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [43–44]; Transcript, Myron Mann, Public hearing 22, 12 April 2022, P-152 [30–33].
- 100 Submissions of Counsel Assisting the Royal Commission following Public hearing 22, 19 July 2022, [225].
- 101 Australian Government Department of Social Services, Disability Employment Services Eligibility, Referral and Commencement Guideline V 1.9, April 2023, pp 6–7.



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- 102 See, for example, Independent Advisory Council to the NDIA, Submission in response to *Employment issues paper*, 12 August 2020, ISS.001.00342, p 21; National Disability Services, Submission in response to *Employment issues paper*, 14 September 2020, ISS.001.00448, p 38; Down Syndrome Australia, Submission in response to *Employment issues paper*, 30 September 2020, ISS.001.00469, p 7.
- 103 Exhibit 22-9, 'Statement of Gerrie Mitra', 1 April 2022, at [42].
- 104 Exhibit 22-9, 'Statement of Gerrie Mitra', 1 April 2022, at [54]; Exhibit 19-37, 'Statement of Gerrie Mitra', 16 July 2021, at [40].
- 105 Australian Government Department of Social Services, Disability Employment Services Eligibility, Referral and Commencement Guideline V 1.9, April 2023, pp 9–10.
- 106 Transcript, Gerrie Mitra, Public hearing 22, 13 April 2022, P-222 [29–32].
- 107 Transcript, Gerrie Mitra, Public hearing 22, 13 April 2022, P-222 [35–39].
- 108 Transcript, Gerrie Mitra, Public hearing 22, 13 April 2022, P-222 [41–48].
- 109 Transcript, Gerrie Mitra, Public hearing 22, 13 April 2022, P-210 [42], [46–49].
- 110 Transcript, Gerrie Mitra, Public hearing 22, 13 April 2022, P-210 [46–49].
- 111 Transcript, Gerrie Mitra, Public hearing 22, 13 April 2022, P-211 [7–9].
- 112 Submissions of Counsel Assisting the Royal Commission following Public hearing 22, 19 July 2022, p 77 [250].
- 113 Submissions of Counsel Assisting the Royal Commission following Public hearing 22, 19 July 2022, p 77 [250].
- 114 National Disability Insurance Agency, *Employment outcomes for NDIS participants*, Report, December 2020, p 81.
- 115 Submissions by the Australian Government in response to Counsel Assisting's submissions in Public hearing 22, 15 August 2022, SUBM.0026.0001.0001, pp 8–9 [30].
- 116 Submissions by the Australian Government in response to Counsel Assisting's submissions in Public hearing 22, 15 August 2022, SUBM.0026.0001.0001, pp 8–9 [30].
- 117 Submissions of Counsel Assisting the Royal Commission following Public hearing 22, 19 July 2022, p 79 [257].
- 118 Exhibit 22-12.01, CTD.9999.0052.0008.
- 119 Submissions of Counsel Assisting the Royal Commission following Public hearing 22, 19 July 2022, [271].
- 120 Submissions by the Australian Government in response to Counsel Assisting's submissions in Public hearing 22, 15 August 2022, SUBM.0026.0001.0001, [15].
- 121 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [23].
- 122 Submissions of Counsel Assisting the Royal Commission following Public hearing 22, 19 July 2022, [447].
- 123 Exhibit 22-13, BED.9999.0003.0001, at [16].
- 124 Exhibit 22-13, BED.9999.0003.0001, at [16].
- 125 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, p 15 [24.1].
- 126 See, for example, Exhibit 22-3, 'Statement of 'Kaite'', 30 March 2022, at [32]; Exhibit 22-2, 'Statement of 'Gert'', 31 March 2022, at [28–31].
- 127 Exhibit 22-2, 'Statement of 'Gert'', 31 March 2022, at [25–27]; Exhibit 22-3, 'Statement of 'Kaite'', 30 March 2022, at [27–30].
- 128 Exhibit 22-18, DRC.9999.0132.0002, [4(b)]; Exhibit 22-19, DRC.9999.0132.0001, [3(d)].
- 129 Exhibit 22-2, 'Statement of 'Gert'', 31 March 2022, at [27]; Exhibit 22-3, 'Statement of 'Kaite'', 30 March 2022, at [28].
- 130 Submissions of Counsel Assisting the Royal Commission following Public hearing 22, 19 July 2022, [296].
- 131 See, for example, Name withheld, Submission, 15 July 2021; Name withheld, Submission, 1 December 2022; Name withheld, Submission, 1 October 2019.
- 132 Exhibit 22-3, 'Statement of 'Kaite'', 30 March 2022, at [42a-42b].; Exhibit 22-5, 'Statement of 'Tay'', 5 April 2022, at [47].
- 133 Name withheld, Submission, 5 January 2021; Name withheld, Royal Commission community forum/ engagement, Hobart, November 2019; Your Say Advocacy Tasmania, Submission, 30 March 2022, SUB.100.01947, pp 2, 5; Name withheld, Submission, 2 March 2022; Name withheld, Submission, 22 August 2019; Private session participant; Private session participant; Private session participant.

134 Transcript, Myron Mann, Public hearing 22, 12 April 2022, P-116 [31].

135 Transcript, Myron Mann, Public hearing 22, 12 April 2022, P-117 [21].

136 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [24.6].

137 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [24.6].

138 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [24.6].

139 Transcript, Myron Mann, Public hearing 22, 12 April 2022, P-119 [1–17]; Exhibit 22-6.06, ISS.001.00509, at [7.4.1].

140 Exhibit 22-6.06, ISS.001.00509, at [7.4.2].

141 Exhibit 22-2, 'Statement of 'Gert'', 31 March 2022, at [37]; Transcript, Phillip Shoolman, Public hearing 22, 11 April 2022, P-24 [42] – P-25 [4]; Transcript, Catherine McAlpine, Public hearing 22, 11 April 2022, P-46 [15–25].

142 Exhibit 22-3, 'Statement of 'Kaite'', 30 March 2022, at [56].

143 Exhibit 22-2, 'Statement of 'Gert'', 31 March 2022, at [37].

144 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [24.7].

145 *4 yearly review of modern awards – Supported Employment Services Award 2010* [2019] FWCFB 8179, [384].

146 Submissions of Counsel Assisting the Royal Commission following Public hearing 22, 19 July 2022, p 91 [305].

147 Submissions of Counsel Assisting the Royal Commission following Public hearing 22, 19 July 2022, [447h].

148 Submissions by the Australian Government in response to Counsel Assisting's submissions in Public hearing 22, 15 August 2022, SUBM.0026.0001.0001, [43]; Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [24.8].

149 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [23].

150 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [24.8].

151 Submissions by the Australian Government in response to Counsel Assisting's submissions in Public hearing 22, 15 August 2022, SUBM.0026.0001.0001, [43]; Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [24.8].

152 Submissions by the Australian Government in response to Counsel Assisting's submissions in Public hearing 22, 15 August 2022, SUBM.0026.0001.0001, [43].

153 Exhibit 22-11, 'Statement of Sandra Parker PSM', 31 March 2022, at [27].

154 Exhibit 22-11, 'Statement of Sandra Parker PSM', 31 March 2022, at [28].

155 Exhibit 22-11, 'Statement of Sandra Parker PSM', 31 March 2022, at [28(b)].

156 Exhibit 22-11, 'Statement of Sandra Parker PSM', 31 March 2022, at [28].

157 Exhibit 22-11, 'Statement of Sandra Parker PSM', 31 March 2022, at [17–18].

158 Exhibit 22-11, 'Statement of Sandra Parker PSM', 31 March 2022, at [17].

159 Exhibit 22-11, 'Statement of Sandra Parker PSM', 31 March 2022, at [24].

160 Submissions of Counsel Assisting the Royal Commission following Public hearing 22, 19 July 2022, [58].

161 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [24.8].

162 Submissions of Counsel Assisting the Royal Commission following Public hearing 22, 19 July 2022, [64].

163 Submissions by the Australian Government in response to Counsel Assisting's submissions in Public hearing 22, 15 August 2022, SUBM.0026.0001.0001, p 8 [29].

164 Submissions by the Australian Government in response to Counsel Assisting's submissions in Public hearing 22, 15 August 2022, SUBM.0026.0001.0001, p 8 [29].

165 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [28].

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- 166 Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of Australia*, 22<sup>nd</sup> sess, UN Doc CRPD/C/AUS/CO/2–3, (15 October 2019), [49(b)].
- 167 *Fair Work Act 2009* (Cth) s 294.
- 168 ‘Minimum wages’, *Fair Work Ombudsman*, web page. <[www.fairwork.gov.au/tools-and-resources/fact-sheets/minimum-workplace-entitlements/minimum-wages](http://www.fairwork.gov.au/tools-and-resources/fact-sheets/minimum-workplace-entitlements/minimum-wages)>
- 169 *Fair Work Act 2009* (Cth) s 293.
- 170 See *Fair Work Act 2009* (Cth) s 284.
- 171 See *Fair Work Act 2009* (Cth) ss 139(1), 294(1)(b), 294(4).
- 172 *Fair Work Act 2009* (Cth) s 12. The definition provides that an ‘employee with a disability’ means a national system employee who is qualified for a disability support pension as set out in section 94 or 95 of the *Social Security Act 1991*, or who would be so qualified but for paragraph 94(1)(e) or 95(1)(c) of that Act.
- 173 Fair Work Commission, *Annual wage review 2021–22 – National Minimum Wage Order 2022*, PR740627, 28 June 2022, p 2 [1].
- 174 Fair Work Commission, *Annual wage review 2021–22 – National Minimum Wage Order 2022*, PR740627, 28 June 2022.
- 175 Special national minimum wage 2 does not apply to an award/agreement-free employee with disability who is an existing employee who has a claim against the employer that is subject to the provisions of workers’ compensation legislation.
- 176 Fair Work Commission, *Annual wage review 2021–22 – National Minimum Wage Order 2022*, PR740627, 28 June 2022, p 7 [A.3.2].
- 177 *Disability Services Act 1986* (Cth) s 7.
- 178 *4 yearly review of modern awards – Supported Employment Services Award 2010* [2019] FWCFB 8179.
- 179 *4 yearly review of modern awards – Supported Employment Services Award 2010* [2019] FWCFB 8179, [1].
- 180 Fair Work Commission statement on four-yearly review of modern awards – *Supported Employment Services Award 2010* [2018] FWCFB 2196, [15(1)].
- 181 Fair Work Commission statement on four-yearly review of modern awards – *Supported Employment Services Award 2010* [2018] FWCFB 2196, [15(2)].
- 182 Fair Work Commission statement on four-yearly review of modern awards – *Supported Employment Services Award 2010* [2018] FWCFB 2196, [15(3)].
- 183 *4 yearly review of modern awards – Supported Employment Services Award 2010* [2019] FWCFB 8179, [342].
- 184 *4 yearly review of modern awards – Supported Employment Services Award 2010*, 30 April 2020, MA000103 PR718543, [A].
- 185 *4 yearly review of modern awards – Supported Employment Services Award 2010*, 30 April 2020, MA000103 PR718543, [B].
- 186 *Supported Employment Services Award 2020*, cl 15.
- 187 *Supported Employment Services Award 2020*, cl 18.
- 188 *Supported Employment Services Award 2020*, sch A.
- 189 *Supported Employment Services Award 2020*, sch D.
- 190 *4 yearly review of modern awards – Supported Employment Services Award 2020* [2022] FWCFB 245, p 15 [48(g)], [49].
- 191 *4 yearly review of modern awards – Supported Employment Services Award 2020* [2022] FWCFB 245, p 14 [48(c)].
- 192 *4 yearly review of modern awards – Supported Employment Services Award 2020* [2022] FWCFB 245, p 14 [48(aa)].
- 193 ‘Supported Wage System (SWS)’, *JobAccess*, web page. <[www.jobaccess.gov.au/supported-wage-system-sws](http://www.jobaccess.gov.au/supported-wage-system-sws)>
- 194 ‘Supported Wage System (SWS)’, *JobAccess*, web page. <[www.jobaccess.gov.au/supported-wage-system-sws](http://www.jobaccess.gov.au/supported-wage-system-sws)>
- 195 Exhibit 22-8, ‘Statement of Debbie Mitchell’, 31 March 2022, at [24].
- 196 Exhibit 22-8, ‘Statement of Debbie Mitchell’, 31 March 2022, at [193].
- 197 Australian Human Rights Commission, Submission in response to *Employment issues paper*, 24 September 2020, ISS.001.00459, p 11 [41].

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- 198 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), arts 3(a), (d).
- 199 Committee on the Rights of Persons with Disabilities, *General comment no. 6 (2018) on equality and non-discrimination*, UN Doc CRPD/C/GC/6, (26 April 2018), [10–11].
- 200 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 27(1).
- 201 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 5.
- 202 Committee on the Rights of Persons with Disabilities, *General comment no. 8 (2022) on the right of persons with disabilities to work and employment*, advance unedited version, UN Doc CRPD/C/GC/8 (9 September 2022), [2].
- 203 Committee on the Rights of Persons with Disabilities, *General comment no. 8 (2022) on the right of persons with disabilities to work and employment*, advance unedited version, UN Doc CRPD/C/GC/8 (9 September 2022), [8].
- 204 Committee on the Rights of Persons with Disabilities, *General comment no. 8 (2022) on the right of persons with disabilities to work and employment*, advance unedited version, UN Doc CRPD/C/GC/8 (9 September 2022), [26].
- 205 Committee on the Rights of Persons with Disabilities, *General comment no. 6 (2018) on equality and non-discrimination*, UN Doc CRPD/C/GC/6, (26 April 2018), [67(c)].
- 206 Australian Human Rights Commission, Submission in response to *Employment issues paper*, 24 September 2020, ISS.001.00459, p 26 [97–98].
- 207 Australian Human Rights Commission, Submission in response to *Employment issues paper*, 24 September 2020, ISS.001.00459, p 29 [117].
- 208 Australian Human Rights Commission, Submission in response to *Employment issues paper*, 24 September 2020, ISS.001.00459, p 29.
- 209 Committee on Economic, Social and Cultural Rights, *General comment no. 23 (2016) on the right to just and favourable conditions of work*, UN Doc E/C.12/GC/23, (27 April 2016), [47(c)].
- 210 Disability Australia Hub, ‘Disability A–Z’, web page. <<https://www.disabilityaustraliahub.com.au/advocacy-self-advocacy/>>
- 211 Transcript, Gregory Tucker, Public hearing 22, 12 April 2022, P-87 [7–10]; Transcript, Anthony Reid, Public hearing 22, 13 April 2022, P-171 [28–31].
- 212 *4 yearly review of modern awards – Supported Employment Services Award 2010* [2019] FWCFB 8179, [253], [371].
- 213 Exhibit 22-8, ‘Statement of Debbie Mitchell’, 31 March 2022, at [134].
- 214 Exhibit 9-28, ‘Statement of Pamela Darling’, 20 November 2020, at [11].
- 215 Exhibit 9-28, ‘Statement of Pamela Darling’, 20 November 2020, at [32].
- 216 Exhibit 9-28, ‘Statement of Pamela Darling’, 20 November 2020, at [35].
- 217 Exhibit 22-4, ‘Statement of ‘Marc’’, 1 April 2022, at [12–17]; Transcript, Phillip Shoolman, Public hearing 22, 11 April 2022, P-17 [25]; P-21 [29].
- 218 Fair Work Commission statement on four-yearly review of modern awards – *Supported Employment Services Award 2010* [2018] FWCFB 2196, [15(2)].
- 219 Submissions by Bedford Group in response to Counsel Assisting’s submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [36].
- 220 Submissions by Bedford Group in response to Counsel Assisting’s submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [36].
- 221 Submissions by Bedford Group in response to Counsel Assisting’s submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [36].
- 222 Submissions by Bedford Group in response to Counsel Assisting’s submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [52.2].
- 223 *4 yearly review of modern awards – Supported Employment Services Award 2010* [2019] FWCFB 8179, [248].
- 224 *4 yearly review of modern awards – Supported Employment Services Award 2010* [2019] FWCFB 8179, [249].
- 225 *4 yearly review of modern awards – Supported Employment Services Award 2010* [2019] FWCFB 8179, [252].
- 226 Exhibit 22-7, ‘Statement of Laurie Leigh and Kerrie Langford’, 7 April 2022, at [5], [15].
- 227 Exhibit 22-7, ‘Statement of Laurie Leigh and Kerrie Langford’, 7 April 2022, at [91].



228 Transcript, Phillip Shoolman, Public hearing 22, 11 April 2022, P-19 [25–36].

229 Transcript, 'Kaite', Public hearing 22, 11 April 2022, P-68 [8–12].

230 Transcript, 'Gert', Public hearing 22, 11 April 2022, P-37 [1–14].

231 Exhibit 22-9, 'Statement of Gerrie Mitra', 1 April 2022, at [38].

232 Transcript, Myron Mann, Public hearing 22, 12 April 2022, P-128 [24–25].

233 Transcript, Myron Mann, Public hearing 22, 12 April 2022, P-128 [28–29].

234 Transcript, Myron Mann, Public hearing 22, 12 April 2022, P-128 [30–33].

235 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, p 25 [57.5].

236 Transcript, Joanne Toohey, Public hearing 23, 20 May 2022, P-490 [5–9].

237 Exhibit 22-7, 'Statement of Laurie Leigh and Kerrie Langford', 7 April 2022, at [105]; Exhibit 22-7.08, NDS.9999.0001.0041.

238 Jeanne Allegro, 'ADEs lifting their commercial viability', (2013), vol 6, *Social Ventures Australia Quarterly*, p 2.

239 Jeanne Allegro, 'ADEs lifting their commercial viability', (2013), vol 6, *Social Ventures Australia Quarterly*, p 1.

240 Jeanne Allegro, 'ADEs lifting their commercial viability', (2013), vol 6, *Social Ventures Australia Quarterly*, p 3.

241 Jeanne Allegro, 'ADEs lifting their commercial viability', (2013), vol 6, *Social Ventures Australia Quarterly*, p 3.

242 *4 yearly review of modern awards – Supported Employment Services Award 2010* [2019] FWCFB 8179, [371].

243 *4 yearly review of modern awards – Supported Employment Services Award 2020* [2022] FWCFB 245, [48(a)].

244 Submissions of Counsel Assisting the Royal Commission following Public hearing 22, 19 July 2022, [411].

245 Submissions by the Australian Government in response to Counsel Assisting's submissions in Public hearing 22, 15 August 2022, SUBM.0026.0001.0001, p 9 [31].

246 National Disability Services, Submission, November 2022, SUB.100.02632, p 3.

247 National Disability Services, Submission, November 2022, SUB.100.02632, p 4.

248 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, [14].

249 Submissions by the Australian Government in response to Counsel Assisting's submissions in Public hearing 22, 15 August 2022, SUBM.0026.0001.0001, pp 4–5 [15].

250 Exhibit 22-7.08, NDS.9999.0001.0041, p 1.

251 National Disability Insurance Agency, *NDIS Participant Employment Strategy – 2021 to 22 action plan*, 7 June 2022, p 2.

252 National Disability Insurance Agency, *NDIS Participant Employment Strategy – 2021 to 22 action plan*, June 2022, p 2.

253 National Disability Insurance Agency, *Employment outcomes for NDIS participants*, Report, June 2018, p 10; National Disability Insurance Agency, *Employment outcomes for NDIS participants*, Report, December 2020, p 43.

254 National Disability Insurance Agency, *Employment outcomes for NDIS participants*, Report, December 2020, p 46.

255 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, pp 25–26 [57.6].

256 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, pp 25–26 [57.6].

257 Submissions by National Disability Services in response to Counsel Assisting's submissions in Public hearing 22, 15 August 2022, SUBM.0026.0001.0018, pp 4–5 [15].

258 Submissions by Bedford Group in response to Counsel Assisting's submissions in Public hearing 22, 17 August 2022, SUBM.0027.0001.0001, pp 25–26 [57.6]; Exhibit 22-7.08, NDS.9999.0001.0041, p 1; Transcript, Joanne Toohey, Public hearing 23, 20 May 2022, P-490 [5–9].

259 Submissions by the Australian Government in response to Counsel Assisting's submissions in Public hearing 22, 15 August 2022, SUBM.0026.0001.0001, p 12 [41].

260 Submissions by the Australian Government in response to Counsel Assisting's submissions in Public hearing 22, 15 August 2022, SUBM.0026.0001.0001, p 7 [24].

261 Submissions by National Disability Services in response to Counsel Assisting's submissions in

Public hearing 22, 15 August 2022, SUBM.0026.0001.0018, pp 4–5 [15].

262 Submissions by Bedford Group in response to Counsel Assisting’s submissions in Public hearing  
22, 17 August 2022, SUBM.0027.0001.0001, pp 25–26.

263 Submissions by National Disability Services in response to Counsel Assisting’s submissions in  
Public hearing 22, pp 3–5.

264 ARTD Consultants, *Fair Work Commission new wage assessment structure trial evaluation*,  
Final report, 24 November 2021.

265 See Appendix A, Taylor Fry and the Centre for International Economics, *Costing a transition  
away from subminimum wages*, Report prepared for the Royal Commission into Violence, Abuse,  
Neglect and Exploitation of People with Disability, January 2023, pp 2–4.

266 See Appendix A, Taylor Fry and the Centre for International Economics, *Costing a transition  
away from subminimum wages*, Report prepared for the Royal Commission into Violence, Abuse,  
Neglect and Exploitation of People with Disability, January 2023, p 4.

267 See Appendix A, Taylor Fry and the Centre for International Economics, *Costing a transition  
away from subminimum wages*, Report prepared for the Royal Commission into Violence, Abuse,  
Neglect and Exploitation of People with Disability, January 2023, p 4.

268 See Appendix A, Taylor Fry and the Centre for International Economics, *Costing a transition  
away from subminimum wages*, Report prepared for the Royal Commission into Violence, Abuse,  
Neglect and Exploitation of People with Disability, January 2023, p 4.

269 See Appendix B, Taylor Fry and the Centre for International Economics, *Costing a transition  
away from subminimum wages – subsidy for half minimum wage*, Report prepared for the Royal  
Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, May 2023.

270 See Appendix B, Taylor Fry and the Centre for International Economics, *Costing a transition  
away from subminimum wages – subsidy for half minimum wage*, Report prepared for the Royal  
Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, May 2023, p 2.

271 See Appendix B, Taylor Fry and the Centre for International Economics, *Costing a transition  
away from subminimum wages – subsidy for half minimum wage*, Report prepared for the Royal  
Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, May 2023, p 3.

272 See Appendix B, Taylor Fry and the Centre for International Economics, *Costing a transition  
away from subminimum wages – subsidy for half minimum wage*, Report prepared for the Royal  
Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, May 2023, p 3.

273 See Appendix B, Taylor Fry and the Centre for International Economics, *Costing a transition  
away from subminimum wages – subsidy for half minimum wage*, Report prepared for the Royal  
Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, May 2023, p 3.

274 See Appendix B, Taylor Fry and the Centre for International Economics, *Costing a transition  
away from subminimum wages – subsidy for half minimum wage*, Report prepared for the Royal  
Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, May 2023, p 3.

275 See Appendix A, Taylor Fry and the Centre for International Economics, *Costing a transition  
away from subminimum wages*, Report prepared for the Royal Commission into Violence, Abuse,  
Neglect and Exploitation of People with Disability, January 2023.

276 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007,  
2515 UNTS 3 (entered into force 3 May 2008), arts 3(a), 3(d).

277 See Appendix B, Taylor Fry and the Centre for International Economics, *Costing a transition  
away from subminimum wages – subsidy for half minimum wage*, Report prepared for the Royal  
Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, May 2023.

278 See Appendix B, Taylor Fry and the Centre for International Economics, *Costing a transition  
away from subminimum wages – subsidy for half minimum wage*, Report prepared for the Royal  
Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, May 2023, p 3.

279 Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report  
of Germany*, 13<sup>th</sup> sess, UN Doc CRPD/C/DEU/CO/1, (13 May 2015), [49–50]; Committee on the  
Rights of Persons with Disabilities, *Concluding observations on the initial report of China*, 8<sup>th</sup> sess,  
UN Doc CRPD/C/CHN/CO/1, (15 October 2012), [67]; Committee on the Rights of Persons with  
Disabilities, *Concluding observations on the initial report of the Republic of Moldova*, 17<sup>th</sup> sess,  
UN Doc CRPD/C/MDA/CO/1, (18 May 2017), [48–49]; Committee on the Rights of Persons with  
Disabilities, *General comment no. 8 (2022) on the right of persons with disabilities to work and  
employment*, advance unedited version, UN Doc CRPD/C/GC/8 (9 September 2022).



- 280 Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of Australia*, 22<sup>nd</sup> sess, UN Doc CRPD/C/AUS/CO/2–3, (15 October 2019), [50(b)].
- 281 See, for example, Women With Disabilities Australia, Submission in response to *Employment issues paper*, 23 August 2020, ISS.001.00383, p 17 [3.3]; Down Syndrome Australia, Submission in response to *Employment issues paper*, 30 September 2020, ISS.001.00469, p 5; Australian Human Rights Commission, Submission in response to *Employment issues paper*, 24 September 2020, ISS.001.00459, at [105].
- 282 Children and Young People with Disability Australia, Women With Disabilities Australia, National Ethnic Disability Alliance, Australian Federation of Disability Organisations, Inclusion Australia, Disability Advocacy Network Australia, First Peoples Disability Network Australia, People with Disability Australia, Submission, 18 October 2020, SUB.100.01566, p 7.
- 283 Children and Young People with Disability Australia, Women With Disabilities Australia, National Ethnic Disability Alliance, Australian Federation of Disability Organisations, Inclusion Australia, Disability Advocacy Network Australia, First Peoples Disability Network Australia, People with Disability Australia, Submission, 18 October 2020, SUB.100.01566, p 8.
- 284 Linda Steele, ‘Law and disability ‘supported’ employment in Australia: The case for ending segregation, discrimination, exploitation and violence against people with disability at work’, (2023), vol 49 (1), *Monash University Law Review*, (forthcoming), p 27.
- 285 Linda Steele, ‘Law and disability ‘supported’ employment in Australia: The case for ending segregation, discrimination, exploitation and violence against people with disability at work’, (2023), vol 49 (1), *Monash University Law Review*, (forthcoming), p 34.
- 286 See for example, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *The association between segregated education and employment on the outcomes of NDIS participants*, prepared by the Data Analytics Team, July 2023.
- 287 See, for example, Transcript, Mija Gwyn, Public hearing 21, 23 February 2022, P-20 [9–30]; Transcript, ‘Kaite’, Public hearing 22, 11 April 2022, P-70 [35]–P-71 [1]; Transcript, Philip Shoolman, Public hearing 22, 11 April 2022, P-16 [36]–P-17 [5]; Exhibit 24-1, ‘Statement of Kimberly Langcake’, 12 May 2022, at [95–97].
- 288 Exhibit 22-4, ‘Statement of ‘Marc’’, 1 April 2022, at [5–7]; Exhibit 22-5, ‘Statement of ‘Tay’’, 5 April 2022, at [10–11]; Linda Steele, Submission, 28 April 2022.
- 289 Transcript, Catherine McAlpine, Public hearing 9, 7 December 2020, P-76 [35–43]; Exhibit 9-4, ‘Statement of Catherine McAlpine’, 27 November 2020, at [63]; Transcript, Catherine McAlpine, Public hearing 22, 11 April 2022, P-41 [23–27].
- 290 Family Advocacy, Submission in response to *Education and learning issues paper*, 2 January 2020, ISS.001.00052, pp 3–4.
- 291 Transcript, Greg Tucker, Public hearing 22, 12 April, P-81 [1–4].
- 292 Exhibit 22-2, ‘Statement of ‘Gert’’, 31 May 2022, at [10–12].
- 293 See, for example, Name changed, private session, ‘Stefan’; Australian Autism Alliance, Submission, 21 September 2020, SUB.100.00946, p 10; Peter Carmichael, Submission, 26 April 2020; Name withheld, Submission, 19 February 2021.
- 294 Exhibit 22-9, ‘Statement of Gerrie Mitra’, 1 April 2022, at [27]. See also Transcript, Gerrie Mitra, Public hearing 22, 13 April 2022, P-205 [34–38].
- 295 Exhibit 22-10, ‘Supplementary statement of Gerrie Mitra’, 6 April 2022, at [19].
- 296 Phil Tuckerman, CEO, Jobsupport, Submission in response to *Employment issues paper*, 19 August 2020, ISS.001.00378, p v; Disability Services Commissioner of Victoria, Submission, 30 June 2020, SUB.100.00805, p 42; Australian Human Rights Commission, *Willing to work: National inquiry into employment discrimination against older Australians and Australians with disability*, Final inquiry report, May 2016, p 242; Australian Civil Society CRPD Working Group, *Disability rights now 2019: Australian civil society shadow report to the United Nations Committee on the Rights of Persons with Disabilities*, July 2019, p 38.
- 297 Name withheld, Submission, 19 February 2020; Name withheld, Submission, 22 June 2020; Name withheld, Submission, 22 August 2019; Name withheld, Submission, 29 August 2019; Name withheld, Submission, 27 November 2019; Private session participant; Private session participant.
- 298 Transcript, ‘Kaite’, Public hearing 22, 11 March 2022, P-69 [38–43].
- 299 Transcript, ‘Kaite’, Public hearing 22, 11 March 2022, P-70 [4–5].

300 Name withheld, Submission, 15 July 2021; Name withheld, Submission, 1 December 2022;  
 Name withheld, Submission, 1 October 2019.  
 301 Name withheld, Submission, 1 October 2019.  
 302 See, for example, Peter Carmichael, Submission, 26 April 2020.  
 303 See, for example, Exhibit 22-0, 'Statement of 'Mahdi'', 1 April 2022, at [34].  
 304 See, for example, Transcript, Anthony Reid, Public hearing 22, 13 April 2022, P-168 [45] – P-169 [18].  
 305 Exhibit 19-36, 'Statement of Sandra Parker PSM', 2 September 2021, at [17]; See also [11].  
 306 Exhibit 19-36, 'Statement of Sandra Parker PSM', 2 September 2021, at [30].  
 307 Independent Advisory Council to the NDIS, Submission in response to *Employment issues paper*,  
 12 August 2020, ISS.001.00342, p 10.  
 308 National Disability Insurance Agency, *Employment outcomes for NDIS participants*, Report,  
 December 2020, p 41.  
 309 National Disability Insurance Agency, *Employment outcomes for NDIS participants*, Report,  
 December 2020, p 41.  
 310 Queensland Advocacy Incorporated, Submission, 14 December 2021, SUB.001.01456, p 5.  
 311 Queensland Advocacy Incorporated, Submission, 14 December 2021, SUB.001.01456, p 5.  
 312 Transcript, Catherine McAlpine, Public hearing 22, 11 April 2022, P-47 [31–34].  
 313 Transcript, Catherine McAlpine, Public hearing 22, 11 April 2022, P-47 [35–36].  
 314 Name changed to protect identity.  
 315 Your Say Advocacy Tasmania, Submission, 30 March 2022, SUB.100.01947, p 3.  
 316 Peter Carmichael, Submission, 26 April 2020.  
 317 Transcript, 'Tay', Public hearing 22, 12 April 2022, P-108 [11–16].  
 318 Name changed to protect identity.  
 319 Your Say Advocacy Tasmania, Submission, 30 March 2022, SUB.100.01947, p 4.  
 320 Transcript, Catherine McAlpine, Public hearing 22, 11 April 2022, P-46 [37].  
 321 Transcript, Catherine McAlpine, Public hearing 22, 11 April 2022, P-46 [41–46].  
 322 Submissions of Counsel Assisting the Royal Commission following Public hearing 22,  
 19 July 2022, [448].  
 323 Inclusion Australia, Submission, 23 December 2022, SUB.100.03035, p 100.  
 324 See Appendix A, Taylor Fry and the Centre for International Economics, *Costing a transition  
 away from subminimum wages*, Report prepared for the Royal Commission into Violence, Abuse,  
 Neglect and Exploitation of People with Disability, January 2023, p 12.  
 325 Australian Human Rights Commission, Submission in response to *Employment issues paper*,  
 24 September 2020, ISS.001.00459, pp 27–28; People with Disability Australia, Submission in  
 response to *Promoting inclusion issues paper*, ISS.001.00700, pp 7–8.  
 326 Phil Tuckerman, CEO, Jobsupport, Submission in response to *Employment issues paper*,  
 19 August 2020, ISS.001.00378, p 2; John Kregel, Paul Wehman, Josh Taylor, Lauren Avellone,  
 Vivienne Riches, Renell Rodrigues & David Taylor for Jobsupport, *A comprehensive review  
 of evidence-based employment practices for youth and adults with intellectual and other  
 developmental disabilities*, Final report, July 2020, pp 8, 19; National Disability Services,  
 Submission in response to *Employment issues paper*, 14 July 2020, ISS.001.00448, p 18;  
 Erin Wilson & Robert Campain, *Fostering employment for people with intellectual disability:  
 The evidence to date*, Report prepared by the Centre for Social Impact Swinburne for Inclusion  
 Australia, August 2020, p 45.  
 327 Erin Wilson & Robert Campain, *Fostering employment for people with intellectual disability:  
 The evidence to date*, Report prepared by the Centre for Social Impact Swinburne for Inclusion  
 Australia, August 2020, p 37; Australian Federation of Disability Organisations, Submission to the  
 Australian Government Department of Social Services, *The future of supported employment in  
 Australia*, March 2018, p 17.  
 328 Exhibit 9-5.04, EXP.0053.0001.0119, p 36.  
 329 Inclusion Australia, Submission, 23 December 2022, SUB.100.03035, p 250.  
 330 Inclusion Australia, Submission, 23 December 2022, SUB.100.03035, p 250.  
 331 Transcript, John Baxter, Public hearing 9, 10 December 2020, P-339 [6–11].  
 332 See, for example, Transcript, Anthony Reid, Public hearing 22, 13 April 2022, P-167 [39–44];  
 Transcript, Phillip Shoolman, Public hearing 22, 11 April 2022, P-25 [39–42]; Exhibit 22-4,  
 'Statement of 'Marc'', 1 April 2022, at [60]; Transcript, 'Kaite', Public hearing 22, 11 April 2022,  
 P-66 [1–17]; Transcript, 'Gert', Public hearing 22, 11 April 2022, P-36 [28–35].

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- 333 See Appendix B, Taylor Fry and the Centre for International Economics, *Costing a transition away from subminimum wages – subsidy for half minimum wage*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, May 2023, p 2.
- 334 See Appendix A, Taylor Fry and the Centre for International Economics, *Costing a transition away from subminimum wages*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, January 2023, pp 19–20.
- 335 See Appendix A, Taylor Fry and the Centre for International Economics, *Costing a transition away from subminimum wages*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, January 2023, p 20.
- 336 See Appendix A, Taylor Fry and the Centre for International Economics, *Costing a transition away from subminimum wages*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, January 2023, pp 21–22.
- 337 See Appendix A, Taylor Fry and the Centre for International Economics, *Costing a transition away from subminimum wages*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, January 2023, p 26 [5.1].
- 338 See Appendix A, Taylor Fry and the Centre for International Economics, *Costing a transition away from subminimum wages*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, January 2023, p 5.
- 339 See Appendix A, Taylor Fry and the Centre for International Economics, *Costing a transition away from subminimum wages*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, January 2023, p 26 [5.1].
- 340 See Appendix A, Taylor Fry and the Centre for International Economics, *Costing a transition away from subminimum wages*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, January 2023, p 20.
- 341 Submissions of Counsel Assisting the Royal Commission following Public hearing 22, 19 July 2022, p 136 [460].
- 342 See, for example, measures suggested in Children and Young People with Disability Australia, Women With Disabilities Australia, National Ethnic Disability Alliance, Australian Federation of Disability Organisations, Inclusion Australia, Disability Advocacy Network Australia, First Peoples Disability Network Australia, People with Disability Australia, Submission, September 2020, SUB.100.01566, p 12.
- 343 Submissions of Counsel Assisting the Royal Commission following Public hearing 22, 19 July 2022, 7 January 2022 (revised 9 March 2022), p 137 [462].
- 344 These principles have drawn on recommendations set out in Inclusion Australia, Submission, 23 December 2022, SUB.100.03035.
- 345 See, for example, Inclusion Australia, Submission, 23 December 2022, SUB.100.03035, p 17.
- 346 See, for example, Inclusion Australia, Submission, 23 December 2022, SUB.100.03035, pp 93–94.
- 347 See, for example, Inclusion Australia, Submission, 23 December 2022, SUB.100.03035, pp 26, 109–110.
- 348 See, for example, Inclusion Australia, Submission, 23 December 2022, SUB.100.03035, pp 27, 78–80.
- 349 See Appendix A, Taylor Fry and the Centre for International Economics, *Costing a transition away from subminimum wages*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, January 2023, p 5.
- 350 See Appendix A, Taylor Fry and the Centre for International Economics, *Costing a transition away from subminimum wages*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, January 2023, p 5.
- 351 Inclusion Australia, Submission, 23 December 2022, SUB.100.03035, p 34.
- 352 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 3(a).





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