

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

**Public Hearing 9: Pathways and Barriers to Open Employment for People With
Disability, 7-11 December 2020**

Submissions on behalf of Riley (a pseudonym)

Riley's evidence

1. Riley gave evidence to the Commission by way of a sworn statement and oral evidence. That evidence spoke to her lived experience as a person with disability in the workplace.
2. Relevantly, Riley's evidence was as follows:
 - a. She has been diagnosed with scoliosis, which has deteriorated over time.¹ This condition limits her physical movements and causes pain if she sits or stands for too long.² More recently, she has also been diagnosed with level 2 autism and other mental health conditions.³
 - b. She has experienced rejection from prospective employers when she has disclosed her scoliosis at a pre-employment (inquiry or recruitment process) stage.⁴ As a result, she has sometimes chosen not to disclose her scoliosis when applying for employment.⁵ In one case she was advised by a consultant from a disability

¹ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [4]; Public Hearing 9, day 4 transcript (10 December 2020), p. 314.17-23.

² Exhibit 9-20, Statement of [Riley], 20 November 2020, at [4]; Public Hearing 9, day 4 transcript (10 December 2020), p. 314.33-43.

³ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [26].

⁴ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [6]; Public Hearing 9, day 4 transcript (10 December 2020), p. 315.37-45.

⁵ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [8], [17].

employment agency not to disclose her condition.⁶ Some of her workplace experiences had resulted in a decision that “it was best to keep my nose down and not say anything” about her disability.⁷ This was in tension with her personal preference for being open with employers or prospective employers. (“I like being truthful and do not like lying or lying by omission. I like being upfront and honest.”)⁸

- c. On the other hand, she generally has not disclosed her autism or mental health conditions to employers. Instead, she uses strategies (including take time off work) to manage her mental health.⁹
- d. Her employers have generally been accommodating of her scoliosis, either by providing her with opportunities to rest or move (depending on her needs), or by offering her alternative roles which she was able to perform.¹⁰
- e. She has utilised a disability employment service (‘DES’), and has had positive experiences with this support. In particular, her evidence was that she had been assisted by a “proactive” DES consultant who assisted her to secure a position within a manufacturing business, which had previously rejected her and then trialled her in a less appropriate role.¹¹ In a subsequent employment application, her DES consultant assisted her to re-apply, successfully, for a job that she had interviewed for previously.¹² She also gave evidence of her DES consultant advising her on the decision whether to disclose her condition to a prospective employer.¹³
- f. She has received a carer’s payment from Centrelink since 2012 and has also received the disability support pension (DSP) since 2020, after two previous applications were denied.¹⁴ Her evidence was that Centrelink’s rules for both payments had impacted on her ability to access employment in a regional area. In

⁶ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [22].

⁷ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [17].

⁸ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [25]; Public Hearing 9, day 4 transcript (10 December 2020), p. 315.10-23.

⁹ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [28]; Public Hearing 9, day 4 transcript (10 December 2020), p. 326.24-33.

¹⁰ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [7].

¹¹ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [14].

¹² Exhibit 9-20, Statement of [Riley], 20 November 2020, at [20]-[21].

¹³ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [22].

¹⁴ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [16], [32]-[33]; Public Hearing 9, day 4 transcript (10 December 2020), pp. 321.11-26, 324.37-325.8, 328.1-329.11.

relation to the carer's payment, her travel times (which, under the rules, were included when calculating the number of hours that she was permitted to work) meant that she would forgo the payment if she went from three to four days' work each week.¹⁵ Similarly, in relation to the DSP, a travel allowance paid to her by her employer was classed as income by Centrelink, and she was at risk of losing her entitlements if her employer was unable to offer her more local work.¹⁶

3. Many of the issues that Riley has had to confront around disclosure of her scoliosis, and managing the symptoms of her condition in the workplace, relate to the fact that scoliosis can be an 'invisible' disability. An x-ray image of Riley's spine is attached as Appendix 1.
4. Riley's evidence intersects with and informs a number of themes of this Public Hearing, including but not limited to those which are addressed below.

Attitudinal and organisational barriers

5. As noted in Counsel Assisting's submissions, Riley has been impacted by discriminatory attitudes at a pre-employment (inquiry or recruitment process) stage. Her evidence included prospective employers losing interest in her "as soon as I say I've got scoliosis."¹⁷ Her description of the cumulative impacts of these rejections is consistent with what is observed at paragraphs [59] to [64] of Counsel Assisting's submissions, and Riley endorses the findings made by Professor Ann Kavanagh and Alexandra Devine in relation to the detrimental effect of barriers to employment on the mental health of people with disability.¹⁸
6. Riley's experiences were also consistent with those of a number of other witnesses who described concerns around disclosing conditions during the recruitment process, or during employment. In particular, she has two conditions which can be effectively 'invisible' disabilities, and her evidence had similarities to commentary from other witnesses to the effect that some workers will conceal a condition or mask their symptoms in order to avoid discrimination (in Riley's case, her experience included not only rejection or adverse action by employers, but also bullying by co-workers).¹⁹

¹⁵ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [16].

¹⁶ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [32].

¹⁷ Public Hearing 9, day 4 transcript (10 December 2020), p. 315.31-42.

¹⁸ See Outline of Submissions of Counsel Assisting Following Public Hearing 9, 5 March 2021, at [64].

¹⁹ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [6], [10], [15], [17]; Public Hearing 9, day 4 transcript (10 December 2020), pp. 321.28-322.20.

It is submitted that this is likely to lead to people with disability tolerating workplace arrangements which are not appropriate for them. To give one example, Riley described working at a fast food business where she was asked to work at a drive-through window. This role was inappropriate for her, because, firstly, working with a headset (providing “constant chatter”) while having to manage several tasks simultaneously led to a state of ‘sensory overload’ consistent with her later autism diagnosis;²⁰ and secondly, because the movements that the role required – through an inappropriately designed workspace – could damage her back or cause greater pain.²¹

7. In light of the above experiences, and given the simple and inexpensive nature of the adjustments which Riley has sought in the workplace, it is submitted that the Commission should endorse the observation made by Dr Ben Gauntlett that 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”.²²
8. Like other lived experience witnesses who gave evidence in this Public Hearing, Riley had encountered recruitment processes which were not supportive or inclusive of people with disability. She described ‘freezing’ during job interviews due to questions that, because of her autism diagnosis, she could not understand under the pressure of interview conditions.²³ She also described training processes which were not ideal for a person with autism.²⁴ Riley agrees with Counsel Assisting’s submissions that it is important to consider accessibility and inclusion from the start of the recruitment process. She also agrees that there is room to increase funding and policy support for skills / ‘job readiness’ training for people with disability.

Physical / environmental barriers

9. Riley endorses Counsel Assisting’s submissions at paragraphs [81] to [85], in relation to the intersection between geographical location and other barriers to employment. In

²⁰ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [9]-[10], [30]; Public Hearing 9, day 4 transcript (10 December 2020), pp. 317.43-318.28.

²¹ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [9]; Public Hearing 9, day 4 transcript (10 December 2020), p. 317.43-47.

²² See Outline of Submissions of Counsel Assisting Following Public Hearing 9, 5 March 2021, at [52].

²³ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [21], [30]; Public Hearing 9, day 4 transcript (10 December 2020), pp. 323.36-324.11.

²⁴ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [22]; Public Hearing 9, day 4 transcript (10 December 2020), p. 324.12-30.

her case, living in a regional centre, it is noted that the issue was not one of simply ‘limited jobs’, or other infrastructure / accessibility factors such housing and transport. In particular, Riley’s evidence was that she had been impacted by Centrelink rules which compounded the effect of these barriers where the availability of appropriate work close to home is limited. She gave evidence that, while employed in a manufacturing business – involving some two hours of travel each day – she was unable to take an additional day of work each week due to Centrelink rules in relation to carer’s payments (“When they calculate the hours you are able to work, they include travel time and the travel time tipped me just over the hours I was allowed”).²⁵

10. A more recent experience with the DSP similarly illustrated the disadvantage that people with disability in regional areas may face, relative to those in major urban centres. In this case, Riley had been allocated work about 20 kilometres from her home, for which she received a travel allowance. The travel allowance was classed as income by Centrelink, which “resulted in my DSP being decreased to nearly nothing”, and a risk of her DSP entitlements being lost altogether.²⁶ Riley’s evidence highlighted the complexities of navigating Centrelink entitlements while working and the consequences of being unable to find work locally. While Counsel Assisting has drawn attention to issues arising out of the potential for employment to impact on the DSP and associated benefits, it is submitted that Riley’s experiences highlight the particular disadvantage experienced by people living outside urban centres.

Structural barriers

11. Riley’s experiences of the difficulties of navigating the relationship between work, on the one hand, and DSP and associated benefits on the other, has been noted above. Riley endorses Counsel Assisting’s submission that the potential reduction or loss of the DSP is a barrier to people with disability working or taking on more hours.
12. She also endorses the submission that the process of applying for and securing the DSP can be long, complex and taxing. It is submitted that these common experiences of the application process speak to a need for greater funding of disability advocates within the kinds of government programs referred to at paragraphs [190] to [199] of

²⁵ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [16]; Public Hearing 9, day 4 transcript (10 December 2020), p. 321.6-26.

²⁶ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [32]; Public Hearing 9, day 4 transcript (10 December 2020), pp. 324.37-325.8

Counsel Assisting's submissions. Better provision for advocates would be consistent with evidence-based practice and would be likely to reduce a number of difficulties faced by DSP applicants who work, or are looking for work (including, for example, ensuring that evidence is assessed by a professional with appropriate qualifications for the issue; and reducing the misinterpretation of terms such 'stabilised and treated' in capacity assessments).

13. One issue which is not adverted to in Counsel Assisting's submissions is superannuation. Riley gave evidence of her concerns about the impact of her disability, together with other employment-limiting factors including her parenting commitments, on her superannuation savings.²⁷ In particular, she gave evidence of the effect of ongoing fees and charges in circumstances where her earning capacity was limited and where she had experienced 'a lot of breaks in employment'. Riley perceived this as a 'real problem' for people with disability, especially those with parenting responsibilities.²⁸ Her savings were subject to the same fees and charges, even where she had experienced limited or disrupted employment. Riley instructs that to counter the effect of fees and charges on her superannuation savings, she has to transfer an additional \$50 per month of her own income (from employment or social security payments) to her fund. Riley's evidence was that her experience was not unique, and it is submitted that this should be of concern to the Commission.

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22 March 2021

²⁷ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [36]; Public Hearing 9, day 4 transcript (10 December 2020), p. 327.2-17.

²⁸ Exhibit 9-20, Statement of [Riley], 20 November 2020, at [36].

Appendix 1: X-ray image of Riley's spine

