



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

Outline of Submissions of Counsel Assisting following Public hearing 9

Pathways and barriers to open employment for people with disability

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... [W]e 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.

Catherine McAlpine, Chief Executive Officer of Inclusion Australia¹

Introduction

1. The Royal Commission's ninth public hearing (**Public hearing 9**) was led by people with disability who shared their experiences and talked about the barriers and pathways to open employment.
2. The evidence raised recurring and common barriers to employment for people with disability. For the reasons outlined in these submissions, it is open to the Royal Commission to find there are barriers experienced by people with disability obtaining and retaining employment. These barriers may be grouped in four broad areas:
 - (a) attitudinal
 - (b) physical/environmental
 - (c) organisational
 - (d) structural.
3. In the context of employment, these barriers may arise when a person prepares to enter the workforce, seeks a job, participates in recruitment processes and commences work. They may also arise during a person's employment and/or lead to job loss or cessation of employment. A person with disability may experience barriers at all or some of these stages. The barriers may arise from the conduct of another person or because of long standing workplace culture and practices. For some people with disability these barriers result in violence, abuse, neglect or exploitation.
4. This outline of submissions sets out the matters Counsel Assisting will address in their oral submissions on 24 March 2021, relevantly:
 - (a) key themes emerging from and any findings available on the evidence led during the hearing, including any additional material tendered; and
 - (b) the proposed scope for the Royal Commission's further inquiry into the themes and issues identified in this hearing.²

¹ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-72 [19-23].

² Transcript of Commissioner Ronald Sackville, Public hearing 9, 11 December 2020, P-450 [3-8].

Background

Disability and the workforce

5. Around 2.1 million people with disability in Australia are of working age.³
6. The labour force participation rates for people with disability aged 15 to 64 years is at 53.4%.⁴ This rate remains unchanged from 2015.⁵ By comparison, the labour force participation rate for people without disability is 84.1%.⁶
7. In 2018, of people with disability in the labour force, 53% of people with disability were employed on a full-time basis and 37% were employed part time. For people without disability, those rates were 65% in full time employment and 30% part time.⁷
8. In addition, rates of unemployment are higher for people with disability. In 2018, around 10% of people with disability of working age were unemployed compared to 5% of people without disability.⁸
9. People with disability are more likely to be unemployed for a longer period of time than people without disability. 22% of people with disability are more likely to be unemployed for 52 weeks or more, compared to 14% of people without disability.⁹
10. In 2018 the median gross income for a person with disability aged 15 to 64 years was \$505 per week.¹⁰ This amounts to less than half the \$1,016 per week earned by the average person without disability in that same age bracket.¹¹
11. Women with disability are less likely to be employed than women without disability. 46% of women with disability are employed (working either full or part time), compared to 76% of

³ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Disability and the Labour Force, 2018*, Catalogue number 4430, 24 July 2019, Table 1.1.

⁴ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Disability and the Labour Force, 2018*, Catalogue number 4430, 24 July 2019, Table 8.1.

⁵ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Disability and the Labour Force, 2018*, Catalogue number 4430, 24 July 2019, Summary of Findings.

⁶ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Disability and the Labour Force, 2018*, Catalogue number 4430, 24 July 2019, Table 8.1.

⁷ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Disability and the Labour Force, 2018*, Catalogue number 4430, 24 July 2019, Table 2.1.

⁸ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Disability and the Labour Force, 2018*, Catalogue number 4430, 24 July 2019, Table 2.1.

⁹ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings, 2018*, Catalogue number 4430, 24 October 2019. Results accessed using ABS TableBuilder Duration of unemployment (ranges); and whether person has a disability.

¹⁰ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings 2018*, Catalogue number 4430, 24 October 2019, Table 7.1.

¹¹ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings 2018*, Catalogue number 4430, 24 October 2019, Table 7.1.

women without disability.¹² Women with disability work part-time at almost double the rate of men with disability working part time.¹³

12. First Nations people with disability, women with disability, culturally and linguistically diverse people (including migrants) with disability, and LGBTIQ people with disability may also face additional barriers to finding and keeping a job.¹⁴
13. In 2012, the unemployment rate for Aboriginal and Torres Strait Islander people with disability was three times higher than the rate for all people with disability.¹⁵ There is a much wider gap between labour force participation of Aboriginal and Torres Strait Islander people with disability, at about 35%, compared to all people with disability at 53.6%, and people without disability, at 84.1%.¹⁶

The importance of employment

14. Meaningful employment is important for all citizens because of the impact work has on a person's economic security, social connections, status and contribution.¹⁷
15. Dr Ben Gauntlett, Disability Discrimination Commissioner, said that '[p]articipation in meaningful employment gives people with disability a sense of worth, self-respect and self-esteem'.¹⁸ This is in addition to other benefits for organisations which are noted in the *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (the **Willing to Work Report**) prepared by the Australian Human Rights Commission (**AHRC**), which include 'productivity, performance and innovation; increased access to a broader talent pool; and improvements to organisational reputation'.¹⁹
16. The impact of work or lack of work on health and wellbeing is multidirectional and 'the opportunity to work in stable employment of one's choice under just and favourable conditions is intricately linked with health, well-being, and social, economic, and financial

¹² Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Disability and the Labour Force, 2018*, Catalogue number 4430, 24 July 2019, Table 8.3.

¹³ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Disability and the Labour Force, 2018*, Catalogue number 4430, 24 July 2019, Table 3.3.

¹⁴ For example, Scott Avery, *Culture is Inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability*, 2018, p 133; National People with Disability and Carer Council, *Shut Out: Experience of People with Disability and their Families in Australia*, 2012; Joint FECCA & NEDA Submission to the Australian Human Rights Commission's 'Willing to Work' Inquiry: *Employment Discrimination Against Older Australians and Australians with Disability*, 2015.

¹⁵ Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander People with a Disability, 2012*, Catalogue number 4433, 18 April 2017.

¹⁶ Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander People with a Disability, 2012*, Catalogue number 4433, 18 April 2017. More recent figures are available from 2015: Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander People with a Disability, 2015*, Catalogue number 4430, 20 April 2017.

¹⁷ Exhibit 9-5, Statement of Professor Karen Fisher, 23 November 2020, at [6].

¹⁸ Exhibit 9-24, Statement of Dr Ben Gauntlett, 3 December 2020, at [71].

¹⁹ Exhibit 9-24, Statement of Dr Ben Gauntlett, 3 December 2020, at [71]; Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, Inquiry Report, May 2016, p 13.

inclusion'.²⁰ Employment plays a role in preventing violence, abuse, neglect and exploitation of people with disability.

17. As was noted during opening remarks, employment is not simply about economics.²¹ Employment is also about rights. Article 27 of the United Nations Convention on the Rights of Persons with Disabilities (the **CRPD**) recognises the right of people with disability to work. This includes an opportunity to gain a living, by work freely chosen or accepted in a labour market, and a work environment that is open, inclusive and accessible.²² Article 27(1) requires Australia as a State Party to take 'appropriate steps' to realise this right.²³
18. Many witnesses with disability spoke to the importance of employment for them and the impact meaningful employment has on their life. Jess Mitchell, Youth Storytelling and Development Officer at Children and Young People with Disability Australia, shared with the Royal Commission insights collected at the 2020 National Youth Disability Summit (the **Summit**) in both oral and written evidence.²⁴ Jess said:

[Y]oung people when discussing what employment meant to them said that it brought them independence, it brought them new skills, it gave them opportunities to meet new people, and it also gave them a sense of living a normal life and transitioning to adulthood.²⁵

Key themes

19. This section outlines the evidence presented at the public hearing about the systemic barriers experienced by people with disability who have sought to obtain and maintain employment in the open labour market.
20. These submissions do not comprehensively summarise nor analyse all the evidence presented during the public hearing. They are intended to address the main issues and themes emerging from the evidence.
21. The purpose of this public hearing was to hear the experiences of people with disability and identify the systemic barriers experienced by people with disability. This public hearing was focused on the experiences of people with disability and it was not the intention of this particular hearing to make findings about the conduct or practices of particular employers. Counsel Assisting do not ask the Commissioners to make factual findings in relation to the experiences of individual witnesses or members of their families.

²⁰ Exhibit 9-5, Statement of Professor Karen Fisher, 23 November 2020, at [6]; Exhibit 9-5.3, EXP.0053.0001.0209 at 0210.

²¹ Transcript of Kate Eastman SC, Public hearing 9, 7 December 2020, P-14 [4-5].

²² *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008), Article 27.

²³ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008), Article 27(1).

²⁴ More information about the Summit can be found in Exhibit 9-13, Statement of Jess Mitchell, 27 November 2020, at [12-30].

²⁵ Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-208 [5-8].

Attitudinal barriers

22. Attitudes are a barrier to employment because they prevent people entering and staying in work.²⁶ Professor Karen Fisher, from the Social Policy Research Centre at the University of New South Wales found that at the least negative attitudes lower expectations about the right to work, and at worse result in abuse in the workplace.²⁷
23. Suzanne Colbert AM, Chief Executive Officer of the Australian Network on Disability (**AND**), noted the results of the Employer Mobilisation Project where employers reported: a '[f]ear of the unknown' and feeling 'uncomfortable because they don't know how to act or accommodate the disability';²⁸ a 'tendency to see the disability rather than the person' resulting in a focus on 'limitations and constraints and a prevalence of unconscious bias';²⁹ and 'extreme examples of disability' and related thinking that they could or would not employ a person with physical or mental ill health or disability.³⁰
24. People with disability experience negative attitudes about their capacity to work from employers, workmates, colleagues, customers and community members and the impact of these negative attitudes to employment of people with disability are lower self-expectations, lower participation rates and lower work conditions.³¹
25. Attitudinal barriers are those that relate to discriminatory beliefs, prejudices, stigmas and behaviours that may bar a person with disability from employment. Based on the evidence at Public hearing 9, a number of attitudinal barriers were identified including:
 - assumptions that people with disability do not want to work or are not capable of working
 - lack of access to job opportunities arising from informal networks
 - discriminatory attitudes and behaviours when seeking a job and during recruitment processes
 - concerns for both employers and people with disability about disclosing disability in the workplace
 - discriminatory attitudes and behaviours in the workplace
 - employers incorrectly assuming hiring people with disability will be costly, burdensome, less productive and risky which may result in overlooking a person's unique skills

²⁶ Exhibit 9-5, Statement of Professor Karen Fisher, 23 November 2020, at [8].

²⁷ Exhibit 9-5, Statement of Professor Karen Fisher, 23 November 2020, at [8].

²⁸ Exhibit 9-22, Statement of Suzanne Colbert, 26 November 2020, at [56(c)].

²⁹ Exhibit 9-22, Statement of Suzanne Colbert, 26 November 2020, at [56(d)].

³⁰ Exhibit 9-22, Statement of Suzanne Colbert, 26 November 2020, at [56(e)].

³¹ Exhibit 9-5, Statement of Professor Karen Fisher, 23 November 2020, at [8-9].

- negative mental health impacts including lack of motivation or confidence resulting from the experience of being excluded from opportunities to work.

Assumptions that people with disability do not want to work or are not capable of working

26. Witnesses described how employers, colleagues and members of the community have low expectations about what people with disability can achieve in employment.
27. Michael Pini recounted his experiences interacting in the broader community and the contrast between those experiences and his experience working as a senior executive in the Australian Taxation Office (**ATO**).³² Mr Pini said that in interactions outside of work in the broader community he has people ask him if he works, and when he says he does they seem surprised, and even more surprised when he says he works full time.³³
28. Kalena Bos said a Disability Employment Service (**DES**) provider told her that she would not be able to work at a fabric and craft store, despite completing work experience at that same store.³⁴ The DES provider did not help her write an application and told her the position would be ‘too hard’ for her.³⁵ Ms Bos now has a different DES provider and is currently employed in a retail position at Kmart.³⁶
29. Catherine McAlpine, the Chief Executive Officer of Inclusion Australia, spoke about the barriers experienced by people with intellectual disability in navigating pathways to open employment. Ms McAlpine agreed with the proposition that the systems have not caught up with society’s evolving understanding of the capacity and desires of people with intellectual disability. Ms McAlpine said ‘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’.³⁷
30. Oliver Hunter said that at times he felt underutilised in the workplace.³⁸ Mr Hunter gave evidence about being given the task of dusting the top of fruit tins at his local supermarket while his colleague worked behind the checkout.³⁹
31. Jess Mitchell said that young people with disability are ‘almost in this double jeopardy of being mutually young and mutually disabled’ which ‘creates a dynamic which can be challenging in which people might underestimate you and how much work you are willing to do’.⁴⁰ Jess also said, on some occasions, employers would do the opposite and fail to consider accessibility due to ‘assumptions that they would be fine’.⁴¹ One participant at the

³² Transcript of Michael Pini, Public hearing 9, 9 December 2020, P-248 [41] – P-250 [12].

³³ Exhibit 9-15, Statement of Michael Pini, 19 November 2020, at [21].

³⁴ Transcript of Kalena Bos, Public hearing 9, 7 December 2020, P-57 [10-27].

³⁵ Transcript of Kalena Bos, Public hearing 9, 7 December 2020, P-57 [27].

³⁶ Exhibit 9-3, Statement of Kalena Bos, 20 November 2020 at [12-13].

³⁷ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-95 [1-18].

³⁸ Transcript of Oliver Hunter, Public hearing 9, 8 December 2020, P-170 [21-25].

³⁹ Transcript of Oliver Hunter, Public hearing 9, 8 December 2020, P-163 [33] – P-164 [32].

⁴⁰ Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-213 [33-36].

⁴¹ Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-214 [4-6].

Summit said they ‘often feel like, depending on the context, I am either not disabled enough or too disabled’.⁴²

32. The influence of low community expectations on the expectations that people with disability may have of themselves was also highlighted in the evidence. Oliver Collins said he has ‘felt that there is a certain pressure that people with disability often grow up with in that we are not supposed to aim for the same things’ which can lead to self-sabotage.⁴³ A societal and attitudinal change is required to address this, ‘so that people with disability won’t always hear “no” – they will hear “yes” or “yes, let’s just do it a bit differently”’.⁴⁴ Mr Collins said that this shift in attitude may come about as a result of more people with disability being encouraged to enter the workforce.⁴⁵

Lack of access to job opportunities arising from informal networks

33. Witnesses described how discriminatory attitudes and behaviours held and manifested by people without disability can lead to social exclusion and isolation. In particular, people with disability can be excluded from informal contact and networks that can lead to employment.
34. Taylor, who was recently diagnosed with autism and works in the Australian Public Service (**APS**), said that they have applied for various positions within the APS where they have opted into the RecruitAbility scheme, and progressed to the interview stage, where they did not seek reasonable adjustments.⁴⁶ Taylor was rated as ‘competitive’ for two roles as part of bulk recruitment processes and placed in the merit pools. However, while several of their colleagues who were also in the merit pools were offered promotions, Taylor was not ultimately offered a position and was not provided with any feedback.⁴⁷ Taylor said that the process of selecting people from the merit pools is opaque and that people with disability, especially neurodivergent people like themselves, ‘might not be as good at networking or blowing their own horn as others and as a result would be less likely to get offered a position through the merit pool process.’⁴⁸
35. Professor Anne Kavanagh and Alexandra Devine, Academic Director of the Melbourne Disability Institute and Research Fellow with the Melbourne School of Population and Global Health respectively, shared the results of their research in the Improving Disability Employment Study (**IDES**) which indicates that participants did not report as often as expected that they found their jobs through connections, family or friends.⁴⁹ This was still

⁴² Exhibit 9-13, Statement of Jess Mitchell, 27 November 2020, at [66(b)].

⁴³ Exhibit 9-14, Statement of Oliver Collins, 18 November 2020, at [46].

⁴⁴ Exhibit 9-14, Statement of Oliver Collins, 18 November 2020, at [46].

⁴⁵ Exhibit 9-14, Statement of Oliver Collins, 18 November 2020, at [46].

⁴⁶ Exhibit 9-9, Statement of Taylor, 22 November 2020, at [7]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-137 [32-36].

⁴⁷ Exhibit 9-9, Statement of Taylor, 22 November 2020, at [7], [29]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-137 [32-36], P-142 [11-19].

⁴⁸ Exhibit 9-9, Statement of Taylor, 22 November 2020, at [30]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-142 [21-25].

⁴⁹ Exhibit 9-12, EXP.0059.0001.0147 at 0139.

an 'important pathway for people with disabilities', although there is an acknowledgement that these networks are 'sometimes smaller than jobseekers without disabilities'.⁵⁰

Discriminatory attitudes and behaviours when seeking a job and during recruitment processes

36. The evidence showed experiences of exclusion from recruitment processes, after employers, hiring managers and human resources staff are made aware of a person's disability:
- (a) Riley spoke about their experience of the many times when they have either called an employer about a position or have gotten to an interview and told the employer about their back problem and was either 'shut down and excluded from the interview almost immediately' or did not make it to the next round of interviews.⁵¹ Riley said they have been hung up on as soon as they say they have scoliosis the potential employer is no longer interested in hiring them.⁵²
 - (b) Mr Hunter spoke about his experience of applying for a Residential Advisor position at the university campus where he lived and studied. The Head of Campus called him after-hours on the day before the interview and asked him to come in for a meeting.⁵³ During the meeting, at which other members of the interview panel were not present, the Head of Campus told Mr Hunter that due to his 'physical restrictions' he would not be able to do the job.⁵⁴ At the interview Mr Hunter's 'physical restrictions' were not mentioned by the Head of Campus and there was no discussions about adapting the role. He was not offered the position. Mr Hunter described his experience of being told he could not do a job due to his 'physical requirements' as 'quite blatantly discriminating against me'.⁵⁵
 - (c) Taylor said they applied for two jobs in the APS in which they disclosed a disability and asked for reasonable adjustments, and on both occasions they were rated 'not competitive'.⁵⁶ Taylor's experiences have led them to suspect there was a correlation between them asking for reasonable adjustments and being rated as not competitive, although they cannot prove causation or be certain.⁵⁷ As a result of their experiences, Taylor said they do not think they would request reasonable adjustments in the future for interviews because they 'believe that the risks of discrimination are not worth any benefits'.⁵⁸

⁵⁰ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-188 [36-43].

⁵¹ Transcript of Riley, Public hearing 9, 10 December 2020, P-315 [31-35].

⁵² Transcript of Riley, Public hearing 9, 10 December 2020, P-315 [37-42].

⁵³ Transcript of Oliver Hunter, Public hearing 9, 8 December 2020, P-167 [32-35].

⁵⁴ Transcript of Oliver Hunter, Public hearing 9, 8 December 2020, P-167 [39-41].

⁵⁵ Transcript of Oliver Hunter, Public hearing 9, 8 December 2020, P-168 [25-36].

⁵⁶ Exhibit 9-9, Statement of Taylor, 22 November 2020, at [6]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-137 [25-30].

⁵⁷ Exhibit 9-9, Statement of Taylor, 22 November 2020, at [20]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-139 [45-47].

⁵⁸ Transcript of Taylor, Public hearing 9, 8 December 2020, P-139 [47] – P-140 [2].

(d) Taylor also spoke about their experience with a recruitment process in the public sector that included a timed, pre-recorded video interview, known as ‘robo’ interviews.⁵⁹ This involved speaking to a camera on their own device and in their own time for the recruiters to view at a later date.⁶⁰ Taylor said that they requested reasonable adjustments, including that the interviewer provide feedback and prompting on whether they had adequately answered the question or if further detail was required.⁶¹ Taylor said that they were not contacted by anyone before the interview to discuss their request for reasonable adjustments. There was also no contact person or phone number to call on the emails they received from a generic recruitment mailbox.⁶² Taylor said that due to the short time frame of the process they had little choice but to go ahead with the interview.⁶³ In any event, Taylor’s requested adjustments were not possible in the automated online interview without an interviewer.⁶⁴

37. Representatives from Get Skilled Access, Dani Fraillon, Zack Alcott and Stephanie Agnew, talked about the values that reflect inclusive cultures in workplaces and having those values front and centre in recruitment. So instead of asking a person coming in for a job ‘have you got a disability?’ you instead ask a question like ‘What is it that we could do for you that is going to make your interview successful?’⁶⁵

Concerns for both employers and people with disability about disclosing disability in the workplace

38. The question of whether or not to tell an employer about disability, how to bring it up and at what stage is a real and difficult one faced by many people with disability. One reason for this is because access to reasonable adjustments often depends on sharing information about a person’s disability.

39. Witnesses at the hearing had different experiences and approaches to disclosure, often depending on the job and employer at hand. Cody Skinner, a First Nations man who identifies as gay and lives with deafness and Autism and experiences mental health challenges, said during his first job at the age of eighteen he told his employer that he was deaf but was too scared to tell the employer about his Autism.⁶⁶ Years later after completing TAFE Mr Skinner applied for many jobs online, and he said:

⁵⁹ Transcript of Taylor, Public hearing 9, 8 December 2020, P-137 [40-44].

⁶⁰ Exhibit 9-9, Statement of Taylor, 22 November 2020, at [9]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-137 [40-44].

⁶¹ Exhibit 9-9, Statement of Taylor, 22 November 2020, at [11]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-138 [6-10].

⁶² Exhibit 9-9, Statement of Taylor, 22 November 2020, at [10]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-137 [46] – P-138 [1].

⁶³ Exhibit 9-9, Statement of Taylor, 22 November 2020, at [10]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-138 [1-4].

⁶⁴ Exhibit 9-9, Statement of Taylor, 22 November 2020, at [11]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-138 [7-11].

⁶⁵ Transcript of Dani Fraillon, Public hearing 9, 11 December 2020, P-425 [45] – P-426 [4].

⁶⁶ Transcript of Cody Skinner, Public hearing 9, 7 December 2020, P-40 [20-35].

... I did really well going up to the interview, but every time I disclosed my disability, they 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.⁶⁷

40. Riley said they have told employers in the past about their scoliosis and that they like to be truthful and not lie by omission and to be upfront and honest.⁶⁸ However, Riley said they have to really think about whether or not they disclose their disability.⁶⁹ In determining whether or not to disclose, Riley considers the vibe from the interviewer, what they know about the company and the working conditions.⁷⁰ For example, Riley said they did not disclose their disability to their current employer during the recruitment process as they thought they would not get the job if they did. Also, the consultant from the DES provider advised Riley not to disclose their disability as legally they did not have to do so and they could do the job without their disability impacting on them.⁷¹
41. Riley said they have recently had to disclose their scoliosis to their employer, as they have been advised by a scoliosis specialist they need to wear a back brace for 3 years. After informing their employer, Riley said the employer has put them off work and required them to get a capacity assessment from the specialist. Riley said they have provided the capacity assessment, in which the specialist cleared them to do the job with little to no hassles. However, their employer has ignored that advice and is making them get a doctor's assessment, physio assessment and complete pre-employment checks again.⁷²
42. John Baxter said he would disclose his disability in job applications 'if it was relevant to the duties and functions of the role'.⁷³
43. Nicky Bath, Daniel Comensoli and Hannah Morgan, representatives from the National LGBTI Health Alliance (the **Alliance**) explained that to avoid discrimination employees may conceal their identity or sexuality or disability.⁷⁴ Ms Morgan provided the following quote which came out of the research with the co-design team for the EmployableQ Disability Employment Inclusion Toolkit (the **EmployableQ Toolkit**):
- There is the whole issue of having to decide am I going to divulge or disclose my disability or my sexuality or gender identify, and then you have to assess how is everyone going to respond.⁷⁵
44. Ms Morgan highlighted that many people with invisible disabilities may mask their symptoms and endure a workplace which may not be suitable for them, which can impact

⁶⁷ Transcript of Cody Skinner, Public hearing 9, 7 December 2020, P-43 [13-16].

⁶⁸ Transcript of Riley, Public hearing 9, 10 December 2020, P-315 [10-15]; Exhibit 9-20, Statement of Riley, 20 November 2020, at [7], [25].

⁶⁹ Transcript of Riley, Public hearing 9, 10 December 2020, P-315 [10-15].

⁷⁰ Transcript of Riley, Public hearing 9, 10 December 2020, P-315 [17-23].

⁷¹ Exhibit 9-20, Statement of Riley, 20 November 2020, at [22].

⁷² Transcript of Riley, Public hearing 9, 10 December 2020, P-325 [10-43]; Exhibit 9-20, Statement of Riley, 20 November 2020, at [23].

⁷³ Exhibit 9-21, Statement of John Baxter, 4 December 2021, at [21].

⁷⁴ Transcript of Daniel Comensoli, Public hearing 9, 9 December 2020, P-265 [17] – P-266 [35].

⁷⁵ Transcript of Hannah Morgan, Public hearing 9, 9 December 2020, P-266 [31-33].

mental health.⁷⁶ A co-design member of the EmployableQ Toolkit stated '[i]t's important to feel safe to bring your whole self to work, because if you can't you won't bring your best self to work'.⁷⁷

45. Jess Mitchell, speaking on behalf of Summit participants, said young people wanted to have 'their full identity ... celebrated and promoted within the workforce'.⁷⁸ Jess identified that a barrier to employment could be negative experiences at a workplace which did not embrace the young person's whole self.⁷⁹
46. Dr Gauntlett highlighted disclosure and privacy issues as one of the barriers to employment for people with disability.⁸⁰ Dr Gauntlett said there is an 'ongoing need to balance disclosure and privacy', and spoke of the tension between an individual needing to disclose their disability to request reasonable adjustments but feeling 'apprehensive' about doing so.⁸¹ Recognising that the 'decision to disclose is deeply personal', Dr Gauntlett said that people may be 'more likely to disclose their disability in a safe space where they know how that information will be used'.⁸² Organisations must ensure that the information is not shared and is not used in any assessment of performance.⁸³
47. Taylor said they were aware there is a view that people with invisible disabilities such as Autism should not disclose their condition if they can avoid doing so, to avoid the risk of discrimination.⁸⁴ Taylor also noted that people with invisible disabilities may also not be seen 'as deserving of adjustments as people with physical disabilities' and requesting adjustments may be seen as seeking an unfair advantage.⁸⁵ Taylor said they made a conscious decision to disclose their disability as they thought it was important for others and they wanted to lead by example.⁸⁶ However, Taylor explained that based on their experiences they are 'unlikely to request reasonable adjustments for an interview again in the future, if [they] ever apply for any other jobs, as [they] believe the potential benefits of disclosure are not worth the risk'.⁸⁷

⁷⁶ Transcript of Hannah Morgan, Public hearing 9, 9 December 2020, P-267 [33-37].

⁷⁷ Transcript of Developing the EmployableQ Disability Inclusion Toolkit video, Public hearing 9, 9 December 2020, P-273 [40-42]; Exhibit 17.2, LHA.9999.0001.0253.

⁷⁸ Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-209 [46] – P-210 [5].

⁷⁹ Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-210 [14-27].

⁸⁰ Exhibit 9-24, Statement of Dr Ben Gauntlett, 3 December 2020, at [84].

⁸¹ Exhibit 9-24, Statement of Dr Ben Gauntlett, 3 December 2020, at [85].

⁸² Exhibit 9-24, Statement of Dr Ben Gauntlett, 3 December 2020, at [86].

⁸³ Exhibit 9-24, Statement of Dr Ben Gauntlett, 3 December 2020, at [86].

⁸⁴ Exhibit 9-9, Statement of Taylor, 22 November 2020, at [19]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-139 [32-36].

⁸⁵ Exhibit 9-9, Statement of Taylor, 22 November 2020, at [19]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-139 [32-37].

⁸⁶ Exhibit 9-9, Statement of Taylor, 22 November 2020, at [20]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-139 [40-42].

⁸⁷ Exhibit 9-9, Statement of Taylor, 22 November 2020, at [21]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-139 [47] – P-140 [2].

Discriminatory attitudes and behaviours in the workplace

48. Discriminatory attitudes and behaviours towards people with disability in the workplace can take the form of employers, managers and staff excluding people with disability from training or career development opportunities, work activities or social events. The evidence showed experiences of assumptions that people with disability are not capable of undertaking more challenging tasks, or instances where they are expected to do additional work without formal recognition:
- (a) Mr Skinner stated that his former boss yelled and clapped in his face to get his attention when he made a mistake.⁸⁸ Mr Skinner was working in a supported employment setting at the time and asked for his boss to attend deaf awareness training and to tap him on the shoulder instead of clapping at him but neither of these actions were taken.⁸⁹ Mr Skinner ultimately left this workplace after his boss's actions led to a mental breakdown that required him to be hospitalised.⁹⁰ In contrast, Mr Skinner also spoke about working in a government department mailing room where he felt welcomed and supported.⁹¹
 - (b) Mr Pini spoke about his experience working in a Queensland government department while completing his Bachelor of Business (Accounting) and after receiving his qualification.⁹² Mr Pini recalled that after completing his studies he continued to be given menial tasks that were not commensurate with his qualifications, which he found 'both disappointing and frustrating'.⁹³ Despite having graduated from university, Mr Pini also continued to sit on the floor of the office with people who performed more processing and administrative roles and did not have qualifications, rather than on the floor with people who had university qualifications in law and finance.⁹⁴ Mr Pini also recalled that he was told by a supervisor not to answer the phone because it would be 'a bad look for the public to hear [his] voice'.⁹⁵
 - (c) Pamela Darling spoke about her experiences in a number of different jobs and spoke of poor treatment she received in a variety of work settings. This included being required to work long hours without days off;⁹⁶ being poorly paid and paid less than someone doing the same type of work;⁹⁷ not being given the opportunity to complete new and different types of work which she was qualified to do;⁹⁸ being

⁸⁸ Transcript of Cody Skinner, Public hearing 9, 7 December 2020, P-47 [26-29].

⁸⁹ Exhibit 9-2, Statement of Cody Skinner, 3 November 2020, at [57].

⁹⁰ Exhibit 9-2, Statement of Cody Skinner, 3 November 2020, at [60-61]; Transcript of Cody Skinner, Public hearing 9, 7 December 2020, P-48 [18-27].

⁹¹ Transcript of Cody Skinner, Public hearing 9, 7 December 2020, P-44 [8-25].

⁹² Exhibit 9-15, Statement of Michael Pini, 19 November 2020, at [6-8].

⁹³ Exhibit 9-15, Statement of Michael Pini, 19 November 2020, at [8].

⁹⁴ Exhibit 9-15, Statement of Michael Pini, 19 November 2020, at [9].

⁹⁵ Exhibit 9-15, Statement of Michael Pini, 19 November 2020, at [9].

⁹⁶ Exhibit 9-28, Statement of Pamela Darling, 20 November 2020, at [15].

⁹⁷ Exhibit 9-28, Statement of Pamela Darling, 20 November 2020, at [15].

⁹⁸ Exhibit 9-28, Statement of Pamela Darling, 20 November 2020, at [18].

subject to inappropriate and disrespectful comments;⁹⁹ lack of management assistance for complaints and questions;¹⁰⁰ and exclusion and verbal bullying.¹⁰¹

- (d) Riley described an incident that while they were working for a previous employer they observed a woman with the same condition be ridiculed behind her back and subject to complaints from other workers and snide remarks after she requested reasonable adjustments.¹⁰² As a result of this, Riley decided not to request any adjustments. Riley also gave evidence that when they disclosed to this same employer that they might be on the spectrum, they were laughed at in the workplace.¹⁰³

49. Professor Kavanagh and Ms Devine said the findings of their recent IDES Report¹⁰⁴ showed that close to 40% of participants reported experiencing discrimination, ranging from experiences of discrimination when looking for a job through to discrimination in the workplace.¹⁰⁵ Ms Devine indicated that discrimination was highlighted amongst both quantitative and qualitative participants as a 'key barrier to employment'.¹⁰⁶
50. A theme which emerged in the evidence was the immediate and flow through negative impacts of discriminatory behaviours and attitudes in the workplace on the person with disability. Jess Mitchell described how a negative experience in a workplace can have a detrimental impact on a young person's aspirations. Jess gave an example of a Summit participant who secured a job through a DES provider and unfortunately experienced 'unpaid overtime, underpaid wages, insufficient breaks' and the onset of health challenges due to a lack of effective support.¹⁰⁷
51. The Alliance spoke about the compounding discrimination that people with disability who identify as LGBTI experience in the workplace, often leading to minority stress. Mr Comensoli explained that this can include the following stresses:

[t]he first one is actual experiences of discrimination that people face and that can be conceptualised to range from subtle forms, so for example, being excluded from workplace social events, to more overt forms, slurs that occur in the workplace. The second one is the expectations of stigma, and that arises from broader social cultural stigmatisation of LGBTI people more broadly. And, third, there is internalised heterosexism, and that is the internal denigration of being LGBTI. And lastly... there is the concealment of identity or histories or experiences.¹⁰⁸

⁹⁹ Exhibit 9-28, Statement of Pamela Darling, 20 November 2020, at [22].

¹⁰⁰ Exhibit 9-28, Statement of Pamela Darling, 20 November 2020, at [26].

¹⁰¹ Exhibit 9-28, Statement of Pamela Darling, 20 November 2020, at [25], [30].

¹⁰² Exhibit 9-20, Statement of Riley, 20 November 2020, at [17], Transcript of Riley, Public hearing 9, 10 December 2020, P-321 [28-43].

¹⁰³ Transcript of Riley, Public hearing 9, 10 December 2020, P-322 [19-20].

¹⁰⁴ Exhibit 9-12.3, EXP.0059.0001.0116.

¹⁰⁵ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-189 [3-8].

¹⁰⁶ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-192 [35-40].

¹⁰⁷ Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-215 [4-14].

¹⁰⁸ Transcript of Daniel Comensoli, Public hearing 9, 9 December 2020, P-265 [25-31].

Employers incorrectly assuming hiring people with disability will be costly, burdensome, less productive and risky which may result in overlooking a person's unique skills

52. A key theme which emerged in the evidence were how prevailing the misconceptions can be about the impact of hiring people with disability. Dr Gauntlett considers there is a need to educate employers about the 'common misconception that hiring a person with disability will result in the need to make significant, and potentially costly, changes to the workplace'.¹⁰⁹ Citing a 2020 Australian Institute of Health and Welfare web report, Dr Gauntlett said that '82% of unemployed working-aged people with disability and 88% of those who are employed do not require any additional support or modification from their employer to work'.¹¹⁰
53. Representatives from Get Skilled Access also spoke to the misconception that costs increase when employing a person with disability. They gave the example of a project they were involved in that was run in local councils that employed 70 people with disability and the only workplace adjustment was the purchase of some green photocopy paper for a person who had visual difficulty with contrast.¹¹¹ Ms Fraillon explained that through working with clients they have come across many examples of employers who believed they were doing the 'right thing' by not hiring someone with perceived medical or accessibility needs.¹¹² Ms Fraillon stated these employers had not realised that having a conversation with that candidate may have alleviated any of their concerns around occupational health and safety.¹¹³
54. Ms Colbert spoke about the results of the Employer Mobilisation Project, which found employers view 'red tape hurdles' around worksite requirements, modifications and adjustments as a barrier to integrating people with disability into their workplace.¹¹⁴ The Employer Mobilisation Project also found employers 'tend to focus on the risks of hiring people with disability', which they presume to include risks associated with injuries and liability.¹¹⁵ Ms Colbert said these assumptions 'are deeply held' and are a result of a lack of understanding.¹¹⁶ It was noted safe work practices and worksites are required for all employees, not just for people with disability.¹¹⁷ Ms Colbert referred to data which shows that people with disability have 'less workplace accidents and injuries than other

¹⁰⁹ Exhibit 9-24, Statement of Dr Ben Gauntlett, 3 December 2020, at [61].

¹¹⁰ Exhibit 9-24, Statement of Dr Ben Gauntlett, 3 December 2020, at [61]; Australian Institute of Health and Welfare, 'People with disability in Australia: Web Report – Workplace arrangements', AIHW website, 2 October 2020.

¹¹¹ Exhibit 9-27, Statement of Dani Fraillon, Zack Alcott and Stephanie Agnew of Get Skilled Access, 26 November 2020, at [18].

¹¹² Transcript of Dani Fraillon, Public hearing 9, 11 December 2020, P-432 [37] – P-433 [3].

¹¹³ Transcript of Dani Fraillon, Public hearing 9, 11 December 2020, P-432 [37] – P-433 [3].

¹¹⁴ Exhibit 9-22, Statement of Suzanne Colbert, 26 November 2020, at [56(b)].

¹¹⁵ Exhibit 9-22, Statement of Suzanne Colbert, 26 November 2020, at [56(f)].

¹¹⁶ Transcript of Suzanne Colbert, Public hearing 9, 10 December 2020, P-358 [12-17].

¹¹⁷ Transcript of Suzanne Colbert, Public hearing 9, 10 December 2020, P-358 [13-14].

employees, and are more likely to be compliant with work health and safety procedures'.¹¹⁸

55. Dominic Hồng Đức Golding, Policy and Project Officer at the National Ethnic Disability Alliance spoke about his experience advocating for Culturally and Linguistically Diverse (**CALD**) people with disability to employers. He shared that, generally, the response he gets from employers is: "I don't have time to do that", or, "That's going to cost too much money, we can't invest in that kind of assistive technology", without knowing that they could apply to Job Access for this sort of thing'.¹¹⁹
56. People with disability explained what the impact of these misconceptions can be for them. Mr Collins said he feels 'like there is a greater amount of pressure on people with disabilities because the attitude is still that we are a burden'.¹²⁰ As a result, Mr Collins said people with disability may feel they have to 'go above and beyond to prove to everyone that we belong'.¹²¹
57. Jess Mitchell said the unique experiences of young people with disability 'often ... actually made them better employees and gave them tools that their non-disabled peers may not have had'.¹²² Jess quoted a Summit participant who said:

I do have a belief that my career and employment journey are deeply enriched by my journey of disability, and that I am succeeding because of my disability and not in spite of it. And that some of the things that I bring to the work I do to my employers or the value that [they] get out of me is intrinsically linked to my disability. It's not me putting my disability to the side that helps me thrive and be great; it's the innate strengths that I get from my disability that bring some of my most important qualities.¹²³

58. Dr Gauntlett said 'people sometimes fail to understand or appreciate ... a person having a disability throughout their life can mean that individual has a lot of soft skills that are incredibly important to an employer'.¹²⁴ Dr Gauntlett identified problem solving skills, strong logic, team work and communication as such attributes.¹²⁵ Dr Gauntlett said it is important to 'emphasise the strengths of people with disability and what they can do'.¹²⁶

Negative mental health impacts including lack of motivation or confidence resulting from the experience of being excluded from opportunities to work

59. Witnesses described how unsuccessful job applications can have serious negative impacts on their mental health.

¹¹⁸ Transcript of Suzanne Colbert, Public hearing 9, 10 December 2020, P-358 [32-35].

¹¹⁹ Transcript of Dominic Hồng Đức Golding, Public hearing 9, 8 December 2020, P-156 [47] – P-157 [2].

¹²⁰ Transcript of Oliver Collins, Public hearing 9, 9 December 2020, P-226 [12-13].

¹²¹ Transcript of Oliver Collins, Public hearing 9, 9 December 2020, P-226 [15].

¹²² Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-210 [34-35].

¹²³ Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-210 [38-44]; Exhibit 9-13, Statement of Jess Mitchell, 27 November 2020, at [44(a)].

¹²⁴ Transcript of Dr Ben Gauntlett, Public hearing 9, 11 December 2020, P-408 [17-19].

¹²⁵ Transcript of Dr Ben Gauntlett, Public hearing 9, 11 December 2020, P-408 [19-23].

¹²⁶ Transcript of Dr Ben Gauntlett, Public hearing 9, 11 December 2020, P-408 [15].

60. Yuri Sianski said that it has been hard to experience so many knockbacks when seeking employment.¹²⁷ Yuri's father, Edward, stated:

From someone who had so much potential to excel in any field he engaged in, to someone struggling to find a few hours work each week, my wife and I are at a loss to know how to help him.¹²⁸

61. Jamie spoke about his experiences seeking employment and the impact of unemployment on his life:

A lifetime of unemployment and under-employment has ruined my life and left me welfare dependant. I can hardly afford to do anything for myself, other than buy a cup of coffee. It has ruined my self-esteem.¹²⁹

62. Riley said they feel frustrated, angry and somewhat disadvantaged when they have disclosed their disability in the recruitment process and not progressed further.¹³⁰ Riley said they have not 'had that chance to use [their] life skills and [their] knowledge to help other people in the workplace, which is what [they] always try and do'.¹³¹

63. Taylor said being rated 'not competitive' when they had previously been rated 'competitive' for the same position when they did not disclose their disability or request reasonable adjustments was 'very disheartening'.¹³² Taylor said it is 'quite demoralising just to feel that you are being rejected for a difference which you have no control over and which doesn't really have any impact on your ability to do the job'.¹³³

64. Professor Kavanagh and Ms Devine referred to an ongoing program of research (led previously by Associate Professor Alison Milner) using longitudinal data, particularly the Household, Income and Labour Dynamics Australia Survey. The research showed that losing a job is 'particularly bad for people with disabilities' mental health' and has a 'worse outcome on mental health' for people with disabilities than for people without disabilities.¹³⁴ Professor Kavanagh said this was 'particularly concerning given that we know that actually the mental health [of people with disability] often tends to be poorer to start with'.¹³⁵

¹²⁷ Transcript of Yuri Sianski, Public hearing 9, 8 December 2020, P-109 [24-27].

¹²⁸ Exhibit 9-7, Statement of Edward Sianski, 19 November 2020, at [11].

¹²⁹ Exhibit 9-25, Statement of Jamie, 18 November 2020, at [21].

¹³⁰ Transcript of Riley, Public hearing 9, 10 December 2020, P-315 [47] – P-316 [1].

¹³¹ Transcript of Riley, Public hearing 9, 10 December 2020, P-316 [1-2].

¹³² Exhibit 9-9, Statement of Taylor, 22 November 2020, at [16]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-139 [19-21].

¹³³ Transcript of Taylor, Public hearing 9, 8 December 2020, P-140 [4-6].

¹³⁴ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-179 [44] – P-180 [4].

¹³⁵ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-180 [4-5].

Physical and environmental barriers

65. Physical and environmental barriers relate to issues of access, including physical spaces, communication methods and provision of reasonable adjustments and assistive technology. These include the following barriers:
- physically inaccessible buildings and workplaces
 - environments that do not support the inclusion of people with various psychosocial/cognitive and episodic disability
 - environments that do not support accessible means of communication
 - lack of availability of jobs, particularly for people living outside urban centres
 - lack of affordable and accessible housing and transport to be able to travel to work
 - inaccessible technology, design, websites or communications.

Physically inaccessible buildings and workplaces

66. A key theme which emerged in the evidence was the fundamental importance of physical accessibility of workplace and buildings for people with disability.
67. Many workplaces are not accessible to people with various disabilities and access needs. Accessibility is more than whether a person can enter and move around a building. It may include whether the office has an accessible toilet that is close and easy to access, and whether other essential facilities, such as the kitchen, can be accessed and used.
68. If an advertised job is located in a building that is not accessible, people with disability may not apply. This means they are excluded from the outset and the employment options available to them are further limited.
69. Mr Collins gave evidence that, when making a choice of career path, he took into account his disability and what the future might look like for him. Mr Collins saw a careers counsellor and determined that law, which involves a lot of computer work, 'would be an ideal career'.¹³⁶ He has had a positive experience at King & Wood Mallesons, who have ensured the accessibility of his office by engaging an occupational therapist and purchasing the recommended office equipment.¹³⁷
70. Dr Beth McNally said considerations around accessibility impacted her initial choice to study psychology.¹³⁸ Dr McNally said she hoped studying psychology would provide opportunities that were not limited by her accessibility requirements; but noted there are a 'lot of barriers that you face as a person with a disability to finding a job that you will be

¹³⁶ Transcript of Oliver Collins, Public hearing 9, 9 December 2020, P-224 [32-41].

¹³⁷ Exhibit 9-14, Statement of Oliver Collins, 18 November 2020, at [32].

¹³⁸ Transcript of Dr Beth McNally, Public hearing 9, 8 December 2020, P-119 [13].

able to be successful in'.¹³⁹ Dr McNally said employers, in her experience, are not proactive in providing information about accessibility and accommodations at the recruitment stage.¹⁴⁰

71. Just as a truly accessibly physical environment can enable and empower, so too can an inaccessible environment disable and disempower. Speaking to this theme, Dr McNally said that 'the workplace is one of the times that makes me feel the most disabled'.¹⁴¹ Dr McNally described her previous experiences at work, including having to travel 6 levels in a lift to access the bathroom and being unable to use the kitchen facilities.¹⁴² Dr McNally gave evidence this not only harmed her productivity while at work, but also meant she was unable to do commonplace things many people take for granted in the workplace such as re-filling her water bottle during the day or bringing lunch to work which would require heating in the microwave.¹⁴³
72. Dr McNally was pleased to report modifications were made in her workplace as a result of advocacy from her senior colleagues.¹⁴⁴ However, Dr McNally noted her concern that not all people with disability may have the capability to effectively advocate on their own behalf, or have colleagues who are willing or able to advocate in this manner.¹⁴⁵ Dr McNally still sees a lack of 'system level support processes for people with disability' to address the needs of people with disability or 'promptly respond' and 'make changes that are necessary to support them to achieve in the workplace'.¹⁴⁶
73. Similarly, Mr Baxter said access can pose a barrier to employment for people with disability. Mr Baxter gave an example of a particular office building which is hard to access which can cause 'an additional layer of difficulty' for someone who uses a wheelchair, for example when 'trying to hold an umbrella or wrapped up in an awkward raincoat, and trying to get down the street in the heavy rain'.¹⁴⁷ Mr Baxter said that workplaces with good accessibility make –

an immense amount of difference because you are not focusing on "When is the next time I need to use the bathroom", "Can I reach the cutlery and the plates if I want to on my lunch break, am I eating it out of a paper bag", things of that nature. You want to connect with your other colleagues at work, you want to be able to just work as a peer.¹⁴⁸

¹³⁹ Transcript of Dr Beth McNally, Public hearing 9, 8 December 2020, P-119 [15-18].

¹⁴⁰ Transcript of Dr Beth McNally, Public hearing 9, 8 December 2020, P-121 [33-41].

¹⁴¹ Transcript of Dr Beth McNally, Public hearing 9, 8 December 2020, P-118 [44-45].

¹⁴² Transcript of Dr Beth McNally, Public hearing 9, 8 December 2020, P-125 [30-33], P-126 [3].

¹⁴³ Transcript of Dr Beth McNally, Public hearing 9, 8 December 2020, P-126 [5-11], [19-25].

¹⁴⁴ Transcript of Dr Beth McNally, Public hearing 9, 8 December 2020, P-127 [21-25], [30-34].

¹⁴⁵ Transcript of Dr Beth McNally, Public hearing 9, 8 December 2020, P-127 [34-38].

¹⁴⁶ Exhibit 9-8, Statement of Beth McNally, 1 December 2020, at [42].

¹⁴⁷ Transcript of John Baxter, Public hearing 9, 10 December 2020, P-339 [1-4].

¹⁴⁸ Transcript of John Baxter, Public hearing 9, 10 December 2020, P-339 [6-11].

Environments that do not support the inclusion of people with various psychosocial/cognitive and episodic disability

74. Some working environments can be distressing or make it hard for people with disability to focus and produce their best work. Given the episodic nature of some disabilities, people can be impacted by environmental factors differently, at various times and for a range of reasons.
75. Jamie gave evidence that some of the impacts of his Acquired Brain Injury include 'difficulty focussing on a task and understanding non-verbal communications in order to understand social situations'.¹⁴⁹ Jamie explained this means it can take a little longer for potential employers to really get to know him.¹⁵⁰
76. Edward Sianski believes his son Yuri's mental health would benefit from the social aspects of work and that a job would 'do wonders for his self-esteem'.¹⁵¹ Edward explained Yuri would require an employer who understands that his illness ebbs and flows and who could provide instructions and supervision.¹⁵²
77. Jess Mitchell shared the words of one Summit participant who had a positive employment experience 'characterised by the employer "being really understanding of that (episodic nature of disability) and [giving] me the support, training, a reference where I didn't have one due to not having one from having so much time off from working at all"'.¹⁵³

Environments that do not support accessible means of communication

78. Some disabilities, such as sensory disabilities, affect the way a person communicates. Sometimes this can mean the person needs supports or adjustments to enable their access to communication.
79. Jess Mitchell shared the experience of a Summit participant, who said that having other young people with disability or peer workers in a workplace enabled easier communication and a feeling of increased support.¹⁵⁴ This was particularly so in the context of conversations around overcoming challenges in the workplace, where young people may find it intimidating to speak to someone who has not had similar experiences.¹⁵⁵
80. Mr Skinner spoke about his own business, which educates employers about how to access assistive technology and communicate with d/Deaf people.¹⁵⁶ Mr Skinner explained that there are a lot of misunderstandings about how disabilities affect people's everyday lives.¹⁵⁷ For example, people may not realise that Auslan is the first language for

¹⁴⁹ Exhibit 9-25, Statement of Jamie, 18 November 2020, at [5].

¹⁵⁰ Exhibit 9-25, Statement of Jamie, 18 November 2020, at [5].

¹⁵¹ Exhibit 9-7, Statement of Edward Sianski, 19 November 2020, at [21].

¹⁵² Exhibit 9-7, Statement of Edward Sianski, 19 November 2020, at [22].

¹⁵³ Exhibit 9-13, Statement of Jess Mitchell, 27 November 2020, at [90].

¹⁵⁴ Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-212 [7-14].

¹⁵⁵ Exhibit 9-13, Statement of Jess Mitchell, 27 November 2020, at [53-54].

¹⁵⁶ Exhibit 9-2, Statement of Cody Skinner, 3 November 2020, at [72]; Transcript of Cody Skinner, Public hearing 9, 7 December 2020, P-38 [5-7].

¹⁵⁷ Exhibit 9-2, Statement of Cody Skinner, 3 November 2020, at [86].

d/Deaf people or that people with Autism Spectrum Disorder like routine and structure.¹⁵⁸ Mr Skinner stated when employers ask about assistive technology they find out that it will not cost them a lot.¹⁵⁹

Lack of availability of jobs, particularly for people living outside urban centres

81. A theme emerging from the evidence was the potentially compounding effect of limited jobs on the barriers experienced by people with disability.
82. Jess Mitchell gave evidence that barriers experienced by young people with disability – including a lack of meaningful, personalised, appropriate and effective supports; ableism; people not listening and making assumptions – are 'often intersected' with additional barriers such as geographical location.¹⁶⁰ One Summit participant said:

Lots of people think people should just move to the city where they can get the help they need. No. Regional communities need better infrastructure and accessibility.¹⁶¹

83. It was suggested that some of the difficulties with the DES system are compounded by a 'lack of jobs that meet people's needs and aspirations and [are] aligned with their capacity', something which Ms Devine noted was a 'significant issue'.¹⁶² Professor Kavanagh said this is likely to increase as we navigate the impact of COVID-19 on the economy.¹⁶³ However, Ms Devine was clear that creating more jobs is only part of the solution as there is also a need to address 'underlying socioeconomic inequalities as well, in terms of improving housing, transport, mental health services'.¹⁶⁴
84. Yuri Sianski said after completing a course in cleaning it took him two years to secure a cleaning job in Hobart, Tasmania.¹⁶⁵ Yuri said the job lasted for two weeks until 'the business shut down or something' and his employment was terminated without an explanation.¹⁶⁶
85. Mr Golding said, in his experience, a person with disability in Mount Gambier is 'likely to end up working in an Australian Disability Enterprise (**ADE**) and so he moved to Adelaide after school to continue his studies.¹⁶⁷ ADEs are programs where people with disability work in a segregated environment under supervision. ADEs use a modified wage system where the employee is paid based on their work capacity. Participants at ADEs can be paid less than minimum wage under this system.

¹⁵⁸ Exhibit 9-2, Statement of Cody Skinner, 3 November 2020, at [86].

¹⁵⁹ Exhibit 9-2, Statement of Cody Skinner, 3 November 2020, at [87].

¹⁶⁰ Exhibit 9-13, Statement of Jess Mitchell, 27 November 2020, at [67].

¹⁶¹ Exhibit 9-13, Statement of Jess Mitchell, 27 November 2020, at [67(c)].

¹⁶² Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-197 [36-38].

¹⁶³ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-197 [40-41].

¹⁶⁴ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-198 [9-11].

¹⁶⁵ Transcript of Yuri Sianski, Public hearing 9, 8 December 2020, P-109 [41] – P-110 [1].

¹⁶⁶ Transcript of Yuri Sianski, Public hearing 9, 8 December 2020, P-110 [1-6].

¹⁶⁷ Exhibit 9-10, Statement of Dominic Hồng Đức Golding, 23 November 2020, at [10].

Lack of affordable and accessible housing and transport to be able to travel to work

86. The importance of stable and accessible housing and transport links in obtaining and maintaining meaningful employment was a theme raised by witnesses.
87. Dr Gauntlett said ‘employment is directly affected by other aspects of a person’s life, whether that be their housing, their access to personal care, their education, their ability to access transport, and their ability to be safe where they live.’¹⁶⁸ Public transport is particularly relevant where a person with disability ‘may not have their driver’s licence, struggle to walk long distances or have difficulties in inclement weather’.¹⁶⁹
88. Dr Gauntlett referred to the ‘dehumanising experience’ which may be endured by a person with disability when public transport is not accessible.¹⁷⁰ He noted that inaccessible transport may lead a person to be ‘unable to get to work in a way which is cost effective or feasible’,¹⁷¹ drawing on the specific example of taxis which ‘can be prohibitively expensive’ and can require ‘significant wait times’.¹⁷² The collection of ‘data which identifies where these services are currently available and where they are most needed’ was posed by Dr Gauntlett as a means of addressing these particular issues.¹⁷³
89. Professor Kavanagh and Ms Devine highlighted issues around accessibility of and access to housing and transport as examples of ‘very important non-vocational barriers’.¹⁷⁴ A significant number of respondents in both Wave 1 and Wave 2 of the IDES research found that lack of transport acted as a barrier to employment.¹⁷⁵
90. Dr McNally said access to work via public transport has been a consideration for her in the job selection and application process. Dr McNally does not drive, so had to consider whether particular jobs would be accessible by public transport before choosing whether to apply for them.¹⁷⁶ This consideration was on top of questions around whether the building would be physically accessible; whether the job required travel; and whether there would be tasks which she would physically be able to complete.¹⁷⁷ This process of problem-solving prior to application led Dr McNally to discount numerous jobs she would otherwise have been qualified for,¹⁷⁸ meaning there were limited jobs she was able to apply for.¹⁷⁹
91. Rohan Fullwood felt confident catching the train to work each day during his 18 years of employment at McDonalds. Mr Fullwood liked following the same routine each morning,

¹⁶⁸ Exhibit 9-24, Statement of Dr Ben Gauntlett, 3 December 2020, at [54].

¹⁶⁹ Exhibit 9-24, Statement of Dr Ben Gauntlett, 3 December 2020, at [109].

¹⁷⁰ Exhibit 9-24, Statement of Dr Ben Gauntlett, 3 December 2020, at [92].

¹⁷¹ Exhibit 9-24, Statement of Dr Ben Gauntlett, 3 December 2020, at [92].

¹⁷² Exhibit 9-24, Statement of Dr Ben Gauntlett, 3 December 2020, at [109].

¹⁷³ Exhibit 9-24, Statement of Dr Ben Gauntlett, 3 December 2020, at [93].

¹⁷⁴ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-192 [1-5].

¹⁷⁵ Exhibit 9-12, Outline of evidence of Professor Kavanagh and Alexandra Devine, at [Table 5].

¹⁷⁶ Transcript of Dr Beth McNally, Public hearing 9, 8 December 2020, P-121 [19-23].

¹⁷⁷ Transcript of Dr Beth McNally, Public hearing 9, 8 December 2020, P-121 [24-27].

¹⁷⁸ Exhibit 9-8, Statement of Beth McNally, 1 December 2020, at [13].

¹⁷⁹ Transcript of Dr Beth McNally, Public hearing 9, 8 December 2020, P-121 [29-31].

he would see the same people on the train and would get to work early to relax before starting his shift.¹⁸⁰

92. The importance of stable housing was highlighted by Rohan's mother, Deborah Fullwood. Ms Fullwood expressed her belief that Rohan's stable housing has been 'a major factor in his successful working life' and, in turn, 'has been a major factor in his life outcomes'.¹⁸¹

Inaccessible technology, design, websites or communications

93. While technology can be a great enabler for including people with disability at work, when it is not accessible, it can also create barriers to their employment.

94. The representatives from Get Skilled Access explained that inaccessible work practices were a barrier that people with disability experience when seeking, maintaining or progressing in employment.¹⁸² They gave the example of a client who had asked their manager to engage an interpreter for their regular online meetings:

The manager agreed however when the meeting began there was no interpreter and the manager indicated that it was too expensive to have them every week. The individual resigned soon after. They were the disability and inclusion manager for that organisation.¹⁸³

95. Inaccessible technology can include computer systems or programs that cannot run screen readers or speech to text, touch screens without audio descriptors, training videos without Auslan translation or captions, or requiring all staff to use the telephone.
96. The design of spaces and objects, such as chairs, tables and shelving, how they are laid out, and if they can easily be moved or modified may also be barriers to the full participation of people with disability in the workplace.

Organisational barriers

97. Organisational barriers have to do with the implementation and running of policies, services and workplaces. They include processes and procedures carried out by a business or service that may exclude people with disability, such as inaccessible recruitment processes, lack of appropriate support services and refusal to make reasonable adjustments. The following organisational barriers were identified from the evidence:

- Preparing for work:
 - difficulty in accessing skills training and education, and lack of support to engage with and complete qualifications
 - lack of access to part-time work or work experience

¹⁸⁰ Transcript of Rohan Fullwood, Public hearing 9, 7 December 2020, P-29 [44-46].

¹⁸¹ Exhibit 9-26, Statement of Deborah Fullwood, 23 November 2020, at [18].

¹⁸² Exhibit 9-27, Statement of Dani Fraillon, Zack Alcott and Stephanie Agnew of Get Skilled Access, 26 November 2020, at [18].

¹⁸³ Exhibit 9-27, Statement of Dani Fraillon, Zack Alcott and Stephanie Agnew of Get Skilled Access, 26 November 2020, at [18].

- lack of or inappropriate assistance in becoming ‘job ready’, finding, securing and maintaining employment
- poorly trained, inefficient job service providers, placing people in any job with no regard to the jobseeker’s skills, qualifications and interests
- Applying for jobs and recruitment processes:
 - job advertisements/role descriptions that are inaccessible, contain discriminatory inherent requirements and do not reference reasonable adjustments
- During employment:
 - employers lacking knowledge, skills, leadership and resources to support people with disability
 - employers refusing to provide flexible work arrangements or reasonable adjustments/accommodations, including during recruitment
 - lack of career progression, accessible learning and development opportunities, or access to challenging and meaningful work.

Preparing for work

Difficulty in accessing skills training and education, and lack of support to engage with and complete qualifications

98. The link between education and employment was a key theme emerging in the evidence.
99. Edward Sianski spoke about the educational difficulties Yuri experienced while trying to find the right medication to treat his psychosis.¹⁸⁴ Yuri had six months left of his course but was unable to complete his mechanical engineering course or his apprenticeship after becoming unwell.¹⁸⁵
100. Yuri also talked about engaging in studies for trades, bartending, hospitality and woodwork that have not led to employment.¹⁸⁶ Yuri believes it would be helpful to engage with further study in a properly designed course that resulted in a job.¹⁸⁷ Edward agrees with the need for a ‘support package that includes education opportunities that are followed by employment’.¹⁸⁸

¹⁸⁴ Transcript of Edward Sianski, Public hearing 9, 8 December 2020, P-105 [41] – P-106 [6].

¹⁸⁵ Transcript of Yuri Sianski, Public hearing 9, 8 December 2020, P-106 [18-24], [43-46]; Exhibit 9-6, Statement of Yuri Sianski, 25 November 2020, at [10].

¹⁸⁶ Exhibit 9-6, Statement of Yuri Sianski, 25 November 2020, at [10-11], [14].

¹⁸⁷ Exhibit 9-6, Statement of Yuri Sianski, 25 November 2020, at [27].

¹⁸⁸ Exhibit 9-7, Statement of Edward Sianski, 19 November 2020, at [25].

101. Mr Baxter spoke about his experiences in high school where he encountered bullying and a lack of focus by the school on integration or access.¹⁸⁹ Mr Baxter underwent a major spinal fusion procedure when he was 14-15 years old which had a 'big impact' on his schooling and meant he was unable to attend all classes or be as socially integrated as he would have liked.¹⁹⁰ Mr Baxter said these absences impacted his education and early job opportunities.¹⁹¹ Mr Baxter eventually left school in Year 11 because keeping up with his school work 'while going through a whole series of procedures and surgeries became too much'.¹⁹²
102. When reflecting on his many years of job-seeking, Mr Baxter thinks his 'educational status' and 'many years of voluntary work and little other employment history' may have affected the way potential employers viewed his application.¹⁹³ Mr Baxter described these things as having a 'compounding effect'.¹⁹⁴
103. Mr Baxter made observations about what could be done better in terms of training and support, particularly for First Nations people with disability. In particular, this related to the proactive provision of ongoing support and ensuring it does not become the responsibility of the individual to ask for training.¹⁹⁵ Mr Baxter said people may need to be encouraged to apply for positions, as a lot of people in the community do have the experience and qualifications needed for a particular role and could be further assisted by something like a traineeship, an apprenticeship or a mentoring program.¹⁹⁶ Support and mentoring would also assist in the retention of employment for people who may not have a large amount of formal education.¹⁹⁷ Mr Baxter also highlighted the importance of leadership and role models in the community;¹⁹⁸ of finding work which is meaningful for people and is in 'a cultural setting in which they feel safe';¹⁹⁹ and of proactively supporting people in employment before it comes to the point of review and potential termination.²⁰⁰
104. Another theme emerging was the importance of training and education being tailored to the particular student cohort. Ms McAlpine, speaking specifically as a result of her professional experience working with people with intellectual disability, said training and education for people with intellectual disability needs to follow evidence based practice. Ms McAlpine referred to research which 'indicates that placement in a job, then on-the-job training, results in higher rates of open employment outcomes'.²⁰¹ This type of training and support is commonly only offered by specialised employment providers, and there is a

¹⁸⁹ Exhibit 9-21, Statement of John Baxter, 4 December 2020, at [6]; Transcript of John Baxter, Public hearing 9, 10 December 2020, P-334 [36-37].

¹⁹⁰ Exhibit 9-21, Statement of John Baxter, 4 December 2020, at [7].

¹⁹¹ Exhibit 9-21, Statement of John Baxter, 4 December 2020, at [9].

¹⁹² Exhibit 9-21, Statement of John Baxter, 4 December 2020, at [8].

¹⁹³ Exhibit 9-21, Statement of John Baxter, 4 December 2020, at [22].

¹⁹⁴ Exhibit 9-21, Statement of John Baxter, 4 December 2020, at [22].

¹⁹⁵ Exhibit 9-21, Statement of John Baxter, 4 December 2020, at [46].

¹⁹⁶ Transcript of John Baxter, Public hearing 9, 10 December 2020, P-340 [7-16].

¹⁹⁷ Exhibit 9-21, Statement of John Baxter, 4 December 2020, at [53].

¹⁹⁸ Transcript of John Baxter, Public hearing 9, 10 December 2020, P-340 [18-26].

¹⁹⁹ Exhibit 9-21, Statement of John Baxter, 4 December 2020, at [47].

²⁰⁰ Exhibit 9-21, Statement of John Baxter, 4 December 2020, at [54].

²⁰¹ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [83].

lack of published data to assist people with intellectual disability and their families to identify these providers.²⁰²

105. Charlene Cristobal said when she completed high school she 'wanted to go to college to learn.'²⁰³ Kit Owen-Turner, Charlene's mother, said that she wanted to fulfil what Charlene wanted to do and was able to get Charlene into an office course in a special unit at TAFE two days a week.²⁰⁴ After one year, Ms Owen-Turner was told by the TAFE that they would not be able to accommodate Charlene the next year. Charlene had not mastered some of the subjects and Ms Owen-Turner asked if she could repeat the course, but that was not possible for budgetary reasons. Ms Owen-Turner said she asked if Charlene could be put into a basic computer course. Ms Owen-Turner asked if she could sit in the classes with Charlene or find someone to support her, but she was told this was against TAFE policy.²⁰⁵ Ms Owen-Turner was able to get Charlene into another TAFE one day a week doing pretty much the same subjects she was doing in the office course.²⁰⁶ She said that she was initially told that the TAFE did not have a place for Charlene, but she 'was bugging them so much they fitted her in.'²⁰⁷ Ms Cristobal said that she likes going to TAFE because it helps her learn.²⁰⁸
106. Professor Kavanagh and Ms Devine shared that the most commonly reported vocational barrier by IDES participants was a lack of qualifications and skills.²⁰⁹ Ms Devine pointed out that often this is because people with disability experience other barriers such as 'discrimination in their educational settings and in their transitions from education to school'.²¹⁰
107. Associate Professor Jennifer Smith-Merry and Professor John Buchanan from the University of Sydney undertook research looking at the way students with disadvantage experience vocational education and training in New South Wales, with disability being one case study of disadvantage (in accordance with categories under the Smart & Skilled Program in New South Wales).²¹¹ Students with disabilities are seen as a cohort in need of extra support to gain employment.²¹² Associate Professor Smith-Merry, Director of the

²⁰² Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [83-84].

²⁰³ Transcript of Charlene Cristobal, Public hearing 9, 10 December 2020, P-299 [34].

²⁰⁴ Transcript of Kit Owen-Turner, Public hearing 9, 10 December 2020, P-303 [8-9]; Exhibit 9-19, Statement of Kit Owen-Turner, 24 November 2020, at [19].

²⁰⁵ Transcript of Kit Owen-Turner, Public hearing 9, 10 December 2020, P-307 [9-18]; Exhibit 9-19, Statement of Kit Owen-Turner, 24 November 2020, at [20].

²⁰⁶ Exhibit 9-19, Statement of Kit Owen-Turner, 24 November 2020, at [21].

²⁰⁷ Exhibit 9-19, Statement of Kit Owen-Turner, 24 November 2020, at [21].

²⁰⁸ Transcript of Charlene Cristobal, Public hearing 9, 10 December 2020, P-300 [7].

²⁰⁹ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-191 [32-33].

²¹⁰ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-191 [33-35].

²¹¹ Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-366 [25-35], P-369 [21-26].

²¹² Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-369 [26-28].

Centre for Disability Research and Policy, said that people with disability are observed to undertake a 'large number of qualifications' but not end up in employment.²¹³

108. Associate Professor Smith-Merry explained the findings of her research with Professor Buchanan, member of the Business Information Systems Discipline, from a qualitative perspective, showing the impact of poor disability confidence and the negative impact that prior experiences of marginalisation and stigma can have on people with disability in terms of completing qualifications.²¹⁴ There were also examples of people not being able to access their course of choice because it was not offered in a format which was accessible;²¹⁵ or being placed in a course which was inappropriate for them in order to fulfil a requirement under DES or JobActive.²¹⁶
109. Associate Professor Smith-Merry also indicated there is a 'lack of disability confidence within the vocational and education training system', where some providers offer an excellent experience while others do not.²¹⁷ Better outcomes are possible where there is 'good cross-sector collaboration', for example where vocational education providers are embedded in the community and therefore know both the employers and disability support providers.²¹⁸
110. Ms Fraillon from Get Skilled Access pointedly said 'everybody talks about just getting a job for a person with disability as opposed to what is the career that they would like to pursue'.²¹⁹
111. Ms Colbert said there is a need to focus on long-term evidence-based programs, citing the existing National Disability Recruitment Coordinator and JobAccess as 'Australia's best-kept secret'.²²⁰ Ms Colbert highlighted the importance of passing on existing information as well as focusing on innovation and investment to ensure that people with disability are given 'more choice over their career destiny with absolute support'.²²¹

Lack of access to part-time work or work experience

112. Having an opportunity to work as a young person, through part-time work or work experience, provides a person with skills, the chance to develop an understanding of the workplace, try out areas of work they may be interested in and start to learn where their

²¹³ Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-366 [35-38].

²¹⁴ Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-375 [26-39].

²¹⁵ Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-377 [19-21].

²¹⁶ Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-377 [25-29].

²¹⁷ Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-375 [41-46].

²¹⁸ Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-376 [25-30].

²¹⁹ Transcript of Dani Fraillon, Public hearing 9, 11 December 2020, P-431 [16-18].

²²⁰ Transcript of Suzanne Colbert, Public hearing 9, 10 December 2020, P-361 [39-41].

²²¹ Transcript of Suzanne Colbert, Public hearing 9, 10 December 2020, P-361 [41-44].

strengths may lie. Without this opportunity, a person with disability can be put at a major disadvantage when it comes to entering the labour market full-time.

113. Jess Mitchell said Summit participants viewed having different pathways to employment as 'vital', pointing to work experience as an opportunity to learn life and work skills.²²²
114. Ms Darling shared her experience at school, where she felt 'they assumed I couldn't do anything'.²²³ Ms Darling said she felt excluded and treated like a baby rather than supported.²²⁴ Ms Darling did not get to do any work experience²²⁵ and no one at her school spoke to her about what she might like to do when she finished her high school education.²²⁶ With the assistance of DES providers, and through her own connections and tenacity, Ms Darling went on to have a number of part time jobs.²²⁷
115. Mr Skinner spoke about undertaking work experience in Years 11 and 12. Mr Skinner stated that this opportunity enabled him to develop skills, build confidence and 'gave me an idea of what work looks like when you go into the real world'.²²⁸ After completing TAFE, Mr Skinner obtained a paid administration position at this organisation.²²⁹
116. Ms Bos said undertaking work experience in an administrative role at Speak Out²³⁰ led to a paid role as an advocate which involves attending meetings each month with people from around Australia and 'making decisions that are important to people with intellectual disability'.²³¹
117. Ms McAlpine said that Year 10 students in special/segregated education are often 'only offered experience within an ADE in a group rather than provided with a variety of individual work experience opportunities as an evidence-based approach to employment readiness'.²³²
118. Dr Lisa Stafford, senior lecturer in Public Health and Social Work, Faculty of Health at the Queensland University of Technology, said many young people with disability do not have experiences of work because it is hard to find a part-time job at school and there are no support systems to help young people with disability do so.²³³ She noted that DES providers cannot provide support to a young person while they are at secondary school.²³⁴

²²² Exhibit 9-13, Statement of Jess Mitchell, 27 November 2020, at [61].

²²³ Transcript of Pamela Darling, Public hearing 9, 11 December 2020, P-436 [30].

²²⁴ Transcript of Pamela Darling, Public hearing 9, 11 December 2020, P-436 [31-33].

²²⁵ Transcript of Pamela Darling, Public hearing 9, 11 December 2020, P-436 [35-37].

²²⁶ Transcript of Pamela Darling, Public hearing 9, 11 December 2020, P-436 [39-42].

²²⁷ Exhibit 9-28, Statement of Pamela Darling, 20 November 2020, at [12-31].

²²⁸ Transcript of Cody Skinner, Public hearing 9, 7 December 2020, P-39 [34-41]; Exhibit 9-2, Statement of Cody Skinner, 3 November 2020, at [11].

²²⁹ Exhibit 9-2, Statement of Cody Skinner, 3 November 2020, at [28].

²³⁰ Exhibit 9-3, Statement of Kalena Bos, 20 November 2020, at [9].

²³¹ Exhibit 9-3, Statement of Kalena Bos, 20 November 2020, at [10].

²³² Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [63].

²³³ Transcript of Dr Lisa Stafford, Public hearing 9, 9 December 2020, P-282 [2-4].

²³⁴ Transcript of Dr Lisa Stafford, Public hearing 9, 9 December 2020, P-282 [4-5].

119. Associate Professor Smith-Merry said exposure to work is ‘essential for people getting employment’.²³⁵ This exposure not only positively impacts the person with disability by increasing their confidence and skills; but also ‘means that employers have more exposure to people with disability’.²³⁶
120. Ms Colbert said ‘one of the best predictors of ongoing employment is work experience during the time of study’.²³⁷ AND has developed a series of programs aimed at ensuring that people with disability have avenues to work experience, mentoring and internships in their chosen fields.²³⁸ Ms Colbert noted, in her experience, students with disability may be unsuccessful in applying for programs with a ‘merit selection’ process, without consideration being given that their academic results may be reflective of a failure to obtain reasonable adjustments or support.²³⁹ As Ms Colbert pointed out, an individual’s ‘academic transcript – on which their application is assessed – is not a reflection of their ability but a reflection of the person’s circumstances’.²⁴⁰

Lack of or inappropriate assistance in becoming ‘job ready’, finding, securing and maintaining employment

121. The evidence highlighted the importance of people with disability becoming ‘job ready’, and the need for supports to achieve ‘job readiness’. Where those supports do not exist, people may struggle to secure and maintain appropriate employment. For example, training should be appropriate and relevant to a person’s vocational goals. It is also important for people to develop soft-skills and knowledge that will help them to put themselves forward in the job market, navigate workplaces and succeed in achieving their vocational goals.
122. Mr Fullwood’s evidence illustrated the importance and value of appropriate assistance in becoming ‘job ready’ for both securing and maintaining employment. While at school, Mr Fullwood completed studies in hospitality.²⁴¹ Upon leaving school Mr Fullwood completed a hospitality course at TAFE that involved learning how to take orders, bartend, serve customers and interact with people.²⁴² As a practical component of the course Mr Fullwood worked as a waiter in a café and restaurant that was operated by the TAFE.²⁴³ Mr Fullwood stated that these studies helped him decide that he wanted to work in

²³⁵ Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-376 [38-39].

²³⁶ Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-376 [39-42].

²³⁷ Transcript of Suzanne Colbert, Public hearing 9, 10 December 2020, P-349 [37-38].

²³⁸ Exhibit 9-22, Statement of Suzanne Colbert, 26 November 2020, at [22-29].

²³⁹ Exhibit 9-22, Statement of Suzanne Colbert, 26 November 2020, at [45(e)].

²⁴⁰ Exhibit 9-22, Statement of Suzanne Colbert, 26 November 2020, at [45(e)].

²⁴¹ Transcript of Rohan Fullwood, Public hearing 9, 7 December 2020, P-26 [26-29].

²⁴² Transcript of Rohan Fullwood, Public hearing 9, 7 December 2020, P-26 [36-39].

²⁴³ Transcript of Rohan Fullwood, Public hearing 9, 7 December 2020, P-26 [41-46].

hospitality.²⁴⁴ After working in administration for a couple of years, Mr Fullwood attended a DES provider that assisted him in applying for a position at McDonalds.²⁴⁵

123. Mr Fullwood said the DES provider assisted him with filling out the application forms²⁴⁶ and continued to visit Mr Fullwood at McDonalds and provide fortnightly and monthly support during the 18 years of his employment.²⁴⁷ Mr Fullwood stated he ‘thought it was very helpful to have their support’.²⁴⁸
124. The IDES research and work of Professor Kavanagh and Ms Devine focuses on the need to improve the DES system by understanding the perspective of jobseekers with disability and the perspective of the service providers so they can better understand the cohort they are tasked with supporting.²⁴⁹ Some of the key findings of the IDES research were that DES participants wanted providers to ‘help them obtain confidence in their own abilities’; to assist them to find jobs that met their needs; to develop their skills; to assist in the job application process; and to support them once they were in a job.²⁵⁰
125. In terms of the effectiveness of the DES system, the IDES research found that the ‘majority’ of respondents reported success in finding work through applying via public advertisements (amounting to around 40% of Wave 1 respondents) while a ‘smaller proportion’ felt that their DES provider directly supported them to find work (amounting to around 28% of Wave 1 respondents).²⁵¹
126. Associate Professor Smith-Merry and Professor Buchanan studied the vocational education and training system and found some good institutions and expertise which can be revitalised to result in positive impacts for disadvantaged groups, including the existing TAFE system which could be used to improve job readiness amongst certain cohorts.²⁵²
127. Professor Buchanan employed a quantitative perspective to illustrate that employment rates for people with disability have remained stagnant for the past 20 years, and set out the challenge to develop a disability-friendly recovery from the economic impacts of COVID-19 which, in his view, will increase the issue of joblessness.²⁵³ Professor Buchanan gave specific suggestions such as the use of quotas supported by tax breaks²⁵⁴

²⁴⁴ Transcript of Rohan Fullwood, Public hearing 9, 7 December 2020, P-27 [7-8].

²⁴⁵ Transcript of Rohan Fullwood, Public hearing 9, 7 December 2020, P-28 [35-44].

²⁴⁶ Transcript of Rohan Fullwood, Public hearing 9, 7 December 2020, P-29 [2-3].

²⁴⁷ Transcript of Rohan Fullwood, Public hearing 9, 7 December 2020, P-31 [13-27].

²⁴⁸ Transcript of Rohan Fullwood, Public hearing 9, 7 December 2020, P-31 [27].

²⁴⁹ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-180 [25-32].

²⁵⁰ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-186 [23-34].

²⁵¹ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-187 [42] – P-188 [2].

²⁵² Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-383 [11-14].

²⁵³ Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-381 [37-46], P-382 [9-14], [21-24].

²⁵⁴ Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-382 [40-41].

as a means of ensuring that people with disability become a 'reference point' for policies to increase employment opportunities rather than 'an after-thought'.²⁵⁵

Poorly trained, inefficient job service providers, placing people in any job with no regard to the jobseeker's skills, qualifications and interests

128. Witnesses gave examples of job service providers paying little regard to the aspirations, skills and interests of people with disability in seeking employment. Witnesses recounted holding multiple qualifications and relevant experience, yet being placed in entry-level or unskilled roles. These roles were often completely unrelated to their expertise and well below their capabilities and experience.
129. Mr Skinner said he was unknowingly placed in a supported employment program by a DES provider despite having a long history working in open employment.²⁵⁶ Mr Skinner realised that everyone working there had a disability²⁵⁷ and his employer told him he was getting paid \$11 because he was on a supported employment program run by the government.²⁵⁸
130. Mr Skinner later found a DES provider that specialised in supporting deaf and hard of hearing jobseekers.²⁵⁹ A staff member from this provider attended job meetings, acted as an interpreter, taught employers about deaf culture and advocated about deaf people in work.²⁶⁰ Through this provider Mr Skinner obtained a paid position as an Auslan teaching aid and stated that he 'found this job extremely rewarding'.²⁶¹
131. Despite Jamie's qualifications including undergraduate and postgraduate studies and years of volunteering experience, he was placed as a packer in a warehouse that was operated by an ADE.²⁶² Jamie stated his DES provider never asked for a copy of his qualifications and did not provide any assistance or supportive technology when he obtained employment.²⁶³ Jamie said '[t]here is a need for a person-centred approach to employment for people with disability' that takes into account the skills, knowledge, experience and education of the participant.²⁶⁴
132. Mr Golding said he holds an Advanced Diploma in Community Development, a Masters of Social Work and a Masters of Research into inter-country adoption in Australia.²⁶⁵ While participating in DES he was placed in roles that were not related to his qualifications or reflective of the area he wanted to work in. For example, despite Mr Golding's

²⁵⁵ Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-382 [36-37].

²⁵⁶ Transcript of Cody Skinner, Public hearing 9, 7 December 2020, P-45 [31] – P-46 [12]; Exhibit 9-2, Statement of Cody Skinner, 3 November 2020, at [51-52].

²⁵⁷ Exhibit 9-2, Statement of Cody Skinner, 3 November 2020, at [51].

²⁵⁸ Exhibit 9-2, Statement of Cody Skinner, 3 November 2020, at [54].

²⁵⁹ Exhibit 9-2, Statement of Cody Skinner, 3 November 2020, at [62].

²⁶⁰ Transcript of Cody Skinner, Public hearing 9, 7 December 2020, P-49 [24-25].

²⁶¹ Exhibit 9-2, Statement of Cody Skinner, 3 November 2020, at [63].

²⁶² Exhibit 9-25, Statement of Jamie, 18 November 2020, at [7-8], [16].

²⁶³ Exhibit 9-25, Statement of Jamie, 18 November 2020, at [13-14].

²⁶⁴ Exhibit 9-25, Statement of Jamie, 18 November 2020, at [23].

²⁶⁵ Transcript of Dominic Hồng Đức Golding, Public hearing 9, 8 December 2020, P-149 [1-6].

qualifications he was placed at a Mexican restaurant washing dishes and making desserts.²⁶⁶ When he did secure a job in his area of interest, it was one that he found independent of his DES provider.²⁶⁷

133. From his experience advocating for CALD jobseekers with disability, Mr Golding said:

Job Network and DES providers generally don't explore a person's interests or desires and how they might be supported or assisted to find the type of work they're interested in. They just want the person placed in a job.²⁶⁸

134. Yuri Sianski said he attended a DES provider every two weeks but did not obtain any jobs.²⁶⁹ Edward Sianski stated:

The services appeared to attempt to find a person to do a particular job rather than to identify work that is tailored to suit the person with a mental disability.²⁷⁰

135. Edward Sianski said '25 years of Yuri trying to get a job has convinced me that it is, it really is a cul-de-sac of neglect'. Edward referred to the Article 27 of the CRPD and stated that 'everyone has the right to a job of some kind'.²⁷¹ Edward said if the conditions or structures are not available for people like Yuri to get a job, 'then they should be'.²⁷²

136. There were also accounts of the benefits of a person-centred approach to job selection. Ms Bos said about the assistance she received from staff members at her current DES provider that one staff member 'really took the time to get to know me' and discovered that she had an interest in clothes.²⁷³ The other staff member then worked with Ms Bos to complete an application for a position at Kmart.²⁷⁴ When Ms Bos received an interview the staff members helped her pick out an outfit, spoke to her about the questions she might be asked and attended the interview with her.²⁷⁵ Upon receiving the position the staff member helped her complete her online training.²⁷⁶ Ms Bos loves her position at Kmart and stated that 'my new job has changed my life'.²⁷⁷

137. Ms Darling has worked with a number of different DES providers, and has found that 'whether you get a job from going to a DES provider all depends on whether you are given a good worker'.²⁷⁸ In her experience, Ms Darling has found that good DES workers 'were people who were willing to take time to get to know me and put in the effort to help me'.²⁷⁹

²⁶⁶ Exhibit 9-10, Statement of Dominic Hồng Đức Golding, 23 November 2020, at [15].

²⁶⁷ Transcript of Dominic Hồng Đức Golding, Public hearing 9, 8 December 2020, P-154 [11-35].

²⁶⁸ Exhibit 9-10, Statement of Dominic Hồng Đức Golding, 23 November 2020, at [48].

²⁶⁹ Exhibit 9-6, Statement of Yuri Sianski, 25 November 2020, at [16].

²⁷⁰ Exhibit 9-7, Statement of Edward Sianski, 19 November 2020, at [15].

²⁷¹ Transcript of Edward Sianski, Public hearing 9, 8 December 2020 P-111 [36-41].

²⁷² Transcript of Edward Sianski, Public hearing 9, 8 December 2020 P-111 [36-41].

²⁷³ Transcript of Kalena Bos, Public hearing 9, 7 December 2020, P-60 [3-7].

²⁷⁴ Transcript of Kalena Bos, Public hearing 9, 7 December 2020, P-60 [25-33].

²⁷⁵ Transcript of Kalena Bos, Public hearing 9, 7 December 2020, P-60 [39] – P-61 [29].

²⁷⁶ Transcript of Kalena Bos, Public hearing 9, 7 December 2020, P-62 [15-24].

²⁷⁷ Transcript of Kalena Bos, Public hearing 9, 7 December 2020, P-65 [40].

²⁷⁸ Exhibit 9-28, Statement of Pamela Darling, 20 November 2020, at [10].

²⁷⁹ Exhibit 9-28, Statement of Pamela Darling, 20 November 2020, at [10].

Ms Darling also said that she has refused to work in jobs found by DES providers because they wanted her to work for a small hourly rate,²⁸⁰ and sometimes at an ADE.²⁸¹

138. Jess Mitchell gave evidence of Summit participant's 'varied' experiences with disability employment services and supports.²⁸² Young people at the Summit shared that DES services which 'embrace young people's diverse, intersectional identities provide the most meaningful support'.²⁸³ In contrast, Jess reported other Summit participants commenting that employment services 'were "ineffective", "did not try enough" and "didn't want to get to know me or my interests or skills"'.²⁸⁴ The Royal Commission heard that poor experiences with a DES provider can discourage young people with disability from seeking employment in the future.²⁸⁵
139. Ms McAlpine said a 'specific skill-set is required to most appropriately assist a person with intellectual disability to find ongoing and meaningful employment'.²⁸⁶ This includes '[a] focus on the vocational aspirations and strengths of the person with disability, and an understanding of what they want from work'.²⁸⁷
140. Professor Buchanan shared the results of his research with Associate Professor Smith-Merry, and their findings that there are good DES providers who are very engaged and supportive.²⁸⁸ However, there is a tendency to deviate from good practice largely as a result of under-resourcing,²⁸⁹ a lack of specialisation²⁹⁰ and the changing underlying structure of the vocational education system.²⁹¹
141. Professor Kavanagh and Ms Devine gave evidence of the issues which can arise where a person is placed in a job which is not 'accommodating of their disabilities or actually made their disabilities and health conditions worse'.²⁹² Ms Devine also highlighted how inadequate training at the start of a job or lack of ongoing support throughout can make it more difficult for a person to manage their condition and may actually result in a compounding of that condition.²⁹³ The common result was the person with disability

²⁸⁰ Transcript of Pamela Darling, Public hearing 9, 11 December 2020, P-439 [18-21].

²⁸¹ Exhibit 9-28, Statement of Pamela Darling, 20 November 2020, at [11].

²⁸² Exhibit 9-13, Statement of Jess Mitchell, 27 November 2020, at [59].

²⁸³ Exhibit 9-13, Statement of Jess Mitchell, 27 November 2020, at [60].

²⁸⁴ Exhibit 9-13, Statement of Jess Mitchell, 27 November 2020, at [59].

²⁸⁵ Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-215 [10-23].

²⁸⁶ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [82].

²⁸⁷ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [82(a)]; Exhibit 9-4.5, EXP.0058.0001.0036 at 0071.

²⁸⁸ Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-373 [32-36].

²⁸⁹ Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-373 [40-43].

²⁹⁰ Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-374 [2-24].

²⁹¹ Transcript of Associate Professor Smith-Merry and Professor Buchanan, Public hearing 9, 10 December 2020, P-374 [29-32].

²⁹² Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-190 [6-9].

²⁹³ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-190 [9-14].

having to leave employment.²⁹⁴ One of the key findings of the IDES research was that ‘because of broad structural barriers it is very difficult for the DES program to adequately support job seekers with disabilities to find and maintain work’.²⁹⁵

142. Ms Colbert gave evidence that AND has received anecdotal feedback showing that ‘[d]egree qualified jobseekers and skilled mid-career jobseekers’ in particular do not benefit from the methods used by DES providers.²⁹⁶ Further, Ms Colbert said issues arise where voluntary jobseekers and jobseekers accessing DES who are required to comply with mutual obligations are not treated as equally valued clients of the provider.²⁹⁷
143. Ms Colbert said there are more than 120 DES providers across the country, making it more difficult for employers to ‘access the skills and talent that might be available in the talent pool’ to find the best candidate for a role.²⁹⁸ There is an issue in the current system with the ability of DES providers to appropriately link employees with employers in need resulting in ‘a lot of waste and loss’.²⁹⁹ Ms Colbert highlighted the importance of ‘evidence based programs’³⁰⁰ and investing in ‘more than one program so that people with disability have much more choice over their career destiny with absolute support’.³⁰¹

Applying for jobs and recruitment processes

Job advertisements/role descriptions that are inaccessible, contain discriminatory inherent requirements and do not reference reasonable adjustments

144. The importance of considering accessibility right from the start of developing a job advertisement or role description was highlighted by several witnesses. Ms Colbert said barriers to employment can begin from the way jobs are described if the inherent requirements of the role are not made clear.³⁰² This can make it ‘very hard for people with a disability to know whether they could actually perform that role’.³⁰³
145. Similarly, the Alliance said through the development of the EmployableQ Toolkit they discovered the importance of thinking about how job advertisements are written.³⁰⁴ The Toolkit contains a step-by-step guide for employers to ensure job advertisements are written in Plain English or Easy Read, can be accessed by screen magnifiers and screen readers, and contain inclusive language such as an equal opportunity employer statement.³⁰⁵

²⁹⁴ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-190 [4-6], [12-14].

²⁹⁵ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-193 [28-31].

²⁹⁶ Exhibit 9-22, Statement of Suzanne Colbert, 26 November 2020, at [43(b)].

²⁹⁷ Exhibit 9-22, Statement of Suzanne Colbert, 26 November 2020, at [43(c)].

²⁹⁸ Exhibit 9-22, Statement of Suzanne Colbert, 26 November 2020, at [43(d)].

²⁹⁹ Exhibit 9-22, Statement of Suzanne Colbert, 26 November 2020, at [43(d)].

³⁰⁰ Exhibit 9-22, Statement of Suzanne Colbert, 26 November 2020, at [57(b)].

³⁰¹ Transcript of Suzanne Colbert, Public hearing 9, 10 December 2020, P-361 [42-44].

³⁰² Transcript of Suzanne Colbert, Public hearing 9, 10 December 2020, P-359 [46] – P-360 [2].

³⁰³ Transcript of Suzanne Colbert, Public hearing 9, 10 December 2020, P-360 [1-2].

³⁰⁴ Transcript of Nicky Bath, Public hearing 9, 9 December 2020, P-269 [38-43].

³⁰⁵ Exhibit 9-17.1, LHA.9999.0001.0046 at 0189-0200.

146. Ms Darling currently works in her ‘dream job’ at the Council for Intellectual Disability, and recommends that job advertisements and applications should be in Easy Read or use pictures to ensure they are accessible.³⁰⁶
147. Rachel Kroes, Chief Executive Officer of the Down Syndrome Association of the Northern Territory, said that job descriptions through DES or mainstream employers do not break down the tasks of a role and are not written from a person-centred approach of what an individual with disability can learn to do.³⁰⁷
148. A recurring issue which emerged in relation to potentially discriminatory inherent requirements was a requirement for a driver’s licence. Jamie gave evidence that he had been unsuccessful for a paid position at an organisation he had been volunteering at because he was unable to obtain a driver’s licence.³⁰⁸ Jamie continued to volunteer at the organisation and stated ‘I am left feeling as though I was exploited’.³⁰⁹ Mr Skinner said that to fulfil his goal of becoming a support worker he needed to obtain his driver’s licence.³¹⁰ Mr Skinner went to approximately 20 different instructors and stated that ‘[t]he problem was they didn’t have experience understanding and teaching people with disability’.³¹¹ After 6 years, Mr Skinner was able to obtain his licence after finding an instructor that provided structure to his lessons.³¹²

During employment

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

149. A key theme emerging in the evidence was the importance of employers having the knowledge, skills, leadership and resources to employ and support people with disability.
150. Jess Mitchell spoke about the desire of young people to work with employers who ‘reach in’.³¹³ Jess said ‘young people want employers to reach in, so not just reach out, but reach in to the young person, and ... foster a culture of acceptance around diversity.’³¹⁴ Summit participants had shared that it is ‘much easier to have a conversation with your boss when they come to you first’.³¹⁵
151. Taylor said they have observed that the experience of employees with disability is heavily dependent on the goodwill of their direct line manager, which is highly variable. Taylor said that ‘[e]mployees with disability who have managers who are supportive of their

³⁰⁶ Exhibit 9-28, Statement of Pamela Darling, 20 November 2020, at [38(a)].

³⁰⁷ Exhibit 9-16, Statement of Rachel Kroes, 26 November 2020, at [20(g)].

³⁰⁸ Exhibit 9-25, Statement of Jamie, 18 November 2020, at [9].

³⁰⁹ Exhibit 9-25, Statement of Jamie, 18 November 2020, at [9].

³¹⁰ Transcript of Cody Skinner, Public hearing 9, 7 December 2020, P-42 [11-21].

³¹¹ Transcript of Cody Skinner, Public hearing 9, 7 December 2020, P-42 [25-28].

³¹² Transcript of Cody Skinner, Public hearing 9, 7 December 2020, P-42 [28-38].

³¹³ Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-213 [1-2].

³¹⁴ Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-213 [2-4].

³¹⁵ Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-213 [5-6].

needs have a much better employment experience and are more likely to progress in their careers than those employees who do not'.³¹⁶

152. Taylor also spoke about the visibility and leadership that can be generated by disability employee support networks if properly active and Disability Champions if properly involved.³¹⁷ However in their experience they found that disability can be the 'poor cousin' of the diversity groups.³¹⁸
153. The Alliance developed the EmployableQ Toolkit after recognising that many of their member organisations lacked resources that would enable them to engage with and employ LGBTI people with disability.³¹⁹ The Toolkit was developed in consultation with a co-design team of people with disability that identify as LGBTI.³²⁰ The Toolkit aims to educate employers and shift their perception of disability by providing resources that focus on inclusion, safety, recruitment and accessibility.³²¹
154. The Alliance said often the onus is on the person with disability to educate others in the workplace and that this responsibility is 'incredibly tiresome'.³²² The Alliance spoke about the importance of shifting the onus onto the organisation to arrange training and implement the EmployableQ Toolkit in a thoughtful and consultative way.³²³
155. Mr Baxter shared his perspective as an Aboriginal man with disability, about particular strategies that employers can implement to establish a culturally safe and inclusive workplace environment.³²⁴ These include developing a Reconciliation Action Plan; having policies around 'sorry leave'; displaying art by Aboriginal and Torres Strait Islander artists; flying the flag; and marking events and dates that are important to the community.³²⁵
156. Ms Colbert said large organisations need an 'authorising environment' towards hiring people with disability, meaning a 'clear message from the top' and 'commitment' from senior leadership to be an organisation which is accessible and inclusive.³²⁶ Ms Colbert specifically noted the role of resources such as a Disability Action Plan.³²⁷

³¹⁶ Exhibit 9-9, Statement of Taylor, 22 November 2020, at [37]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-144 [11-15].

³¹⁷ Exhibit 9-9, Statement of Taylor, 22 November 2020, at [38]-[40]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-144 [15-28], P-145 [22-31].

³¹⁸ Exhibit 9-9, Statement of Taylor, 22 November 2020, at [40]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-144 [32-33].

³¹⁹ Transcript of Nicky Bath, Public hearing 9, 9 December 2020, P-268 [42-47].

³²⁰ Transcript of Hannah Morgan, Public hearing 9, 9 December 2020, P-272 [1-10].

³²¹ Transcript of Hannah Morgan, Public hearing 9, 9 December 2020, P-273 [4-24].

³²² Transcript of Hannah Morgan, Public hearing 9, 9 December 2020, P-271 [3-5].

³²³ Transcript of Hannah Morgan, Public hearing 9, 9 December 2020, P-271 [1-17].

³²⁴ Exhibit 9-21, Statement of John Baxter, 4 December 2020, at [33], [44].

³²⁵ Transcript of John Baxter, Public hearing 9, 10 December 2020, P-339 [22-34]; Exhibit 9-21, Statement of John Baxter, 4 December 2020, at [44].

³²⁶ Transcript of Suzanne Colbert, Public hearing 9, 10 December 2020, P-347 [13-26].

³²⁷ Transcript of Suzanne Colbert, Public hearing 9, 10 December 2020, P-348 [29-37].

157. The representatives from Get Skilled Access described the importance of involving senior leadership in the creation and implementation of Disability Inclusion and Action Plans.³²⁸ Ms Agnew stated that GSA also provides immersive experiences to leaders, such as taking them through an organisation using a blindfold and cane.³²⁹ Mr Alcott stated the experience enables leaders to understand that small changes in the workplace can have a large impact for employees with disability.³³⁰

Employers refusing to provide flexible work arrangements or reasonable adjustments/accommodations, including during recruitment

158. A key theme emerging in the hearing was a lack of flexible working arrangements or reasonable adjustments together with the onus of seeking modifications and adjustments commonly falling on the person with disability.
159. Mr Baxter spoke to this point and said that '[t]his can leave the person with disability feeling like they have to justify their disability' and in a position where they may feel they have to be 'more disabled to get the modifications' but also 'less disabled' in order to fit in with their colleagues.³³¹ Mr Baxter also noted that this information is often not stored anywhere within the organisation, so individuals may have to have 'awkward or difficult discussions' on multiple occasions if their supervisory structure changes.³³²
160. Similarly, Dr McNally said she encountered physical barriers during the job application and recruitment stage which were not proactively addressed by the organisation. She explained that:

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.³³³

161. Taylor said that their experience of requesting reasonable workplace adjustments was that it was left up to them to drive the process, educate their manager about their condition, negotiate adjustments with their manager and engage the specialist workplace adjustments team in human resources.³³⁴
162. Jess Mitchell shared an experience of a Summit participant who said:

One of the things is access. A big problem for me with a physical disability and using a wheelchair. I applied for a role and got to the interview stage where there was a training session for about 20 people. When I got there, the room wasn't accessible. I got in touch

³²⁸ Transcript of Zack Alcott, Public hearing 9, 11 December 2020, P-427 [19-39].

³²⁹ Transcript of Stephanie Agnew, Public hearing 9, 11 December 2020, P-424 [5-12].

³³⁰ Transcript of Zack Alcott, Public hearing 9, 11 December 2020, P-424 [30-33].

³³¹ Exhibit 9-21, Statement of John Baxter, 4 December 2020, at [42].

³³² Exhibit 9-21, Statement of John Baxter, 4 December 2020, at [42].

³³³ Exhibit 9-8, Statement of Beth McNally, 1 December 2020, at [14-15].

³³⁴ Exhibit 9-9, Statement of Taylor, 22 November 2020, at [33]; Transcript of Taylor, Public hearing 9, 8 December 2020, P-143 [19-22].

with the people and they said ‘Oh well, we will follow up with you afterwards’. Then they never followed up.³³⁵

163. Jess Mitchell also shared one Summit participant’s positive experience with recruitment, where the young person was provided with the questions beforehand.³³⁶ The participant said the interview ‘wasn’t about how well you can perform in a stressful situation, but how well do you know what you need to be able to do this job’.³³⁷ This interview and application process was described as ‘inclusive and supportive’.³³⁸
164. Mr Skinner gave evidence about feeling ‘discriminated and disincluded’ in his position as a disability support worker.³³⁹ Mr Skinner was told by his boss that he was breaking the workplace health and safety rule by taking out his hearing aids to shower clients.³⁴⁰ When Mr Skinner asked whether they could do deaf awareness training or find alternative technology his boss told him ‘We do not have time for that, we are focusing on your job’.³⁴¹ Mr Skinner later received a letter to say that his employment was terminated.³⁴²
165. Mr Collins shared his positive experience at King & Wood Mallesons, a law firm where his boss was very open to implementing reasonable adjustments such as working from home.³⁴³
166. Mr Collins also spoke about the importance of people with disability being made to feel secure enough to ask for appropriate adjustments.³⁴⁴ Mr Collins shared experiences from earlier in his career where he did not ask for adjustments or accommodations because he ‘wanted to be treated like everyone else’.³⁴⁵ Mr Collins admits that this resulted in him having to work through pain and discomfort.³⁴⁶ Mr Collins described this as ‘a work in progress’ as people with disability may ‘need time to be comfortable with their disability’.³⁴⁷ He also commented that people with disability ‘need to be conscious that it is not always just them who are asking to be treated differently’, pointing to the increased provision of equipment such as height-adjustable desks for people without disability.³⁴⁸ It comes down to the implementation of an ‘individualised approach’ to workplace adjustments.³⁴⁹
167. Dr Gauntlett spoke about his work with young people with disability. Dr Gauntlett identified that young people are often presumed to know what adjustments they might need, and

³³⁵ Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-215 [33-37]; Exhibit 9-13, Statement of Jess Mitchell, 27 November 2020, at [70].

³³⁶ Exhibit 9-13, Statement of Jess Mitchell, 27 November 2020, at [62].

³³⁷ Exhibit 9-13, Statement of Jess Mitchell, 27 November 2020, at [62].

³³⁸ Exhibit 9-13, Statement of Jess Mitchell, 27 November 2020, at [62].

³³⁹ Transcript of Cody Skinner, Public hearing 9, 7 December 2020, P-45 [10-11].

³⁴⁰ Transcript of Cody Skinner, Public hearing 9, 7 December 2020, P-45 [6-9].

³⁴¹ Transcript of Cody Skinner, Public hearing 9, 7 December 2020, P-45 [9-11].

³⁴² Transcript of Cody Skinner, Public hearing 9, 7 December 2020, P-45 [28-29].

³⁴³ Exhibit 9-14, Statement of Oliver Collins, 18 November 2020, at [36].

³⁴⁴ Transcript of Oliver Collins, Public hearing 9, 9 December 2020, P-235 [44-46].

³⁴⁵ Exhibit 9-14, Statement of Oliver Collins, 18 November 2020, at [18].

³⁴⁶ Exhibit 9-14, Statement of Oliver Collins, 18 November 2020, at [19].

³⁴⁷ Transcript of Oliver Collins, Public hearing 9, 9 December 2020, P-235 [46] – P-236 [1].

³⁴⁸ Exhibit 9-14, Statement of Oliver Collins, 18 November 2020, at [34].

³⁴⁹ Exhibit 9-14, Statement of Oliver Collins, 18 November 2020, at [34].

required to ask for them, 'potentially without the benefit of any work experience or not having worked in a similar role'.³⁵⁰ In that instance, a young person may not know what adjustment they need or what to ask for and it would be more beneficial for the employer to lead or initiate regular discussions around what is available.³⁵¹

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

168. Once in employment, people with disability can continue to experience barriers to their success and wellbeing at work.
169. Mr Baxter spoke about his job in a government business enterprise where he worked for 5-6 years but was never offered the opportunity to progress or advance.³⁵² Mr Baxter endeavoured to undertake additional training and move between offices,³⁵³ but felt as though during his yearly reviews 'the focus was more based on what I could not do, as opposed to what I could do and what I had achieved to that point'.³⁵⁴ Mr Baxter also said that he did a lot of voluntary work in his 20s and 30s in an effort to show his 'skills and consistency', but that none of those opportunities led to paid employment.³⁵⁵ Despite not leading to paid employment, Mr Baxter credits his voluntary work with improving his social skills and public speaking skills which has benefitted him in his advocacy work.³⁵⁶
170. Jamie said he has volunteered with a number of organisations over the past 20 years with the hope of ultimately gaining paid employment in the social services sector.³⁵⁷ Jamie made numerous applications for paid positions with these organisations but was never successful despite receiving positive feedback for his performance as a volunteer.³⁵⁸
171. Jess Mitchell recounted the experience of one young Summit attendee who undertook unpaid work experience with the promise that this work would result in a job. The Summit attendee said '[h]e said earlier in the year he was going to hire me. Then when I went back and asked for the job, he said "Nah, we don't have any work" but didn't say why'.³⁵⁹
172. Ms Bos spoke about starting her 'first real job' at her local Kmart store.³⁶⁰ Ms Bos explained that this position was the first time that she had been given responsibility and challenges at work.³⁶¹ Some of the things that Ms Bos loves about her job include working

³⁵⁰ Exhibit 9-24, Statement of Dr Ben Gauntlett, 3 December 2020, at [59].

³⁵¹ Exhibit 9-24, Statement of Dr Ben Gauntlett, 3 December 2020, at [59].

³⁵² Transcript of John Baxter, Public hearing 9, 10 December 2020, P-336 [30-44].

³⁵³ Transcript of John Baxter, Public hearing 9, 10 December 2020, P-336 [46] – P-337 [1].

³⁵⁴ Transcript of John Baxter, Public hearing 9, 10 December 2020, P-337 [1-4].

³⁵⁵ Transcript of John Baxter, Public hearing 9, 10 December 2020, P-335 [38-39]; Exhibit 9-21, Statement of John Baxter, 4 December 2020, at [15].

³⁵⁶ Transcript of John Baxter, Public hearing 9, 10 December 2020, P-336 [18-22].

³⁵⁷ Exhibit 9-25, Statement of Jamie, 18 November 2020, at [8].

³⁵⁸ Exhibit 9-25, Statement of Jamie, 18 November 2020, at [9-11].

³⁵⁹ Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-214 [42] – P-215 [2]; Exhibit 9-13, Statement of Jess Mitchell, 27 November 2020, at [71].

³⁶⁰ Exhibit 9-3, Statement of Kalena Bos, 20 November 2020, at [12].

³⁶¹ Transcript of Kalena Bos, Public hearing 9, 7 December 2020, P-59 [21].

with different people her age and being given tasks that she hasn't done before.³⁶² Ms Bos gave evidence about the importance of working with helpful colleagues that gave her responsibility, trusted her and did not judge her.³⁶³

173. Dr McNally spoke of her concern that her disability 'will negatively impact [her] career progression into the future'.³⁶⁴ Dr McNally is concerned that the barriers she faces now will be 'exacerbated in these senior roles – making [her] not only less likely to secure such a position but also less likely to flourish'.³⁶⁵
174. Dr McNally suggested that human resources or similar departments within organisations should be trained in the identification and resolution of 'issues facing people with disability'.³⁶⁶ Dr McNally feels this could impact on 'the recruitment, maintenance and successful career progression of a person with a disability in an organisation'³⁶⁷ and 'afford similar access to all'.³⁶⁸ In particular, Dr McNally said having someone 'who could speak to people with disability about their career progression opportunities and how the organisation may be able to facilitate this' would be 'so valuable'.³⁶⁹

Structural barriers

175. Structural barriers refer to those created by policies, systems, governmental programs and legislation. They include a lack of appropriate jobs available in the labour market, a lack of effective active labour market policies that incentivise and prioritise the employment of people with disability, and complex and confusing system or program rules and requirements.
176. The following barriers were identified:
- lack of access to adequate income required to meet essential living standards and participate in finding and keeping a job
 - lack of access to employment related advocacy services
 - structural issues in the operation of the Disability Employment Service program
 - lack of coherence and connections between government programs designed to help people with disability into employment, including complexity and variance around eligibility requirements
 - potential reduction or loss of the Disability Support Pension and associated benefits as a result of employment or increased hours of work

³⁶² Transcript of Kalena Bos, Public hearing 9, 7 December 2020, P-63 [41-44].

³⁶³ Transcript of Kalena Bos, Public hearing 9, 7 December 2020, P-65 [3-4].

³⁶⁴ Exhibit 9-8, Statement of Beth McNally, 1 December 2020, at [61].

³⁶⁵ Exhibit 9-8, Statement of Beth McNally, 1 December 2020, at [61].

³⁶⁶ Exhibit 9-8, Statement of Beth McNally, 1 December 2020, at [57].

³⁶⁷ Exhibit 9-8, Statement of Beth McNally, 1 December 2020, at [57].

³⁶⁸ Exhibit 9-8, Statement of Beth McNally, 1 December 2020, at [58].

³⁶⁹ Exhibit 9-8, Statement of Beth McNally, 1 December 2020, at [62].

- overly complex and confusing rules around participation requirements and mutual obligations associated with income support
- gap in support for people who do not qualify for the National Disability Insurance Scheme
- pathways and transitions from education to open employment
- job capacity assessments that emphasise impairment and weakness
- legal protection for people with disability who experience discrimination in the workplace.

Lack of access to adequate income required to meet essential living standards and participate in finding and keeping a job

177. A person's ability to meet basic living standards, look for work and maintain employment is greatly influenced by their access to income. There are a number of costs that may be associated with finding and keeping a job, such as purchasing appropriate attire or required gear, travel to and from work, and arranging care for children or people they might otherwise support or look after.
178. Jamie gave evidence that at his last position he was paid \$3.51 per hour.³⁷⁰ Jamie stated that 'this amount of income is not nearly enough to cover the necessities, such as rent or mortgage repayments, bills, and other essential grocery and personal items'.³⁷¹

Lack of access to employment related advocacy services

179. Advocacy can play a crucial role in helping people with disability create the lives they want to live. Advocacy can lead to important changes and improvements for both individuals and the systems with which they interact and use. In employment settings having access to advocates is important. Advocates may include co-workers, advocacy groups, networks or union representation.
180. Jess Mitchell gave evidence that young people at the Summit 'spoke about the need for systemic advocacy, as well as individual advocacy, and the importance of young people being supported to lead advocacy efforts'.³⁷² Participants at the Summit were strong in the conviction that young people with disability should be allowed to be 'the experts in their own lived experience'.³⁷³ In order to instigate change, 'you need to involve young people and let them lead the way'.³⁷⁴
181. Mr Collins discussed alternative models of advocacy and support for people with disability in relation to employment. He spoke about the Diverse Abilities Network of the Queensland Law Society which was founded in early 2020. Aims of the Diverse Abilities

³⁷⁰ Exhibit 9-25, Statement of Jamie, 18 November 2020, at [19].

³⁷¹ Exhibit 9-25, Statement of Jamie, 18 November 2020, at [19].

³⁷² Exhibit 9-13, Statement of Jess Mitchell, 27 November 2020, at [94].

³⁷³ Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-218 [29-30].

³⁷⁴ Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-218 [32-33].

Network include to ‘raise the profile of disability’³⁷⁵ in the legal profession and show employers that ‘people with disabilities can be very valuable and contributing members of [a] workforce’.³⁷⁶

182. Ms Kroes presented evidence that young people with disability need support in understanding, ‘how the world works, how government works, how discrimination works, their human rights’.³⁷⁷ She said that targeted education could assist in addressing this need.³⁷⁸

Structural issues in the operation of the Disability Employment Service program

183. The DES program is a key issue when considering access to employment for many people with disability. A question arises as to whether the structure or design of the system itself may be creating barriers to sustainable and meaningful employment outcomes for people with disability.
184. Ms McAlpine said the current system of payments to DES providers means there is ‘very little incentive to keep people in jobs longer and that support is not available’.³⁷⁹ Ms McAlpine detailed the payment system under DES, whereby providers receive an outcome payment when a participant gets a job; when they stay in the job for 26 weeks; and a ‘smaller payment if the person stays in the job for 52 weeks’.³⁸⁰ The Royal Commission also heard how the new funding model has had a negative impact on the availability of ongoing support for participants.³⁸¹
185. Ms McAlpine gave evidence of other systemic issues which impact the DES system. Ms McAlpine noted that the DES system is moving away from specialist services and towards generalist services, a process which Ms McAlpine believes poses a risk of services not accounting for the specific needs of their clients.³⁸²
186. Ms McAlpine also suggested that DES providers receiving outcome payments for education outcomes does not promote effective practice for people with intellectual disability who, research shows, learn more effectively on the job rather than in the classroom.³⁸³ Further, Ms McAlpine said that the current funding system requires DES services to focus on compliance over good practice, noting for example the inability of providers to ‘reallocate resources’ amongst clients to respond to fluctuations in their work and personal needs.³⁸⁴

³⁷⁵ Transcript of Oliver Collins, Public hearing 9, 9 December 2020, P-231 [32].

³⁷⁶ Transcript of Oliver Collins, Public hearing 9, 9 December 2020, P-231 [39-41].

³⁷⁷ Transcript of Rachel Kroes, Public hearing 9, 9 December 2020, P-258, [43-44].

³⁷⁸ Transcript of Rachel Kroes, Public hearing 9, 9 December 2020, P-258, [44-46].

³⁷⁹ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-81 [3-7].

³⁸⁰ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-81 [40-46].

³⁸¹ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-82 [7-17]; Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [31].

³⁸² Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [81].

³⁸³ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [85].

³⁸⁴ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [86-87].

187. Dr Stafford explained the practices of ‘churn’, ‘creaming’ and ‘parking’ associated with marketised-outcome based service models like the DES system. She said the practice of ‘creaming’ prioritises unemployed individuals who are most job ready and most likely to get a job.³⁸⁵ In contrast, the practice of ‘parking’ involves providers not working with people with more complex issues who are the furthest away from being ready to be placed in employment or have more severe impairments.³⁸⁶
188. Dr Stafford provided the example of a young man with higher support needs who went to an employment agency, explained the idea about his job and in the second interview with the employment agency was told it was not worth him getting a paid job because he would get next to nothing.³⁸⁷ Dr Stafford talked about the phenomenon of young people with disability being ‘churned’ through the system, which was described as being stuck in a cycle of unemployment, volunteerism and casualization.³⁸⁸
189. Dr Stafford also provided examples of what young people have done to work around the system. One such example was a young man who used self-directed support to start up a business venture, and Dr Stafford noted the importance of choice and self-determination for young people with disability.³⁸⁹

Lack of coherence and connections between government programs designed to help people with disability into employment, including complexity and variance around eligibility requirements

190. A key theme emerging from the evidence was the complexity and interconnectedness of the different government programs which make it very difficult for people with disability to navigate through the system to achieve employment outcomes.
191. Some witnesses described the complexity and confusion around the connections between government programs designed to help people with disability into employment. The range of programs and supports offered by different departments and across state, territory and federal jurisdictions makes the system complex. This complexity can be intensified by many varying eligibility and participation requirements for each program.
192. It can be very difficult for people to understand which supports or programs they can access, or see how they could build a pathway towards their goals. This complexity and lack of coherence can lead to people losing motivation or giving up on employment.
193. Ms McAlpine agreed that the lack of appropriate supports for people to ‘navigate frameworks, programs and... policies’ acts as a barrier to employment for people with

³⁸⁵ Transcript of Dr Lisa Stafford, Public hearing 9, 9 December 2020, P-285 [43] – 286 [31]; Exhibit 9-18.2, ISS.001.00355 at 01_0006-0007.

³⁸⁶ Transcript of Dr Lisa Stafford, Public hearing 9, 9 December 2020, P-286 [39]-[43]; Exhibit 9-18.2, ISS.001.00355 at 01_0007.

³⁸⁷ Transcript of Dr Lisa Stafford, Public hearing 9, 9 December 2020, P-287 [24]-[30].

³⁸⁸ Transcript of Dr Lisa Stafford, Public hearing 9, 9 December 2020, P-287 [2]-[8]; Exhibit 9-18.2, ISS.001.00355 at 01_0007-0008.

³⁸⁹ Transcript of Dr Lisa Stafford, Public hearing 9, 9 December 2020, P-289 [17]-[40]; Exhibit 9-18.2, ISS.001.00355 at 01_0016-0017.

intellectual disability in particular.³⁹⁰ In explaining the interactions between DES, the Disability Support Pension (**DSP**) and the National Disability Insurance Scheme (**NDIS**) in particular, Ms McAlpine illustrated how complex the systems are and that this complexity can operate to prevent or discourage people from seeking opportunities in open employment.³⁹¹ One pertinent example of this is the concept of future work capacity and eligibility for the DES service.³⁹² An additional complexity arises where a person has manifest eligibility under the DSP, meaning they are 'automatically assessed' as having a future work capacity below the required eight hours to participate in the DES program.³⁹³

194. Ms McAlpine sees it as crucially important that all government employment programs 'ensure that providers use evidence based practice'.³⁹⁴ Ms McAlpine also made various specific recommendations to reduce the complexity of these systems and increase transparency,³⁹⁵ including the removal of the eight-hour per week eligibility threshold for the DES program.³⁹⁶
195. The impact of this complexity was also addressed by Ms Devine. Ms Devine noted 'one of the key issues [is] that currently not enough people with disabilities and their families are well enough informed or supported to navigate the different services and systems'.³⁹⁷ As a specific example, Ms Devine and Professor Kavanagh referred to research indicating that people have difficulties navigating the NDIS and DES systems separately, and also in understanding the interface between the two systems.³⁹⁸
196. In an exchange with the Chair of the Royal Commission, both Professor Kavanagh and Ms Devine agreed that there is no simple guide available to support people to navigate these systems³⁹⁹ or understand the supports available through private or government programs.⁴⁰⁰
197. The importance of support in navigating these pathways and the consequence when they are not available was also highlighted by Edward Sianski. Edward gave evidence about the lack of structures available to assist his son, Yuri, in obtaining a job.⁴⁰¹ Edward stated that his grandson, 'Robert', has also been diagnosed with schizophrenia but has received

³⁹⁰ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-76 [12-14].

³⁹¹ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [23-24].

³⁹² Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-80 [9-29].

³⁹³ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-83 [30-37]; Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [75-79].

³⁹⁴ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-93 [43-45]; Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [106(a)].

³⁹⁵ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [106].

³⁹⁶ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-94 [27].

³⁹⁷ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-196 [31-33].

³⁹⁸ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-195 [13-23]; Exhibit 9-12.3, EXP.0059.0001.0116; Exhibit 9-12.4, EXP.0059.0001.0008.

³⁹⁹ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-196 [21-47].

⁴⁰⁰ Transcript of Professor Kavanagh and Ms Devine, Public hearing 9, 8 December 2020, P-197 [1-6].

⁴⁰¹ Transcript of Edward Sianski, Public hearing 9, 8 December 2020, P-111 [36-41].

more employment support.⁴⁰² Robert receives support through the NDIS to arrange travel to attend interviews and is registered with an employment agency.⁴⁰³ Edward stated:

I think the contrast between the support Robert is getting and what Yuri got is an amazing contrast. It is encouraging that Robert has NDIS support and an employment agency that recognises his special needs. My current fear is that this support will evaporate in time and that he will [be] joining his father, Yuri, languishing on the sidelines of employment and education opportunities to supplement his pension.⁴⁰⁴

198. Professor Fisher said one of the six priorities of the National Disability Strategy is economic security, including the policy direction to increase access to employment opportunities as a key to improving economic security and personal wellbeing for people with disability, their families and carers.⁴⁰⁵
199. Professor Fisher said a review of the implementation of the National Disability Strategy found that in relation to employment there were implementation gaps and that gathering evidence through measurement and analysis for accountability and transparency was critical to inform the priorities.⁴⁰⁶ Professor Fisher also said that despite the introduction of new employment strategies in many jurisdictions, economic security of people with disability had deteriorated in recent years and in particular employment of people with high support needs had declined.⁴⁰⁷

Potential reduction or loss of the Disability Support Pension and associated benefits as a result of employment or increased hours of work

200. As a person's hours worked and income earned from employment increases, their DSP payment may be reduced or eventually cancelled. A person can be on a DSP payment of \$0 and remain eligible for the DSP for up to two years. However, people with disability still report that the potential reduction or loss of the DSP is a barrier to them working or taking on more hours.
201. The process of applying for and securing DSP can be long, involved and taxing. For many, the potential of losing the DSP and its associated benefits, such as health and pharmaceutical concessions, and then having to re-apply and repeat that process, makes employment or increased hours less appealing.
202. A key theme which emerged in the evidence was the potential for exploitation by employers who use a reduction in DSP as a result of income earned as a reason to pay employees with disability less. This was illustrated in the evidence of Edward Sianski, who believes that his son was exploited by employers that realised Yuri was on the DSP. Edward stated that the employers knew that Yuri was only able to earn a certain amount

⁴⁰² Transcript of Edward Sianski, Public hearing 9, 8 December 2020, P-113 [38] – P-114 [23].

⁴⁰³ Exhibit 9-7, Statement of Edward Sianski, 19 November 2020, at [28-30].

⁴⁰⁴ Exhibit 9-7, Statement of Edward Sianski, 19 November 2020, at [33-34].

⁴⁰⁵ Exhibit 9-5, Statement of Professor Karen Fisher, 23 November 2020, at [17].

⁴⁰⁶ Exhibit 9-5, Statement of Professor Karen Fisher, 23 November 2020, at [21].

⁴⁰⁷ Exhibit 9-5, Statement of Professor Karen Fisher, 23 November 2020, at [22].

of money due to the constraints of the DSP and only paid him for a few hours of work per week while Yuri was working full time.⁴⁰⁸ Edward stated:

... I knew Yuri was being exploited but I thought to myself, 'Now, it's better for Yuri to go out and do something rather stay home in his flat all day and do nothing', and I felt the system had failed Yuri in that Yuri wasn't able to get a proper job, and as a result he was open to exploitation, and he was open to people who knew what Yuri's situation was and yet they exploited him. And it made me really angry.⁴⁰⁹

203. Similarly, Jamie gave evidence that many ADEs would attempt to justify paying him extremely low wages to ensure he would not lose his DSP.⁴¹⁰ However, Jamie receives the permanently blind category of the DSP which means that his pension is not subject to any income or assets tests.⁴¹¹ Jamie considers that these ADEs were incorrect in their understanding of his entitlements as a recipient of the permanently blind category of the DSP.⁴¹² In any event, Jamie stated, 'I would much rather work for a substantial income than a minimal amount plus pension'.⁴¹³ This also speaks to the attitudinal barrier identified regarding assumptions that people with disability do not want to work.
204. Another key theme was confusion and concern around the impact of employment on benefits, such as DSP. Edward Sianski spoke about the difficulties of understanding how much work his son can do without losing his DSP,⁴¹⁴ which is complicated by the fact that Yuri's capacity to work varies due to his condition which can ebb and flow. In Edward's view, 'Yuri can't risk losing his [DSP] because if he does that, then he has to then go back and renegotiate his pension. And that's a huge task'.⁴¹⁵
205. Ms McAlpine gave evidence that currently a person receiving the DSP can work 29 hours each week before they stop getting the DSP⁴¹⁶ and can earn \$178 per fortnight before they lose any income under the DSP.⁴¹⁷ A person earning more than \$178 per fortnight will lose 50 cents in the dollar of their DSP, although Ms McAlpine pointed out that DSP recipients will still be better off financially if they earn income despite the reduction of the DSP and the requirement to pay tax.⁴¹⁸

⁴⁰⁸ Transcript of Edward Sianski, Public hearing 9, 8 December 2020, P-110 [25-28].

⁴⁰⁹ Transcript of Edward Sianski, Public hearing 9, 8 December 2020, P-110 [25-38].

⁴¹⁰ Exhibit 9-25, Statement of Jamie, 18 November 2020, at [20].

⁴¹¹ Exhibit 9-25, Statement of Jamie, 18 November 2020, at [20].

⁴¹² Exhibit 9-25, Statement of Jamie, 18 November 2020, at [20].

⁴¹³ Exhibit 9-25, Statement of Jamie, 18 November 2020, at [21].

⁴¹⁴ Transcript of Edward Sianski, Public hearing 9, 8 December 2020, P-111 [1-6].

⁴¹⁵ Transcript of Edward Sianski, Public hearing 9, 8 December 2020, P-110 [40-47].

⁴¹⁶ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [48].

⁴¹⁷ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-85 [7-9].

⁴¹⁸ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-85 [10-13], P-86 [36-41], P-86 [46] – P-87 [8]; Exhibit 9-4.7, EXP.0058.0001.0116.

206. Ms McAlpine also noted the additional complexities which people earning income will encounter, as they are required to report to Centrelink⁴¹⁹ and may risk losing their concession card which entitles them to other benefits such as subsidised medication.⁴²⁰
207. Mr Golding spoke about the difficulty of reporting income earned from casual employment to Centrelink. Often Mr Golding would not know how much or when he would be paid, meaning he couldn't report accurately within the Centrelink compulsory reporting timeline.⁴²¹ As a result of this, he 'ended up owing Centrelink money according to their Robodebt system.'⁴²²
208. Riley gave evidence that their DSP was impacted when they began receiving a travel allowance from their employer to cover the cost of travelling further to work, which is classed as income by Centrelink.⁴²³ Riley's DSP was decreased to nearly nothing and they were also told that if they kept getting the travel money, Centrelink would consider cancelling their pension.⁴²⁴ Riley has had to negotiate with their employer to work closer to their home.⁴²⁵ Riley also said that they had wanted to work 4 days per week during school hours at a previous job, but they were not able to because the travel time to and from work tipped them over the hours they were allowed and their carers pension would have been impacted.⁴²⁶ Riley said navigating the DSP and other entitlements is not an easy task and while they can survive on the DSP for a little while it is not a long term solution.
209. Another theme emerging was the complexity of reporting arrangements for income. Ms Fullwood gave evidence about the complicated and difficult process of reporting income as a requirement of her son Rohan's DSP.⁴²⁷ Ms Fullwood explained that this process involved providing specific details of Rohan's work hours and income to Centrelink within a specific reporting period, otherwise Rohan's DSP would be suspended.⁴²⁸
210. Ms Fullwood considered that Centrelink made 'a real mess' when readjusting Rohan's pension, after he ceased casual work he was undertaking in addition to his permanent part time position.⁴²⁹ Ms Fullwood stated that when Rohan's father notified Centrelink that he was no longer working in the casual position his DSP was not correctly readjusted, which resulted in an underpayment of \$9000 that took two years and multiple formal

⁴¹⁹ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-85 [42-44].

⁴²⁰ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-85 [13-15]; Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [42], [49-50].

⁴²¹ Transcript of Dominic Hồng Đức Golding, Public hearing 9, 8 December 2020, P 155 [1-4].

⁴²² Exhibit 9-10, Statement of Dominic Hồng Đức Golding, 23 November 2020, at [17].

⁴²³ Exhibit 9-20, Statement of Riley, 20 November 2020, at [32].

⁴²⁴ Transcript of Riley, Public hearing 9, 10 December 2020, P-325 [1-2].

⁴²⁵ Exhibit 9-20, Statement of Riley, 20 November 2020, at [32].

⁴²⁶ Exhibit 9-20, Statement of Riley, 20 November 2020, at [16].

⁴²⁷ Exhibit 9-26, Statement of Deborah Fullwood, 23 November 2020, at [13].

⁴²⁸ Exhibit 9-26, Statement of Deborah Fullwood, 23 November 2020, at [13].

⁴²⁹ Exhibit 9-26, Statement of Deborah Fullwood, 23 November 2020, at [11].

complaints to be resolved.⁴³⁰ Ms Fullwood described the system of reporting income to Centrelink as 'a real barrier to people like Rohan remaining independent and employed'.⁴³¹

211. Ms Fullwood also addressed the impact of categorising financial contributions from family members as income. Ms Fullwood and Rohan's father decided to give Rohan payments each month to assist him with paying for bills and activities and to teach him about budgeting.⁴³² Approximately seven years later, Centrelink determined that these contributions would be treated as income and reduced Rohan's pension.⁴³³ As a result, Rohan's parents stopped depositing funds into his account and instead decided to pay directly for some of his activities.⁴³⁴ Ms Fullwood stated 'this situation was a real barrier in helping Rohan understand his real expenses and thus continuing to develop his money management skills'.⁴³⁵

212. Dr Stafford shared the experience of a 21 year old who had to navigate the policy and rules of her DSP and accessible housing and work:

I've got to balance out working enough so I earn enough but then I've also got to balance out earning under the threshold to keep my pension, and I've also got to balance earning under the threshold to stay in this unit ... because there's like a \$609 a week limit on how much you can earn and there's a pension and employment so it doesn't leave me a lot of options. Yeah, it's also doing hours to satisfy all the requirements of my pension but not over-working myself as well in terms of my own needs. Then I've got to factor in how far it is and transport costs so there's all these different variables.⁴³⁶

213. Given those complexities, Ms Colbert said 'there is too much economic insecurity for many people with disability to tap into the world of open employment'.⁴³⁷ Ms Colbert said that 'the system can be punitive'⁴³⁸ and that the DSP in particular 'can create disincentives for people to seek employment' including by requiring people to reapply for the DSP after working for a particular period of time.⁴³⁹ The 'lack of assurance of continued DSP' was also seen as a 'significant deterrent' in Ms Colbert's professional experience.⁴⁴⁰

Overly complex and confusing rules around participation requirements and mutual obligations associated with income support

214. Some people with disability receiving the DSP are required to partake in activities, such as 'job readiness' training or attending an agreed number of sessions with an employment services provider. These are known as participation requirements.

⁴³⁰ Exhibit 9-26, Statement of Deborah Fullwood, 23 November 2020, at [11-12].

⁴³¹ Exhibit 9-26, Statement of Deborah Fullwood, 23 November 2020, at [13].

⁴³² Exhibit 9-26, Statement of Deborah Fullwood, 23 November 2020, at [15].

⁴³³ Exhibit 9-26, Statement of Deborah Fullwood, 23 November 2020, at [16].

⁴³⁴ Exhibit 9-26, Statement of Deborah Fullwood, 23 November 2020, at [17].

⁴³⁵ Exhibit 9-26, Statement of Deborah Fullwood, 23 November 2020, at [17].

⁴³⁶ Transcript of Dr Lisa Stafford, Public hearing 9, 9 December 2020, P-288 [8-24].

⁴³⁷ Exhibit 9-22, Statement of Suzanne Colbert, 26 November 2020, at [42].

⁴³⁸ Exhibit 9-22, Statement of Suzanne Colbert, 26 November 2020, at [42].

⁴³⁹ Exhibit 9-22, Statement of Suzanne Colbert, 26 November 2020, at [43(a)].

⁴⁴⁰ Exhibit 9-22, Statement of Suzanne Colbert, 26 November 2020, at [43(a)].

215. Many people receiving other working age income support payments are required to agree to and undertake a range of activities to help them secure a job. These are called mutual obligations.
216. A key theme emerging from the hearing was the impact of mutual obligations on people with disability in seeking employment. Ms McAlpine described the complexities which arise for people on the DSP who, under a Job Capacity Assessment, are deemed to have a future work capacity of between 8 and 15 hours and are therefore subject to ‘mutual obligations and participation requirements to try and get work’.⁴⁴¹ People subject to mutual obligations must generally report using the MyGov online platform, which Ms McAlpine considered is often inaccessible for a person with intellectual disability,⁴⁴² and failure to do this may mean their DES support or DSP will cease.⁴⁴³ Ms McAlpine provided evidence about the Everyone Can Work website and resources which Inclusion Australia has developed in an attempt to translate information and make it more accessible for people with intellectual disability and their supporters.⁴⁴⁴
217. Mr Golding said coming from a working-class background and not having a family who could support him financially meant he had to go on the DSP.⁴⁴⁵ To keep his DSP, Mr Golding had to engage with a DES provider. After a series of unsuccessful and inappropriate work placements, over seven years and with two different providers, he said ‘I felt trapped but staying with the DES provider was the only way I was able to keep the DSP.’⁴⁴⁶
218. Edward Sianski discussed about the lack of support his son initially received to meet the requirements of his income support. Edward stated that he would scour newspapers, type up applications and drive Yuri to interviews to help him meet the income support requirements but he felt the ‘whole thing was futile in the end’.⁴⁴⁷

Gap in support for people who do not qualify for the National Disability Insurance Scheme

219. Ms McAlpine noted that not all people who qualify for the DSP or DES will also be NDIS participants.⁴⁴⁸
220. There is an inconsistency between manifest eligibility under the DSP (which is available to a person with an IQ of less than 70) and eligibility under the NDIS Operational Guidelines which indicate that a person with intellectual disability is deemed to be a person with an IQ of 55 points or less (and severe deficits in adaptive functioning).⁴⁴⁹ This ‘narrower

⁴⁴¹ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-84 [43-45].

⁴⁴² Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [91].

⁴⁴³ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [32].

⁴⁴⁴ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [25].

⁴⁴⁵ Exhibit 9-10, Statement of Mr Dominic Hồng Đức Golding, 23 November 2020, at [11].

⁴⁴⁶ Exhibit 9-10, Statement of Mr Dominic Hồng Đức Golding, 23 November 2020, at [16].

⁴⁴⁷ Transcript of Edward Sianski, Public hearing 9, 8 December 2020, P-108 [1-8]; Exhibit 9-7, Statement of Edward Sianski, 19 November 2020, at [12].

⁴⁴⁸ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-87 [23-25].

⁴⁴⁹ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [88].

approach by the NDIS means there is a cohort of people with intellectual disability who are eligible for the DSP, but do not receive NDIS supports'.⁴⁵⁰ This may lead to a situation where people may try to navigate systems such as the NDIS and Centrelink without adequate supports under either system.⁴⁵¹

Pathways and transitions from education to open employment

221. A key theme emerging from the evidence was the difficulty of various transitions, particularly from school to open employment.
222. Ms Owen-Turner said once Charlene finished high school, she was pretty much on her own, trying to navigate and find support or opportunities for further studies for Charlene.⁴⁵² In Charlene's last couple of years of high school, Ms Owen-Turner said she had several meetings with the counsellors and transition team to try and transition her into higher education, as that is what she wanted to do.⁴⁵³ She considered that Charlene's school really pushed for her to go to a day support program for people with disability.⁴⁵⁴ Ms Owen-Turner said that Charlene did some work experience at a day support program in her final years of school that involved packing and delivery, which Charlene did not particularly enjoy.⁴⁵⁵
223. Ms Owen-Turner said that through the head teacher at the school, she found out about a social enterprise, which had people working with scanners, computers and file management and was a live office that involved paid work.⁴⁵⁶ This was more in line with what Charlene wanted to do and she was able to get a trial at the end of year 12.⁴⁵⁷ Ms Cristobal attends the social enterprise 3 days a week and has been there for almost two years.⁴⁵⁸ Ms Owen-Turner said that from the research she has done she thinks the social enterprise is one of the best programs available that is in line with Charlene's goal.⁴⁵⁹ She noted that other programs involve going to the movies and bowling, which is recreation, not learning, and Ms Owen-Turner wanted Charlene to have as many full days of learning as she could.⁴⁶⁰ As outlined above, Ms Owen-Turner was also able to get Charlene into TAFE.⁴⁶¹
224. Ms McAlpine highlighted the transition from school to open employment as one pathway which is in need of improvement and consistency.⁴⁶² Research undertaken on behalf of Inclusion Australia by Swinburne University revealed that Australia 'does not have a

⁴⁵⁰ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [89].

⁴⁵¹ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [89].

⁴⁵² Transcript of Kit Owen-Turner, Public hearing 9, 10 December 2020, P-307 [39]-[41].

⁴⁵³ Exhibit 9-19, Statement of Kit Owen-Turner, 24 November 2020, at [5].

⁴⁵⁴ Exhibit 9-19, Statement of Kit Owen-Turner, 24 November 2020, at [6].

⁴⁵⁵ Exhibit 9-19, Statement of Kit Owen-Turner, 24 November 2020, at [6].

⁴⁵⁶ Exhibit 9-19, Statement of Kit Owen-Turner, 24 November 2020, at [7].

⁴⁵⁷ Exhibit 9-19, Statement of Kit Owen-Turner, 24 November 2020, at [7].

⁴⁵⁸ Exhibit 9-19, Statement of Kit Owen-Turner, 24 November 2020, at [10].

⁴⁵⁹ Transcript of Kit Owen-Turner, Public hearing 9, P-304 [19]-[20].

⁴⁶⁰ Exhibit 9-19, Statement of Kit Owen-Turner, 24 November 2020, at [16].

⁴⁶¹ See [105] above.

⁴⁶² Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [66-68].

nationally consistent transition model'.⁴⁶³ This same research showed that an effective model would include education programs and extra-curricular activities across multiple years.⁴⁶⁴ New NDIS line items were introduced in July 2020 which Ms McAlpine hopes will provide greater opportunities for young people with disability to use NDIS support to obtain casual employment, something Ms McAlpine described as 'a real facilitator for future success in employment'.⁴⁶⁵

225. Ms Kroes described a lack of transition pathways for young people with disability, particularly intellectual disability, once they finish high school. She explained that all of a sudden, everything changes and they have no routine, no structure, and they don't see their friends any more.⁴⁶⁶ She said that this presents 'a challenge to the family of "What are we going to do now?"'.⁴⁶⁷
226. Ms Kroes said many young people with disability are not prepared for the transition out of school and into adult life and open employment, leaving them 'very vulnerable'.⁴⁶⁸ Without the opportunities for young people with disability to develop their life skills after finishing school, and to continue to build literacy and numeracy skills, Ms Kroes said there is a significant gap in the pathway from school to open employment.⁴⁶⁹ Ms Kroes added where supports to help navigate pathways to employment exist, the information about them is not presented in ways that are understandable or accessible for people with intellectual disability.⁴⁷⁰
227. Dr Stafford said her research showed that for many young people they were not having conversations about careers before transitioning out of high school, or expectations of not only work but also careers was not being set.⁴⁷¹ Dr Stafford also gave evidence that transitions from school to work for people with disability are seen as a narrow time-space issue, when it is known that 'transition takes much longer' and is 'more complicated', especially in the current precarious work environment.⁴⁷²
228. A further transition pathway identified in the evidence was from special/segregated education settings to open employment. Ms McAlpine said, in both her personal and professional experience, people have to be 'pretty determined' to reach a goal of open employment.⁴⁷³ By comparison, Ms McAlpine spoke about the 'polished pathway' as a

⁴⁶³ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [66].

⁴⁶⁴ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [66].

⁴⁶⁵ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [67].

⁴⁶⁶ Transcript of Rachel Kroes, Public hearing 9, 9 December 2020, P-258 [12]

⁴⁶⁷ Transcript of Rachel Kroes, Public hearing 9, 9 December 2020, P-258 [16-17]

⁴⁶⁸ Transcript of Rachel Kroes, Public hearing 9, 9 December 2020, P-258 [33-35].

⁴⁶⁹ Exhibit 9-16, Statement of Rachel Kroes, 26 November 2020, at [20(a)-(b)].

⁴⁷⁰ Exhibit 9-16, Statement of Rachel Kroes, 26 November 2020, at [20(i)].

⁴⁷¹ Transcript of Dr Lisa Stafford, Public hearing 9, 9 December 2020, P-280 [31-36].

⁴⁷² Transcript of Dr Lisa Stafford, Public hearing 9, 9 December 2020, P-280 [42-45].

⁴⁷³ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-76 [27-29].

means of describing the relative ease of transition from special/segregated education into supported/segregated employment.⁴⁷⁴

229. Ms McAlpine explained some new line items introduced under the NDIS which can be used to facilitate a transition from school to open employment, although these are still relatively untested due to COVID-19.⁴⁷⁵
230. A further transition point is moving between jobs. Ms McAlpine spoke about the supports available for people transitioning between jobs and from supported/segregated employment to open employment,⁴⁷⁶ as well as between programs like School Leaver Employment Supports (**SLES**) and DES.⁴⁷⁷ Ms McAlpine gave evidence about the expectation that once a person with disability has a job, they will stay in that job for life.⁴⁷⁸ For those who wish to move between jobs, Ms McAlpine referred to the 'ongoing support item in DES' but noted anecdotal feedback that the funding is insufficient.⁴⁷⁹ Ms McAlpine said there have historically 'never been any supports' to transition from supported/segregated to open employment, but commented there is a new NDIS line item which was made available as of July 2020.⁴⁸⁰ Ms McAlpine was not aware of any particular supports available to people who lose their jobs in open employment.⁴⁸¹
231. The transition from SLES to DES is an example of the issues which can be faced by a person with disability trying to navigate the numerous systems, as SLES is operated by the National Disability Insurance Agency while DES is operated under the Department for Social Services.
232. Ms Owen-Turner said she is very nervous for what will happen in 2021 as Charlene's funding through the SLES program is due to expire and she has her NDIS funding review at the end of that year.⁴⁸² Ms Owen-Turner said she is going to try and get a continuation in funding for Charlene to continue her education and training, but she has heard from other parents that their funding has been cut and they are not getting the amount they need for the level of support required.⁴⁸³ Ms Owen-Turner is unsure of what they are going to do if Charlene does not get the funding through the NDIS.⁴⁸⁴ Ms Owen-Turner said she feels like it will be up to her as a parent to look for opportunities for Charlene in moving forward.⁴⁸⁵ She believes Charlene can be a productive member of the community if she

⁴⁷⁴ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-76 [35-36]; Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [63].

⁴⁷⁵ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-88 [1-19]; Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [68].

⁴⁷⁶ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-90 [12-46].

⁴⁷⁷ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [69-73].

⁴⁷⁸ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-90 [18-20].

⁴⁷⁹ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-90 [22-23].

⁴⁸⁰ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-90 [35-46]; Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [64].

⁴⁸¹ Transcript of Catherine McAlpine, Public hearing 9, 7 December 2020, P-91 [7-10].

⁴⁸² Exhibit 9-19, Statement of Kit Owen-Turner, 24 November 2020, at [28].

⁴⁸³ Transcript of Kit Owen-Turner, Public hearing 9, 10 December 2020, P-309 [5-9].

⁴⁸⁴ Exhibit 9-19, Statement of Kit Owen-Turner, 24 November 2020, at [28].

⁴⁸⁵ Exhibit 9-19, Statement of Kit Owen-Turner, 24 November 2020, at [24], [28].

has the opportunity and is provided with the support she needs, but she is worried about what comes next for her as there seems to be no clear plan.⁴⁸⁶

Job capacity assessments that emphasise impairment and weakness

233. Some evidence concerned the utility and effectiveness of job capacity assessments. A job capacity assessment is an evaluation conducted by a government employed assessor for Centrelink to determine a person's level of functional impairment and work capacity. Assessments such as Job Capacity Assessments (**JCAs**) and Employment Services Assessments are used to assist in determining a person's eligibility for the DSP and DES.
234. Ms McAlpine noted 'questions have been raised over time regarding the credibility and validity of [JCAs] in determining employment capacity'.⁴⁸⁷ Ms McAlpine referred to the work of Inclusion Australia's former CEO Paul Cain who found that 'job capacity testing, before job placement and training, will often result in a measure of low job capacity and exclude the group from labour market programs'.⁴⁸⁸

Legal protection for people with disability who experience discrimination in the workplace

235. A theme emerging was the legal protections for people with disability in the workplace and the avenues to raise complaints and seek a remedy for discrimination. The two key pieces of legislation are the *Disability Discrimination Act 1992* (Cth) (the **Disability Discrimination Act**) and the *Fair Work Act 2009* (Cth) (the **Fair Work Act**).
236. Dr Gauntlett gave evidence that the highest number of complaints to AHRC are in relation to disability, and a 'significant proportion' of those complaints relate to employment.⁴⁸⁹ He expressed concern that:
- [T]he [Disability Discrimination] Act as it operates at a practical level is not as effective as we would have hoped, and that people with disability do not know what their rights are in certain situations, and that they are required to bear the burden of enforcing those rights.⁴⁹⁰
237. It can be difficult to prove direct discrimination. The operation of the Disability Discrimination Act means that a prospective employee or employee will have to prove that the employer engaged in 'direct discrimination' by presenting evidence that the person with a disability was treated less favourably compared to an employee without a disability and that a reason for the treatment was the person's disability. Likewise, if 'indirect discrimination' occurs, a prospective employee or employee will have to prove they were unable to comply with a particular requirement imposed by the employer and the

⁴⁸⁶ Exhibit 9-19, Statement of Kit Owen-Turner, 24 November 2020, at [31], Transcript of Kit Owen-Turner, Public hearing 9, 10 December 2020, P-309 [41-45].

⁴⁸⁷ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [46].

⁴⁸⁸ Exhibit 9-4, Statement of Catherine McAlpine, 27 November 2020, at [46]; Inclusion Australia, 'Designing Evidence Based Transition-to-Work and Open Employment Support for People with Intellectual Disability', 24 June 2015.

⁴⁸⁹ Transcript of Dr Ben Gauntlett, Public hearing 9, 11 December 2020, P-404 [15-18].

⁴⁹⁰ Transcript of Dr Ben Gauntlett, Public hearing 9, 11 December 2020, P-402 [43-46].

requirement would disadvantage people with the particular disability. The employer then has to prove the requirement was reasonable in the circumstances.

238. In contrast, claims of adverse action discrimination under the Fair Work Act place an onus on the employer to prove discrimination did not occur.
239. There is also a lack of clarity about the onus of proof in relation to ‘unjustifiable hardship’, making ‘reasonable adjustments’ and the particular statutory defences and exceptions under the Disability Discrimination Act. The way the Disability Discrimination Act works makes it hard for people with disability to come forward and make a complaint, for a number of reasons, including lack of access to legal assistance.
240. A theme identified at the hearing was the difficulty that this model can pose for people with disability, including those who do not have a legal background; whose first language is a language other than English; or who may not have access to legal representation.⁴⁹¹ For this reason, Dr Gauntlett said that we ‘need to have a multitude of policy frameworks to ensure that people with disabilities can get not just a job, but a good job’ coupled with the ‘very clear foundation of a legal system that does protect fundamental rights for people’.⁴⁹²
241. Dr Gauntlett considered that we need anti-discrimination legislation that is ‘fit for purpose for all people with disability to enable them to avail themselves of their rights if needed but also to guide employers as to what is good conduct’.⁴⁹³ This approach may assist employers to have constructive discussions about disability,⁴⁹⁴ and employees with disability to develop workable long-term relationships and build their careers.⁴⁹⁵
242. Dr Gauntlett also considered it important to recognise that the Disability Discrimination Act does not have ‘intersectional operation’, in a manner that recognises and protects the rights of people with disability on an ‘intersectional basis’.⁴⁹⁶
243. Ms Colbert said that, in her opinion, disability discrimination law in Australia is ‘passive’⁴⁹⁷ and the discrimination experienced by people with disability looking for employment can be ‘absolutely corrosive... emotionally wearing, exhausting and tiring’.⁴⁹⁸ Ms Colbert agreed that a complaints system that puts the onus on the victim of discrimination is ‘not effective’,⁴⁹⁹ and noted that the confidentiality requirements placed on settlement agreements mean that there has been ‘no learning’ for the broader community from these cases.⁵⁰⁰

⁴⁹¹ Transcript of Dr Ben Gauntlett, Public hearing 9, 11 December 2020, P-400 [40-43].

⁴⁹² Transcript of Dr Ben Gauntlett, Public hearing 9, 11 December 2020, P-400 [44-47].

⁴⁹³ Transcript of Dr Ben Gauntlett, Public hearing 9, 11 December 2020, P-401 [25-27].

⁴⁹⁴ Transcript of Dr Ben Gauntlett, Public hearing 9, 11 December 2020, P-401 [37-39].

⁴⁹⁵ Transcript of Dr Ben Gauntlett, Public hearing 9, 11 December 2020, P-402 [28-29].

⁴⁹⁶ Transcript of Dr Ben Gauntlett, Public hearing 9, 11 December 2020, P-403 [24-25].

⁴⁹⁷ Transcript of Suzanne Colbert, Public hearing 9, 10 December 2020, P-360 [29].

⁴⁹⁸ Transcript of Suzanne Colbert, Public hearing 9, 10 December 2020, P-360 [29-33].

⁴⁹⁹ Transcript of Suzanne Colbert, Public hearing 9, 10 December 2020, P-361 [5-8].

⁵⁰⁰ Transcript of Suzanne Colbert, Public hearing 9, 10 December 2020, P-361 [8-15].

Concluding submissions on key themes and findings

244. With respect to the evidence presented at this public hearing, we do not seek any findings about a specific incident or whether a particular person, employer or government engaged in conduct that constitutes violence, abuse, neglect or exploitation of a person with disability. However, it is open to the Royal Commission to consider the totality of evidence presented during the public hearing to the extent it discloses key themes and issues.
245. The totality of the evidence supports the Royal Commission finding there are systemic barriers experienced by people with disability in obtaining and retaining employment in the open labour market.
246. It is open to the Royal Commission to find the barriers operate in four broad areas and may be described broadly in the following way:

Attitudinal barriers

- (1) assumptions that people with disability do not want to work or are not capable of working
- (2) lack of access to job opportunities arising from informal networks
- (3) discriminatory attitudes and behaviours when seeking a job and during recruitment processes
- (4) concerns for both employers and people with disability about disclosing disability in the workplace
- (5) discriminatory attitudes and behaviours in the workplace
- (6) employers incorrectly assuming hiring people with disability will be costly, burdensome, less productive and risky which may result in overlooking a person's unique skills
- (7) negative mental health impacts including lack of motivation or confidence resulting from the experience of being excluded from opportunities to work.

Physical and environmental barriers

- (8) physically inaccessible buildings and workplaces
- (9) environments that do not support the inclusion of people with various psychosocial/cognitive and episodic disability
- (10) environments that do not support accessible means of communication
- (11) lack of availability of jobs, particularly for people living outside urban centres
- (12) lack of affordable and accessible housing and transport to be able to travel to work
- (13) inaccessible technology, design, websites or communications.

Organisational barriers

- (14) Preparing for work:
 - (14.1) difficulty in accessing skills training and education, and lack of support to engage with and complete qualifications
 - (14.2) lack of access to part-time work or work experience
 - (14.3) lack of or inappropriate assistance in becoming 'job ready', finding, securing and maintaining employment
 - (14.4) poorly trained, inefficient job service providers, placing people in any job with no regard to the jobseeker's skills, qualifications and interests.
- (15) Applying for jobs and recruitment processes:
 - (15.1) job advertisements/role descriptions that are inaccessible, contain discriminatory inherent requirements and do not reference reasonable adjustments.
- (16) During employment:
 - (16.1) employers lacking knowledge, skills, leadership and resources to support people with disability
 - (16.2) employers refusing to provide flexible work arrangements or reasonable adjustments/accommodations, including during recruitment
 - (16.3) lack of career progression, accessible learning and development opportunities, or access to challenging and meaningful work.

Structural barriers

- (17) lack of access to adequate income required to meet essential living standards and participate in finding and keeping a job
- (18) lack of access to employment related advocacy services
- (19) structural issues in the operation of the Disability Employment Service program
- (20) lack of coherence and connections between government programs designed to help people with disability into employment, including complexity and variance around eligibility requirements
- (21) potential reduction or loss of the Disability Support Pension and associated benefits as a result of employment or increased hours of work
- (22) overly complex and confusing rules around participation requirements and mutual obligations associated with income support
- (23) gap in support for people who do not qualify for the National Disability Insurance Scheme

- (24) pathways and transitions from education to open employment
 - (25) job capacity assessments that emphasise impairment and weakness
 - (26) legal protection for people with disability who experience discrimination in the workplace.
247. A number of parties provided submissions pursuant to the second direction made by the Chair at the close of Public hearing 9 on Friday 11 December 2020. This included correspondence and additional material provided on behalf of the Australian Government, in respect of a number of Government departments and agencies. We have not specifically addressed those submissions in the written outline. There will be an opportunity for parties with leave to appear to provide an outline of submissions in response and to make oral submissions at the hearing on 24 March 2021.

Proposed scope for the Royal Commission's further inquiries

248. Building on the evidence from Public hearing 9 identifying barriers to open employment for people with disability, Counsel Assisting submit the Royal Commission should provide private and public sector employers with an opportunity to address the findings about the systemic barriers, including how these systemic barriers should be addressed and eliminated.
249. Counsel Assisting submits the Royal Commission should consider the practices, policies and regulation of both private and public sector employers, as well as the government entities and institutions responsible for regulation of employment and the labour market in Australia.
250. A further public hearing will provide an opportunity to hear from employers, service providers, governments and others in addressing the identified barriers in relation to open employment.
251. The intended purpose of a further public hearing on open employment will be two-fold. First, to explore what employers and other key actors in this area are doing (or are not doing) to address the systemic barriers identified in Public hearing 9. Secondly, to explore potential measures to eliminate the barriers to open employment that cause or contribute to violence, abuse, neglect and exploitation of people with disability.
252. At a further hearing, the Royal Commission may be assisted by hearing evidence about promising practice for employing and retaining employees with disability, and whether lessons from that practice may be applied more broadly.
253. We submit the Royal Commission's further investigations focus on:
- (a) the private sector – by informing itself about what employers in the private sector are doing to make their recruitment and employment practices accessible for people with disability and what actions they are taking to provide accessible, safe and inclusive workplaces for employees with disability. This includes consideration

of how the inherent requirements of a job are determined and the approach to making reasonable adjustments.

- (b) the public sector – by informing itself about what the Australian Public Service and/or state and territory public services are doing to attract, retain and promote employment for people with disability. Also to examine what the public sector are doing to make their recruitment and employment practices accessible for people with disability, what actions they are taking to provide accessible, safe and inclusive workplaces for employees with disability, how inherent requirements are determined and the approach to making reasonable adjustments.
- (c) the DES system – by informing itself about the barriers to employment that exist within the DES system.
- (d) the Australian Government's overarching strategy to increase employment for people with disability, including the National Disability Strategy and the developing National Disability Employment Strategy.
- (e) the operation of relevant laws and institutions intended to protect and safeguard the rights of people with disability in the workplace. These could include inquiries into the operation of and experiences of people with disability engaging with the Fair Work Commission, Fair Work Ombudsman, legal aid services, legal centres, human rights commissions or unions.

254. In accordance with the Royal Commission's terms of reference, any further inquiries will also be informed by the findings and recommendations of past reports.

255. In particular, the AHRC published the Willing to Work Report in 2016. The Willing to Work Report made a number of overarching recommendations to address systemic issues related to the employment of people with disability. These included recommendations relating to the need for a national workforce strategy,⁵⁰¹ accountability mechanisms⁵⁰² and investment in community education.⁵⁰³ Recommendations were also made in relation to specific programs currently operated by the Commonwealth Government, including the National Disability Recruitment Coordinator.⁵⁰⁴

⁵⁰¹ Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, Inquiry Report, May 2016, Recommendation 25, p 233.

⁵⁰² Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, Inquiry Report, May 2016, Recommendation 26, p 234.

⁵⁰³ Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, Inquiry Report, May 2016, Recommendation 28, p 234.

⁵⁰⁴ Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, Inquiry Report, May 2016, Recommendation 40, p 253.

256. The Willing to Work Report also considered the important role of government as a purchaser and investor in increasing employment opportunities for people with disability, in addition to their obligations as an employer in their own right.⁵⁰⁵
257. Dr Gauntlett gave evidence about the lack of implementation of certain recommendations in the Willing to Work Report, and the importance of data collection and education campaigns.⁵⁰⁶
258. The Willing to Work Report also included numerous strategies ‘offered for consideration by employers’ which were not formal recommendations of the AHRC, but are based on research and evidence gathered by that inquiry.⁵⁰⁷
259. In addition to the Willing to Work Report, the following reports are also relevant:
- (a) National People with Disabilities and Carer Council on behalf of the Government of Australia, *Shut Out: The Experience of People with Disabilities and their families in Australia*, Final Report, 2009
 - (b) Australian Government Reference Group on Welfare Reform to the Minister for Social Services, *A New System for Better Employment & Social Outcomes*, Final Report to the Minister for Social Services, February 2015
 - (c) Children with Disability Australia, *Post School Transition; The Experience of Students with Disability*, Final Report, 2015
 - (d) Australian Government Employment Services Expert Advisory Panel, *I Want to Work*, Employment Services Report, 2018
 - (e) *Respect@Work*, Australian Human Rights Commission, March 2020
 - (f) Auditor-General of Australia, *Management of Agreements for Disability Employment Services: Department of Social Services*, Auditor-General Report No 45, June 2020.

Supported/segregated employment

260. Noting the evidence adduced during Public hearing 9 in relation to supported/segregated employment settings, including by Jamie, Mr Skinner, Ms McAlpine and Professor Fisher, the Royal Commission will also continue to inquire into issues of specific relevance to this important topic including in its future public hearing work. This includes the operation of ADEs and the treatment of people with disability working in ADEs.
261. Counsel Assisting understand the Royal Commission intends to explore how this form of employment may lead to neglect and exploitation of people with disability, the experiences of and potential increased risk of violence and abuse towards people with disability in

⁵⁰⁵ Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, Inquiry Report, May 2016, Recommendation 43, p 258.

⁵⁰⁶ Transcript of Dr Ben Gauntlett, Public hearing 9, 11 December 2020, P-407 [34] – P-408 [15].

⁵⁰⁷ Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, Inquiry Report, May 2016, p 297.

these settings, and how supported/segreated employment impacts inclusion in other areas of life for people with disability.

262. The Royal Commission has published a series of Issues Papers on specific topics relevant to our inquiries. The Issues Papers set out questions and invite the public to share their views on what governments, institutions and communities can do to prevent violence, abuse, neglect and exploitation of people with disability. The Issues Paper on 'Promoting Inclusion' is currently open for comment and asks, among other things, what steps non-government institutions, the private sector and communities need to take to promote a more inclusive society for people with disability including changes in organisations, culture and workforces. The Royal Commission welcomes responses. There will be further ongoing opportunities for public input into the policy and research work of the Royal Commission.

Appendix A

The witnesses gave their evidence at Public hearing 9 in the following order:

No.	Witnesses	Exhibit Number	Date of transcript
1.	Rohan Fullwood	9-1	7 December 2020
2.	Cody Skinner	9-2	7 December 2020
3.	Kalena Bos	9-3	7 December 2020
4.	Catherine McAlpine	9-4 – 9-4.7	7 December 2020
5.	Professor Karen Fisher (written statement)	9-5 – 9.5.7	8 December 2020
6.	Yuri Sianski and	9-6	8 December 2020
7.	Edward Sianski	9-7	
8.	Dr Beth McInally	9-8	8 December 2020
9.	Taylor	9-9	8 December 2020
10.	Dominic Hồng Đức Golding	9-10	8 December 2020
11.	Oliver Hunter	9-11	8 December 2020
12.	Panel: Alexandra Devine and	9-12 – 9-12.10	8 December 2020
13.	Professor Anne Kavanagh		
14.	Jess Mitchell	9-13; 9-29	9 December 2020
15.	Oliver Collins	9-14	9 December 2020
16.	Michael Pini	9-15	9 December 2020
17.	Rachel Kroes	9-16	9 December 2020
18.	Panel: National LGBTI Health Alliance – Nicky Bath	9-17 – 9-17.5	9 December 2020
19.	Daniel Comensoli		
20.	Hannah Morgan		
21.	Dr Lisa Stafford	9-18 – 9-18.8	9 December 2020
22.	Kit Owen-Turner and	9-19	10 December
23.	Charlene Cristobal		2020
24.	Riley	9-20	10 December 2020
25.	John Baxter	9-21	10 December 2020

No.	Witnesses	Exhibit Number	Date of transcript
26.	Suzanne Colbert AM	9-22 – 9-22.8	10 December 2020
27.	Panel: Associate Professor Jennifer Smith-Merry and	9-23 – 9-23.4	10 December 2020
28.	Professor John Buchanan		
29.	Dr Ben Gauntlett (Disability Discrimination Commissioner, Australian Human Rights Commission)	9-24 – 9-24.5	11 December 2020
30.	Jamie (written statement)	9-25	11 December 2020
31.	Deborah Fullwood (written statement)	9-26	11 December 2020
32.	Panel: Get Skilled Access – Dani Fraillon	9-27	11 December 2020
33.	Zack Alcott		
34.	Stephanie Agnew		
35.	Pamela Darling	9-28	11 December 2020