



# Opening Address Counsel Assisting – Kate Eastman SC

## Public Hearing 9: Pathways and barriers to open employment for people with disability

**Sydney 7 December 2020**

Thank you Commissioners and good morning to everyone following the live feed.

As Counsel Assisting based in both Sydney and Brisbane also acknowledge and pay our respects to the traditional custodians of the lands on which we meet today. We pay our respects to First Nations Elders, past, present and emerging.

We also pay our respects to people with disability who are participating in and following this public hearing.

As the Chair has mentioned, this is the first public hearing of the Royal Commission to focus on the area of economic participation and specifically the barriers to open employment for people with disability.

## Focus of this hearing

You will shortly hear from the witnesses who will share their experiences of working in a wide range of workplaces and industries. The focus of the evidence will be on the systemic barriers experienced by people with disability in finding and maintaining meaningful employment. There are a large number of issues which arise in the area of employment and we cannot examine all of the issues in this public hearing. This public hearing will be largely led by people with disability. They will speak about the barriers they have faced in attaining meaningful employment.

This week, **Yuri Sianski** from Tasmania will tell you he has never had meaningful employment. Together with his father **Edward Sianski**, they will tell you about the impact on Yuri's life and their hope for the future.

**Kalena Bos**, who provided evidence to Public hearing 5 about the impact of COVID 19 on people with disability, will tell you she has been looking for a real job since she was 18 years old. She will tell you at that the age of 31, around three months ago she started her first real job at Kmart. She will tell you that the job is 'great' and she really loves work.

**John Baxter**, a First Nations Elder will tell you about taking on a lot of voluntary work in his 20s and 30s because he thought this would be a good opportunity to show his skills and consistency but this work never turned into a paid position.

**Ella Darling** will tell you about the support she has received from different Disability Employment Services providers and all of the different jobs she has found. She will tell you about her work as a cake decorator, trainee hairdresser and working in fast food outlets. She will tell you that she refused to accept work with an ADE and be paid \$2.50 per hour. She will tell you she is now in her dream job. Her dream job is working to help people with disability stand up for their rights.

**Dr Ben Gauntlett**, Australia's Disability Discrimination Commissioner is also a person who works to help people with disability stand up for their rights. He was a Rhodes

Scholar, worked as a High Court judge's associate and as a barrister. He will tell you about his personal experiences and also about his work as the Disability Discrimination Commissioner.

Not all people with disability have a visible disability. Deciding whether to disclose a disability is a personal decision and you will hear from witnesses about the experiences of working with disabilities that are not obvious. **Taylor** will tell you about applying for jobs and Taylor's experiences when she has disclosed her autism and when she chose not to. **Riley** will tell you about her experiences when she disclosed her scoliosis. Prospective employers 'hung up' on her or she experienced bullying. She will tell you the impact on her when she got jobs but did not disclose her disability.

The focus of this hearing is deliberately directed to the experiences of people with disability. For this hearing, you will not hear from employers, employer or employee representative bodies or governments. In future hearings, we will turn our attention specifically to the measures and actions of employers, unions and governments in addressing the systemic barriers to eliminate violence, abuse, neglect and exploitation of people with disability in employment.

Commissioners before you hear from these witnesses, I will provide an overview of what to expect during the public hearing and the likely findings that will be open for you to make.

## **Date and relevant statistics**

Commissioners you are aware of data relevant to employment from the Royal Commission's [Employment Issues Paper](#) released in May 2020 and those following can find a copy of that paper on the Commission's website.

Data collected by the Australian Bureau of Statistics reveals around 4.4 million people in Australia have some form of disability.

**Professor Anne Kavanagh and Ms Alex Devine** will tell you Australia has one of the lowest employment participation rates for people with disability, compared to other OECD countries.

The available data from 2018 says that there were around 2.1 million people with disability who were of working age (15-64 years of age). People with disability are significantly less likely to be in the labour force than people without disability.

This is evident when the labour force participation rates for those aged 15 and 64 years has not budged since 2015. That rate is at 53.4%. This is compared to an increase in the participation rate for people without disability, and that rate is 84.1%.

In 2018, for about 54% of people with disability working, around 53% were employed full-time, and around 37% were employed part-time. In comparison, around 84% of people without disability were in the labour force. Around 65% were employed full-time, and 30 % were employed part-time.

**Catherine McAlpine**, CEO of Inclusion Australia, who will give evidence later today, will tell you that people with intellectual disability experience even lower rates of employment in Australia. She cites data collected in 2012 that found that 39% of people with intellectual disability were in the labour force.

As the Chair has mentioned this morning, the rates of unemployment are higher for people with disability. In 2018, that was around 10% of people with disability of working age who were unemployed and that compared to around 5% of people without disability.

As the Chair has mentioned, people with disability are more likely to be unemployed for a longer period of time than people without disability. People with disability are more likely to be unemployed for 52 weeks or more (22%), compared with people without disability (14%).

For people with disability in Tasmania, Tasmania has the lowest labour force participation rate of all states and territories with 41% of people with disability compared to 86% of people without disability. The Australian Capital Territory has the highest rate of participation for people with disability.

If we dig a little deeper into some of these statistics, they tell us that women and girls with disability experience particularly low rates of employment at about 46%. Women with disability work part-time at almost double the rate of men with disability working part time. Women with disability are also significantly more likely to experience sexual harassment in the workplace than women without disability in the last 5 years.

You will also hear from the **National LGBTI Health Alliance** about the barriers faced by LGBTI people who live with disability in seeking and maintaining employment.

You will hear about the experience of young people with disability in the age group of 15 to 24. They are twice more likely to be unemployed compared to an older group aged 25 to 64.

**Jess Mitchell**, who is the Youth Storytelling and Development Officer with Children and Young People with Disability Australia, is an experienced advocate. Jess has lived experience as a young person with psychosocial disability and neurodiversity. Jess will speak about the experience of young people and tell you about the Inaugural National Youth Summit which was held between 29 September and 3 October this year which included discussion about employment.

In 2012, the unemployment rate of Aboriginal and Torres Strait Islander people with disability was 3 times higher than the rate for all people with disability. The gap between labour force participation of Aboriginal and Torres Strait Islander people with disability (35%), and all people with disability (53.6%), is therefore much wider compared to the same gap for people without disability.

**Dominic Golding**, the Policy and Project Officer at the National Ethnic Disability Alliance will tell you that the experience of people with disability from Culturally and Linguistically Diverse backgrounds is high. This is particularly so if they are non-English speaking and have a disability.

**Professor Anne Kavanagh and Ms Alex Devine** will tell you Australians with disability are less likely to be in paid work, relative to Australians without disability. Further, people with disability are:

- more likely to be overeducated for their jobs,
- have lower earnings;
- have poorer job satisfaction.

Many employees with disability hold tertiary qualifications. However, graduates with disability take longer to gain full-time employment compared to graduates without disability.

When it comes to looking at comparative income, in 2018, the median gross income for a person with disability aged 15 to 64 years was \$505 per week. That was less than half the \$1,016 per week median gross income of a person without disability.

Nearly half of all employed people with disability reported that they had experienced unfair treatment or discrimination by their employer due to their disability in the past 12 months.

These statistics reflect the findings of the *Willing to Work Report* published by the Australian Human Rights Commission when it conducted a national inquiry into discrimination against people with a disability and older workers in 2015 – 2016.

In 2018–19, almost half of the complaints, about 44%, received by the Australian Human Rights Commission related to disability discrimination, with over a third, 36%, related to employment.

Of course, none of these statistics reveal the impact of the COVID 19 pandemic on the employment opportunities for people with disability.

In the short time available for this hearing, we want to go behind these statistics and meet some of the real people and hear from people with disability.

We know that the National Disability Strategy has noted the vast majority of people with a disability can and do want to work and be as financially independent as possible.

**Professor Karen Fisher** will remind you the National Disability Strategy has the “shared vision is for an inclusive Australian society that enables people with disability to fulfil their potential as equal citizens”. The Strategy's goals include improving the accessibility and inclusiveness of society and the participation of people with disability as well as changing community attitudes towards disability. The strategy seeks to promote and guide action and reform across all Australian governments, private enterprises, disability sector organisations and the broader community.

**Professor Fisher, Professor Anne Kavanagh and Ms Alex Devine** will tell you that employment for people with disability has numerous social, health and economic benefits including a greater likelihood of secure housing, reduced poverty, social inclusion as well as better physical and mental health.

There are further benefits to the Australian economy. In a report commissioned by the **Australian Disability Network** in 2011, Deloitte Access Economics, economic modelling suggests that Australia will forego substantial economic benefits if the labour market disadvantages faced by people with disability are not addressed. The modelling showed that if the gap between the participation rate and unemployment rate for people with disability and those without could be reduced by just one third, and that was phased in up to 2021, the cumulative impact on GDP would have been \$43 billion. The modelling showed the economic payoffs could be large.

This is also a point made in the *Willing to Work Report*. **Dr Ben Gauntlett** the Disability Discrimination Commissioner will tell you about the recommendations made in that report.

## CRPD and human rights

That takes me then to the important point of human rights. Employment is not simply about economics. Employment is also about human rights. For people with disability, the right to work on an equal basis with others is a core human right. The right to work, together with just and favourable conditions of work are long standing human rights.

Article 27(1) of the CRPD recognises that the right of persons with disabilities to work on an equal basis with others 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.

Article 27 requires Australia to safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation covering 11 specific areas.

As the Commissioners have heard in previous hearings, Australia's compliance with its international legal obligations are monitored by a committee established under the Convention. In October last year, in *Concluding Observations on Australia*, the CRPD Committee recommended a range of measures that Australia must implement to give effect to its obligations under Article 27. In particular, the CRPD Committee has recommended that Australia do the following:

1. First, take measures to reform the Disability Employment Services and develop a national disability employment strategy that incorporates the recommendations from the *Willing to Work Report* and contains targeted gender-sensitive measures.
2. Secondly, the Committee recommended that Australia undertake a comprehensive review of ADEs to ensure that they adhere to Article 27 of the CRPD and provide

services to enable people with disability to transition from sheltered employment into open, inclusive and accessible employment, ensuring equal remuneration for work of equal value.

3. Thirdly, the Committee recommended that Australia implement measures to address systemic and structural barriers experienced by people with disability, particularly by women with disabilities, Aboriginal and Torres Strait Islander people with disability, people with disability from culturally and linguistically diverse backgrounds and refugee and asylum-seeking people with disability.
4. Fourthly, the Committee recommended an immediate discontinuance of the use of the Business Services Wage Assessment Tool.
5. Fifthly, to ensure that the Supported Wage System is modified to secure correct assessment of the wages of persons in supported employment, including ADEs.
6. Finally, to adopt initiatives to increase employment participation by women with disabilities by addressing the specific underlying structural barriers to their workforce participation.

To put some of these observations in context, in Australia, there is a distinction between the open labour market and what is described as sheltered or segregated employment. Segregated employment is of the kind offered by Australian Disability Enterprises (ADEs). It involves programs where people with disability work in a segregated environment under supervision. ADEs commonly employ a large number of people with cognitive disabilities and use a modified wage system where the employee is paid based on their work capacity. Participants at ADEs can be legally paid less than the Australian minimum wage under this system.

The operation of ADEs and the treatment of people with disability working in ADEs has been highlighted by the CRPD Committee. ADEs are transitioning from the Commonwealth Department of Social Security to the NDIS. This change will uncap the number of ADE places and potentially increase the number of people with disability in ADEs. Commissioners you have also identified ADEs as an area to be examined by the Royal Commission. A specific examination of ADEs will be conducted in future public hearings and that will pick up the matters identified by the CRPD Committee.

**Ms Catherine McAlpine** will tell you later today that there are pressing concerns about ADEs. She will tell you about data published by the NDIA in December 2019 on the type of paid employment for participants with intellectual disability, which shows that for participants aged 25 and over, 15% are in open employment with full award wages, 13% are in open employment with less than award wages and 72% are employed in ADEs.

Commissioners you are aware of the work done by the Full Bench of the Fair Work Commission in its examination of the *Supported Employment Services Award 2010*. That Award was subject to a 4 yearly review and has now been replaced by the *Supported Employment Services Award 2020*. This Award covers employers throughout Australia who operate *supported employment services* to support the paid employment of persons with disabilities, 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.*

Commissioners you are aware that Australia has a national minimum wage.

On 19 June 2020, the Full Bench of the Fair Work Commission relevantly made an order declaring that the national minimum wage is \$753.80 per week and that translates into \$19.84 per hour.

There are two exceptions to those who are guaranteed the national minimum wage. One of those exceptions is for award or agreement free employees with disability. For employees with disability whose productivity is not affected, then that minimum wage will apply. But for employees with disability whose productivity is affected, then an assessment is made under the supported wage system. That system assesses a person's capacity and then determines the rate of pay as a proportion of capacity. Under that system, a person with disability may be paid as little as \$89 per week and that translates into \$2.34 per hour for full-time employees.

Commissioners you will receive a statement from **Jamie**. Jamie is 58 years old. He has a vision impairment and an Acquired Brain Injury. He has tertiary qualifications including a Master of Human Services and Master of Social Work. He has spent over 20 years volunteering to develop his skills and experience. His opportunities for paid work have been limited and generally in ADEs. During some recent employment with an ADE he was paid an hourly rate of \$3.51. He says this was not nearly enough to cover the necessities of life. He says that during his employment with various ADEs he was told his lower wages were intended to ensure he would not lose his Disability Support Pension. He says 'a lifetime of unemployment and under-employment has ruined my life and left me welfare dependant'. He feels exploited.

## Systemic barriers

Based on the submissions received by the Royal Commission and the evidence you will hear this week, we have identified four key areas:

1. Attitudinal
2. Physical/environmental
3. Organisational
4. Structural barriers

After considering the evidence presented this week, it will be open to the Commissioners to find that people with disability experience systemic barriers in obtaining and retaining employment.

## Attitudinal barriers

All of the witnesses this week will describe different kinds of attitudinal barriers.

Commissioners, you will hear about the attitudes towards people with disability from the direct experience of witnesses but also from survey evidence, including the *Survey of Community Attitudes toward People with Disability* (August 2018).

**Michael Pini** is a senior executive in the Australian Taxation Office. He will tell you about his experience working with the ATO for 33 years. He will tell you his ATO colleagues know him and he has not experienced internal barriers. But he will tell you that in going about everyday life, he still faces attitudinal barriers. For example, people ask him if he

works and seem surprised if he says he does and even more surprised if he says that he works full-time.

**Oliver Hunter** says his ideal job would be to work as a comedian in radio or media. But he will share his experience of applying for a job in 2015 and being dissuaded from pursuing the position at a University when the Head of Campus said 'due to your physical restrictions you won't be able to do the job', and that was the end of it.

**Prof Karen Fisher** says attitudes are a barrier to employment because they prevent people entering work and staying in work. At the very least, negative attitudes lower expectations about the right to work, and at worse they result in abuse in the workplace.

She says, from her research, that community expectations about low or no capacity to work prevent people from considering work or entering the labour market. These negative attitudes that affect people's right to work encompass people's life course and life domains.

People with disability face these attitudes from early childhood, such as access to educational and social opportunities equal to other children. Equally, in the community and workplaces, they face negative attitudes about their capacity to work from employers, workmates, colleagues, customers and community members.

She will tell you studies from Australia, the UK, Canada and other countries show that many employers are reluctant to employ people with disabilities (especially those with mental health issues, learning disabilities or blindness). Reasons for their reluctance include negative employer attitudes, and these are often due to misconceptions about the capabilities of people with disabilities, the cost of workplace modifications, stereotyping and fear of workplace disruption.

**Associate Professor Jennifer Smith-Merry and Professor John Buchanan** will tell you about their recent research into the NSW Vocational Education and Training (VET) System and the Smart and Skilled system. They found discrimination and stigma towards people from disadvantaged backgrounds (including those with disability) is deep-seated and widespread. They have prepared a detailed final report and they will discuss the complexity of systems and the labour market factors that contribute to their findings.

**Suzanne Colbert AM**, the CEO of the Australian Network on Disability will tell you about the Employer Mobilisation Project that examined employers' attitudes and barriers to the

employment of people with disability. The barriers identified by employers mirror those identified by people with disability. Attitudes ranked highly in the outcome of that project:

- a. Fear of the unknown — employers responded that they:
  - (i) “don’t know how to act” or “don’t know how to accommodate mental ill health or disability”; and
  - (ii) recruitment of people with disability is a bigger hurdle than retaining people with disability – and a key barrier is other staff feeling uncomfortable because they don’t know how to act or accommodate the disability.
- b. The tendency to see the disability rather than the person – therefore there is a focus on limitations and constraints and this results in a prevalence of unconscious bias.
- c. Extremism – that is the tendency for employers to think of extreme examples of disability, whether physical or mental, that can result in employers citing this as a reason why they couldn’t or wouldn’t employ people with physical or mental ill health or other disability.

In summary, the evidence presented to this hearing will identify attitudinal barriers such as:

- *Discriminatory attitudes and behaviours during recruitment, from employers, hiring managers and Human Resources personnel.*
- *Discriminatory attitudes and behaviours in the workplace, from employers and others, including colleagues and staff.*
- *Assumptions that people with disability do not want to work or are not capable.*
- *Employers incorrectly assuming hiring people with disability will be costly, burdensome, less productive and risky.*
- *Concerns for both employers and people with disability around disclosing disability and navigating when, how and if to do that.*
- *Lack of access to job opportunities from informal networks resulting from people with disability experiencing social exclusion and isolation.*

- *Negative mental health impacts including lack of motivation or confidence resulting from continued and pervasive employer rejections experienced by people with disability.*

## **Physical/Environmental**

**Dr Beth McInally** sums up the physical barriers when she says:

*“The process of attending an interview poses physical barriers for me. In the first instance I have to contact the organisation to determine if the building where the interview is to be held is accessible. For me the term ‘accessible’ does not simply mean that there are no stairs. As a result of using an electric wheelchair and having short arms, there are a number of other factors that make a building inaccessible to me. For example, I also need to ensure that there is sufficient space in rooms and that doorways are sufficiently wide to allow for manoeuvrability. Also, due to my specific disability, I can encounter barriers to access due to unreachable door handles and lift buttons.*

*Having to consider the various aspects of access makes the process of attempting to and ultimately obtaining employment all the more challenging and at times exhausting for people with disability. When consistently faced with barriers that I need to problem solve how best to overcome, I am reminded of the additional effort that is required for me to simply ‘reach the same point’ in the day as a person without a disability.”*

**Oliver Collins** works as a solicitor in Brisbane. He will tell you he was initially reluctant to raise the issues of adjustments in the workplace. In his current job, he has sought adjustments and will tell you about how those adjustments have worked for him, including during the COVID 19 shut downs.

In summary, the evidence that will be presented to this hearing will identify physical and environmental barriers such as:

- *Workplaces/buildings that are physically inaccessible.*
- *Environments that do not support the inclusion of people with various psychosocial/cognitive and episodic disability.*

- *Environments that do not support communication access.*
- *Lack of availability of jobs, particularly for people living outside urban centres.*
- *Lack of accessible transport to be able to travel to work.*
- *Inaccessible technology, design, websites or communications.*

## Organisational

**Kit Owen-Turner** and her daughter Charlene will tell you about Charlene's ambition to work in an office. Ms Owen-Turner will tell you about Charlene's transition from school to further education at TAFE and the push from Charlene's school that she to go to day support programs. She wants there to be options, including the opportunity for Charlene to focus on her further education.

**Cody Skinner** will give evidence today. He will tell you about his wide range of different jobs. He will tell you about the importance of work experience, building good working relationships and even barriers to obtain qualifications, including his quest to obtain a drivers licence. He has started his own business because he was tired of being bullied and stressed by employers.

**Dr Lisa Stafford** will tell you about her recent research examining the insights into young people with disability from education to work. She will tell you about the practice of 'churn', particularly for young people being in a cycle of short term employment placements. One of the research participants told her *'still it's a numbers, get them in, get them out and hopefully get them into the right environment. You want that fine line of saying you're person centred and you follow the standards of disabilities, but in reality, you are processing people through and getting them into a job as quickly as possible. If you don't, then your business closes down and there's no one there to support anybody.* We will explore these issues with Dr Stafford and the experience of those assisting young people to find employment.

**Suzanne Colbert** will also talk about these barriers and tell the Royal Commission about some research done to identify the reasons advanced by employers. She will tell you that employers tend to focus on the risks of hiring people with disability. These are:

- (i) perceptions of risk associated with making poor hiring decisions and having to re-hire again;
- (ii) potential risks from having someone with a disability injure themselves or others because of their disability;
- (iii) concerns that people with pre-existing injuries, or those who are injured on the job, could become a liability.

Ms Colbert will explain how employers' perceptions contribute to the barriers.

In summary, the evidence that will be presented to this hearing will identify organisational barriers such as:

- *Employers lacking knowledge, skills, leadership and resources to support people with disability. Employers may overlook the unique skills of people with disability for particular types of work.*
- *Difficulty for people with disability in accessing skills training and education and lack of support to engage with and complete qualifications.*
- *Lack of access for people with disability to part-time work, volunteering or work experience.*
- *Job advertisements/role descriptions that are inaccessible, contain discriminatory inherent requirements and do not reference reasonable adjustments.*
- *Lack of or inappropriate assistance in becoming 'job ready', finding, securing and maintaining employment.*
- *Poorly trained, inefficient job service providers, placing people in any job with no regard to the jobseeker's skills, qualifications and interests.*
- *Workplaces refusing to provide flexible work arrangements or reasonable adjustments/accommodations, including during recruitment (e.g. at an interview).*

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

## Structural

Australia has a number of employment programs aimed at increasing the participation of people with disability in employment. I have referred to ADEs and the Wage Assessment tools earlier. Others important to this hearing include the:

**National Disability Insurance Scheme (NDIS) employment supports:** That involves funding for employment supports may be included in a person's NDIS plan that will give them assistance to build skills and capacity to find employment. These include individual and group employment supports, employment related assessments and School Leaver Employment Supports (SLES).

But as we have noted on many occasions, not all Australians with disability are NDIS participants.

A second area is the **Department of Social Services (DSS) employment supports.** These include Disability Employment Services (DES). They are designed to support people with disability to find work in the open labour market, and the Employment Assistance Fund (EAF), which organises customised reasonable adjustments and provides funding to employers of people with disability for work related modifications, equipment, and supports.

**Ms Alex Devine** has provided the Royal Commission with research undertaken in 2020 exploring the interface of NDIS and DES with respect to the influence on employment outcomes for Australians with disability. The research found participants had positive experiences but also challenges. One of the key findings undermining the effectiveness of the NDIS and DES interaction was the gaps and overlap in the growing number of government and non-government initiatives aimed at improving outcomes for people with disability and other target groups of marginalised jobseekers.

The complexity of the systems is a recurrent theme in the evidence. You will also hear about the importance of supports.

You will hear from our first witness this morning, **Rohan Fullwood**, who has recently retired after working for about 18 years at McDonalds in George Street, Sydney. Those in Sydney may know it well. He will tell you about his work experiences and the support he received over his 18 years with one employer.

In summary, the evidence that will be presented to this hearing will identify structural barriers such as:

- *Lack of access to adequate income required to meet essential living standards and participate in finding and keeping a job (e.g. sufficient food, appropriate and safe shelter with utilities, phone and internet access, ability to buy suitable clothing).*
- *Lack of access to employment related advocacy services.*
- *Disincentives in the Disability Employment Services program.*
- *Lack of coherence and connections between government programs designed to help people with disability into employment, including complexity and variance around eligibility requirements.*
- *Potential reduction or loss of the Disability Support Pension and associated benefits as a result of employment or increased hours.*
- *Overly complex and confusing rules around participation requirements and mutual obligations associated with income support.*
- *Job capacity assessments that emphasise impairment and weakness, thereby obscuring structural, organisational and attitudinal barriers.*
- *Narrow legislative definitions and burden of proof being on people with disability to demonstrate where discrimination has occurred.*

As noted above, the highest number of complaints to the AHRC have concerned disability discrimination in employment. Dr Gauntlett will tell you about the effectiveness of the *Disability Discrimination Act* to provide redress. Under the *Disability Discrimination Act* complainants bear the onus of proving discrimination. Some comparisons may be

made to the General Protections regimes in the *Fair Work Act* which provide for a reverse onus, so an employer must prove that adverse action was not, relevantly taken, because of an employee's physical or mental disability.

There are likely to be other barriers that emerge from the evidence.

## What needs to happen next?

Simply preparing a list of systemic barriers is not enough. The Commission will need to examine how these barriers can be addressed and ideally eliminated. This will necessarily involve a closer examination of the practices, policies and the regulation of private and public sector employers together with governments and the institutions responsible for regulation of employment and the labour market in Australia.

Commissioners, in your future work, you will need to examine measures such as the NDIS Participant Employment Strategy launched in 2019. The NDIS Participant Employment Strategy potentially applies to the 10% of people with disability who receive a NDIS plan. The other 90% of people with disability who also face structural, social, attitudinal and support barriers may also benefit from any learning from the NDIS scheme.

Many witnesses will share their recommendations and suggestions for change. In this public hearing, you will hear about measures taken by the **Australian Network on Disability** through various internship programs. You will also hear from three members of the team from **Get Skilled Access**. GSA as it is known, was founded in 2017 by Dylan Alcott and Nick Morris. GSA works with employers to build inclusive cultures, overcoming barriers and building in accountability.

The **National LGBTI Health Alliance** will share their experience developing the EmployableQ Disability Inclusion Toolkit and the importance of co-design with people with disability.

You will hear from **Rachel Kroes** in Darwin and the reasons why she established Project 21. Her focus has been on the transitions from school into work and she will tell you what young people with disability currently experience.

Innovation is essential. Our workplaces and the way we work are changing. Casualisation and the gig economy will impact on people with disability. Likewise, the impact of COVID 19 on Australian workers with disability will be of ongoing concern.

## **This public hearing**

As I noted above, this is the first hearing to explore the area of economic participation and employment.

Our focus is on listening and understanding the experience of people with disability. It is likely that some evidence will be distressing.

I must stress, that for this hearing, the Royal Commission will not be making findings of negligence or breaches of any workplace laws. The Royal Commission is not intended to be a substitute for the Fair Work Commission, the Fair Work Ombudsman or local complaints processes or internal investigations. The Royal Commission is not a court and cannot provide remedies for individuals.

For this hearing, the Royal Commission will not be making findings whether a particular person or employer breached the law or breached a policy.

## **Protection for witnesses**

I want to mention again the protections for witnesses. We have raised this for each hearing but it is important. There are provisions of the Royal Commissions Act which have the very clear object of protecting witnesses who give evidence before the Commission. In particular, I want to draw attention to section 6M of that Act, which provides that – any person who uses, causes, or inflicts, any violence, punishment,

damage, loss or disadvantage to any person on account of the person having appeared as a witness, given evidence, or produced documents to the Royal Commission, commits an indictable offence.

Particularly for this hearing, section 6N of the Act makes it an offence for any employer who dismisses any employee from his or her employment, or prejudices any employee in his or her employment, for or on account of the employee having:

- (a) appeared as a witness before a Royal Commission; or
- (b) given evidence before a Royal Commission; or
- (c) produced a document or thing, or given information or a statement, pursuant to a summons, requirement or notice, also commits an indictable offence.

#### Possible effect of watching/listening to hearings

I noted that some of the evidence this week may be distressing, and the public hearings will continue to be made available by way of web stream. The Royal Commission encourages those watching, whether by web stream or whether here in person, to be mindful that topics might be upsetting and we encourage those to seek support in that respect.

The Royal Commission has an internal counselling and support services team, made up of social workers and counsellors. They are able to provide counselling and support to people engaging with the Commission. The information is available on the Royal Commission's website.

Thank you Commissioners, that concludes my opening remarks.