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**TRANSCRIPT OF PROCEEDINGS**

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**THE HON RONALD SACKVILLE AO QC, Chair**  
**THE HON ROSLYN ATKINSON AO, Commissioner**  
**DR RHONDA GALBALLY AC, Commissioner**  
**THE HON JOHN RYAN AM, Commissioner**

**THE ROYAL COMMISSION INTO VIOLENCE, ABUSE, NEGLECT AND  
EXPLOITATION OF PEOPLE WITH DISABILITY**

**10.30 AM, MONDAY, 7 DECEMBER 2020**

**DAY 1**

**Kate Eastman SC, Senior Counsel Assisting**  
**Simone Fraser and Melinda Zerner, Counsel Assisting**

## OPENING REMARKS BY CHAIR

5 CHAIR: Good morning, everyone. This week we will be conducting the ninth hearing of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. The hearing will examine the pathways and barriers to open employment for people with disability. This is an issue of great importance as this Commission continues its work, seeking to move Australia towards becoming a more inclusive society.

10 I extend a warm welcome to all those who will be following the proceedings. I especially welcome those people with disability who have been generous enough to come forward and give evidence of their experiences with the labour market.

15 We begin as we always do in our hearings with an Acknowledgment of Country. I wish to acknowledge the Gadigal people of the Eora Nation, the traditional custodians of this land. I also acknowledge the Turrbal and Jagera Nations upon whose lands our hearing room in Brisbane is located. I pay my respects to their Elders, past, present and emerging, as well as to all First Nations people viewing this hearing on the livestream.

20 At the hearing this week, I shall be joined by Commissioner Roslyn Atkinson AO, who is in our Brisbane hearing room; Commissioner Rhonda Galbally AC is participating in the hearing from Melbourne; Commissioner John Ryan AM is present in the hearing room with me.

25 Ms Kate Eastman SC is the Senior Counsel Assisting the Royal Commission at this hearing; she is also present in the Sydney hearing room. Ms Eastman appears with Ms Simone Fraser and Ms Melinda Zerner, both of whom are in the Brisbane hearing room.

30 Emeritus Professor Ron McCallum AO, a Senior Adviser to the Royal Commission, was to have joined Ms Eastman in the Sydney hearing room. Professor McCallum is internationally recognised as an expert in employment law and labour relations and has contributed a great deal to the preparation for this hearing. By one of those cruel little twists of fate that have characterised 2020, Professor McCallum has been required to quarantine, through circumstances entirely beyond his control. We do hope he will be able to join the hearing later this week.

35 Legal representatives for the parties given leave to appear will participate in the hearing, either in person in the Brisbane or Sydney hearing rooms or remotely, and I will ask them to announce their appearances shortly. This is a public hearing but because of the continuing issues with the COVID-19 pandemic, it is not possible for members of the public to be present in either of the hearing rooms. However, the proceedings can of course be followed on the webcast, which is available on the Royal Commission's website. As with all our hearings, an Auslan-English interpreter will be visible on the webcast. Our Auslan interpreters on this occasion

will be operating from the Brisbane hearing room.

5 We are approaching the end of 2020, a year that for many will be seared in our memory. This is particularly true for those who experienced the most severe impacts from the COVID-19 pandemic and the restrictions associated with the pandemic, including, of course, many people with disability.

10 The Royal Commission has recorded the experiences of people with disability, particularly during the early stages of the pandemic in our report on Public hearing 5, which was publicly released on 30 November 2020.

15 The Royal Commission's proposed schedule of hearings for 2020 was severely disrupted by the advent of the COVID-19 pandemic. We had intended to hold hearings throughout the year in every State and Territory of the Commonwealth. Before the pandemic arrived we were able to hold one hearing in February in Homebush in Sydney, over nine hearing days. That was on the topic of healthcare and services for people with cognitive disability.

20 The Commissioners' report on that hearing, Public hearing 4, has been published, and the issues identified at the hearing were also addressed in the Royal Commission's interim report which was published on 30 October 2020.

25 Let me deal with each of the hearings briefly that we have held this year after the pandemic began.

30 The first was Public hearing 5, dealing with COVID-19. The advent of COVID-19 meant that we could not resume hearings until mid-August 2020, a gap of about six months from the previous hearing. Public hearing 5 addressed the experiences of people with disability during the COVID-19 pandemic and was conducted over four days from 18–21 August 2020. That hearing, like all our subsequent hearings, was conducted remotely with the use of technology. As I have indicated, the Royal Commission presented the report arising from the COVID-19 hearing on 30 November 2020. The report of 131 pages finds that there were serious failings in the response of the Australian Government to the COVID-19 pandemic, jeopardising the health, safety and wellbeing of many people with disability. As the report found, in the early stages of the pandemic people with disability were "forgotten and ignored".

40 The report has made 22 recommendations designed to ensure that there is no repeat of these fails in any future emergency. At all times, even during a pandemic, the human rights of people with disability must be upheld and they must receive the protection and the services to which they are entitled.

45 The report on COVID-19 is the first report of the Royal Commission to make formal findings of fact and to make recommendations for change. It is for that reason that it was presented to the Governor-General. The report demonstrates, as we foreshadowed earlier in the life of the Royal Commission, that we do not have to wait until the presentation of our final report in order to make findings and

recommendations. Of course, there has to be an evidentiary basis for findings and recommendations. Parties that may be adversely affected by any such findings and recommendations must have an opportunity to make submissions and, if appropriate, to bring forward evidence to support their case.

5

Subject to these requirements, we will be prepared to make recommendations during the life of the Royal Commission if they are necessary to protect people with disability from violence, abuse, neglect and exploitation.

10 Public hearing 6 was held from 22–25 September 2020 and addressed "Psychotropic medication, behaviour support and behaviours of concern". Psychotropic medication is a form of chemical restraint used to control certain behaviour of people with disability, especially people with cognitive disability. Detailed submissions arising out of that hearing have been prepared by Counsel Assisting the Royal Commission and responses have been received to those submissions from parties who were given  
15 leave to appear at the hearing. In due course the Commissioners' report of that hearing will be prepared and published.

20 Public Hearing 7, over five days from 12–16 October 2020, was our second hearing on the theme of inclusive education. It examined the barriers to accessing a safe, quality and inclusive school education and the life course impacts of the failure to provide inclusive education as should have been the case.

25 Evidence at the hearing demonstrated the gap between the goal of achieving inclusive education in mainstream schools and the reality so often experienced by students with disability.

30 Our terms of reference require us to have regard to the multilayered forms of violence, abuse, neglect and exploitation experienced, among others, by First Nations people. Consistently with that direction we originally had intended to hold a hearing in the Northern Territory in May to examine the multiple forms of discrimination and disadvantage experienced by First Nations people with disability.

35 That hearing had to be postponed, but Public hearing 8, which was held from 23–27 November 2020, addressed the experiences of First Nations people with disability and their families, coming in contact with child protection systems of the States and Territories.

40 This is a topic of particular significance because First Nations parents and children are heavily over-represented in the child protection systems of the States and Territories. The evidence of that hearing suggests that First Nations parents and children with disability are also heavily over-represented in the child welfare systems of the States and Territories.

45 Public hearing 8 heard of the indelible historical events that have made the interactions between First Nations people and the child protection systems in Australia such a blight on Australia's modern history. We heard of the consequences

of: colonialism, dispossession, oppression and intergenerational trauma associated with the Stolen Generations. These are themes to which we shall return in future hearings. In due course we shall formulate recommendations intended to forestall, so far as possible, history repeating itself.

5

We have learned a great deal from the five public hearings held so far during this year. As I shall explain, in addition to this week's hearing, we shall be holding the seventh hearing for the year next week.

10 First and foremost, the public hearings have provided an opportunity for people with disability to recount their own experiences and to tell their own stories. This is not the only means of doing so. There are other opportunities for people with disability to share their experiences through submissions, responses to issues papers, private sessions and various other forms of engagement with the Royal Commission.

15

That evidence at a public hearing from people with lived experience of disability is central to our work. Their evidence bears witness to the violence, abuse, neglect and exploitation that people with disability experience on a daily basis. Allowing their voices to be heard complies with our obligations under the terms of reference to ensure that people with disability engage with the Royal Commission's inquiry, provide evidence and their experiences.

20

Evidence from people with disability leaves a lasting impression on those who hear it. One memory among many that stand out is the message conveyed at Public hearing 7 by Quaden Bayles, a boy with disability, who had been severely bullied at school and subject to discrimination by reason of his disability. When asked what he would like to tell the children and others who had been responsible for bullying him, he said:

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30 *Just don't be rude to kids who have disabilities and just be kind and nice.*

Secondly, the subject matter of the hearings conducted to date confirms what we have said from the very beginning of the Royal Commission. Our inquiry is extraordinarily wide, extremely complex and very challenging. By the end of this year, we will have held hearings addressing: violence, abuse, neglect and exploitation in the context of education; group homes; the health system (particularly in relation to people with cognitive disability); the responses to the COVID-19 pandemic; chemical restraints applied to people with disability; First Nations people with disability and the child protection systems; open employment; and the training of health professionals. Next year, 2021, will be comparable in breadth and variety.

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This is one reason why we have asked the Australian Government to extend the life of the Royal Commission until September 2023, four and a half years from its establishment. Another reason is the interruption of our work that was caused by the pandemic. We hope to have a response from the Australian Government to our request shortly.

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Thirdly, the hearings have attempted to expose the systemic issues that must be addressed in Australia if we are to make progress towards, in the language of the terms of reference, a more inclusive society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.

Identifying the issues is the first necessary step towards proposing reforms to legislation and to official policies and practices as well as bringing about a transformation of attitudes about a transformation of attitudes of the wider community towards people with disability. Much of our work will be designed to bring about the attitudinal changes that are essential if we are to achieve the objective of a more inclusive society.

Fourthly, we have used the hearings to identify further lines of inquiry and, in some cases, to flag possible recommendations or at least proposals for consideration. This approach can be seen, for example, in Chapters 12–14 and 19 of the Interim Report. A reading of those Chapters and indeed of the Interim Report as a whole will indicate the directions in which the Royal Commission is heading. As I have said on other occasions, this is not a sprint but a marathon. Stamina and a certain amount of patience are required.

Fifthly, and by no means least, public hearings play a critical part in informing the whole Australian community of the violence, abuse, neglect and exploitation experienced by people with disability. Much of the evidence we hear consists of accounts that mirror the experiences of virtually all people with significant disability. They already understand. It is the understanding and attitudes of people without disability, including decision-makers, that need to change for social inclusion to be an attainable goal.

The challenge for the Royal Commission is for these stories and the reasons for institutional failures to reach people throughout the Australian community. It is here that the media have an indispensable role. Unless the hearings are widely reported, there is a risk that the Royal Commission and people with disability will be talking mainly to those who already appreciate the problems and challenges.

It is of course no part of the Royal Commission's function to comment on the cultural wars that form such an entertaining part of the country's intellectual fabric. However, it is appropriate to commend the ABC for its outstanding coverage of the public hearings. There are other outlets which have been prepared to devote resources to reporting the hearings and their role has been and will be very important.

I hope that during 2021, more mainstream media outlets will consider the work of the Royal Commission to be worthy of public attention. This is not in the interests of the Commission but it is in the interests of the people with disability and Australian society as a whole.

What's to happen next year? In the course of 2021, our hearings will include

investigations into the experiences of people with disability in the criminal justice system, the role of service providers in the National Disability Insurance Scheme, the interactions between First Nations people with disability and out-of-home care, the use of restraints on children with disability, and the health and safety of women and girls with disability.

While this hearing, Public hearing 9, is focused on open employment, the Royal Commission intends to consider the experiences of people with disability in segregated employment settings in future hearings.

As the Royal Commission moves towards a Final Report, even if it is nearly three years away, there will be a greater concentration on exposing violence, abuse, neglect and exploitation of people with disability through detailed case studies. We intend to examine the conduct of service providers and others who come in regular contact with people with disability.

We shall also be working towards formulating proposals that after further consultation and refinement can provide the foundation for firm recommendations. There is still a long way to go.

As far as this hearing is concerned, this week is the first time a public hearing of the Royal Commission is investigating the barriers to the economic participation of people with disability.

The statistics relating to workforce participation of people with disability are sobering. We will hear during the week that Australia has one of the lowest employment rates for people with disability in the OECD. A survey in 2018 by the Australian Bureau of Statistics reported that 10.3 per cent of people with disability were unemployed, compared with 4.6 per cent of the general population --- well over more than twice as many.

According to the Australian Institute of Health and Welfare, people with disability not only experience higher rates of unemployment, but they are unemployed for longer and have higher rates of underemployment than the general population. The Human Rights Commission reports that nearly half of people with disability who are employed experience unfair treatment or discrimination by employers in the previous 12 months.

During this week, people with disability will relate their experiences of attempting to find and keep jobs in open employment, their transitions into and out of the workforce and the ways in which they have been subjected to discrimination, neglect and in some cases exploitation. Ms Eastman will outline in her opening in more detail the issues to be examined at the hearing. But they do include the systemic barriers to people with disability obtaining rewarding employment and receiving the support to which they are entitled as part of their employment.

As Ms Eastman will explain, the barriers are attitudinal, such as prejudicial

assumptions made by prospective employers about the capability of people with disabilities; environmental, such as the physical inaccessibility of premises or the absence of proper communication facility; organisational, such as the lack of adjustment to allow smooth transition to employment; and structural, such as the lack of integration between income support programs and the labour market for people with disability.

The evidence this week will highlight a fundamental point that has been made in previous hearings but I suspect is not generally understood by the wider community including by many employers. Discrimination obviously includes conduct that treats a person with disability less favourably than a person without disability in circumstances that are not materially different. A simple example is where an applicant is denied an interview for a position for which she is qualified because the prospective employer knows that she uses a wheelchair. Under the *Disability Discrimination Act*, this is known as "direct discrimination".

But discrimination also occurs when someone such as an employer requires a person with disability to comply with a requirement that the person with disability can only comply with that requirement if the employer makes reasonable adjustments for the person and the employer fails to do so.

An example is where a person with disability is perfectly capable of performing a particular job or a particular role but cannot do so because the employer fails to provide, for example, an accessible bathroom in circumstances where it is not particularly difficult for the employer to do so. This is known as "indirect discrimination".

Once this fundamental concept is grasped, the nature of discrimination experienced by so many people with disability becomes clear, including in the context of economic participation. What needs to be done to eliminate that form of discrimination also becomes much clearer. That is where we are heading this week.

Ms Eastman.

MS EASTMAN: Thank you, Chair. I announce my appearance. I appear for the Royal Commission, and I am assisted by Ms Zerner and by Ms Fraser who are both in Brisbane.

CHAIR: Thank you, I will invite any parties with leave to appear who are represented today to announce their appearance, please.

MS McMILLAN: Good morning, Chair, my name is McMillan, initials KA, Queen's Counsel. I appear with Ms Clohessy, instructed by Crown Law.

CHAIR: Thank you very much, Ms McMillan.

MR DIGHTON: Chair, my name is Dighton, I am appearing for the

Commonwealth, instructed by Gilbert + Tobin.

CHAIR: Thank you, Mr Dighton. Are there any other appearances to be taken today?

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MS CARROLL: Good morning, Commissioners, my name is Ms Carroll, and I appear on behalf of John Baxter and I am instructed by Mr Sood.

CHAIR: Thank you, Ms Carroll.

10

MR FITZGERALD: If it please the Commission, my name is Fitzgerald, I appear for the witness given the pseudonym "Riley", instructed by Doogue + George Defence Lawyers.

15 CHAIR: Thank you, Mr Fitzgerald.

I think that may complete the appearances. I will now ask Ms Eastman to make her opening statement.

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#### **OPENING REMARKS BY MS EASTMAN**

MS EASTMAN: Thank you, Commissioners, and good morning to everyone following the live feed.

25

As Counsel Assisting based in both Brisbane and in Sydney, we 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.

30

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, specifically the barriers to open employment for people with disability. You will shortly hear from the witnesses who will share their experiences of working in a wide range of workplaces and industries.

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The focus of the evidence will be on 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 those issues in this public hearing.

40

This public hearing will be largely led by people with disability. They will speak about the barriers they have faced in obtaining meaningful employment.

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This week, Yuri Sianski from Tasmania will tell you that 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.

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

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

15 Ella Darling, who you will hear give evidence on Friday, will tell you about the support she has received from 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 Australian Disability Enterprise, 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.

25 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 about his work as the Disability Discrimination Commissioner.

30 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 has not. 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.

40 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.

45 (Pause due to technical difficulties)

In future hearings we will turn our attention specifically to the measures and actions

of employers, unions, representative bodies and governments in addressing the systemic barriers to eliminate violence, abuse, neglect and exploitation of people with disability in employment.

5 Commissioners, before you hear from the witnesses, I will provide you with a short overview of what you will expect in this hearing and the likely findings that will be open for you to make, but may I start with some statistics and relevant data.

10 Commissioners, you are aware of the data, set out in the Royal Commission's Employment issues paper that was 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 that about 4.4 million people in Australia have some form of disability. Professor Anne Kavanagh and Ms Alex Devine will tell you that Australia has one of the lowest employment participation rates for people with  
15 disability compared to other OECD countries.

The available data from 2018 says that there are around 2.1 million people with disability who are of working age, that being between the age of 15 and 64. People  
20 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 show that those aged between 15 and 64 years have not budged since 2005. That rate is 53.4 per cent. This is to be compared to an increase in the participation rate for people without disability, and that rate is 84.1 per cent.

25 In 2018, for about 54 per cent of people with disability who were eligible for work, around 53 per cent were employed full-time and around 37 per cent were employed part-time. Again, compared to people without disability, around 65 per cent of people without disability were employed on a full-time basis and 30 per cent on a part-time  
30 basis.

Catherine McAlpine, the CEO of Inclusion Australia, will give evidence later today and she will tell you that for people with intellectual disability, the experience is of even lower rates of employment. She cites data collected in 2012 that found  
35 39 per cent 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 per cent of people with disability  
40 of working age who were unemployed and that compared to 5 per cent 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.

For people with disability in Tasmania, Tasmania has the lowest labour force participation rate of all States and Territories, with 41 per cent of people with  
45 disability, compared to 86 per cent of people without disability. The ACT 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 per cent. Women with disability work part-time at almost double that rate to the rate of men working part-time. Women with disability are significantly more likely to experience sexual harassment in their workplace than women without disability over  
5 the last five years.

You will also hear this week from the National LGBTI Health Alliance about the barriers faced by people who are LGBTI who also live with disability in seeking and wishing to maintain employment. You will hear about the experience of young  
10 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  
15 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 that was held between 29 September and 3 October this year, which included discussion about employment.

In 2012, and that is the most recent data, we understand that the unemployment rate for Aboriginal and Torres Strait Islander people with disability was three times  
20 higher than the rate for all people with disability. The gap between labour force participation of Aboriginal and Torres Strait Islander people with disability, at 35 per cent, compared to all people with disability at 53.6 per cent, is a much wider  
25 comparison to be made and the gap for people without disability.

Dominic Golding, the Policy and Project Officer at the National Ethnic Disability Alliance, will tell you that the experiences of people with disability from culturally and linguistically diverse backgrounds is high. This is particularly so if they are  
30 non-English speaking and have disability.

Professor Kavanagh and Ms Devine will tell you Australians with disability are less likely to be in paid work, relative to Australians without disability. And, further, people with disability are more likely to be overeducated for their jobs, have lower  
35 earnings, and have poor job satisfaction.

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

When it comes to looking at comparative income, in 2018 the median gross income for a person with disability aged between 15 and 64 was \$505 per week. That was less than half of the \$1,016 per week representing the median gross income for a  
45 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

previous 12 months.

5 These statistics are reflected in 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 disability and older workers over the period 2015 and 2016.

10 In 2018 and 2019, almost half of the complaints, about 44 per cent, received by the Australian Human Rights Commission related to disability discrimination and over a third, 36 per cent, 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.

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

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

25 Karen Fisher will remind you that the National Disability Strategy has said that the "shared vision is for an inclusive Australian society that enables people with disability to fulfil their potential as equal citizens". The Strategy's goal includes improving the accessibility, inclusiveness of society, and the participation of people with disability, as well as changing community attitudes towards disability.

30 The Strategy seeks to promote and guide actions and reform across all Australian governments, private enterprises, disability sector organisations and the broader community.

35 Professor Fisher, Professor Kavanagh and Ms 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.

40 There are further benefits to the Australian economy. In a report commissioned by the Australian Disability Network in 2011 and prepared by Deloitte Access Economics, the economic modelling suggested that Australia will forego substantial economic benefit if the labour market does not face the disadvantages by people with disability. The modelling showed that if the gaps between the participation rate and the 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 economic modelling shows that the economic  
45 pay-offs could be large.

This is a point that was also made in the Willing to Work Report and Dr Gauntlett,

the Disability Discrimination Commissioner, will tell you about the recommendations made in that report.

5 That takes me then to the important point of human rights. Employment is not simply about economics. Employment is also about 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 longstanding human rights.

10 Article 27 of the *Convention on the Rights of People with Disabilities* recognises that there is a right of persons with disability to work on an equal basis with others, and that includes the right to the opportunity to gain a living by work freely chosen or accepted in the labour market and work environment that is open, inclusive, accessible to persons with disability.

15 Article 27 requires Australia to safeguard and promote the realisation of this 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.

20 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 Committee recommended a range of measures that Australia must implement to give effect to its obligations under Article 27. In particular, the CRPD Committee recommended Australia do the following:

25 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.

30 Secondly, the Committee recommended that Australia undertake comprehensive review of Australian Disability Enterprises, the ADEs, to ensure they adhere to Article 27 of the Convention 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.

35 Thirdly, the Committee recommended that Australia implement measures to address systemic and structural barriers experienced by people with disability, particularly women with disabilities, Aboriginal and Torres Strait Islander people with disability, people with disability from culturally and linguistically diverse backgrounds, and  
40 refugee and asylum seekers with disability.

Fourthly, the Committee recommended an immediate discontinuance of the use of the Business Service Wages Assessment Tool.

45 Fifthly, to ensure that the Supported Wage System is modified to secure correct assessment of wages of persons in supported employment, including ADEs.

Finally, to adopt initiatives to increase employment participation by women with disabilities by addressing the specific underlying structural barriers to their workforce participation.

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

15 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.

20 Commissioners, you have 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.

25 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 last year on  
the type of paid employment for participants with intellectual disability. That shows  
that for participants aged 25 years old and over, 15 per cent are in open employment  
with full wages, 13 per cent are in open employment with less than the award wage,  
and 72 per cent are employed in ADEs.

30 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 four-yearly review and has been now replaced by the  
Supported Employment Services Award 2020. This award covers employers  
35 throughout Australia who operate supported employment services to support the paid  
employment to 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.

40 Commissioners, you are aware that Australia has a national minimum wage. On 19  
July this year, 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.

45 There are two exceptions to those who are guaranteed a 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 of a Supported Wage System. That system assesses a person's capacity and then determines the rate of pay as a proportion of capacity.

5 Under that system, a person with disability may be paid as little as \$89 a week, and that translates into \$2.34 per hour for full-time employees.

Commissioners, you will receive this week a statement from Jamie. Jamie is 58 years old. He has a vision impairment and an Acquired Brain Injury. He has several tertiary qualifications, including a Master of Human Services and a Master of Social Work. He has spent over 20 years volunteering to develop his skills and experience. His opportunity for paid work have been limited and generally through ADEs. During some recent employment with an ADE, he was paid an hourly rate of \$3.51. He says this is not nearly enough to cover the necessities of life.

15

He says that during his employment with various ADEs, his lower wages were intended to ensure that he did not lose his Disability Support Pension. But he says:

20 *A lifetime of unemployment and underemployment has ruined my life and left me welfare dependent.*

He feels exploited.

I now turn to the systemic barriers. Based on submissions received by the Royal Commission and the evidence you will hear this week, we have identified four key areas. The first, attitudinal; the second, physical or environmental; the third, organisational; and the fourth, structural barriers.

30 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.

I want to say something briefly about each of these four barriers. I will start with 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 a Survey of Community Attitudes Towards People with Disability, prepared in August 2011.

40 Michael Pini is a senior executive in the Australian Taxation Office. He will tell you about his experience working for the ATO for 33 years. He will tell you that his ATO colleagues know him and he has not experienced any 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 then they seem surprised if he says he does and even more surprised when he says that he works full-time.

45

Oliver Hunter will tell you this week that his ideal job would be to work as a

comedian in the radio or the 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.

5

Professor Karen Fisher will tell you that attitudes are a barrier to employment because they prevent people entering work and staying at work. At the very least, negative attitudes lower expectations about the right to work, and at worst they result in abuse in the workplace.

10

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 affect people's right to work that encompass a person's life course and life domain.

15

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

20

Professor Fisher will tell you about studies in Australia, the UK, Canada and other countries that show many employers are reluctant to employ people with disabilities, especially those with mental health issues, learning disabilities or blindness.

25

The reasons for their reluctance include negative employer attitudes and these attitudes are often due to misconceptions about the capability of people with disabilities, the cost of workplace modifications, stereotyping and the fear of workplace disruption.

30

Associate Professor Jennifer Smith-Merry and Professor John Buchanan will tell you about their recent work in the New South Wales Vocational Education and Training System, the VET system and will comment on the Smart and Skilled system. They found discrimination and stigma towards people from disadvantaged backgrounds, particularly those with disability is "deep-seated and widespread". They have prepared a detailed final report and they will discuss the complexity of the systems and the labour market factors that contributed to their findings.

35

Suzanne Colbert AM, who is the CEO of the Australian Network on Disability, will tell you about the Employer Mobilisation Project. That examined employers' attitudes and barriers to employment of people with disability. Some of the barriers are identified by people with disability but occasionally the employers identify the barriers. The barriers identified by employers mirror those identified by people with disability.

40

Attitudes ranked highly in the outcome of that project. But the attitudes are interesting. The attitudes included: fear of the unknown; employers responded saying that they "don't know how to act", or, they "don't know how to accommodate

45

mental ill health or disability".

5 The employers recorded that the recruitment of people with disability is a bigger hurdle than retaining people with disability, and a key barrier is often staff feeling uncomfortable because they don't know how to act or accommodate disability.

10 Ms Colbert will tell you from those findings that there is a tendency to see disability rather than the person. Therefore, there is a focus on limitation and constraints, and this results in a prevalence of unconscious bias. She will also talk about 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.

15 In summary, the evidence presented to the hearing this week will identify the following attitudinal barriers.

20 First, discriminatory attitudes and behaviours during recruitment, from employers, hiring managers, human resource personnel.

Next, discriminatory attitudes and behaviours in the workplace from employers and others, including colleagues and staff.

25 Then, assumptions that people with disability do not want to work or are not capable of working.

Employers incorrectly assuming that hiring people with disability will be costly, burdensome, less productive and risky.

30 Concerns for both employers and people with disability around disclosing disability and navigating when and how to do that.

35 Then, lack of access to job opportunities from informal networks, resulting from people with disability experiencing social exclusion and isolation.

Negative mental health impacts, including the lack of motivation or confidence resulting from continued and pervasive employer rejections that are experienced by people with disability.

40 The next area is the physical and environmental barriers. Dr Beth McNally, who will give evidence tomorrow, sums up the physical barriers when she says this:

45 *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 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.*

5

She says this:

10 *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 details effort that is required for me to simply "reach the same point" in the day as a person without a disability.*

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

20 In summary, the evidence that will be presented to this hearing will identify physical and environmental barriers such as the following: first, that workplaces and buildings are physically inaccessible; secondly, environments that do not support the inclusion of people with disability 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.

30 The third area we have identified is organisational behaviours. 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 and TAFE, and she will tell you there was a push from Charlene's school that Charlene go into day support programs. Ms Owen-Turner wants there to be options, including the opportunity for Charlene to focus on further education.

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

40

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 the "churn". This is particularly so for young people being in a cycle of short-term employment placements. She says that one of the research participants told her this:

45

*Still it's a numbers, get them in, get them out and hopefully get them in the*

*right environment. You want is that fine line of saying that you're person-centred and you follow the standards of disabilities, but in reality you are processing people through, 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 anyone."*

5

We'll explore these issues with Dr Stafford and the experience of those assisting young people to find employment.

10 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: perceptions of risks associated with making poor hiring decisions and having to re-hire again; potential risks of having someone with disability injure  
15 themselves or others because of their disability; 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.

20 In summary, the evidence that will be presented to this hearing will identify organisational barriers such as the following: employers lacking knowledge, skills, leadership and resources to support people with disability; secondly, that employers may overlook the unique skills of people with disability for particular types of work; the difficulty for people with disability in accessing skills, training and education and  
25 a lack of support to engage with and complete qualifications; the barriers include lack of access for people with disability to part-time work, volunteering or work experience.

30 Job advertisements and role descriptions that are inaccessible, contain discriminatory inherent requirements and do not reference reasonable adjustments; the lack of or inappropriate assistance in becoming "job ready", finding, securing and maintaining employment; poorly trained, inefficient job service providers, placing people in jobs with no regard to the jobseeker's skills, qualifications and interests; workplaces refusing to provide flexible work arrangements for reasonable adjustments or  
35 accommodations, including during recruitments, for example, at an interview; lack of career progression, accessible learning and development opportunities, or access to challenging and meaningful work.

40 The fourth and final area is the structural barriers. Australia has a number of employment programs aimed at increasing the participation of people with disability in employment. I have referred earlier to the ADEs and the wage assessment tools, but some of the others important to this hearing include the National Disability Insurance Scheme employment supports. That involves funding for employment supports that may be included in a person's NDIS plan that will give them assistance  
45 to build skills and capacity to find employment. These include individual and group employment supports, employment-related assessments and the School Leaver Employment Supports (SLES).

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

5 A second area is the Department of Social Services employment support, and these  
include Disability Employment Services, the DESes. They are designed to support  
people with disability to find work in the open labour market and the employment  
assistance fund, which organises customised reasonable adjustments and provides  
10 funding to employers of people with disability for work-related modifications,  
equipment and supports.

Alex Devine, who has provided the Royal Commission with the results of her  
research undertaken this year, explored the interface of the NDIS and the DES  
15 system with respect to the influence on the employment outcomes for Australians  
with disability. Her research found that participants had positive experiences but  
also challenges and one of the key findings undermining the effectiveness of the  
NDIS and the DES interaction were the gaps and the overlaps 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.

20 The complexity of the systems is a recurrent theme in the evidence. You will also  
hear of 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 the McDonald's in George Street, Sydney. Those in Sydney may know it well. He  
25 will tell you about his work experiences and the support he received over 18 years  
with one employer.

In summary, though, the evidence that will be presented to this hearing will identify  
30 the following structural barriers: first, the lack of access to adequate income required  
to meet essential living standards and participate in finding and keeping a job; this  
includes sufficient food, appropriate and safe shelter with utilities, phone, internet  
access, and the ability to buy suitable clothing; lack of access to employment related  
advocacy services, the disincentives in the Disability Employment Services program;  
35 the lack of coherence and connection between government programs designed to  
help people with disability into employment, including complexity and variance  
around eligibility requirements; the potential reduction or loss of the Disability  
Support Pension and associated benefits as a result of employment or increased hours  
of work; overly complex and confusing rules around participation requirements and  
mutual obligations associated with income support; job capacity assessments that  
40 emphasise impairment or weakness, thereby obscuring structural, organisational and  
attitudinal barriers; and narrow legislative definitions on the burden of proof being  
on people with disability to demonstrate when discrimination has occurred.

45 As I noted above, the highest number of complaints to the Australian Human Rights  
Commission have concerned disability discrimination, particularly 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 and some comparisons may need to be made to the general protections regimes that operate under the *Fair Work Act* which provide for a reverse onus, so that an employer must prove that adverse action was not relevantly taken because of an employee's physical or mental disability.

5

There are likely to be a number of other barriers that emerge from the evidence, but 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.

10 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 about 10 per cent of people with disability, who receive an NDIS plan. But the other 90 per cent of people with disability also face structural, societal, attitudinal and support barriers. They may  
15 benefit from any learning from the NDIS scheme.

Many witnesses this week 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.

20

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.

25

The National LGBTI Health Alliance will share their experiences of developing the EmployableQ Disability Inclusion Toolkit and and I hope we will have an opportunity to see the toolkit in action during the course of the week. And they will talk about the importance of co-design with people with disability.

30

You will hear from Rachel Kroes in Darwin, and the reason why she established Project 21. Her focus has been on transitioning from schooling to work, and she will tell you with young people with disability currently experience.

35

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

40

Back to 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, but 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  
45 Commission, the fair work ombudsman or local complaint processes or internal workplace 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.

5

I want to mention again the protections for witnesses. We have raised this for each hearing but it is important. There are provisions in the *Royal Commissions Act* which have a very clear objective of protecting witnesses who give evidence before the Royal Commission. In particular, I 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.

10

15

Particularly for this hearing, section 6N makes it an offence for any employer who dismisses any employee from his or her employment or prejudices any employment in his or her employment for or on account of the employee having appeared as a witness before the Royal Commission, or given evidence, or produced a document, thing or given information in a statement, pursuant to a summons, requirement or notice, also commits an indictable offence.

20

25

I noted that some of the evidence this week may be distressing, and the public hearings will continue to be made available on the webstream. And the Royal Commission encourages those watching, whether by the webstream or otherwise, to be mindful that the topics may be upsetting and we encourage anyone to seek support in this respect.

30

The Royal Commission has a counselling and support services team made up of social workers and counsellors. They are able to provide assistance to people engaging with the Royal Commission. Information about these services is available on the Royal Commission's website.

Thank you, Commissioners. That concludes my opening remarks.

35

CHAIR: Is it convenient to take an adjournment now?

MS EASTMAN: Thank you.

40

CHAIR: We will adjourn for 20 minutes and resume at 12.10.

**ADJOURNED**

**[11.51 AM]**

45

**RESUMED**

**[12.10 PM]**

CHAIR: Yes, Ms Eastman.

MS EASTMAN: The first witness is Rohan Fullwood and he is appearing from the Sydney hearing room.

5

CHAIR: Mr Fullwood, if you wouldn't mind following the instructions of Mr Dowsett, he will administer the affirmation to you.

10 **MR ROHAN FULLWOOD, AFFIRMED**

**EXAMINATION-IN-CHIEF BY MS EASTMAN**

15

MS EASTMAN: Commissioners, Mr Fullwood and I have agreed on a series of questions that he would like me to ask him and he has worked on some answers. So we are going to follow the questions and answers that we have agreed.

20 Mr Fullwood, are you happy for me to call you Mr Fullwood or would you prefer me to call you Rohan?

MR FULLWOOD: It doesn't matter.

25 MS EASTMAN: Can I call you Rohan?

MR FULLWOOD: Yes.

MS EASTMAN: Can you tell me a little bit about yourself?

30

MR FULLWOOD: I worked for 18 years at McDonald's at George Street in Sydney. I have retired from work earlier this year.

MS EASTMAN: You have retired from McDonald's earlier this year?

35

MR FULLWOOD: Yes.

MS EASTMAN: What do you like to do with your spare time?

40 MR FULLWOOD: I like to catch up in my spare time with friends, to go to the cafe or the pub. We usually talk, have a drink, something to eat. When I want to relax, I stay home and watch TV or DVDs.

MS EASTMAN: You also like playing sport, don't you?

45

MR FULLWOOD: I do, yes.

MS EASTMAN: What do you play?

MR FULLWOOD: I like to play basketball, I play in a team with other people with different disabilities.

5

MS EASTMAN: How often do you play basketball?

MR FULLWOOD: We train on Tuesday, we also have comps that run throughout the year. I also enjoy tenpin bowling and swimming.

10

MS EASTMAN: I want to ask you about school. Where did you go to school?

MR FULLWOOD: I went to school at Heritage Christian School in Port Macquarie, for about the last three years of school. Before that I also went to schools in Melbourne and country Victoria.

15

MS EASTMAN: So you have been to a few different schools?

MR FULLWOOD: I have, yes.

20

MS EASTMAN: Did you do work experience when you were at school?

MR FULLWOOD: Yes. I volunteered sorting out equipment in the sports shed. I also helped in the canteen and helped young children with their reading.

25

MS EASTMAN: What was the favourite thing you did when you were doing that work experience at school?

MR FULLWOOD: I liked to teach the little children to read the best.

30

MS EASTMAN: How old were you when you started to do some work experience?

MR FULLWOOD: I was about 16 or 17, I think.

35

MS EASTMAN: You also did some work experience outside school. What did you do?

MR FULLWOOD: I used to work at the cash and carry.

40

MS EASTMAN: What did you enjoy about that work experience?

MR FULLWOOD: I enjoyed getting to know the staff and employees.

MS EASTMAN: Did you have any jobs while you were at school?

45

MR FULLWOOD: Yes, I used to do a paper run, it was my first job. I had an old golf trolley with a container, and I would throw the papers as I walked through the

streets.

MS EASTMAN: You were doing the paper delivery job. How old were you when you started doing that job?

5

MR FULLWOOD: I was about 16 or 17.

MS EASTMAN: How did you find that job?

10 MR FULLWOOD: I saw the job advertised in the newspaper.

MS EASTMAN: How often did you do that work?

15 MR FULLWOOD: Once a week, after school. I would do it myself unless it was raining or really hot when my dad would drive me.

MS EASTMAN: How long did you do that job for?

20 MR FULLWOOD: A couple of years.

MS EASTMAN: When you were at school, you decided that you wanted to work in hospitality?

25 MR FULLWOOD: Yes, that's right.

MS EASTMAN: While you were at school, did you do some studies in hospitality?

30 MR FULLWOOD: Yes, I did a hospitality course through school that I went to for about a year.

MS EASTMAN: So you did the hospitality course at school. And then after school did you do a hospitality course at the TAFE?

35 MR FULLWOOD: Yes, it went for about three to six months.

MS EASTMAN: What did you learn in the hospitality courses?

40 MR FULLWOOD: It was mainly just to take orders and how to be a bartender, how to serve customers and how to interact with people in a restaurant or bar.

MS EASTMAN: Did you get any practical training as part of the hospitality courses?

45 MR FULLWOOD: We did. There was a cafe and a restaurant that was run at the TAFE. I got to work in a uniform as a waiter and even had to wear a uniform with a bowtie.

MS EASTMAN: Did you like the bowtie?

MR FULLWOOD: Yes, I did.

5 MS EASTMAN: What did you enjoy about the TAFE hospitality courses?

MR FULLWOOD: I enjoyed all of the courses. It helped me to decide that I wanted to do some work in hospitality.

10 MR FULLWOOD: After you finished the TAFE course, you left home, didn't you?

MR FULLWOOD: Yes, I did.

MS EASTMAN: How old were you when you left home?

15

MR FULLWOOD: I was about 20 years old.

MS EASTMAN: Where did you move to?

20 MR FULLWOOD: I moved to Sydney.

MS EASTMAN: Where did you live when you moved to Sydney?

25 MR FULLWOOD: When I moved, I spent one night with my mum, and then I went straight into the apartment to live by myself.

MS EASTMAN: You lived in an apartment by yourself when you were 20 years old?

30 MR FULLWOOD: Mm-hmm.

MS EASTMAN: How did you feel about moving to Sydney?

35 MR FULLWOOD: I was nervous at first, but then I got used to it. I had a couple of support workers that helped me.

MS EASTMAN: Do you still live in Sydney?

40 MR FULLWOOD: Yes, I live in an apartment that my sister and my mum own. I have lived in the same apartment for 20 years.

MS EASTMAN: Did you find work in Sydney?

45 MR FULLWOOD: Yes, my first job was with East West Direct Marketing.

MS EASTMAN: How did you find this job?

MR FULLWOOD: My sister was working there, they needed someone to do a job helping with mail. She said she knew someone who could do that job, and that person was me.

5 MS EASTMAN: What sorts of things did you do there?

MR FULLWOOD: I mainly did the mail. There was lots of mail. I collected the mail from the post office and would then carry the mail to the office.

10 MS EASTMAN: Was there lots of mail?

MR FULLWOOD: Yes. There was a lot of mail, and I would have to carry it in a backpack and two big bags.

15 I would open the mail, sort it out, putting the cheques into one pile, the money orders in another pile, things like that.

MS EASTMAN: It was a busy job. How many hours or days a week did you work in that job?

20

MR FULLWOOD: I think it was about a couple of hours a day, each weekday.

MS EASTMAN: So every day of the week?

25 MR FULLWOOD: Yes.

MS EASTMAN: How long did you work in that job for?

MR FULLWOOD: A couple of years.

30

MS EASTMAN: Did the job come to an end, and if so, how did it come to an end?

A. Yes, the company closed and everybody lost their jobs.

35 MS EASTMAN: What did you do after the company closed, did you look for another job when it closed?

MR FULLWOOD: Yes, my dad told me about Jobsupport. They help people with intellectual disability find jobs.

40

MS EASTMAN: Your dad told you about Jobsupport. Did Jobsupport help you find a job?

MR FULLWOOD: Yes, they helped me to find a job at McDonald's.

45

MS EASTMAN: Right. Rohan, I know it's a long time ago, but do you remember what you had to do to get the job at McDonald's?

MR FULLWOOD: I remember Jobsupport helped me to fill out some forms and to get started in my new job. I also attended an interview.

5 MS EASTMAN: We know you were successful at that interview and you got the job. When did you start working at McDonald's?

MR FULLWOOD: In 2001.

10 MS EASTMAN: How did you feel when you started working at McDonald's?

MR FULLWOOD: I was really excited even though I was a little bit nervous at the start, but I got used to it after a while.

15 MS EASTMAN: Now, you had some training at McDonald's. What did your training involve?

MR FULLWOOD: I was shown how to do jobs. I would learn one job before doing another. McDonalds did all of my training.

20

MS EASTMAN: Did you find that that made it easier for you to learn the jobs?

MR FULLWOOD: Yes, it worked well for me that way..

25 MS EASTMAN: Rohan, do you mind me asking, how much did you get paid when you worked at McDonald's?

MR FULLWOOD: I was paid about 70 to 80 per cent of the full wage, for the time I was doing the training. After three months, my pay was reviewed and I was paid the full hourly wage.

30

MS EASTMAN: You were paid the full hourly wage and that continued for the time you worked at McDonald's?

35 MR FULLWOOD: I would usually work a three-hour shift, from 8.00 am to 11.00 am or 9.00 am to midday. I worked five days a week.

MS EASTMAN: Do you know whether you were a casual or a part-time employee.

40 MR FULLWOOD: I was a permanent part-time employee.

MS EASTMAN: Can I ask you, how did you get to work in the mornings?

45 MR FULLWOOD: I would catch the train every day. I caught the same train at the same time to work each day. I would see the same people on the way to work each day. This made me feel pretty confident.

MS EASTMAN: It made you feel confident to catch the train every day.

MR FULLWOOD: Yes.

5 MS EASTMAN: You like to follow the same routine each morning, don't you?

MR FULLWOOD: Yes, I always like to get to work early so I would just sit down and relax before I start work. I don't like to feel rushed.

10 MS EASTMAN: What sort of jobs did you do when you were working at McDonald's?

MR FULLWOOD: I was mainly working in the dining room, packing up trays and tidying tables. I would set up the salt and pepper, sauces, napkins and cutlery that  
15 were needed for lunch after breakfast finished. I also helped with the washing up in the kitchen.

MS EASTMAN: What did you enjoy about working at McDonald's?

20 MR FULLWOOD: I enjoyed the whole thing. I liked seeing a lot of people. I would have regular customers that would come in that I liked seeing and speaking to. The McDonald's at George Street was really busy, especially during the school holidays.

25 MS EASTMAN: Was there anything you didn't like about your work?

MR FULLWOOD: Sometimes my boss would tell me if I wasn't doing something right, like if I wasn't cleaning the table properly. I didn't like it when I was told off.

30 I also had one not so good experience at work. One day a customer threw a drink at me. I didn't like that.

MS EASTMAN: On the day the customer threw the drink at you and you didn't like that, how did McDonald's help you after that had happened?

35

MR FULLWOOD: My boss talked to me about it and helped me to calm down.

MS EASTMAN: How did you feel when your boss spoke to you to help you to calm down.

40

MR FULLWOOD: I was still a little bit worried but I felt better after the manager spoke to me about it.

MS EASTMAN: Was there anything else you found hard about working at  
45 McDonald's?

MR FULLWOOD: I did see some homeless people going through bins, searching

for food.

MS EASTMAN: How did seeing homeless people going through the bins and searching for food, how did that make you feel?

5

MR FULLWOOD: It made me feel uncomfortable.

MS EASTMAN: When you were working at McDonald's, did you feel comfortable asking for help for anything that you were doing at work?

10

MR FULLWOOD: Yes.

MS EASTMAN: Did Jobsupport continue to support you when you were working at McDonald's?

15

MR FULLWOOD: Yes, they came in and checked everything was okay.

MS EASTMAN: Do you remember how often did someone from Jobsupport come in to visit and check on everything?

20

MR FULLWOOD: About once every fortnight or once a month. There were a couple of people that would help me.

MS EASTMAN: How did that feel by having the Jobsupport to come and support you?

25

MR FULLWOOD: I thought it was very helpful to have their support.

MS EASTMAN: Did you feel well supported when you were working at McDonald's?

30

MR FULLWOOD: Yes. I needed to take some sick leave for an operation last year. I used a mix of sick leave, annual leave and long service leave.

35

MS EASTMAN: So you had sick leave, annual leave and long service leave.

MR FULLWOOD: Yes.

MS EASTMAN: What was involved in your return to work after your operation?

40

MR FULLWOOD: I was able to start off returning to work for one day at a time. I built up slowly to five days per week again.

MS EASTMAN: So you built back up to the five days a week. Were the people at McDonald's good to work with?

45

MR FULLWOOD: Yes. I had friends at work. The people were all friendly when

I worked with them.

MS EASTMAN: Would you say that overall, working at McDonald's was a good experience for you?

5

MR FULLWOOD: Yes, it was good to get up each day and to go into work, earn some money and have something to do.

MS EASTMAN: I think you mentioned earlier that you have now retired from McDonald's.

10

MR FULLWOOD: Yes.

MS EASTMAN: Why did you decide to retire?

15

MR FULLWOOD: I was stood down earlier this year with COVID.

MS EASTMAN: That was during the COVID shutdown. What impact did the COVID have on your work?

20

MR FULLWOOD: It had a big impact on my work. When COVID started, I was told that I wouldn't be needed for a while so I had some time off work.

MS EASTMAN: After a bit of time off work, you were asked to come back to work. What happened when you were asked to come back to work?

25

MR FULLWOOD: Around April this year, McDonald's offered for me to come back. But my job had changed. Dad told me that they wanted me to do a retrial, the cleaning was going to be harder because of COVID. I didn't want to go back and have to clean differently so I decided that the time was right to retire.

30

MS EASTMAN: It was your decision to retire. Was this an easy decision to make?

MR FULLWOOD: It was. I felt like my time in that job was up. I had a few weeks off and I spent time with my mum at the holiday unit.

35

We discussed it and I decided that at the time, this was the decision I wanted to make. I really enjoyed my job. But you know, I enjoy not having to wake up at 5.30 am every morning for work.

40

MS EASTMAN: You now enjoy not having to wake up at 5.30 every morning for work ---

MR FULLWOOD: Yes.

45

MS EASTMAN: --- and you have got time for yourself during the day?

MR FULLWOOD: Yes.

MS EASTMAN: Almost 20 years at Maccas is a long time to work. How do you feel about that?

5

MR FULLWOOD: I feel proud of myself, I even have a picture of myself with the CEO of Maccas.

MS EASTMAN: You have given us the photo of yourself with the CEO of Maccas, so is it okay if I put that up on the screen so everybody can see the photo?

10

MR FULLWOOD: Yes.

MS EASTMAN: I'll put that up now. The photo is up on the screen. Is that you in the red shirt?

15

MR FULLWOOD: Yes, it is, yes.

MS EASTMAN: You are very proud of that photo?

20

MR FULLWOOD: Yes, I am.

MS EASTMAN: Thank you very much for sharing that photo. Can I come back and ask you a few more questions?

25

MR FULLWOOD: Yes.

MS EASTMAN: Did you do any other work at the same time that you were working for Maccas?

30

MR FULLWOOD: Yes, I helped in the Intellectual Disability Rights Service with a project they were doing. I helped them prepare workshop materials and workshop activities. We travelled to meet with different groups. We did workshops to help people know about their rights.

35

MS EASTMAN: With the work with the Intellectual Disability Rights Service and the workshops to help people know about their rights, how long did you do this for?

MR FULLWOOD: It was one afternoon a week mostly. Except for when we travelled to speak with groups, then we did a few days. It went for six months. It finished then because it was a project.

40

MS EASTMAN: Now that you have retired, do you want to work anywhere else?

MR FULLWOOD: I'm hoping to do some volunteer work. I've also applied for some casual work with the Down Syndrome Association as a Health Ambassador.

45

MS EASTMAN: You applied for that job. But you have got that job, haven't you?

MR FULLWOOD: I have, yes, I have just been recently offered that job.

5 MS EASTMAN: Congratulations on your application to be a Health Ambassador. Can I ask you, what is a health ambassador? What are you going to do?

MR FULLWOOD: They go and talk to doctors and help people understand more about working with people with Down syndrome.

10

MS EASTMAN: It will help doctors and people understand more about people who have Down syndrome.

15 Why did you apply for this particular job as a Health Ambassador with the Down Syndrome Association?

MR FULLWOOD: I was in hospital for about three weeks last year after an operation last year. I talked to a lot of people in the hospital about my life and showed them photos on my iPad of my friends and activities I like doing.

20

I feel that I could help others understand what things that they needed to know about people who have Down syndrome.

25 MS EASTMAN: What else are you hoping to do in your spare time?

MR FULLWOOD: I'm hoping to do some tenpin bowling and some swimming. I'm also thinking about starting golf in the new year. I am also hoping to continue doing some activities online with my friends. We have been having online parties and quizzes. I have also been doing a bedroom bootcamp. Now that the swimming pool has opened up, I'm hoping to go for a swim.

30

MS EASTMAN: How has working at McDonald's helped you in your life?

35 MR FULLWOOD: Work has helped me to earn some money, make friends, and do things at home.

MS EASTMAN: You have used some of the money that you have earned while working at McDonald's to travel, haven't you?

40 MR FULLWOOD: Yes, I have.

MS EASTMAN: Where have you been on your travels? Where have you gone?

45 MR FULLWOOD: I have travelled overseas to Down Syndrome World Conferences in Singapore, Cape Town, Canada, London, Dublin and Glasgow.

I've also visited my sister's family overseas in San Diego as well.

MS EASTMAN: When you went to the Down Syndrome World Conferences at all these places all over the world, what did you do at the conferences?

5 MR FULLWOOD: I participated in workshops with other people who have Down Syndrome.

MS EASTMAN: Did you have a favourite conference and a favourite place you went to a conference?

10

MR FULLWOOD: My favourite conference was in London where I also did some tours around London and Birmingham. I also visited Westminster Abbey.

MS EASTMAN: Did you like Westminster Abbey?

15

MR FULLWOOD: Yes.

MS EASTMAN: Would you like to travel overseas again?

20 MR FULLWOOD: In the future I would like to travel to San Diego to see my sister and her family again.

MS EASTMAN: Mr Fullwood, thank you so much for coming and sharing your experiences of working with McDonald's and your life with us today. We are very grateful and thank you so much for coming today.

25

Commissioners, that concludes Mr Fullwood's evidence.

CHAIR: Mr Fullwood, I too on behalf of the Commissioners would like to thank you today for coming to give your evidence. We very much appreciate it and we have learned a lot about your experiences. Thank you very much.

30

### **THE WITNESS WITHDREW**

35

MS EASTMAN: Thank you, Commissioners. For the next witness, we move to Brisbane and I will hand now to Ms Zerner.

40 MS ZERNER: The next witness is Mr Cody Skinner. Mr Skinner is appearing in person.

MS EASTMAN: While we are waiting, I may take the opportunity, Commissioners, to ask you to receive the photograph of Rohan Fullwood with the CEO of McDonald's Australia into evidence and mark the photograph as Exhibit 9.1.

45

CHAIR: Yes, thank you, that can be done, the photograph will be marked in that

way.

MS EASTMAN: Thank you.

5

**EXHIBIT #9.1 - PHOTOGRAPH OF MR ROHAN FULLWOOD**

10 MS ZERNER: Mr Skinner is getting himself ready, he is about to sit down into the witness box now.

CHAIR: Okay. There is no hurry.

15 CHAIR: Mr Skinner, thank you very much for coming to give evidence. I'm speaking to you from Sydney. I know you are in the Brisbane hearing room and Commissioner Ryan is with me in Sydney, and Commissioner Galbally is joining us from Melbourne.

20 This is all a bit complicated but I will ask you to follow the instructions of Mr Dowsett, who is in Sydney, who will administer the oath to you, so if you wouldn't mind following his instructions. Thank you very much.

CHAIR: Commissioner Atkinson's associate will administer the oath to you.

25

**MR CODY LEE SKINNER, AFFIRMED**

30 CHAIR: Thank you, Mr Skinner. Ms Zerner, who is in the Brisbane hearing room, will ask you some questions.

**EXAMINATION-IN-CHIEF BY MS ZERNER**

35

MS ZERNER: Thank you, Commissioner.

Mr Skinner, can you tell the Commission your full name?

40 MR SKINNER: My full name is Cody Skinner. My sign name is Cody.

MS ZERNER: Mr Cody, it is correct that you have provided a statement to the Royal Commission?

45 MR SKINNER: Yes.

MS ZERNER: Have you had the opportunity to read that statement recently?

MR SKINNER: Yes, I've read it a few times. Yes.

MS ZERNER: The contents of your statement are true, aren't they?

5

MR SKINNER: Yes.

MS ZERNER: Just some formalities. I would like to tender your statement, Mr Skinner.

10

Commissioners, you will find Mr Skinner's statement in Tender Bundle Part A at Tab 1, and I ask to tender this statement into evidence and that it be marked as Exhibit 9.2.

15 CHAIR: Yes, thank you, that can be done.

### **EXHIBIT #9.2 - STATEMENT OF MR CODY LEE SKINNER**

20

MS ZERNER: Mr Skinner, in your statement you describe yourself as a self-employed advocate who has a passion for improving the quality of life for people who live with disability.

25 MR SKINNER: Yes, I do. Yes.

MS ZERNER: You haven't always, though, been self-employed, have you?

MR SKINNER: No, I have been self-employed for about two and a half years.

30

MS ZERNER: Can you tell us why you decided to be self-employed rather than working for someone else?

35 MR SKINNER: I have had a lot of challenging experiences in employment in many organisations I've worked for. I was tired of being bullied, discriminated and faced a lot of barriers everyday. It was challenging, so I decided to be a leader for people with disability in their community and to achieve human rights for all.

40 MS ZERNER: Mr Skinner, your business is called Linked Connection One Community, isn't it?

MR SKINNER: Yes.

45 MS ZERNER: You provide a range of services?

MR SKINNER: Yes.

MS ZERNER: You have set those out in your statement. We don't need to go through those today but I wonder if you could tell the Commissioners an example of a recent workshop that you have conducted?

5 MR SKINNER: I have recently done a deaf awareness workshop, which is to promote awareness about how to understand the deaf community, communicate to a deaf person, using technology to access technology in the workplace.

10 MS ZERNER: You have said before that you have had some difficulties working with other people. How does it make you feel to now have your own business?

MR SKINNER: I feel empowering, and focusing on the ability, yes, we can.

15 MS ZERNER: In addition to living with deafness, you also live with the Autism Spectrum Disorder and have had some mental health challenges, haven't you?

MR SKINNER: Yes.

20 MS ZERNER: You have been working very hard recently on your mental health and that has greatly improved over the last 12 months, hasn't it?

MR SKINNER: Yes, it's improved over the last 12 months.

25 MS ZERNER: You are feeling good at the moment?

MR SKINNER: Yes, I'm feeling excellent at the moment.

30 MS ZERNER: Good. In addition to living with disability, you are also a proud Indigenous man, aren't you?

MR SKINNER: Yes, very, very proud of my being First Nations.

MS ZERNER: Where does your father come from, where is your heritage from?

35 MR SKINNER: My heritage is from Caboolture, which is out in western Queensland.

40 MS ZERNER: You tell the Commission that in regards to being an Indigenous man, there are certain things that make you feel comfortable when you walk into an organisation. What are the types of things as an Indigenous man that make you feel comfortable?

45 MR SKINNER: To feel comfortable, they show the First Nations flag at the front of the receptionist, at the desk. And also they show the acknowledgment, Welcome to Country when you walk in the door.

MS ZERNER: In addition, you also came out as gay in 2017, didn't you?

MR SKINNER: Yes, and that was the best thing that has happened to me, coming out, after keeping a secret for so many years.

5 MS ZERNER: You really struggled with that and had some challenges, didn't you?

MR SKINNER: Yes, it was very challenging, fearing I was going to be discriminated against every day.

10 MS ZERNER: In your statement you say you were worried about how you dressed and how you did your hair. Why was that?

MR SKINNER: People would easily make judgments because of their beliefs and their fears, so I just tried to pretend to be normal, like a normal person.

15

MS ZERNER: And that would be in workplaces as well as other places?

MR SKINNER: Yes.

20 MS ZERNER: You say in your statement that you'd like to tell the Commission that you want to encourage other people with disability to come out and that they will be okay?

25 MR SKINNER: Yes, it's okay to be different and we are all proud, in Australia we are all equal.

30 MS ZERNER: Mr Skinner, you said in your evidence recently that you have had some challenges working with employers. I wanted, if I can, to go through some of your experience, some positive and some not so positive. We might start back at the beginning, if we can.

MR SKINNER: Yes.

35 MS ZERNER: In Years 11 and 12 you had the opportunity to undertake work experience in open employment. Can you tell the Commission a little bit about what that meant for you?

40 MR SKINNER: The work experience gave many opportunities to open doors to employment, it is about to be able to develop skills and mixed experience and explore employment for after school, so that helped me build up the confidence to be ready for work.

45 MS ZERNER: Isn't it the case that in one of your work experiences that you continued to do some volunteering after you finished that work experience?

MR SKINNER: Yes.

MS ZERNER: And that volunteering was hopefully leading on to assist you with some further studies that you were doing?

MR SKINNER: That's right, yes, when I was studying my community services.

5

MS ZERNER: In regards to your studying, you went to TAFE, didn't you?

MR SKINNER: Yes.

10 MS ZERNER: Before going to TAFE, during those first Christmas holidays, you decided you wanted to get your first ever paid job, didn't you?

MR SKINNER: Yes.

15 MS ZERNER: That was in a bookstore?

MR SKINNER: That's right.

MS ZERNER: You found the job for yourself and you went for an interview?

20

MR SKINNER: Yes.

MS ZERNER: You told them that you were deaf.

25 MR SKINNER: Yes.

MS ZERNER: But you say in your statement that you were a bit scared to open up about your autism. Why?

30 MR SKINNER: Yes. I was scared to share about my autism.

MS ZERNER: You were 18 at the time, is that right?

MR SKINNER: That's right.

35

MS ZERNER: Being the first job, you didn't want to open up to the employer about your autism?

MR SKINNER: That's correct, yes.

40

MS ZERNER: It's the case, though, during that job, that you did have some challenges in relation to your boss and you were having some difficulties with putting books in certain places, weren't you?

45 MR SKINNER: That's correct, yes.

MS ZERNER: After some time of perseverance, you decided to have a conversation

with your boss?

MR SKINNER: Yes.

5 MS ZERNER: How did that conversation go, what happened?

MR SKINNER: It didn't work out well, my boss was too busy to focus on me doing the job, she said, "Don't have enough time for that, focus on your job, you are here to do your job", that was it.

10

MS ZERNER: That job ended shortly after that, didn't it?

MR SKINNER: It finished after --- one month later. I had a few warnings for putting things in the wrong place.

15

MS ZERNER: Then you went on to TAFE as we said before, and you did a Certificate II in Business and a Certificate III in Community Services, and then went on to complete a Diploma of Business; that's right?

20 MR SKINNER: Yes.

MS ZERNER: You say, looking back on your studies, that the most challenging thing for you was your other classmates, and they were judging your disability. They were saying things like, "Oh, he's got a disability, I don't think he will make it through". How did that make you feel?

25

MR SKINNER: It was very frustrating and took away a lot of negative self-esteem. Yeah.

30 MS ZERNER: When you heard that, what did you decide to do?

MR SKINNER: I decided to have a "Yes" attitude, "Yes we can", to study and focus and do well and prove the people wrong.

35 MS ZERNER: When you say a "yes we can" attitude, that's a catch cry that you use all the time?

MR SKINNER: Yes, that's right, I always use the word every day.

40 MS ZERNER: And you proved them wrong, didn't you, because during your Diploma of Management you were awarded Student of the Year?

MR SKINNER: Yes, I was awarded the Student of the Year, yes.

45 MS ZERNER: You were able to go on and complete your studies?

MR SKINNER: After the Diploma?

MS ZERNER: Yes.

MR SKINNER: I plan to do a university degree next year, to study human services.

5

MS ZERNER: So that is a long-term goal now, to try to go on and do tertiary education?

MR SKINNER: Yes.

10

MS ZERNER: While all this was happening, as I understand it, you always wanted to get your driver's licence, is that right?

MR SKINNER: Yes, it was one of my goals for long-term employment.

15

MS ZERNER: Why did you think you needed your driver's licence for long-term employment?

MR SKINNER: One of my goals was to apply for a support worker job, and most of the businesses were asking for a driver's licence as a requirement for the job, I decided to achieve my driver's licence.

20

MS ZERNER: It was difficult for you to get a driver's licence?

25

MR SKINNER: It was very challenging with many different driving instructors, I went through 20 different driving instructors. The problem was they didn't have experience understanding and teaching people with disability, so that was very challenging. It took me six years but I was determined --- yes, we can.

30

MS ZERNER: You finally found that one driving instructor that had, as you referred to, that "Yes, we can" attitude?

MR SKINNER: Yes.

35

MS ZERNER: With that driving instructor, he set some structure to your lessons and that really helped you in getting your driver's licence?

MR SKINNER: Yes.

40

MS ZERNER: When you got your driver's licence, it meant an awful lot to you. What happened?

45

MR SKINNER: Yes, they said, "Congratulations, you got your driver's licence", I --- my first reaction was I just cried and cried and cried, and --- it was the years of hard work being paid off after six years of determination, and it was proving people wrong, the odds, and yes, we can, and my driving instructor phoned me up that night and said, "How did your mum feel about you getting your driver's licence?" And

I made him cry too. He said to me, I was a very inspiring person.

MS ZERNER: Excellent. I want to now move on to, after you finished TAFE and your qualifications, and to go through some of the jobs you have had since that time.  
5 If we turn first to when you first finished TAFE, you really struggled to get a job, didn't you?

MR SKINNER: Yes, it was very difficult.

10 MS ZERNER: Can you tell us a little bit about that? I think you say you had around 100 applications that you made.

MR SKINNER: Yes, I applied for a lot of jobs online, through JobSeeker, but I did really well going up to the interview, but every time I disclosed my disability, they  
15 just rejected it, and it felt very frustrating and it felt like I was hopeless, people don't understand the education about us, the life we live.

And so that was very, very challenging, having to reapply, interview, reapply, being refused, reapply, and just on and on and on.

20 MS ZERNER: Mr Skinner, at that time you didn't know about Job Providers, did you?

MR SKINNER: No, I didn't know about job employment providers, no.

25 MS ZERNER: Can you tell us how you came to know about employment job providers?

MR SKINNER: I went to a job expo run by --- organised by Centrelink, and I was  
30 looking around, and then they said about the Job Providers, and then I decided, "Maybe I should join, it might make it more easier to get the job with the support of someone advocating for me".

MS ZERNER: It's the case, isn't it, that you approached the Disability Employment  
35 Service provider; is that right?

MR SKINNER: Yes.

MS ZERNER: And you worked with a case worker to find a job for you?

40 MR SKINNER: Yes.

MS ZERNER: The job that you found was through a government department; is that  
45 right?

MR SKINNER: Yes, it was a government job.

MS ZERNER: Can you tell us a little bit about what you were doing at the government job?

5 MR SKINNER: I was organising mailing for the government and data entry, and so I was recording all the mail to be sent out to the people in Queensland. It's all different government departments.

10 MS ZERNER: In your statement you describe what seems to be that you felt very welcome at that particular workplace; is that right?

15 MR SKINNER: Yes, that's correct. My boss was interested to learn more about autism, and he would go home every day and Google on the internet about autism, and he would come back to work and ask about autism and how it would affect our daily life. He was more open. And he had a really good work friend with autism too, so we were getting along with each other at work.

MS ZERNER: That work friend, did he also have autism?

20 MR SKINNER: Yes, he has.

MS ZERNER: Do you think that helped having that colleague there as a support person as well?

25 MR SKINNER: Yes, there was lots of support and people could look at us and go, "Oh, wow, it's interesting how they behave and how they do their job role well".

30 MS ZERNER: You hoped to be able to continue on with that job, but there was a change in circumstances so you were no longer able to continue with that job; is that right?

MR SKINNER: That was correct, yes.

35 MS ZERNER: I want to then turn to when you became a personal care worker. And it was the case, isn't it, that you worked in a group home?

MR SKINNER: Yes.

40 MS ZERNER: You had a casual position for 15 hours per week and you were hoping to lead to a permanent position?

MR SKINNER: Yes.

45 MS ZERNER: You faced some problems in that particular job in regards to your hearing aid; is that right?

MR SKINNER: That is correct, yes.

MS ZERNER: Can you tell us about what happened in that job and the issue with the hearing aid?

5 MR SKINNER: Yes, I was in my second or third work shift, and I had to shower the client, that's part of my job role, and I had to negotiate with my boss and I realised that showering, you have to have waterproof hearing aids. So I negotiated to the boss and said, "I have to take out my hearing aids because they are not waterproof", the boss said, "You are breaking the work health and safety rule, you are breaching it". I sort of said, we can sit down and do deaf awareness training and find some  
10 other technology we could use. She said, "We don't have time for that, we are focusing on your job", and I felt, like, discriminated and disincluded. It was disappointing, even though I tried to advocate myself.

MS ZERNER: You say you tried to advocate yourself. What did you do? Did you  
15 look for other alternatives?

MR SKINNER: Yes, I booked in a hearing appointment with Hearing Australia to find out if they had waterproof hearing aids, but at the time there were none available at the time.  
20

I negotiated for funding for EAF, which is an employment funding program, to see if they can have access to the technology. There was nothing available and the boss wasn't interested.

MS ZERNER: And because of that, you weren't able to continue on in that role, were you?  
25

MR SKINNER: That's right, yes, so I couldn't continue on, and I got a letter to say the employment was terminated.  
30

MS ZERNER: Mr Skinner, if I can move on to the coffee shop, and that was a job that you got through a job provider, a disability job provider, again?

MR SKINNER: Yes.  
35

MS ZERNER: As I understand it, a case worker had suggested to you to work in a coffee shop; is that right?

MR SKINNER: Yes.  
40

MS ZERNER: This wasn't a particularly good experience for you, was it?

MR SKINNER: It wasn't a good experience, it was a lot of challenges, yes.

MS ZERNER: In regards to your case worker saying to work in a coffee shop, you agreed to, you thought that that would be a good opportunity to undertake a different skill and to start a new job?  
45

MR SKINNER: Yes.

5 MS ZERNER: It's the case, isn't it, after you started, a few days into the job, that you realised that all the people you were working with also had disabilities?

MR SKINNER: Yes.

10 MS ZERNER: Soon after, you realised that it was actually a supported employment position; is that right?

MR SKINNER: That's correct, yes.

15 MS ZERNER: How did you become aware of that?

MR SKINNER: I had asked --- after a few shifts of my job, I found out it was supported employment, because my boss was telling me more about the supported employment program, and I went home and Googled it and it's more like the boss supporting you on a job, so it's more support, it's not an independent support job, it was more under supervision by the boss.

MS ZERNER: All of the previous jobs you'd had were in open employment and weren't in supported employment; is that right?

25 MR SKINNER: That's right, yes.

MS ZERNER: Can you tell us a little bit, if at all, this was different to a previous job in relation to, for example, training?

30 MR SKINNER: The training was more one-to-one with the employer supporting you on a one-to-one basis, and they were teaching you the skills to develop that training.

35 MS ZERNER: What about the pay difference?

MR SKINNER: I noticed the pay was very different and I got paid, my first pay, and I looked through my bank statement, \$11 an hour. I thought, I was expecting \$20-odd an hour like my previous job. So I went and negotiated to the boss and said, "Why this amount?" He said, "Because you are on supported employment program, it's organised by the Government". And I disagreed. I had always believed that we should all be equal in the pay conditions. Doesn't matter if you have a disability or not, it should be the same wages. I was disappointed.

45 MS ZERNER: Certainly, the wages you had had previously were of the normal award wage; is that right?

MR SKINNER: Yes.

MS ZERNER: How did that make you feel when you realised you were in supported employment and the work you were doing and the hours you were doing, to be paid \$11 an hour?

5

MR SKINNER: I was feeling disappointed and ashamed and thought, this is un-Australian, we should be on the same pay as everybody else.

MS ZERNER: Why did you feel ashamed?

10

MR SKINNER: It's because it just feels like that we were --- people treating us differently because they looked at us disability.

MS ZERNER: Putting the pay aside and the supported employment aside, you also had some challenges with your supervisor, didn't you?

15

MR SKINNER: Yes.

MS ZERNER: Your supervisor didn't have a disability, did she?

20

MR SKINNER: No.

MS ZERNER: Can you tell us a little bit about what happened with your supervisor in relation to communication, for example?

25

MR SKINNER: Yes. Every time I would make mistake, she would always clap at me in the face, and I said, "That's not appropriate". And everything that was taught, was her way, and I felt it wasn't the right experience to learn this way, she said, "No, this is my way, you have to do it my way". It was challenging, and I sort of sat down to the boss and said, "Could we please sit down and understand about our disability? I know you have experience in the coffee shop before, it would be nice to get to sit down and know each other well".

30

MS ZERNER: In relation to being clapped in the face, why was she doing that?

35

MR SKINNER: She was trying to get my attention and trying to yell at me because I couldn't hear in the workplace.

MS ZERNER: Did you ask her to communicate with you in a different way?

40

MR SKINNER: Yes, I asked her to tap instead of clapping.

MS ZERNER: Did she then do that instead of clapping?

45

MR SKINNER: She was still clapping.

MS ZERNER: Is it the case that you looked at "What else can I do to help me with

this job", and consult your psychologist?

MR SKINNER: Yes, because it was affecting my anxiety at work and stress.

5 MS ZERNER: What did you and your psychologist come up with as an idea to help you?

MR SKINNER: He decided to come to the workplace and look at the job and give me some advice and ideas for me to manage mental health at work and to sit down  
10 and negotiate with the boss about my mental health.

MS ZERNER: Your psychologist came into your place of employment?

MR SKINNER: Yes.  
15

MS ZERNER: What happened at that time with your boss?

MR SKINNER: The boss wasn't happy and she said to me, "How dare you bring a  
20 psychologist at my workplace?" I felt just angry about that. And that night, I had a mental breakdown and I was admitted to hospital because of what happened that day by the boss.

MS ZERNER: Did you continue on in that job or did you leave that job shortly after that?  
25

MR SKINNER: I left that job the day after because of the wages and had a --- the way how they discriminate and mistreat me.

MS ZERNER: When you look back on all the jobs that you have had, do you think  
30 that is the worst way you were treated in a job previously?

MR SKINNER: Absolutely, yes, yes.

MS ZERNER: To this day, that still affects you a little bit in relation to having that  
35 particular job?

MR SKINNER: Yes, I still remember it from time to time.

MS ZERNER: In regards to after that job, it took you a little while to get yourself  
40 well enough to get another job, didn't it?

MR SKINNER: Yes, I took a year off, yes.

MS ZERNER: Going on to the next job you got after that 12 months, you were able  
45 to get a job as an Auslan teaching aide; is that right?

MR SKINNER: That's correct, yes.

MS ZERNER: You say in your statement you were able to get a different job that specialised in supporting people with deafness?

5 MR SKINNER: Yes, supporting people at work, yes.

MS ZERNER: You didn't know about this provider before that time, did you?

10 MR SKINNER: No, I didn't know about it until a friend of mine told me about it.

MS ZERNER: Did it make any difference to you, going to a specialised job provider?

15 MR SKINNER: It made a big difference by promoting deaf awareness and deaf rights to the employer.

MS ZERNER: Did you have greater confidence when you had that particular specialised job provider in going for a job?

20 MR SKINNER: Yes, because they would advocate for me.

MS ZERNER: What did they do?

25 MR SKINNER: They would turn up at job meetings, they would interpret, and they would advocate about deaf people in work, and they would teach about Deaf culture.

MS ZERNER: When you got that job, what was your role in that job?

30 MR SKINNER: My job was to assist support students with disability in the classes and teaching to the teachers some Auslan and teaching about Deaf culture and educating that Auslan is our first language and English is the second, and it was a really good experience, very, very rewarding, teaching the students. When I first started, the students weren't talking, and when I finished the job at the end of that year, the students were improving in school and they were communicating. It was  
35 very rewarding.

40 MS ZERNER: It is the case, isn't it, that you found some of the students a bit challenging but as the year went on you built a better relationship with them, particularly because of the Auslan?

MR SKINNER: Yes.

45 MS ZERNER: With that particular job, you did that for about 12 months; is that right?

MR SKINNER: Yes.

MS ZERNER: You had to finish that job because you moved away, not because you wanted to finish the job; is that right?

MR SKINNER: Yes, because I moved, I wanted to be close to my family.

5

MS ZERNER: I want to turn now to your passion for advocacy. As I understand it, you have always from being a young man at work experience, all the way through your jobs, no matter what you have done, is to advocate for yourself in relation to deaf awareness but wanting to help other people. Is that right?

10

MR SKINNER: Yes, I wanted to be a really good advocate and be a great role model for people with disability and make sure we all have a voice to advocate and that we be heard.

15 MS ZERNER: You were able to get a job as a peer mentor with a disability organisation. Can you tell us about how that job came about?

MR SKINNER: I went to a conference in Sydney and it was a human rights conference so I had to present a public speaking, and they told me about the job and they said, "We think you would be good in the job", so encouraged me to apply, so I applied and got the job.

20

MS ZERNER: Because of that public speaking, the role as a mentor, peer mentor, what did that involve?

25

MR SKINNER: Being the voice for customers in the organisation, teaching about human rights and educating customers of the organisation to speak up for their rights and promoting different workshops to the customers of the organisation.

30 MS ZERNER: In particular, in that role, were you doing some travel?

MR SKINNER: Yes, I was travelling a lot to Sydney for work and the Gold Coast, and I was involved in a lot of conferences, doing public speaking and sharing stories about human rights and why human rights is very important for all.

35

MS ZERNER: In regards to the payment for those jobs, that was in open employment, so it wasn't supported employment, like the coffee shop?

MR SKINNER: No, it was open employment, yes.

40

MS ZERNER: In regards to your work with the peer mentor with the disability organisations, did you feel that you were supported in your role as a peer mentor?

MR SKINNER: Yes, we had a really good relationship with the boss. Every week we would sit down and do some training every week. I loved having the opportunity to be involved in interviewing and the recruitment of new workers. They would have the opportunity to be on the RAP group, which is the Reconciliation Action Plan

45

group, and they teach you about leadership and being a leader in an organisation, so they opened up many opportunities.

5 MS ZERNER: Did you feel that was very supportive for you in helping to do your role?

MR SKINNER: Absolutely, yes.

10 MS ZERNER: Did that inspire you to become an advocate and do my own business?

MR SKINNER: Yes, I got a lot of experience and learning from that organisation that really opened up the door to setting up my business.

15 MS ZERNER: Did you start your business before you finished the role or did you decide to finish the role and then start the business?

MR SKINNER: I actually started the business when I was working with that organisation, developing skills at the same time.

20 MS ZERNER: Did you find it was becoming a bit difficult to be able to manage both?

25 MR SKINNER: It was, as the business became too much work hours, it became challenging, so I decided to now focus on my business.

MS ZERNER: In regards to your business, we started there at the beginning, if we go back to the business now, in addition to, for example, deaf awareness workshops, what else do you do?

30 MR SKINNER: I do teaching Auslan to businesses, I have just spoken on the work health and safety side, emergency signs, I also do public speaking at conferences and talking about my advocacy experience and human rights. I would work with another organisation --- work with a lot of disability organisations to bring some ideas and improve ideas for human rights and advocacy and hear about our stories and make  
35 disability more inclusive.

MS ZERNER: Mr Skinner, you have outlined to the Commissioners a number of things you think could be changed or how you think things could potentially be changed. One is in relation to the workplace health and safety requirements. That  
40 goes back to the support care work position that you had. What are your ideas in regards to that?

45 MR SKINNER: I want to improve on the wording of the work health and safety, about protecting people with disability in jobs, and allowing their talents to be involved. Like, for example, a lot of people think that deaf people can't drive trucks or can't hear when they shower clients, so allowing people with disability to do their job without discriminating them.

MS ZERNER: It goes back to that job that you had in relation to that hearing aid. You had actually tried to look at other alternatives, including being able to switch the lights on and off, rather than actually having a hearing aid; is that right?

5

MR SKINNER: That's right, yes.

MS ZERNER: So it is really looking at what alternatives can be done for people with a disability, to allow them to be able to do the role?

10

MR SKINNER: Absolutely, yes.

MS ZERNER: All right. You also talk about promoting Aboriginal and Torres Strait Islander culture and you have talked a little bit about that in relation to the Aboriginal flag and Welcome to Country.

15

MR SKINNER: Yes, and encouraging people with disability to be on the Reconciliation Action Plan (RAP) group program.

MS ZERNER: In relation to the LGBTI people with disability, you have also said in your statement that --- to be able to be inclusive, so ensure that employers are inclusive of people with LGBTI background?

20

MR SKINNER: Absolutely, yes.

25

MS ZERNER: In your statement, you say that we need to focus on the ability, not the disability, and to look at everyone for their different talents and different skills.

MR SKINNER: Yes, because I have always believed that everyone has a gift, everyone comes to work, has their talents, and so many opportunities to offer.

30

MS ZERNER: You also talk about that you need to get the word out there to be able to educate people, and that is particularly in relation to deafness. Can you tell us what your ideas are about that?

35

MR SKINNER: By celebrating Deaf Awareness Month or Deaf Awareness Week, like for example, April is Autism Awareness Month, so having business organisations celebrating that event and make it more inclusive, so we can celebrate.

MS ZERNER: Excellent. Mr Skinner, I am wondering if you can perhaps leave the Commissioners with one thought that you might have, so the most important thought that you can think of that would make a difference that you believe for people with a disability going into open employment.

40

MR SKINNER: I would like to see growth in employment for people with disability and seeing them more in management roles, celebrate the ability, yes we can, everyone has a gift, that disability is "yes, we can", improving job protection for

45

people with disability, for employment, and open up the growth in employment for that beyond the future.

MS ZERNER: Thank you.

5

Commissioners, unless I can assist further, they were the questions that I had for Mr Skinner.

CHAIR: Thank you very much. Mr Skinner, I will ask the Commissioners if they have any questions for you. I will start with Commissioner Atkinson who is in Brisbane with you.

10

Commissioner Atkinson, do you have any questions?

COMMISSIONER ATKINSON: No, thank you. Thank you, Mr Skinner.

15

CHAIR: Commissioner Galbally, do you have any questions?

COMMISSIONER GALBALLY: No questions, but thank you, Mr Skinner, that was very valuable, lots of lessons there. Thank you.

20

CHAIR: Commissioner Ryan?

25

COMMISSIONER RYAN: No, but thank you both.

CHAIR: Thank you, Mr Skinner, for coming to give evidence. We do very much appreciate it, and both your statement and your evidence is very helpful to us. So thank you so much for coming to the Brisbane hearing. Thank you.

MR SKINNER: Thank you for inviting me today. Thank you.

30

CHAIR: And we wish you every success in your business.

MR SKINNER: Thank you.

35

#### **THE WITNESS WITHDREW**

MS EASTMAN: Commissioners, we have made very good time today, and so our next witness is not scheduled until 1.30pm Queensland time or 2.30pm Sydney time. Our next witness must be Kalena Bos who is joining us from Tasmania. If the Commissioners would like to take the lunch adjournment now, we have a little bit of extra time than we had planned.

45

CHAIR: We are very grateful for the extra time. We shall resume at 2.30pm Sydney time, 1.30pm Brisbane time, 2.30pm Tasmanian time.

MS EASTMAN: Thank you, Commissioners.

5 **ADJOURNED** [1.17 PM]

**RESUMED** [2.30 PM]

10

MS EASTMAN: Good afternoon, Commissioners. The next witness is Kalena Bos. She is in Tasmania and her evidence will be taken by Ms Fraser, who is in the hearing room in Brisbane.

15 CHAIR: Thank you very much, and thank you, Ms Bos, for giving evidence today from Tasmania. As you have just been told, Ms Fraser is in Brisbane, Commissioner Atkinson is also in Brisbane, Commissioner Galbally is in Melbourne, Commissioner Ryan and I are in Sydney, you are in Tasmania, so we have a fair few States covered, one way or another. If you wouldn't mind following the instructions from  
20 Mr Dowsett, he will administer the affirmation to you.

**MS KALENA ADELE BOS, AFFIRMED**

25

**EXAMINATION-IN-CHIEF BY MS FRASER**

30 CHAIR: Thank you very much, now Ms Fraser will ask you some questions.

MS FRASER: Could you state your full name for the Commission this morning.

MS BOS: Kalena Adele Bos.

35 MS FRASER: For the purposes of our questions today, are you happy for me to call you Kalena?

MS BOS: Yes.

40 MS FRASER: Commissioners, Kalena has sworn a statement dated 20 November 2020, that appears at Tender Bundle Part A, Tab 2, and I would ask that it be admitted into evidence and marked as Exhibit 9.3.

45 CHAIR: Yes, that will be done, thank you.

**EXHIBIT #9.3 --- STATEMENT OF MS KALENA ADELE BOS**

MS FRASER: Kalena, are you happy now for me to ask you some questions?

5 MS BOS: Yes.

MS FRASER: Thank you.

10 Commissioners, Kalena and I have worked together to develop some questions and answer. I am going to ask Kalena a set of pre-determined questions and she will answer me in the way that we have worked together previously. We will now proceed to work through those questions.

Kalena, could you tell me a little bit about yourself?

15

MS BOS: My name is Kalena, I am 31 years old, I live in Burnie, Tasmania, with my husband David, we have been married for two years.

MS FRASER: What are some of your hobbies and interests?

20

MS BOS: I love fashion, crafts and my cats.

MS FRASER: You sound like a lady after my own heart, Kalena. What are the names of your cats?

25

MS BOS: Peaches, Pixie and Charlotte.

MS FRASER: Our hearing today is about employment. Are you currently working, Kalena?

30

MS BOS: Yes.

MS FRASER: You have recently found a new job, haven't you?

35 MS BOS: Yes, I have. It's my first real job.

MS FRASER: Before you found that job, how long had you been looking for a job for?

40 MS BOS: Since I was 18.

MS FRASER: During all of those years, had anybody been helping you look for a job?

45 MS BOS: My DES provider had been helping me since I was 16.

MS FRASER: When did you get your first job?

MS BOS: I was 18, I was halfway through Year 12.

MS FRASER: Where was your first job?

5

MS BOS: At a charity op shop.

MS FRASER: You got that job when you were 18. How long did you work at the charity op shop for?

10

MS BOS: About 12 years.

MS FRASER: How many days each week did you work at the charity op shop for?

15

MS BOS: Two half-days.

MS FRASER: That was two half-days each week?

MS BOS: Yes.

20

MS FRASER: Have you had any other work experience?

MS BOS: I did some work at, work experience at a cafe.

25

MS FRASER: Was that in about 2017?

MS BOS: Yes.

MS FRASER: When you were about 28?

30

MS BOS: Yes.

MS FRASER: How long did you do the work experience in the cafe for?

35

MS BOS: Four weeks.

MS FRASER: You have also done some work experience at a fabric and craft store, haven't you?

40

MS BOS: Yes.

MS FRASER: You would have enjoyed that because you like craft?

MS BOS: Yes.

45

MS FRASER: Can you remember exactly when that work experience was?

MS BOS: Not exactly.

MS FRASER: Did you apply for a job at the fabric and craft store after you finished the work experience?

5

MS BOS: I saw a job position in the paper one day.

MS FRASER: After you saw the job position in the paper did you apply for the job?

10 MS BOS: I took it to my DES provider.

MS FRASER: Did the DES provider help you?

MS BOS: No.

15

MS FRASER: Why not?

MS BOS: They told me that I wouldn't be able to work there.

20 MS FRASER: That was even after you had done work experience there?

MS BOS: Yes.

25 MS FRASER: Did they give you a reason why they thought you wouldn't be able to work there?

MS BOS: They said because it would be too hard for me.

30 MS FRASER: You have also done some work experience with Speak Out, haven't you?

MS BOS: Yes.

35 MS FRASER: What sort of work did you do?

MS BOS: I did some administration work.

MS FRASER: When was this?

40 MS BOS: I was 26 years old.

MS FRASER: How long did that work experience last for?

MS BOS: Three or four weeks.

45

MS FRASER: Can you tell me about what Speak Out does?

MS BOS: They are an advocacy service for people with disability, an agency member of Inclusion Australia.

5 MS FRASER: How did you find out about Speak Out?

MS BOS: I was 19 and I participated in this program called Adorable, run by Speak Out.

10 MS FRASER: What is the Adorable program all about?

MS BOS: It's a woman's program about women looking after their health, confidence and wellbeing.

15 MS FRASER: That sounds pretty good. Did you enjoy that program?

MS BOS: Yes, I did.

MS FRASER: You are involved with Speak Out now, aren't you, Kalena?

20 MS BOS: Yes.

MS FRASER: Are you an advocate for Speak Out?

25 MS BOS: Yes.

MS FRASER: What do you do as an advocate for Speak Out?

30 MS BOS: I work on a committee for Inclusion Australia and I was on members executive.

MS FRASER: In terms of the committee for Inclusion Australia, what does that involve?

35 MS BOS: I talk with people around Australia, we make decisions that are important for people with intellectual disability.

MS FRASER: How often does that committee meet?

40 MS BOS: Every month.

MS FRASER: Who else is on the committee?

MS BOS: People from different states across Australia.

45 MS FRASER: Are you paid for this work?

MS BOS: Yes.

MS FRASER: I would like to ask you a few questions about your current job. Is that okay?

5 MS BOS: Yes.

MS FRASER: You work in retail now, don't you?

MS BOS: Yes.

10

MS FRASER: When did you find your current job?

MS BOS: About three months ago.

15 MS FRASER: Why do you call the job that you have now your "first real job"?

MS BOS: I feel like it's my first real job since I finished school.

MS FRASER: How is your current job different from your other jobs?

20

MS BOS: It's the first time I have been given responsibility and challenges at work.

MS FRASER: And that's what makes it feel like a real job, isn't it?

25 MS BOS: Yes.

MS FRASER: Do you enjoy your current job?

MS BOS: Yes, it's great. I really love it.

30

MS FRASER: How did you find the job?

MS BOS: Laura helped me get the job at Kmart.

35 MS FRASER: Who is Laura?

MS BOS: Laura is my new Jobsupport worker from DES provider.

MS FRASER: When did Laura start helping you look for work?

40

MS BOS: Around April this year.

MS FRASER: So you have been working with a DES provider since you were 18 and Laura started helping you in April of this year?

45

MS BOS: Yes.

MS FRASER: How did Laura help you?

MS BOS: Laura really took the time to get to know me.

5 MS FRASER: Did she ask you what sort of job you would like to do?

MS BOS: Yes, she talked to me and found out that I liked clothes.

10 MS FRASER: You told her that you wanted to work somewhere where you could work with clothes, didn't you?

MS BOS: Yes.

15 MS FRASER: That sounds like a pretty good idea to me. When did Laura help you find the job that you have now?

MS BOS: In July.

20 MS FRASER: Can you tell me what did you have to do to get the job?

MS BOS: It was a big process to get the job.

MS FRASER: What did the process involve?

25 MS BOS: I had to fill in some application forms.

MS FRASER: Did you get any help with the application?

30 MS BOS: Yes, Oscar helped me.

MS FRASER: Does Oscar also work with the DES provider?

MS BOS: Yes.

35 MS FRASER: How did you find out that you got an interview?

MS BOS: Oscar told me that I got an interview for the job.

40 MS FRASER: Before you actually went for the interview, did Laura and Oscar help you prepare for the interview?

MS BOS: Yes, Laura helped me pick out some clothes for the interview.

45 MS FRASER: Kalena, Laura actually came to your house to help you do that, didn't she?

MS BOS: Yes.

MS FRASER: That would have been really helpful, wouldn't it?

MS BOS: Yes.

5

MS FRASER: How about Oscar, how did he help you?

MS BOS: He spoke to me about the questions Kmart might ask during the interview.

10 MS FRASER: How did you feel before you went into the interview?

MS BOS: It was a bit scary going to the interview.

MS FRASER: Had you ever been to a job interview before?

15

MS BOS: No.

MS FRASER: So you went for your first job interview when you were about 31?

20 MS BOS: Yes.

MS FRASER: You said that you were really nervous at first when the interview started, but after it started, it felt good?

25 MS BOS: Yes, I was really nervous at first but after I started talking I felt good.

MS FRASER: Who was at the interview?

MS BOS: One person from Kmart and Oscar.

30

MS FRASER: How long did the interview go for?

MS BOS: About half an hour.

35 MS FRASER: That's quite a long time, nearly as long as the questions I'm going to ask you. Hopefully you are not as nervous as you were on the day of your interview. How do you think that it went?

MS BOS: I must have done well in the interview because I got the job.

40

MS FRASER: What happened after the interview?

MS BOS: I got a call from Oscar to tell me I got the job.

45 MS FRASER: How did you feel when Oscar told you that you got the job?

MS BOS: I was really excited.

MS FRASER: Kalena, it's pretty amazing to go for one job interview when you are 30 and to get the first time round, so I would like to say congratulations. Who did you tell after you found out you got the job?

5

MS BOS: I told my dad and he was really proud of me.

MS FRASER: I would like to ask you a few questions about training for your job. Is that okay?

10

MS BOS: Yes.

MS FRASER: Did you have to do any training before you started the job?

15

MS BOS: I had to do some online training.

MS FRASER: Was there quite a bit of online training that you had to work through?

20

MS BOS: Yes, there was a bit.

MS FRASER: Did you have any help with the online training?

25

MS BOS: One of my workers from my DES providers sat down with me and helped me.

MS FRASER: Was there any other training that you had to do after you finished the online training?

30

MS BOS: I also had to do some training in the store.

MS FRASER: And what did this involve?

MS BOS: I had to fill out pieces of paper and do things around the store.

35

MS FRASER: The sorts of things you had to do around the store, was that putting different things away and putting things on certain shelves?

MS BOS: No, we just had to go round the stores and find different things or figuring out where they were, like cash registers and stuff.

40

MS FRASER: Did you do this by yourself?

MS BOS: I did it with another guy who was interviewing at the same time.

45

MS FRASER: So another person who got the job at the same time as you?

MS BOS: Yes.

MS FRASER: Was that man around the same age as you?

MS BOS: No, he was about 15 or 16, I think.

5

MS FRASER: Did you enjoy doing the training with him?

MS BOS: Yes.

10 MS FRASER: What are some of the good things about working at your new job?

MS BOS: Now that I have been working for three months, I recently got my discount card, which is great.

15 MS FRASER: That means you can buy the clothes at a discount price, so that's always a good thing. Have you been to any events organised by your work?

MS BOS: Yes. I've been to RU OK?Day where I got to dress up in yellow.

20 MS FRASER: Did you enjoy that?

MS BOS: Yes, it was fun.

MS FRASER: Was it also good to go to that sort of social event with your work  
25 colleagues?

MS BOS: Yes.

MS FRASER: Are you having a Christmas party this year?  
30

MS BOS: Yes, I just had it on Saturday.

MS FRASER: Oh, lovely! And did you enjoy that?

35 MS BOS: Yes.

MS FRASER: Did you wear a beautiful outfit?

MS BOS: Yes, Christmas outfit.  
40

MS FRASER: Can you tell me what you love about your job?

MS BOS: I get to work with different people my age and I am given things to do at  
45 work that I haven't done before. I also enjoy working at a shopping centre.

MS FRASER: Do you like trying new jobs at work?

MS BOS: Yes, I enjoy being given responsibility and challenges.

MS FRASER: In the time that you have been in your new job, have you ever had to ask for help at work?

5

MS BOS: Yes, everyone that I work with at Kmart is really friendly. If I don't know what to do, they tell me.

MS FRASER: And so if you have a question, you feel like you can approach anyone who is working with you for help?

10

MS BOS: I feel like I can approach anyone who is working there for help.

MS FRASER: Can you give me an example, Kalena, of a time when you asked someone a question or for help?

15

MS BOS: One day I went to put something back on a shelf, and the shelf where it normally went had been moved. I was able to find someone that was working close to me to ask them where I should put the item.

20

MS FRASER: So you feel really comfortable, don't you, asking anybody at your work for help?

MS BOS: Yes, everyone is really helpful, no matter who they are.

25

MS FRASER: How often do you work at your current job, Kalena?

MS BOS: At the moment I usually work three-hour shifts in the afternoon, three days a week. I usually start around lunchtime.

30

MS FRASER: What jobs do you do?

MS BOS: I do different jobs. I unpack clothes and put them onto racks. I also put stuff on the shelves and get to help customers that come into the store.

35

MS FRASER: What is your favourite part about the job? Let me guess: is it getting to see all the new clothes?

MS BOS: Yes.

40

MS FRASER: That doesn't surprise me.

Kalena, can you tell me how you feel when you get up each morning to go to work?

MS BOS: I love it when I wake up in the morning and get dressed in my work uniform and I go to work.

45

MS FRASER: What do you look forward to each day?

MS BOS: I really like the people at work giving me responsibility and trust me, the people that I work with are friendly and do not judge me.

5

MS FRASER: Are there any particular rules that you need to follow at work?

MS BOS: Rules are very important to me and I always try to do the right thing.

10 MS FRASER: Rules are important to you. What are some of the rules that apply at work?

MS BOS: We have to wear the right footwear. We need to make sure we get to work on time, that we have a clean uniform and that we are not doing anything that we shouldn't be doing in the store in front of customers.

15

MS FRASER: Do you always get to work on time, Kalena?

MS BOS: Yes.

20

MS FRASER: And you always wear a clean uniform and look nice, too, don't you?

MS BOS: Yes.

25 MS FRASER: Have you made friends at work?

MS BOS: Yes. The people I work with are friendly and helpful.

MS FRASER: Does having friends at work make it easier to go to work?

30

MS BOS: Yes, I'm excited to go to work each morning.

MS FRASER: You have said that you feel positive and good every day going to work. Are you looking forward to working in the busy period around Christmas?

35

MS BOS: I am. I would love to be able to work more hours around Christmas.

MS FRASER: What impact do you think your new job has had on you, Kalena?

40 MS BOS: I love it. I feel like my new job has changed my life.

MS FRASER: Kalena, just like you did in your interview for your new job, you have done an absolutely wonderful job in answering my questions today. I would like to say thank you so much for your time today. I'm just going to take a moment to ask the Commissioners whether they have got any questions for you. Is that okay?

45

MS BOS: Yes.

MS FRASER: Commissioners, are there any questions?

5 CHAIR: Thank you, Ms Bos. First of all I will ask Commissioner Galbally in Melbourne if she has any questions for you.

COMMISSIONER GALBALLY: No, but thank you. Thank you very much for your evidence. It was terrific, thank you.

10 CHAIR: I will now ask Commissioner Atkinson, who is in our Brisbane hearing room.

COMMISSIONER ATKINSON: No, thank you. Thank you for your evidence.

15 CHAIR: Commissioner Ryan who is with me in Sydney?

### **QUESTIONS BY THE COMMISSION**

20 COMMISSIONER RYAN: Hi, Kalena, I do have one question I would like to ask you. Do you like to work nine hours a week or would you like to work more hours, other than at Christmas time?

25 MS BOS: I would love to work more than nine hours.

COMMISSIONER RYAN: The disability service provider, was that the same provider you have had all along and have you changed around?

30 MS BOS: The same one.

COMMISSIONER RYAN: Thank you so much. Congratulations on your new job and I hope it goes incredibly well.

35 MS BOS: Thank you.

CHAIR: Ms Bos, thank you very much for giving evidence. We are very grateful to you, and as Ms Fraser said, you did a very good interview, and we hope that it continues to go well in your job. Thank you very much.

40 MS FRASER: Thank you, Kalena.

MS BOS: Thank you.

45 CHAIR: Ms Eastman.

## **THE WITNESS WITHDREW**

5 MS EASTMAN: Commissioners, we are continuing to make good time. According to the timetable, we were to take a break at 3.00 pm Sydney time, so we are a little ahead. Perhaps if we could take the break now for 10 minutes and then we will start Catherine McAlpine's evidence after we return, and we may finish a little earlier today.

10 CHAIR: We will take an adjournment for 10 minutes and resume at 3.05 Sydney time, that is 2.05 Brisbane.

MS EASTMAN: Thank you.

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**ADJOURNED** [2.53 PM]

20

**RESUMED** [3.05 PM]

CHAIR: Yes, Ms Eastman.

25 MS EASTMAN: Thank you, Commissioners. The final witness for today is Catherine McAlpine, who is the Chief Executive Officer of Inclusion Australia. Ms McAlpine joins us by the audiovisual link.

CHAIR: From?

30 MS EASTMAN: Melbourne.

CHAIR: Ms McAlpine, thank you for joining us, and good afternoon to you. If you would be good enough, please, to follow the instructions of Mr Dowsett, who will administer the affirmation to you.  
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## **MS CATHERINE MCALPINE, AFFIRMED**

40 CHAIR: Thank you, Ms McAlpine. You are probably aware of this but in case you are not, Commissioner Galbally is joining the hearing from Melbourne, Commissioner Atkinson is participating in the hearing from Brisbane in our hearing room. Commissioner Ryan is with me in Sydney, and Ms Eastman is also with us in Sydney. That completes the roll call.

**EXAMINATION-IN-CHIEF BY MS EASTMAN**

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MS EASTMAN: Ms McAlpine, can I confirm that you are Catherine McAlpine?

MS McALPINE: That's correct.

10 MS EASTMAN: You are the Chief Executive Officer of Inclusion Australia?

MS McALPINE: I am.

MS EASTMAN: You have made a statement dated 27 November this year.

15

MS McALPINE: Yes.

MS EASTMAN: Are the contents of this statement true?

20 MS McALPINE: Yes, to the best of my knowledge.

MS EASTMAN: Commissioners, can I deal with some administrative matters. If you could receive the statement into evidence and mark the statement at Exhibit 9.4.

25 CHAIR: Yes, that can be done.

**EXHIBIT #9.4 --- STATEMENT OF MS CATHERINE McALPINE**

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MS EASTMAN: Ms McAlpine has a number of annexures and documents referred to in her statement, and if they could be marked 9.4.1 to 9.4.6.

CHAIR: Yes, that too can be done.

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**EXHIBITS #9.4.1 TO #9.4.6 - ANNEXURES TO STATEMENT OF MS CATHERINE McALPINE**

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MS EASTMAN: Ms McAlpine, you have provided what I might call a bit of a blockbuster statement, and between us we are going to try to cover the systems that apply to the employment of people with disability, with a particular focus on intellectual disability. I hope by the end of this that we will have navigated through some of the systems.

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In your statement, you have very kindly described the statement as one of six parts.

I thought it might be helpful to work through each of those parts, and if the Commissioners have got any particular questions as we cover each of the areas, we might pause and invite the Commissioners' questions at that point in time.

- 5 Can I start with a little bit about you. You are currently the Chief Executive Officer of Inclusion Australia and it's a role that you have held since October 2019?

MS McALPINE: That's correct.

- 10 MS EASTMAN: I have provided the Royal Commission with a copy of your CV, and I think you say in your statement that your career has had three distinct parts.

- MS McALPINE: That's right. I worked in sort of the surface coatings industry, I'm an industrial chemist by qualification, and worked in the surface coatings industry for a bit over a decade, I worked in small business, my husband and I are directors of a building company, and I have worked in the disability sector in paid roles since 2005.

- MS EASTMAN: I won't ask you a lot about the surface coatings sector work that you have done as a chemist. Can I focus on your work in the disability sector. Prior to working with Inclusion Australia, you have had a lot of experience in disability advocacy over the past 15 years, and some of this is set out in paragraphs 10 and following in your statement. Can you tell the Royal Commission about some of the roles that you have held over those 15 years?

- MS McALPINE: Certainly. I came into the sector as a volunteer and was on the board of Down Syndrome Victoria, and then became the Executive Officer of Down Syndrome Victoria, and I was there for about five years.

- 30 During that time we realised, we were campaigning for a National Disability Insurance Scheme, and we realised we needed a national voice, and I was part of a group of people that worked hard to put together Down Syndrome Australia and became the inaugural CEO and held that role for another three years, and since then I have held other advocate roles in national and statewide advocacy organisations.

- MS EASTMAN: In terms of you starting work as a volunteer in advocacy, what sort of activities were you involved in?

- MS McALPINE: I started early childhood intervention, mainly doing fundraising, and then I came on to the committee of Down Syndrome Victoria with a whole lot of other like-minded people who were interested to try and change the world for our young people.

- MS EASTMAN: In your role with Down Syndrome Australia and the executive work that you did in Down Syndrome Victoria, what was the nature of your role there both in terms of advocacy and other work that you did?

MS McALPINE: Down Syndrome Victoria is a peer support and information organisation, so we did a lot of independent evidence-based and information that's informed by the lived experience of people with Down Syndrome and their families. That's very much a grassroots organisation, so that's deal with people --

5

MS EASTMAN: Can I just in here because someone is about to hold up a sign in front of me, and probably you, about slowing down.

MS McALPINE: Slowing down. Sorry.

10

MS EASTMAN: Can we slow down a little bit. We have got lots of time, so there's absolutely no rush.

MS McALPINE: Sure. At Down Syndrome Victoria it's very much a grassroots organisation that supports people on the ground, so running local peer support groups, statewide conferences, for information for families, phone support, and then running projects, such as the Mentoring Connections Program was my very first project running about employment.

15

20 MS EASTMAN: What was involved in the Mentoring Connections Program?

MS McALPINE: That was connecting young people with Down Syndrome with business --- people in business, to have a mentoring relationship about what is work and about pathways to employment. It was a very interestingly conceived project, but what we found was people were not ready for that, and in fact the thing that the people with Down Syndrome liked the most about it was the connection with a new person, and a connection to talk about work, because they hadn't even started those conversations, and so we realised that we needed to start a little bit earlier in the pathway to really make a practical difference in people's lives.

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MS EASTMAN: When you say they weren't ready for it, who wasn't ready for it and why?

MS McALPINE: Everyone wasn't ready for it. A lot of the young people with Down Syndrome came out of school with no experience at all, hadn't thought about work, had not had any work experience and did not necessarily have some of the skills --- had not had the opportunity to develop some of the skills that people might need in the workplace. The employers weren't ready either, and at that time there was almost no information in Easyread, there was no information for people in terms of the supports they might need to transition to employment, and the NDIS hadn't come about either.

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40

MS EASTMAN: Between 2014 and 2019 you held positions of senior manager at the Australian Federation of Disability Organisations, and you ran the Disability Loop Project. What can you tell the Royal Commission about the nature of the work that you did in AFDO?

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MS McALPINE: The Disability Loop Project was a very big project, a national project, right in the launch phase or the trial phase of the National Disability Insurance Scheme.

5 Loop was intended to be a big communication tool with people with disability and their families as the NDIS was rolled out. So we had a lot of information there as we learned about how the NDIS would work, and things that were relevant.

10 We also did a really big gap analysis nationwide, went round and talked to people about the communication access needs related to the NDIS and found, you know, unsurprisingly, that the biggest issue was access to information and having information in the form that people needed at the time that they needed it delivered in the context that they needed it.

15 MS EASTMAN: Many people following this broadcast may have heard or know of Paul Cain, a former CEO of Inclusion Australia, and you wanted to make mention of Mr Cain's contribution to this area. He was your predecessor; is that right, for Inclusion Australia?

20 MS McALPINE: That's right. He was the previous CEO of Inclusion Australia and before that he was the national employment manager --- advocacy person. So he worked very hard to advocate for open employment for people with intellectual disability, for decades. His work influenced me greatly, both professionally and personally, and I really want to acknowledge that from time to time, some of the data  
25 that I will refer to, or information, is actually Paul's work and I would like to acknowledge that when I do that as well, thank you.

MS EASTMAN: Can I ask you a little bit about Inclusion Australia. It's a peak national body for people with intellectual disability and their families. It was  
30 initially established in and under a previous name in the early 1950s; is that correct?

MS McALPINE: That is correct.

35 MS EASTMAN: What can you tell us about the evolution of the body that now is Inclusion Australia?

MS McALPINE: It's confronting talking about the names that Inclusion Australia had before now because in 1954 it was the National Organisation for Subnormal  
40 People. Not long after that it became the National Organisation for Mental Retardation, and then the name that everyone knows us by before now was the National Council on Intellectual Disability. More recently, we have changed our name to Inclusion Australia to reflect the very close ties we have with Inclusion International, which is the international organisation representing people with  
45 intellectual disability and their families.

MS EASTMAN: As a body that operates on advocacy and other work in Australia, are you a federated body with State agencies or do you just operate with one national

body?

MS McALPINE: No, we are a federated body with State agencies, and each of our State organisations are --- generally the organisations that --- in fact the Disability  
5 Royal Commission knows well, organisations such as CID in New South Wales and  
VALID in Victoria and Speak Out in Tasmania, and in fact Kalena that we just saw  
is a member of Our Voice, the governance subcommittee of Inclusion Australia that  
gives us advice from people with intellectual disability.

10 MS EASTMAN: At the present time, Inclusion Australia is involved in a number of  
advocacy campaigns. One of them, you say in the statement, is the advocacy work  
around open employment opportunities for people with intellectual disability. That's  
one of the areas.

15 MS McALPINE: Yes. Mainly because of Paul's work, Inclusion Australia has been  
at the lead of a lot of work around open employment for many years, and we have  
made many submissions to Government. You spoke in your opening address about  
the Business Services Wage Assessment Tool case, and Paul was an expert witness  
20 then. So we have continued on that work, having a real focus, because we believe  
that for people to live truly inclusive lives, that employment is critical to that because  
employment is where you meet people, where you are valued, where you create your  
own income for your own quality of life. It is critical to the wellbeing of all people,  
including people with disability and people with intellectual disability.

25 MS EASTMAN: We might do a quick recap about the difference between open  
employment, when we use that expression, and employment that might be described  
variously as segregated employment or sheltered employment.

30 You may have heard in the opening this morning, that I identified that segregated  
employment or sheltered employment is certainly an area that the Royal Commission  
wants to explore in its ongoing work, but it is not the feature that we want to explore  
for this particular hearing.

35 But the concept of sheltered or segregated employment is a very significant part of  
the advocacy work that Inclusion Australia does, and you have a number of concerns  
about sheltered or segregated employment, and that's essentially where people are in  
employment through the Australian Disability Enterprise, the ADEs; is that right?

40 MS McALPINE: That is correct. You just heard earlier that our own name has  
evolved over time as attitudes have changed and as understanding of the capability  
and human rights of people with intellectual disability have developed. So the same  
thing is the same situation with Australian Disability Enterprises, so they were set up  
when people came out of institutions and that was better than being in institutions.  
But in the meantime, we have really moved forward in our thinking about what is  
45 best practice, and we have our systems in Australia are such that many, many people  
with intellectual disability end up in segregated employment, where they just work  
with other people with intellectual disability, supervised by people without disability

and we would refer to that as "closed employment" because it is not together with everyone else in the community. So the term "open employment" is the opposite of that and that is what we concentrate on, and that is saying that people can work together with everyone else in the community if they are given the right support.

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MS EASTMAN: Can you give the Royal Commission an example of what working in segregated or closed employment might look like? Who would be undertaking that work, what type of work is available for people in the segregated employment field?

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MS McALPINE: Look, I'll be --- colloquially within advocacy they often talk about food, flowers and filth, that people with intellectual disability typically work in food preparation or serving, that they work in nursery and garden-type settings, and they work in cleaning. The evidence also shows there is a couple of other typical ways.

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I don't want to take away from the dignity of some of those roles and I certainly don't want to take away the age appropriate places in your life when you might work, when you learn about work. But what it does do, it says that people are not capable of more.

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Some ADEs --- they vary greatly --- still as recently as last year we heard terrible stories of people who are given a box of nails to sort, and then when they finish sorting it by lunchtime and said, "What am I going to do for the afternoon", they said, "Whoops", and popped them back in the box and said, "Here you go, you can sort them again". On the other hand, there are ADEs doing interesting work, and that are moving --- in fact we might talk about in promising practice is that some changes that are coming in the way ADEs might be able to transform the way they work. So you have business models where people are genuinely doing quite productive work in manufacturing or labelling and a whole lot of other things. They tend to be smaller, repetitive, easier jobs. But one of the critical concerns, of course, is that people are paid much, much lower, and as you said, are legally paid lower than other people in the community.

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MS EASTMAN: Just --- certainly. Do you want to explain that at all? You may have heard I mentioned the review undertaken by the Full Bench of the Fair Work Commission in relation to the Award. Obviously that detail of the work of the Fair Work Commission, we don't need to go into in the context of this hearing, but it may assist the Commissioners to have an understanding about how people are paid when they work in ADEs and the system that enables people who work in ADEs to be paid quite a low rate of pay, compared to the national minimum award wage standard. Why is that and how does that work?

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MS McALPINE: Well, it all starts, and of course even when we talk about the Disability Support Pension, it starts from a presumption that some people with disability, and that includes people with intellectual disability, can't work, in fact maybe it's not fair to make them work. So it wasn't regarded as a priority historically to pay people well because what mattered was that they were safe and that they were

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in an environment where they were receiving some supports.

5 But what we have seen develop is that sometimes the basis of those businesses relies on the fact that the people with intellectual disability are paid so poorly and they have done so in what used to be called the Business Services Wage Assessment Tool, and that the Fair Work Commission is making some changes. My understanding is there were some trials to happen this year, that haven't happened because of COVID, so I have lost track a little bit of where that is up to now.

10 But what I know, in our --- in the Inclusion Australia big submission that we made, not my witness statement but our other submission, we told a story about how there was an Australian Disability Enterprise where people had been paid less than \$3 an hour and they transformed the business into an actual going concern that wasn't funded through the ADE, and so the people then got assessed through another system  
15 called the Supported Wage System, and the Supported Wage System is a system where people get externally assessed, so someone will come into the workplace and they will basically time you and do some measures of your productivity compared to the workers without disability, and then you will get a rating. For example, you might be told that you are 70 per cent --- you do your job about 70 per cent as fast as  
20 someone else, then it is legal to pay you 70 per cent of the Award.

MS EASTMAN: There is quite a range of factors going into the wage assessment tool and ---

25 MS McALPINE: That is quite a range, that's right.

MS EASTMAN: --- there is some complexity around that; is that right?

30 MS McALPINE: Yes, and the point I was going to make is that the people who came out of the ADE, who then got assessed in the Supported Wage System actually found that their wages, they got assessed at 60, 70 and in fact 100 per cent. So, in fact, some people were found to be just as productive as anyone else, forklift drivers and the like. It's very problematic that people can have quite high skills and still be paid very, very low amounts.

35 MS EASTMAN: With respect to the Business Services Wage Assessment Tool, I made a note of that in talking about the concluding observations and recommendations made by the CRPD Committee. That wage assessment tool was the subject of a discrimination case in the Full Court of the Federal Court, the matter  
40 of Nojin, and Mr Cain was involved in that case, was he not?

MS McALPINE: He was involved. In fact, he was a key expert witness to talk --- again, to talk about how it worked, the impact and also, I believe, the evidence that  
45 exists on the productivity of people with intellectual disability and their ability to be very useful employees if they are given the appropriate support.

MS EASTMAN: Sometimes there is no hard or bright line between what may be

open employment and what might be segregated employment, and I want to start to get into some of the systems about open employment. But I think your evidence and some of the evidence that the Commissioners have heard this morning shows that some people go between the segregated working environment and then into open employment, so we may need to come back to some of the topics that we have touched on. But we can turn our focus now to open employment.

MS McALPINE: Absolutely.

MS EASTMAN: You deal with this in Part 2 of your statement. You have said there has been some recent work done by the Centre for Social Impact at Swinburne University of Technology, and this is part of work commissioned by Inclusion Australia, called The Employment First project. We have included in the evidence for the Commissioners a copy of the Swinburne report. Before we launch into the different systems, can I ask you to tell the Commissioners about the work done by Swinburne University and why Inclusion Australia commissioned this particular piece of work?

MS McALPINE: Inclusion Australia was funded through an NDIS Information Linkages and Capacity Building Grant to put together a website particularly for the purposes of navigating the difficult systems of the Disability Support Pension, Disability Employment Services and the NDIS, and we brought together a group of experts to start that project in November 2019.

There was an academic there and we talked about the fact that families, when they are making decisions and when people with intellectual disability are making decisions about employment, they need evidence to make those decisions. So --- you know, even people like me reflected on our own personal experience to say, when we were making, for example, the school decision, would our son go to a mainstream school or a special school, I didn't know that I was making an employment decision then. I didn't know that the evidence really shows that people who go to mainstream schools are more likely to be successful in open employment.

I didn't know that parental expectations were the biggest predictor of success in open employment. So we talked about some of those things and we thought, it's not as effective when we just tell our stories, even though as advocates and families we try really hard to get the respect of the community in terms of our lived experience. In the end, it's the hard evidence that backs that up. So we asked Swinburne to put together a series of 17 pieces of data to help people inform their decisions, so we put them together in small accessible ways. It's really what is known as a data translation piece. They didn't do any new research. What they did is put the existing research together in a way that made sense to families and advocates to be able to use that as the basis of decisions. Then, after they had done the 17 pieces, in fact Swinburne were so delighted with it, they put together the Fostering Employment Paper as a single paper to be used to help the community discussions on this topic.

MS EASTMAN: One of the things that comes out of that work, and this is your

view, is it not, is that the employment of people with disability is critical to the sustainability of the NDIS because it means that people with disability are more likely to live independently and less reliant on a Disability Support Pension, for example, and they are more likely to become taxpayers and make a contribution to the Australian economy in that way; is that right?

MS McALPINE: That's exactly right, and that's what the Productivity Commission found when they looked at the feasibility of the NDIS.

10 MS EASTMAN: When you step back and say, if that is an objective, both sustainability of the NDIS and moving people to become taxpayers rather than welfare dependent, a barrier to employment for people with intellectual disability or complex needs is the lack of appropriate supports to navigate frameworks, programs and the policies that are available from time to time.

15 MS McALPINE: That's exactly right.

MS EASTMAN: Are you saying that the systems that are set up to assist people with disability find work in open employment create the greatest barriers to seeking opportunities for open employment?

MS McALPINE: It's a great disappointment and irony of the system. I was watching this morning, and I really want to acknowledge the expertise and experience of the people with intellectual disability who have already appeared as witnesses, and who will throughout this hearing. But it is an absolute indictment on the systems that you need me here and you don't have a person with disability coming to explain the systems because they are so complicated. And I can tell you, at a personal level and a professional level, wending your way through to open employment, you have to be pretty determined to get there.

30 MS EASTMAN: I think otherwise you can end up on what --- I like your phrase here, the polished pathway --- is that depending on where you start will probably determine where you end. Is that right?

35 MS McALPINE: Yes, unfortunately there are well polished pathways from segregated education into segregated employment. We hear too often of people who are in special schools, who either never get any work experience, never talk about work at all or if they do, they go only to an Australian Disability Enterprise because it is presumed that is the only place they will ever work. So when they leave school, the only contact they have is either to the day program or to the Disability Enterprise, and it is very polished --- even within the NDIS, it is very easy, and it is easy for families who are worried, and because you don't need so much planning, so people just sort of slide from one system into the next.

45 MS EASTMAN: Let's dive into the three main systems that work together, that have an impact on people with intellectual disability's ability to find and maintain employment.

The three are the Disability Employment Services, often referred to as the DES; the Disability Support Pension, the DSP; and the National Disability Insurance Scheme, the NDIS. So those are the three that we will focus on.

5

Let's start with the Disability Employment Services, the DES. This is a Commonwealth Government employment service that helps people with disability to find and keep a job in open employment. We start with the DES. What I want to ask you about is from your perspective what does the DES do, and then I'll come to ask you about who is eligible for the DES services?

10

MS McALPINE: The DES system is the Australian Government's employment services that help people with disability find and keep a job in open employment. Basically if you are a person with a disability, injury or health condition, you can get supports through DES services to find and keep a job.

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MS EASTMAN: So there are particular eligibility rules that apply for somebody to become a DES participant; is that right?

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MS McALPINE: That is correct.

MS EASTMAN: You have, as part of the new website, set out the DES eligibility rules and you have included in your statement a snapshot of that, at paragraph 29. Let's see if this works. While I ask you some questions about that, we might see if the little graphic could come up on the screen.

25

Can we zoom in a little bit on that. This is the DES eligibility rules. I will quickly run through them. There are 7 criteria that decide whether someone is eligible for the DES.

30

1. Have a disability, injury or health condition
2. Be at least 14 years old, but not old enough to qualify for the age pension
- 35 3. Be at or above the minimum legal working age in your particular state or territory
4. Be an Australian resident or eligible visa holder
- 40 5. Not be studying full-time, unless you are an eligible school leaver ....
6. Have a valid Employment Services Assessment (ESAt) or Job Capacity Assessment (JCA). Whichever assessment you have, it needs to recommend you work with a DES and include a future work capacity of 8 or more hours a week
- 45 7. Not be working at or above your assessed work capacity (according to an ESAt or JCA assessment) that I have identified immediately above.

Ms McAlpine, this is the simple list of eligibility criteria; is that right?

5 MS McALPINE: That is correct, and it still took us weeks to write it, and any of my members and experts in Easy Read will tell you how inaccessible that list that you just read out is.

MS EASTMAN: Do you have to have expertise in the field to work out whether you are a person with disability who will meet the 7 criteria?

10 MS McALPINE: If you are a person with disability, the most likely way that you get towards DES is through your DSP application. What happens is you go to Centrelink and apply for the DSP and as part of that they might refer you to a DES. So it's less common that people just go to DES --- they are allowed to, but it's less  
15 common that people just go to DES, separately to the Centrelink system. Technically you don't need to be an expert, but what you find and what you heard in the evidence this morning is that people get told by other people to do something and they don't even know what they are doing. They go to Centrelink for a meeting and they don't know that the meeting is a Job Capacity Assessment. You go to an  
20 employer and you don't know that you just got moved from an open employer to ADE. You hear from Kalena that there are people supposed to support you but you don't really know what their role is and what they should have been doing.

25 You are not supposed to need to be an expert, but really the only people that successfully navigate it, people like my son who have middle class education and actually disability system expertise, because otherwise you will get lost on the acronyms in the first page and not know where to go next.

30 MS EASTMAN: Isn't it even something as simple as what does a disability, injury or health condition mean, that each of those expressions have different meanings depending on the circumstances?

MS McALPINE: Yes, that is correct, and the same within the Disability Support Pension.

35 MS EASTMAN: Coming back to your evidence a little bit earlier about the transitions from school into open employment, that critical period is when teenagers are in their last few years of school, and so this set of criteria also means that you have to be at least 14, but you also have to be able to legally work in your particular State and Territory, and each State and Territory has different laws that apply to  
40 when children and young people can work in paid employment or otherwise.

MS McALPINE: That is true, in a lot of places it is 14 years and 9 months. But we have the extra complexity these days, that since the Child Sexual Abuse Royal Commission, that there is now a requirement, if you employ people under the age of  
45 15, so in practical terms we are heading to a situation where it is very hard to get work experience or a job before the age of 15. But the rules haven't sort of caught up with that yet.

MS EASTMAN: So if I'm a person with intellectual disability and I want to try my luck in open employment, my counterpart might be a person without intellectual disability, doesn't have to meet any eligibility rules to apply for jobs and to seek work in open employment?

MS McALPINE: That's right. They also have to meet the age rules, but apart from that, no.

MS EASTMAN: Other than that, there are a lot of hurdles that have to be overcome, are there not, just to even get into the DES system to qualify for the DES service; is that right?

MS McALPINE: That's correct, and you have got to remember that the person doing it is a person with disability who may already have some other support needs in the navigation --- not the support needs to work but also support needs to navigate and understand that system.

CHAIR: Commissioner Sackville here. Can we go back to the first of the criteria, which Ms Eastman mentioned, that is, "have a disability, injury or health condition". What does that actually mean for the purposes of the DES eligibility rules?

MS McALPINE: My understanding is they relate back to the Disability Support Pension rules as well, which are very strict and very complicated. But basically, I suppose at a plain language view, you would be saying that the disability, injury or health condition is significant enough that it impacts on your ability to look for work with the mainstream support system, so in Jobactive or in one of the other systems, that any of --- if you have been trying to get work in that system and those providers find that you need more support, they can also refer you to DES. So the 2 eligibilities are not exactly aligned because DSP is much stricter. But what it means is that at a practical level, there is something about your personal situation that means that you have been unable to find work through the other government supports. Or through --

CHAIR: Presumably there is a definition somewhere of what "disability, injury or health condition", I know these are your words, but presumably there is a definition somewhere that enables a person, if sufficiently diligent and determined, to ascertain what the rules are?

MS McALPINE: Yes. I have to say that I don't have them at my fingertips partly because, for people with intellectual disability they come in --- they meet a narrower set of rules for the DSP, so they always meet the DES rules. So therefore for the purposes of the website we didn't go into the detail of DES rules because they are broader than the DSP, which is a very narrow set, it's a very tight gateway in the Disability Support Pension. But one of the more flexible things is that if you have been trying for 12 months to get work in one of the mainstream systems, they can still refer you to a DES, so there is a more practical approach at the Disability

Employment Services level.

5 MS EASTMAN: Commissioners, we might provide you with a series of the definitions as they appear in relevant pieces of Commonwealth legislation, from the *Social Security Act* and also some cross referencing in the *Fair Work Act* in the definition of an employee with disability, so we will do that in due course.

10 I want to ask you about particular features that you have identified of the DES system. One of the principal features is this notion of a future work capacity, and 8 hours is a key indicator in terms of whether you will be in the DES system or outside the DES system. Is it right that for a person to use DES, the person must be able to work 8 or more hours a week?

15 MS McALPINE: That's right, they must have either a Job Capacity Assessment or the ESAt, and I have already gone blank on the --

MS EASTMAN: Employment Services Assessment tool.

20 MS McALPINE: Services Assessment tool, they are very similar processes. You must be weighted as 8 hours or more to have eligibility for DES, yes.

25 MS EASTMAN: If your capacity is less than 8 hours per week then you will end up finding your way into an ADE, into the segregated, or the expression used, closed employment; is that right?

30 MS McALPINE: That's right, that's part of the polished pathway. What happens is if you are ranked as being able to work less than 7 hours a week without support, then the only thing that Centrelink will offer you is an Australian Disability Enterprise. You won't even be offered support to try for open employment.

35 MS EASTMAN: In terms of what happens through the DES providers, it's the case, isn't it, that the only funds the DES providers use to support people with disability in their jobs is up to 26 weeks; is that right? If a person gets a job through a DES provider then the supports are there for 26 weeks?

40 MS McALPINE: That's when you initially come into DES, yes. So you get supports --- there are some changes to the system --- there are some changes about when payments are done, and so some people are staying on until 52 weeks now because there is a 52-week payment. But yes, the primary supports are about getting the job and getting established in the job, getting what they call a 26-week outcome, so you have worked for 26 weeks.

Then there's another --

45 MS EASTMAN: Does this give rise to what is expressed to be a concern called the "churn" effect? That if the supports are only there initially for a 26-week period, then after the 26 weeks is complete, that might be the end of that particular job and

then you start the cycle all over again?

5 MS McALPINE: Yes, because the way that the payments are made to the DES providers, there's no incentive to keep people in jobs --- there's very little incentive to keep people in jobs longer and that support is not available. Although at some point I assume you will ask me about ongoing support, which is a separate thing that kicks in at the 26-week mark for some people.

10 MS EASTMAN: Yes, I think we heard evidence from Mr Fullwood earlier today, who worked for 18 years at McDonald's through Jobsupport, and his evidence was he had ongoing support throughout his employment at McDonald's and his evidence was that people came to visit him on a fairly regular basis just to provide him support on an ongoing basis. So would he be an example of the ongoing supports that may be available to some people in the DES?

15 MS McALPINE: Yes, some DES providers also provide the ongoing support program, and what that means is at the 26-week mark, if it's identified that you might need ongoing support to keep your job, then you can get put into the ongoing support program.

20 He referred --- so Jobsupport is the name of a DES, a Disability Employment Service provider who is a specialist provider in intellectual disability, one of very few in the country. And so they were then his DES, they would have continued to come, and they would have given him flexible support over the years. Sometimes he would have needed more and sometimes he would need less, that's why I listened to his answer, he said sometimes fortnightly, sometimes once a month, sometimes other meetings, because it is supposed to be a demand-driven support.

30 COMMISSIONER RYAN: Can I just ask a clarification question here, I'm a little confused. I take it 26 weeks is what a DES will give you to help you find the job, and if you haven't found one, you start again, but if you have found one, you can have some ongoing support for up to 52 weeks, is that how it works?

35 MS McALPINE: Sorry, no, the 26-week mark is from when you start the job. So there are payments --- the DES helps you find a job and then when you --

COMMISSIONER RYAN: That can be indefinite, I take it?

40 MS McALPINE: Then you get a payment, they get another payment at 26 weeks. The DES is a two-year program, so when you come into DES, the DES will have a look at you and decide whether or not you are likely to get a job within the next two years, and so Senior Counsel Assisting is probably going to talk me through about some complexity there, but once you get a job, there is a payment to the DES around getting the job, and then there is another payment if the person stays in that job for 45 26 weeks, and more recently there is another smaller payment if the person stays in the job for 52 weeks.

COMMISSIONER RYAN: As I understood, the extension to 52 weeks was designed to make DESs work a little harder with people who were more complex, and I think you have suggested what that does is string out the payment and it is not necessarily working the way it was intended; is that right?

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MS McALPINE: That's right. There is a very --- I don't even understand the algorithm behind what is called the Risk Adjusted Funding Model. What I know is that in real terms, the specialist providers have been telling us how there is less money, less support for people with ongoing support needs, there's a problem with ongoing support, that providers used to be able to pool the money between participants, so at any point in time there's always some participants who need more support than what they have really been allocated and some people that need a bit less support, and so they were able to balance it out.

10

15 But the recent changes to the DES system, now, when an audit is done, they basically scoop away any of the underused funding but haven't topped up any of the people who need more support. So it is so complicated ---

COMMISSIONER RYAN: Yeah, that's as clear as mud for me!

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MS McALPINE: Yeah, I'm quite confident you will ask me questions I don't know the answer to, and I'm one of the people that supposed to know the system better.

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CHAIR: I'm struggling to understand that as well. I wonder if it might help if you take us through a typical chronological account. Let us take a child, let us say aged 16, with an intellectual disability, who is on the NDIS. Can we take that as a starting point?

30

MS McALPINE: We could.

CHAIR: What happens when the child wants to get into the workforce in terms of the interaction of these various systems and entities? What does the child --- properly advised, no doubt with a team of lawyers --- what does the child do in the first instance?

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MS McALPINE: Right. If I concentrate on the intersection with DES, and there is more to be talked about earlier, but basically a child, a young person, will not get access to DES until they leave school. DES does not apply for part-time jobs, casual jobs that you might have at school. And in fact, when we get to talking about the NDIS we will see that there are some supports now, more recently, that can do that. A person will be at school, they will apply for the Disability Support Pension at age 16 or they can, let's say they have, they have applied for the Disability Support Pension, they are getting --

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45 CHAIR: Just pausing there, being on the NDIS is no barrier to getting the DSP?

MS McALPINE: No. So the NDIS is a system for funding reasonable and necessary

disability supports, the DSP is income support provided by the Federal Government, and the DES system is Disability Employment Services, also provided by the Commonwealth Government. So they are three separate systems, although the DSP and the DES do talk to each other.

5

CHAIR: I understand that. So the young person first up goes to get the DSP?

MS McALPINE: Yes.

10 CHAIR: As I understand it from one of your paragraphs a little bit later on, what happens is that whoever is administering the DSP, presumably the Department of Social Services, then says, "Go and get a Job Capacity Assessment"?

MS McALPINE: They actually will do a Job Capacity Assessment as part of your  
15 Centrelink application.

CHAIR: I see.

MS McALPINE: Because the DSP is, by definition --- so pensions are payments that  
20 governments give because people either can't or are not expected to work.

CHAIR: How then does the Department of Social Services determine the extent of  
the work capacity of the applicant and in particular to determine whether the  
applicant can work more than eight hours a week, which seems to be the critical  
25 criteria?

MS McALPINE: That's right. If you are a person with intellectual disability, one of  
the good things about the DSP is you meet what's called the Manifest Eligibility  
Requirements, so you meet some requirements that say you have to theoretically  
30 jump through fewer hoops to get the DSP. But one of the things that goes along with  
a manifest eligibility is you are automatically assessed at seven hours or less, because  
the Manifest Eligibility says you are one of the people who is least likely to work.  
So they already expect that a person with intellectual disability, by definition,  
through the definitions in the program, you already can't work.

35

So you are assumed to be able to work less than eight hours, you are only offered an  
ADE as employment support. If you say ---

MS EASTMAN: Can I jump in there. The Manifest Medical Rules, which are these  
40 qualifiers to an automatic eligibility for the DSP, are based on doing an IQ test.

MS McALPINE: An IQ test and a functional test --- a Functional Capacity  
Assessment, they go together. That is related to --- it's not exactly clear to me  
because there is not a lot of transparency but it seems that you go through that and as  
45 part of that, you get the Job Capacity Assessment, which says that you can only work  
seven or fewer hours a week.

CHAIR: I'm undoubtedly missing something, but the logic of that seems to be that if you are eligible for the DSP, you can't be eligible for a DES?

MS McALPINE: That is for people with intellectual disability, that is ---

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CHAIR: I'm sorry, for people with intellectual disability.

MS McALPINE: They changed the rules a few years ago to say you are allowed to self-present, you are allowed to self-refer to a DES, so you are allowed to ask now, "I would like to go to a DES", but you have to know that you are allowed to ask. The automatic system is that you are manifestly eligible for the DSP, and so therefore you go straight into an ADE. That's what you are offered as an employment support --- that is once you --- leaving school. If you are 16 and you are still at school then nothing really happens for a couple of years on the employment front.

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MS EASTMAN: If we are still on the DSP and you don't satisfy the Manifest Medical Rules, there is another pathway to the DSP through the General Medical Rules Assessment; is that right?

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MS McALPINE: That's right. I haven't spoken to this in so much detail but there are things called the DSP impairment tables and that's another whole area of pain, in terms of the way that the very complicated way you have to get enough points against each item on the table to show that your impairment is such that you are eligible for the DSP.

25

MS EASTMAN: Taking from the Chair's little case study, say a person qualifies for a DSP, either through the Manifest Medical Rules or through the General Medical Rules which takes you through the impairment tables, if a person qualifies for a Disability Support Pension, there is no obligation --- there is no mutual obligation for a person on the DSP; is that right? So they don't have to look for a job, if they are on a DSP because the assumption is that they cannot work?

30

MS McALPINE: Again, there's been some more recent changes, and if you are a person under 35 and --- so this doesn't apply to people with intellectual disability, you don't have to work, you are not penalised if you don't work --- there is a thing called participation requirements, which is a little bit different to mutual obligation requirements, for people under 35 with some disabilities where there is an expectation that they would go to work because they will have been assessed to be 8 to 15. So there is the less than 8 but if you are assessed as having capacity to work between 8 hours a week and 15 hours a week, then you are referred to a DES.

35

40

So for the other people on the Disability Support Pension who have a Job Capacity Assessment of 8 to 15, they are referred to DES and they have expectations in terms of mutual obligations and participation requirements to try and get work.

45

MS EASTMAN: The person who qualifies for a DSP who also wants to work,

there's a careful path to be navigated to not work more hours that would detract from the DSP, because there's a sliding scale, isn't there, that if you're earning up to a particular amount, that starts to have an impact on the total value of the DSP? I think you have done a graph for us on that, if we can put that up in a second to try to explain that.

MS McALPINE: Yes. The rules are that you can earn, at the moment --- this changes year over year --- but you can earn \$178 per fortnight before you lose any DSP, and then after that, for most people, you would lose 50 cents in the dollar. That's okay, that's basically saying that for every dollar that you earn you lose 50 cents but you end up 50 cents better off, so gradually the income you take home will increase until you get to a threshold at which you don't have access to the DSP any more. Of course, there's a problem there because there are --- if you qualify for the DSP, you also qualify for cheaper medicines, you also historically qualified for other taxi services --- so the graph is there now.

MS EASTMAN: You prepared this --- thank you very much, because this is a query in just working through paragraph 48 of the statement, an understanding that exercise of the value of the DSP decreasing as the earnings increase. Can you walk us through this graph that you have prepared?

MS McALPINE: Sure. The yellow section shows the amount of DSP that you earn over time, that you earn as you earn more. As your income increases, your DSP decreases, and by the time you earn \$2,066.60 per fortnight, then you would stop getting the DSP. But at the same time your earnings have gone up to \$2,066.60 and in fact once you started earning \$700 a fortnight, you started paying tax as well.

So this shows that the DSP is designed --- this part of the DSP design I wouldn't be particularly critical of, except that it's complicated, because what it does is it says to people on the DSP, you can still get the DSP through a sliding scale of your own income, you don't lose it, you don't fall off a cliff and lose it at a certain point. It happens gradually.

MS EASTMAN: But is the complexity that for a person who depends on the DSP, including all the concessional benefits around medicines and the like, is that if they do want to find work, either through a DES or without the assistance of a DES, that they need to be fairly certain about what the levels of earning will be, so that they don't either impact on their DSP and lose those other benefits is that the primary concern?

MS McALPINE: Yes. Then what happens, if you work at an ADE, you have just got a set-and-forget, you don't have to deal with Centrelink very often. As soon as you start working, particularly if your hours are variable, you have to report to Centrelink on a fortnightly basis, and you have to report to Centrelink, and there are complicated things called work credits that I don't understand, you have to make sure you don't accidentally earn too much, you have to make sure that you report every two weeks because I found out that if you don't report for two fortnights in a row you

can suddenly lose eligibility for the DSP, and you have to do this much higher navigation of the system, which for a person with intellectual disability means that someone else is doing it for them. So it means that a parent or an advocate or some other disability support worker is helping them navigate the online system, which again is much harder than just, you know, going to a day program every day.

COMMISSIONER ATKINSON: May I --

CHAIR: I'm not sure whether that graph is meant to be precise in terms of figures --- I don't mean the figures on the vertical axis, I mean the shaded parts of it --- but is there any point at which additional earnings, the green section, are more than offset by the combination of (a) additional tax and (b) loss of DSP?

MS McALPINE: Yes, that happens --- once you get to \$2,066.60 --

CHAIR: No, I'm talking before you get to that point. My question is: in effect, what is the marginal tax rate on additional earnings when you take into account not only tax but loss of DSP? Do you follow my question?

MS McALPINE: Yes, the graph, and also remembering that everyone's situation is different in terms of what you can claim on tax and what have you, so this is only a schematic, it's not an exact thing.

CHAIR: That's fine.

MS McALPINE: Once you start earning \$700 a fortnight, you start paying tax, so the green bit is what you earn, so you would actually take home --- I think it is about \$346 that you get taxed if you earn \$2,066.

COMMISSIONER ATKINSON: Can I ask a question about this, so does this graph show what the welfare trap is because at a certain point, I think you said \$700 a fortnight, you are losing your DSP at 50 cents in the dollar, plus you are paying tax. So what the Chair referred to as your effective tax rate is more than 50 cents in the dollar and that continues to rise until you lose your DSP altogether?

MS McALPINE: That's right, yes. So you have got your 50 cents in the dollar and then you've got the 18 cents in the dollar, so basically I suppose you are 68 cents in the dollar worse off. Of the money that you actually --- I understand the Chair's question better now, sorry --- of each dollar that you earn yourself, you then lose another --- you lose 68 cents, you lose 50 cents of the DSP that you had been getting, and then you start paying tax.

COMMISSIONER ATKINSON: And that is a positive disincentive not to earn money.

MS McALPINE: Yes, well, we try --- in terms of the website, we try and make the point to everyone, look at the green line, it keeps going up, you are still better off.

But you are absolutely right, in terms of encouraging people, if you have to go through all this complexity and effectively what you are getting is 32 cents in the dollar benefit, you have to ask --- you have to really want the human rights outcome and the independence outcome, which are not insignificant, I might add ---

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COMMISSIONER ATKINSON: Sure.

MS McALPINE: But yes, it's not a big reward for your effort.

10 COMMISSIONER ATKINSON: Thanks.

MS EASTMAN: All right, I haven't done justice to our plan to take each particular area and do it bit by bit. The Commissioners have the benefit of your full statement and others can read it when the statement goes up. I'm sorry to jump around so  
15 much. But can I perhaps get to the NDIS and where the NDIS fits into the DES scheme that you have talked about and the DSP. You deal with this from paragraph 51 of the statement. How does the NDIS have a role in supporting people to work in open employment?

20 MS McALPINE: I think, if there was any message that I wanted you to get from this evidence, it is just it is so complicated, it is just so complicated, it's just outrageous.

The NDIS is a different system, and you have to be eligible, so we need to remember that not all people, even with intellectual disability, who qualify for the DSP or for  
25 DES will also be NDIS participants. But if I talk to the NDIS now, the NDIS has made a number of changes, and in fact employment support is now better than it's ever been before. So you can now use your NDIS plan to get support for a casual job, if you're young. So when my son got his little casual job at the basketball stadium canteen, we had to pay for the support worker because DES didn't pay, there  
30 was nowhere you could get money to support you at that wage. The NDIS will now support young people to do casual work, so you can get support to do that.

You can get support, when you leave school, there's a system called School Leaver Employment Supports and there are some complexities and rigidities around that  
35 system that are not going well. But more recently there are also individual employment supports, and the new rules that are that Australian Disability Enterprises can now provide support to their workers to transition to open employment. So they can still be the --- provide the employment support, but not in their own setting, but also in settings outside.

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MS EASTMAN: I will just ask you a little bit more about the NDIS funding from the transitions from school to work. The information the Royal Commission has received is that for young people starting out, often it's these very first jobs, working  
45 in retail, working at the McDonald's or the fast food, in the fast food industry, that gives young people the skills that move them from school to what it's like to work in a workplace, to follow directions, to have to turn up, as Kalena said, to turn up on time, to follow different sorts of rules. Often these first jobs are the doors that open

into ongoing employment. Is there any review of the success of the NDIS funding the transition from school to work for young people, or is it too early to have a view as to whether this is making a difference for young people with disability?

5 MS McALPINE: I think it's too early to tell whether the impact of the funding being made much younger is effective, but it is very disappointing that the support called School Leaver Employment Supports that we all know as SLES has not been reviewed. There is no data --- that's a program that was intended to help people get  
10 DES and what have you. So the NDIS, almost immediately when it started, decided that it would look to try and support school leavers for up to two years to try and get ready, be ready to move to a DES, to be ready to work more than eight hours a week, and to learn those other skills that you just described. But in fact, that has been captured a bit by a lot of providers that provide day services and anecdotally we hear  
15 of a lot of people that do two years of SLES and then move to a day service instead of moving towards open employment. Unfortunately there has not been any evaluation of the success of SLES, we have no data as to how many people with disability have found jobs or moved the next step along the pathway to open employment through SLES.

20 COMMISSIONER RYAN: As I understand it, SLES is based on a scheme that was in New South Wales that used to be called Transition to Work?

MS McALPINE: That is right.

25 COMMISSIONER RYAN: That program was evaluated, I have forgotten the outcome of that evaluation, but is it fair to say that that evaluation did show that SLES, or as it was called, Transition to Work, had showed some promise in directing people to employment or educational outcomes? Do you include that in your  
30 assessment, that there has never been an evaluation of the program, or do you take the view that that is so different in its evaluation that it couldn't be counted?

MS McALPINE: No, the Transition to Work Program in NSW was a very good  
35 program and there was good reason for SLES to be based on that. That is because the Transition to Work providers in New South Wales mainly took an evidence-based approach to transition to work. So for people with intellectual disability, we know that place-in-train works, we know you should be in the job before you then learn about work in an employment situation, that because of the cognitive impairment for people with intellectual disability, it is much harder to learn  
40 things in a classroom and then to transfer them to the work environment.

So the TTW program in NSW was delivered by providers who used that evidence base. The problem that we've seen in the NDIS is you have some providers that are still doing that, and that I think have reasonable outcomes, but you have a lot of other  
45 providers that have now turned it into a classroom-based environment. So now you have groups of people go along, they talk about work for three days a week, at school I have a young person in my life who has been told they can do a group work

experience down at Woolies, so the use of the evidence that says, "This is what you do to get to a transition to work", seems to have fallen away, and it is one of the themes of my evidence that I certainly will say towards the end, when counsel offers me the opportunity to say what are the things that you think need to happen, is that we are not using evidence-based systems, that DES and SLES, the funding comes out, and the Government providers of the funding are not insisting that if you are a provider of this service, you must use the best evidence-based strategies to find people work. What happened in New South Wales, which was narrower and more controlled on that front, gave very promising outcomes, what has happened in the NDIS is you have had this gradual move away from the evidence-based approach, and so now we don't know where we're at, in terms of the promise versus the outcome.

COMMISSIONER RYAN: Thank you.

MS EASTMAN: I am going to have to ask you to slow down a little bit.

MS McALPINE: Sorry. Yes.

CHAIR: Quite a lot, in fact.

MS EASTMAN: One aspect of the work done by Swinburne was that Australia does not have a nationally consistent transition model for young people with intellectual disability leaving school, and this is an area of concern, that a nationally consistent model may be a better pathway for families and most importantly young people with intellectual disability leaving school in knowing what their options might be. Is that right?

MS McALPINE: That's correct. We have the unfortunate situation that Paul Cain said that for 15 years before we lost him, and I have been saying it ever since. It's just indescribable that we can say this for decades and still be trying to make sure that the systems that work are the systems that are used. This is the thing, as I said, there's a couple of specialist providers, one of which Rohan luckily lived in an area where that provider provided service, so he was able to use that for the 20 or so years he worked. Where Kalena works, there is no specialist provider there and you heard what her story was like.

COMMISSIONER ATKINSON: May I ask something here. Ms McAlpine, is what's happened that a successful NSW program has been replaced with a less successful national program?

MS McALPINE: That's my view, given what we hear from people with intellectual disability and their families. There has been no reported outcomes on SLES, so we don't have the data to know whether what we hear anecdotally and see is true.

COMMISSIONER ATKINSON: So the national system only works if it picks up the best of a State system that was operating successfully; national guidelines in

themselves are not particularly useful if they are actually worse than what people in one particular state had before that?

MS McALPINE: That's true.

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COMMISSIONER ATKINSON: Is that fair?

MS McALPINE: That is fair.

10 COMMISSIONER ATKINSON: Thank you.

MS EASTMAN: Can I just go to a slightly different topic, and focus a bit on a young person transitioning from school to employment. But what about transition between jobs? Once a person with intellectual disability has a job in open  
15 employment, what supports are available for transitioning into different jobs, or is the expectation that once you have that job, that's your job for life?

MS McALPINE: There is much more of an expectation that once you have that job, that's a job for life, in the same way that we put people into accommodation and  
20 assume that they are going to live there forever.

But the ongoing support item in DES is supposed to be able to help you do that. But the anecdotal feedback we get is that funding is insufficient to make that happen. So what happens is that people ask for support through a DES provider and the DES  
25 provider either says, "I can't provide you that support because we don't get enough funding", or they do attempt to provide that support, but there is not enough of it for the success to happen.

So you hear the occasional success story, but in general, people with intellectual  
30 disability don't move between jobs very often. And of course, the evidence --- historical evidence, given that there were some changes in July this year --- is that less than 1 per cent of people that work in ADEs ever move out of an ADE to open employment.

MS EASTMAN: So that is moving from ADEs to open employment, but what about  
35 once in open employment, moving from different jobs or promotions within a particular organisation? What evidence is there of the support for people with intellectual disability progressing in particular roles in open employment or moving between different employers?

40

MS McALPINE: There's never been any supports to do that, and it's something that happens very rarely, and it's something that the NDIS has now introduced a support item to explicitly deal with that. So the NDIS has recognised that there are a few big glaring gaps in terms of the Commonwealth supports available, and have looked to  
45 fill them. So since July this year that's been something that people can use NDIS funding for.

MS EASTMAN: I don't think you have commented on this specifically, but the Royal Commission will hear over the course of this week a number of situations where people have obtained jobs in open employment, but often in very small businesses, and then the business closes down, and then they have to go back through the whole system again.

What supports are available to people with intellectual disability who lose their jobs in open employment? Do they just come back around on the same cycle?

MS McALPINE: Yes. I'm not aware of any supports specifically that deal with that. If they've been receiving ongoing support from a DES, then my understanding is the cycle starts again, like I think the DES can get funding to look to place them again. But it's --- you just hear story after story. Unless someone has other informal supports or other supports around them, to be able to navigate that, again people give up and go towards the polished pathways.

MS EASTMAN: This morning when I was taking the statistics from the ABS and from sources that you have provided in your evidence, it raised this question: that is, people with intellectual disability who reach retirement age, and assume 65 as the average retirement age, what supports are there for people with intellectual disability to retire from work? We heard Rohan Fullwood retiring in his early 40s.

MS McALPINE: This is a really --- there is nothing, there is nothing there, and it's a really big issue because a lot of people with intellectual disability have an underlying health condition that means that they age faster. And so historically there used to be, for instance, in aged care, in terms of access to aged care supports, there were two groups of people that had access to aged care people, and that was Aboriginal and Torres Strait Islander and people with Down Syndrome, and that's because people with Down Syndrome have three copies of chromosome 21, which is associated with Alzheimer's Disease, so there is an early onset aging that occurs.

So one of the things you hear, and I saw this great thing on social media recently about someone who had been working somewhere, was one of the first people with intellectual disability to get open employment and had retired after 30 years, I know no one with intellectual disability who works until they are 65. So basically they just go back to the Disability Support Pension and hope that they can get some NDIS supports. But there's no system, there's no sort of acknowledgment that that's a challenge and a right that people should have access to, the same as everyone else in the community.

MS EASTMAN: One gnarly topic we haven't covered is where superannuation fits into the scheme. Do you have a view on the extent to which the superannuation scheme fits into this particular model?

MS McALPINE: I haven't done any specific preparation for this, but the same problems for superannuation that happened for people --- so people don't earn enough income to get superannuation, even if they got the 9 per cent or 9.5 per cent,

it's on such a small income that they don't get it. If you get the Disability Support Pension, you don't get superannuation, if you live in poverty --- because if you live on the Disability Support Pension, you are likely to live very close to the poverty line if you have no other supports, so you have no capacity to prepare for retirement.

5 Probably your health support needs go up around that age, and if you don't have proper supports, you end up hearing about the abuse or the neglect, I suppose in particular, that you have heard in other things. You see people with intellectual disability ending up, young people in nursing homes, which you have seen in other contexts, it's just --- it's diabolical because of course when people with intellectual  
10 disability --- people with intellectual disability historically passed away before their parents. And we are now at the wonderful situation where the life expectancy, even though you have heard some really dreadful things about the life expectancy of people with intellectual disability, we are now seeing more substantial numbers of people retire. There was a project by DSS about three or four years ago where they  
15 had to think about retirement from ADEs, because before that people didn't live long enough to retire.

So we now have a good thing, that there is an expectation that people's life expectancy is such that they could expect to enjoy a retirement and we have no  
20 systems whatsoever, either in superannuation or in other supports to support them to transition to that in a dignified way, to have enough income to enjoy the fruits of their labour for the last years of their life.

MS EASTMAN: In the time remaining --- and I thought we could add an extra few  
25 hours here, but --- could I ask you two things: one is if you would like to tell the Royal Commission about Inclusion Australia's focus on employment, and this is really about the reason why you have developed the Everyone Can Work website.

Then I'm going to ask you to comment on the matters that you have identified in your  
30 statement as recommendations for change. I'll try not to interrupt you, but could I ask you to tell the Royal Commission about this website which went live on 30 October. So it's only been in place for a relatively short period of time, but what is that seeking to do in terms of providing information to people with intellectual disability and their families?  
35

MS McALPINE: Well, basically we are trying to put together the information that we just told you in a fairly jumbled way, but it's because of the complexity, to try and put it in an organised way online so that people can come back to it again and again, wherever they are in that system, to try to navigate what supports might be available.  
40 It has Easy Read materials for people with intellectual disability thinking about work, and trying to understand the Disability Support Pension and we also have some workshops around that for families because families have such a big impact on the decision families about whether people did go to open employment, and workshops, we had one this morning for people with intellectual disability who would like to talk  
45 about open employment.

Basically, the Everyone Can Work website is just a very first step about helping

people navigate the systems to achieve open employment, and to give them some hints and tips about decision-making they might do earlier on in a young person's life that might help them and to learn about the evidence-based strategy, such as on-the-job experience, learning in place and the things we know work.

5

So it is making sure all of that information is in one place instead of on the Centrelink website and on the NDIS website and other places where it is very hard to work out how those systems interface with each other.

10 I would regard it very much as a first step, it is not in any way the answer to what things are needed, but I have known since my Down Syndrome Victoria days that this is a thing people ring up about every week, "I don't understand how to navigate the system, can you help?"

15 MS EASTMAN: Has IA been specially funded to develop this website and put together this information?

MS McALPINE: We received a one-off ILC funding through the National Disability Insurance Scheme, ILC funding. That project ceased on 30 November. We are still  
20 doing some workshops and we will do some work because we believe in but in fact the funding for that project has ceased.

MS EASTMAN: Finally, the recommendations for change, and you have set them  
25 out in paragraph 106 of your statement.

Commissioners, that is page 33 of the statement.

Ms McAlpine, can I ask you to run through those in terms of what you identify as the  
30 key recommendations for change that could improve the experience of people with intellectual disability seeking and maintaining open employment?

MS McALPINE: Absolutely. The one thing that I --- could I just mention one thing  
35 we didn't talk about from my evidence, and that is that it all starts with segregated education. Because this doesn't come specifically in the recommendations. But kids learn very young that people with disability, particularly people with intellectual disability, belong over there. And now, we have all these conversations about employer attitudes. I think it is really important to connect the dots between what we do when people are 5 and the attitudes that we end up with in employment, and what  
40 needs to be then undone, and lots of government money spent on undoing it. I just really wanted to connect those dots, that the problems in employment start with segregated education, and to make that link for you.

Having said that, it will be no surprise that I'm saying that all government  
45 employment programs, including NDIS-funded supports, should ensure that providers use evidence-based practice that is specific to people with intellectual disability. Therefore, that DES providers undertake best practice training on achieving open employment outcomes for people with intellectual disability.

That the DES program publish actual employment outcomes, differentiated by the type of disability, for each provider, and that would partially be a means of holding them accountable but it also helps families make informed decisions.

5

That there be specialist DES providers for people with intellectual disability in every State and Territory.

10 That the NDIS publish actual employment outcomes, either a job or a transfer to a DES, differentiated by type of disability, by provider as well, so that people are able to make choices and providers are held accountable for the work, if they are going to do a two-year program of Transition to Work, that can we see that that happens. While I acknowledge that this is outside the scope of the current hearing, I believe it is important that all schools, including special schools, offer work experience in open  
15 employment settings to all students.

The NDIS to clarify if NDIS supports can be used for school supported work experience when a student with disability requires continuous support particularly in short-term placements. There are some interface issues around reasonable and  
20 necessary, about whether or not you can use your NDIS funds to achieve some employment-related outcomes, when the school education system also has funding and requirements to deliver on that front. So there is some complexity there as well.

25 MS EASTMAN: Just pausing there, you have covered that earlier in your statement in some detail so I will refer the Commissioners back to those paragraphs.

MS McALPINE: To remove the eight-hour per week eligibility threshold for DES. That funding to SLES and DES providers who support people with intellectual disability be dependent on the programs being based on research and evidence of  
30 best practice. Approaches to the transition to employment, and you mentioned earlier that the recommendations by the Australian Human Rights Commission in the Willing to Work Inquiry should be actioned.

35 MS EASTMAN: Ms McAlpine, we have rushed as a tour de force through some incredibly complex material, but we are very grateful in you assisting us this afternoon, with just getting a little window into the complexity of the systems. Thank you very much.

40 MS McALPINE: Thank you for having me.

CHAIR: Thank you, Ms McAlpine. I will ask Commissioner Galbally first if she has any questions.

45 **QUESTIONS BY THE COMMISSION**

COMMISSIONER GALBALLY: Thank you very much for your evidence. I would like to ask you about where you started, with the vision, in the naming of your organisation, that change over that period of time of 70 years, that it has also changed for the vision about intellectual disabled people working alongside everybody else, and somehow these systems haven't caught up. Would that be what you are sort of suggesting, that it is still keeping people trapped in old models that aren't about working alongside everybody else?

MS McALPINE: Absolutely. Our organisation started when people were embarrassed to say they had a child with an intellectual disability because of the stigma attached. Families have had to learn a lot about substitute decision-making and supported decision-making.

But the thing that we found when we moved people out of institutions is that if you kept people in a bed all day and did nothing, they couldn't do anything. And then the longer people have been out of institutions and the more we have learnt, the more we have learnt what people can do, and I certainly agree that our systems have not kept pace.

COMMISSIONER GALBALLY: And that aspiration is very important, is that ---

MS McALPINE: Yes, aspiration is hugely important, as I said, the biggest predictor is that whether or not --- if a family thinks a person can work --- Paul Cain used to say that the only job capacity predictor you needed was a pulse; if you wanted to work and you had the right, you could.

CHAIR: Yes, thank you, Commissioner Galbally.

Commissioner Atkinson?

COMMISSIONER ATKINSON: No, thank you.

COMMISSIONER RYAN: Nothing further, Mr Chair.

Thank you for your efforts.

CHAIR: Ms McAlpine, as I look at your statement to see how this set of interacting systems actually works, it seems that the administration of an IQ test has extraordinarily important consequences. It seems to be a gateway to whether somebody gets a DSP automatically or whether they go into some other system. How does this administration of an IQ test, which seems to have fallen into some disrepute --- not this particular test, whatever it is, I don't know what it is but the general concept of IQ tests is very much under challenge over the last few decades. Do you have any information on how that works?

MS McALPINE: That is a very good question, Commissioner. You are absolutely right. IQ testing has fallen, maybe not into disrepute but it is certainly not a measure

of a person's ability. You heard Dr Jenny Torr spoke at the Health hearing about the problems around the 70 mark in terms of having a mild intellectual disability or not.

5 The hard cutoff is enormously problematic because you have a person who on one day is assessed by a person to say, yes, you have an IQ of 69, so therefore you get access to these various supports, and then on the next day you hear, yes, there's an IQ of 71 and you have access to --- you theoretically have access to those supports but you don't get any of the support to navigate that goes with it.

10 So it is enormously problematic, it is going to come out with the stuff that you hear about justice, it is problematic --- it is just enormously problematic that instead of people looking at the support needs that someone needs, that they measure them by this number that is completely dependent on what happens on the day, and that their ability to get supports for open employment or other aspects of their life is dependent  
15 on that number.

You could have a hearing almost on that topic, with respect, sir.

20 CHAIR: Thank you.

COMMISSIONER ATKINSON: May I do the wrong thing and ask a question in spite of the fact that you asked me before if I did have any and I said no, Chair?

25 CHAIR: Yes, go ahead.

COMMISSIONER ATKINSON: Thank you. I was looking at that website that you have, Everyone Can Work. You have actually got a scheme which is employment pathways, which I think probably answers the question the Chair asked you earlier about as someone goes through life, what is available to them. Presumably you want  
30 us to take that into account, what you have got on your website?

MS McALPINE: By all means, yes. In the website there is like a wizard that you can step through and ask about where you are in your life and then it will gather the information we have on the website, that might be of most relevance to you. But  
35 I wouldn't pretend that everything is there, remembering there are State systems, there is the complexity of State systems and other supports, but certainly it is our attempt --- that is our attempt to make it as simple as possible, that you can go on to the website, answer a few questions about your context, and hopefully be given the resources that are most relevant to you.

40 COMMISSIONER ATKINSON: Thank you.

CHAIR: I think I can answer my own question on marginal tax rates.

45 From 2012 to 2020, the marginal tax rate if you earned over 18,000 but under 37,000 was 19 per cent. Therefore, if somebody on the DSP earned \$19,000, that is, \$1,000 more than \$18,000, the effective marginal tax rate is 69 per cent, being 50-cent

reduction per dollar in the DSP plus 19 per cent. If the person gets over \$37,000, let us say earns \$38,000, by the same reasoning the effective tax rate is 82.5 per cent because --

5 MS McALPINE: That is true, but they will have stopped getting the DSP by then because they will have crossed the threshold by the time they hit the \$37,000. But you are absolutely correct in your calculations.

10 CHAIR: That is something that is endemic to the welfare system, it has been that way for decades upon decades, so it is probably not unique to this area of concern but that's the way it works.

15 Thank you very much. As Ms Eastman said, we got through a great deal of material in a relatively short time, and we thank you for providing us with such a clear explanation of what appears to be singularly opaque. Thank you very much for your evidence and for the detail that you have provided us with. It's been very helpful. Thank you.

20 MS EASTMAN: Thank you, Ms McAlpine.

Commissioners, I might ask you to mark the graph that Ms McAlpine prepared, which I put up earlier, during the evidence, and mark that Exhibit 9.4.7.

25 CHAIR: Yes.

**EXHIBIT #9.4.7 --- FURTHER ANNEXURE TO STATEMENT OF MS CATHERINE McALPINE**

30 MS EASTMAN: So that can be part of Ms McAlpine's exhibits, and that concludes the evidence for today.

35 We are scheduled to resume at 10.30 am Sydney time, 9.30 am Brisbane time, tomorrow morning.

40 CHAIR: We will do that, but just following up on Commissioner Atkinson's point, we might, as Ms McAlpine very helpfully suggested, we could use the material on the website. Perhaps we could make arrangements for that in due course to be tendered as well.

45 MS EASTMAN: There is a reference in the statement to the website and some graphics that we have included in the statement, so I hope that that will be incorporated by reference in the statement.

CHAIR: Thank you again, Ms McAlpine.

We will adjourn until 10.30 am Sydney time, 9.30 am Brisbane time tomorrow.  
Thank you.

**5 THE WITNESS WITHDREW**

**ADJOURNED AT 4.41 PM (ADST) UNTIL TUESDAY, 8 DECEMBER 2020  
AT 10.30 AM (ADST)**

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