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**TRANSCRIPT OF PROCEEDINGS**

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

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

**10.30 AM, THURSDAY, 10 DECEMBER 2020**

**DAY 4**

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

CHAIR: Good morning, everybody. We begin as usual with an acknowledgement of country. I wish to acknowledge the Gadigal People of the Eora Nation, the traditional custodians of the land upon which Commissioner Ryan and I are located. I also acknowledge the Turrbal and Jagera Nations upon whose lands our hearing room in Brisbane is located, where Commissioner Atkinson is, and the Wurundjeri people of the Kulin Nation upon whose lands Commissioner Galbally is located today.

I pay my respects to their Elders past, present and emerging, as well as to all First Nations people who are viewing this hearing on the livestream.

Today, as you will know, is Human Rights Day. It is the 70th Anniversary of the proclamation by the United Nations of Human Rights Day. The Declaration of Human Rights itself was adopted by the United Nations in 1948.

I now invite Ms Eastman to make a statement in respect of human rights.

#### **STATEMENT BY MS EASTMAN**

MS EASTMAN: Good morning, Commissioners and good morning everybody following the live broadcast. Today we acknowledge and celebrate Human Rights Day. 72 years ago on 10 December 1948, on a cold day in Paris, the United Nations General Assembly adopted the Universal Declaration of Human Rights. The Universal Declaration expressly recognises human rights that are relevant to the issues that we are exploring in the Royal Commission this week. These are relevant to issues of economic participation and employment. And while the language 72 years later may seem a little old-fashioned and perhaps not gender-inclusive, the Universal Declaration of Human Rights recognises that everyone has a right to standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, medical care and necessary social services, and a right to security in the event of unemployment, sickness, disability, widowhood, old age and other lack of livelihood in circumstances beyond their control.

The Universal Declaration provides that everyone has the right to work, to free choice of employment, to just and favourable conditions of work, and to protection against unemployment. The Declaration says everyone without discrimination has the right to equal pay for equal work.

And, finally, everyone who works has the right to just and favourable remuneration, ensuring for himself and his family, an existence worthy of human dignity and supplemented, if necessary, by other means of social protection.

Now, many people may be unaware that it was a person with disability who planted the seed for the Universal Declaration of Human Rights. As the Second World War was coming to an end in Europe, and the leaders of the United States, the United

Kingdom, the Soviet Union and China met together, they agreed to establish a United Nations with the aim of securing lasting international peace and security. President Franklin Delano Roosevelt, FDR as he's commonly known, was the President of the United States and he wanted to include a commitment to human rights in the development of and the ongoing work of the United Nations.

President Roosevelt died before peace came and before the United Nations was established. However, his widow, Mrs Eleanor Roosevelt, was appointed to chair the new Human Rights Commission of the United Nations. And the Commission's task, its first task under her leadership, was to write a Bill of Rights for the United Nations. And it is that work that concluded with the Universal Declaration of Human Rights.

President Roosevelt had what we would now describe as an acquired disability. In 1921, when he was 39 years old, he contracted polio and thereafter lived with a mobility disability. Echoing some of the themes that we've heard in the evidence this week, he tried to hide his disability, not always successfully. And after a period of recuperation, he returned to work. In 1928 he was elected the Governor of New York. In 1932 he was elected President and he assumed the office of President during the time of the Great Depression. He won four presidential elections and died in office in April 1945. His commitment to human rights was long-standing.

Now, the language of human rights was probably not known in the 1930s and 1940s and the language used at that time may be different to the way we would describe human rights today, but the core values that underpin human rights were shaped by him during this period. In August 1935 he introduced the *Social Security Act* into the United States. This was a significant step and it created a right to social security. The Act introduced old age benefits and then enabled several States --- and the language again here might be jarring for the reasons I think Catherine McAlpine spoke to us about a little earlier in the week, but the Act introduced a process that enabled for more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child welfare and public health.

In 1944 when he delivered the State of the Union address, President Roosevelt spoke about the United States adopting a second Bill of Rights. Now, we all know about the Bill of Rights in the United States, and even in Australia we've heard of things like "taking the 5th", but he thought that the United States was ready for a new Bill of Rights and he said this:

*We have come to a clear realisation of the fact that true individual freedom cannot exist without economic security and independence.*

And he advocated the need to guarantee in law the following rights: the right to a useful and remunerative job; the right to earn enough to provide adequate food and clothing and recreation; the right of every family to a decent home; the right to adequate medical care and the opportunity to achieve and enjoy good health; the right to adequate protection from the economic fears of old age, sickness, accident

and unemployment; and the right to a good education.

He said this:

5           *All of these rights spell security. And after this war is won, we must be prepared to move forward, in the implementation of these rights, to new goals of human happiness and well-being.*

10           This year's Human Rights Day has the theme of "Recover Better – Stand Up for Human Rights". With the COVID-19 pandemic front of mind, this theme asks us to look forward and ask how we can build back better with human rights at the centre.

15           The United Nations has expressed concern today of its concern that the COVID-19 pandemic has been fuelled by deepening poverty, rising inequality, and structural and entrenched discrimination. The United Nations says to recover from the current crisis we must also address the inequality pandemic. For that, it says this:

20                     *We need to promote and protect economic, social and cultural rights. We need a new social contract for a new era.*

25           Maybe these words are a little of history repeating. Sometimes it is valuable to look back and reflect on history. President Roosevelt's commitment to human rights also grew from an economic crisis and a period of great hardship. He considered human rights, including economic participation, needed to be at the centre of the nation's recovery and, indeed, the international community's recovery after the Second World War.

30           The inclusion of the perspective of a person with lived experience with disability, such as President Roosevelt, no doubt made a difference and will continue to do so.

CHAIR: Thank you, Ms Eastman. We will now proceed to the day's regular hearing. Ms Eastman, again.

35           MS EASTMAN: Thank you, Commissioners. I'm very pleased to say that our first witnesses this morning include Charlene, who is here in the hearing room with us in Sydney, and Charlene's mother, Kit Owen-Turner. I think the first thing is to take their affirmations.

40           CHAIR: Thank you very much. Just before we take the affirmation, I will explain where everybody is as you can see on the screen.

45           We have Commissioner Galbally who is in Melbourne. I'm not sure if you can see that screen, she is on the right-hand bottom corner of that screen. In the left-hand bottom corner is Commissioner Atkinson who is in our Brisbane hearing room who just waved. And here is Commissioner Ryan who is sitting with me, and my name is Ronald Sackville and I am the Chair of the Royal Commission.

What I would like you to do now, please, is just to listen carefully to the instructions of my associate who is sitting just there, and she will administer the affirmation to you. Thank you very much.

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**MS KIT OWEN-TURNER, AFFIRMED**

**MS CHARLENE CRISTOBAL, AFFIRMED**

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CHAIR: Thank you very much, Charlene and Ms Owen-Turner, and thank you both very much for coming to the Royal Commission today in Sydney to give your evidence. I will now ask Ms Eastman to ask you some questions.

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

20 MS EASTMAN: Good morning to both of you. We have decided that Charlene will go first this morning, and we're going to have a conversation about some of Charlene's experience.

25 So, Charlene, you've helped me this morning by photocopying some notes that you prepared about what you would like to talk to the Royal Commission about?

I might ask Mum to move the microphone a little so I can hear you.

30 CHARLENE: Okay.

MS EASTMAN: I'm on question 1. When you completed high school, what did you want to do or be?

35 CHARLENE: I wanted to work in an office and I wanted to go to college to learn.

MS EASTMAN: I want to ask you about the training program. So, question number 2 is you want me to ask you this: what do you do each day at the training program?

40 CHARLENE: I do file management and scan documents. I also have group meetings and one-on-one session.

MS EASTMAN: And you also go to TAFE. So the next question I am going to ask you is number 3: what do you like about TAFE?

45 CHARLENE: I like to learn. I've learnt office skills. My teachers and peers are all very nice.

MS EASTMAN: So we turn over the page. What don't you like about TAFE?

CHARLENE: Nothing.

5 MS EASTMAN: Nothing!

CHARLENE: I like going to TAFE because it helps me learn.

10 MS EASTMAN: And about the training program, what do you like about the training program? That is question number 5.

CHARLENE: I like to learn and work. I also like it when I achieve my goals.

15 MS EASTMAN: I'm scared to ask this question, but what don't you like about the training program?

CHARLENE: Nothing. I enjoy working!

20 MS EASTMAN: Now, what are your favourite things to do on the weekends and after you get home each day?

CHARLENE: I like to paint things and dance. I also like to read books and work on my spreadsheet on my computer. I also like to collect business cards.

25 MS EASTMAN: So, Charlene, that is a shout-out to everybody, that anybody here at the Royal Commission today, if they've got business cards, you'll collect them, and then you put the business cards into the spreadsheet on the computer.

CHARLENE: Yeah, I do.

30 CHAIR: I want to place on record that Charlene already has my business card!

CHARLENE: Thank you.

35 MS EASTMAN: Charlene, my final question, number 8. What do you want to do when you finish at TAFE and on the training program?

CHARLENE: I want to be a private banker and work in an office like my mum.

40 MS EASTMAN: Thank you for telling us you want to be a private banker and work in an office like your mum. So I am going to ask your mum some questions.

You are Kit Owen-Turner?

45 MS OWEN-TURNER: Yes.

MS EASTMAN: And you are a private banker?

MS OWEN-TURNER: Yes.

5 MS EASTMAN: I might ask you to keep your voice up a little bit. And you've prepared a statement for the Royal Commission?

MS OWEN-TURNER: Yes.

10 MS EASTMAN: The Royal Commission has a copy of the statement. And what you've said in the statement is true?

MS OWEN-TURNER: That's correct.

15 MS EASTMAN: Commissioners, you have a copy of Ms Kit Owen-Turner's statement in Tab 12 of Tender Bundle A, and if you could mark the statement Exhibit 9.19.

CHAIR: Yes, thank you. That can be done.

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**EXHIBIT #9.19 - STATEMENT OF MS KIT OWEN-TURNER**

25 MS EASTMAN: The copy you have has got a couple of different dates, 24 November and 23 November.

MS OWEN-TURNER: Sorry, that was my mistake.

30 MS EASTMAN: The statement was signed on 23 November and the 24th should be taken on the final page as a typo.

MS OWEN-TURNER: Yes.

35 MS EASTMAN: Now, you've said to us in starting your evidence that Charlene at the age of 20 is very determined and focused.

MS OWEN-TURNER: That's correct.

40 MS EASTMAN: I think we've seen that today. She would like to be a private banker. And whenever you've asked Charlene about what she would like to do in the future, she's made it pretty clear that she would like to work in an office.

MS OWEN-TURNER: Yes, that's true.

45 MS EASTMAN: When did this start, Ms Kit Owen-Turner, Charlene's wish to work in an office?

MS OWEN-TURNER: I think it is pretty much at a very young age, so Charlene would witness me on the phone constantly or on the computer working away, and that sort of developed her interest in working on computers. And also she likes to talk to clients because that's what she hears me do all the time, and she will do  
5 pretend calls, "Hello, clients". But --- so, generally, you know, I'm pretty realist in a lot of ways, and I know that is probably something that is a bit of a stretch, so, you know, I did ask her, "What do you like about being a private banker, about what I do?" and it is about the computers really and the client relations. So I was thinking  
10 more of an office is what her real interest is, because she probably doesn't really know what I do in depth.

MS EASTMAN: Talking a little bit about Charlene's experience at school, so she completed high school, is that right?

15 MS OWEN-TURNER: Yes.

MS EASTMAN: Tell us a little bit about what Charlene's time at school was like. And Charlene, if you want to jump in at any time, please do, as Mum is talking.

20 CHARLENE: Okay.

MS OWEN-TURNER: So, varied. It varied a lot from primary through to high school. We've had some challenges in the primary before she started because, there were a few reasons. As you probably could imagine with children like Charlene,  
25 a lot of it was from the very beginning and there was a real eye-opener as to what the experience would be moving forward, and how I needed to adjust and cope with that as a parent. I think the key thing with the education piece was a lot of it was really pleasant. She had really good memories, especially when she was in Year 6 where she had one-on-one support and she was pretty much the only child with special  
30 needs left from her unit, because they tried to shut it down. That wasn't a very pleasant experience that we had to bring forward to the Discrimination Board and all that sort of stuff. But, you know, the teachers are always very, very supportive, and they try their very best to help, but sometimes they are also limited in what they can do.

35

MS EASTMAN: And what about high school? Were there ever any discussions at high school about what Charlene might do when she left school?

40 MS OWEN-TURNER: Yes. So the head teacher would help us try and transition Charlene as she is readying herself to leave Year 12. We had meetings with the counsellors, and they are also trying to help me navigate what is next. Yes, so that's how we came about where she's at now.

45 MS EASTMAN: Did you get a sense from those final years at school about whether open employment was something that might be available for Charlene, or did you get a sense that you might have been directed in a particular direction?



MS OWEN-TURNER: Yes.

MS EASTMAN: You talk about this in your statement a little bit. Tell us about that.

5 MS OWEN-TURNER: So, a lot of it I felt that most of the children or people in her situation, leaving high school, are pretty much directed to employment training programs, whereas Charlene is kind of different. She wanted to go to college, as she said. She said, "I want to go to university", and I obviously wanted to fulfil what she wanted to do, and so she ended up at TAFE.

10 MS EASTMAN: When she was in Year 12 she went into what is called the SLES program through the NDIS, that's the School Leavers Employment Supports Program. What were you told about that program and what were your expectations of that program?

15 MS OWEN-TURNER: It really is a funding program. So basically she will have two years worth of funding to find any training programs she would be interested in, and hopefully it is enough to get her to whatever employment she can get herself into. Yes, so she's finished that up now this year.

20 MS EASTMAN: So in terms of what happened to Charlene after you left school, you had two streams: you had the social enterprise training program, and also going to TAFE.

25 MS OWEN-TURNER: Yes.

MS EASTMAN: And so let me ask you a little bit about the social enterprise where the training program occurred. So Charlene's attended the social enterprise 3 days a week; is that right?

30 MS OWEN-TURNER: So are you referring to while she was in high school, the transition, or after?

35 MS EASTMAN: Sorry, I'm on paragraph 10 of the statement if that is a helpful reminder about where we are up to.

MS OWEN-TURNER: Yes, she does go to the training program 3 days a week.

40 MS EASTMAN: And she's been going to that particular social enterprise training program for 2 years?

MS OWEN-TURNER: That's correct.

45 MS EASTMAN: What is a typical day like at the training program for Charlene?

MS OWEN-TURNER: So Charlene will have a group session in the morning, and they will have a catch-up on what the plan is for the day, and then they will get

allocated their work, whether that will be file management or scanning. Then they will have normal breaks, and she will have a one-on-one session as well to sort of break down the topic of the week at her level, individual level. And that's pretty much it.

5

Am I right, Char? Is there anything else? That's what you do?

CHARLENE: Yeah, (inaudible).

10 MS OWEN-TURNER: Yes, okay.

MS EASTMAN: And in terms of what Charlene has learnt, she has told us a little earlier that she likes the training program, there is nothing that she doesn't like. What is your view about how the training program has increased Charlene's skills or helped her develop new skills?

15

MS OWEN-TURNER: So it has helped Charlene in terms of interaction, you know, enhancing her knowledge in the scanning and office behaviours, that sort of stuff. But with --- my view, it is best that she can --- the best training provider that she can have in line with her goal. The down side is it is an hour away from our house, so we have to make the trip, but it is what it is. If that's what is going to help her moving forward, you are just going to have to do it.

20

MS EASTMAN: And Charlene has been, I think, quite competitive, and she enjoys the competition even in the training program --

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MS OWEN-TURNER: Yes.

MS EASTMAN: --- to be the very best that she can.

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MS OWEN-TURNER: That's part of the reason why I also agreed to keep her at the training program that she is in now, because they have six stages. So the beginning is really unstapling documents and then getting it ready for the next person to do the scanning. As you get better at each stage, you just progress. And she gets really excited, and it pushes her a little bit more when she can move forward. That's also -- the other reason also that I chose this particular training program for her is it is more for higher functioning individuals. And I feel that that would stretch Charlene and help her reach her full capacity more so than there is another training program 10 minutes away from us which is more of a day program. It wouldn't really --- it will be a lot of fun, but it won't really help her get to where she wants to get to, because it's more catered for higher needs individuals.

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40

MS EASTMAN: It sounds like Charlene has mastered the art of the spreadsheet --

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MS OWEN-TURNER: She has!

MS EASTMAN: --- which is beyond many of us.

You love computers, don't you Charlene?

5 CHARLENE: Yes. I will do a spreadsheet to organise full name.

MS EASTMAN: So each of the business cards that you get, you put the person's name into the spreadsheet, their address into the spreadsheet, and you keep all of that detail and you check the spreadsheets?

10 CHARLENE: Yes, I do.

MS EASTMAN: Ms Owen-Turner, I think you've said in your statement also that there are some downsides of the training program. One is just the distance from your home and that commitment from a family perspective of making sure that Charlene gets there in time, and that has had an impact on your work as well, is that right?

MS OWEN-TURNER: Yes, I was fortunate enough to work in an environment where there is flexibility, so I can be a little bit later because I have to hit traffic once I get back into the city. So it does have an impact because a part of my role is I need to do the work myself as I guess the main person for the portfolio that I manage. I do end up working extended hours to compensate for the travel.

MS EASTMAN: Have you looked at transport options for Charlene to travel independently to the training program?

MS OWEN-TURNER: Yes, I have. It's not that easy to find that support that would also cover the funding that she has been allocated. As you would imagine, it is a long distance and it can get quite expensive. But, yes, I have looked.

30 MS EASTMAN: And you had an expectation that for Charlene once she completes this particular training program, that she might have got a job at that particular social enterprise; is that right?

MS OWEN-TURNER: Yes.

35 MS EASTMAN: And is that what is going to happen?

MS OWEN-TURNER: I did clarify that quite recently as well. That was my initial understanding. But now it's more around --- there is a milestone that they need to hit before they can, you know, I guess qualify them as they are employable on their own, independently. I think with Charlene she has a fair bit to go from our last meeting. And the expectation was --- well, the clarification was they will try and fit her in if they can, but it's very difficult because you need to wait for someone to leave before they can slot her into that role.

45 And the other part to it is if there is a role that they find elsewhere, maybe a bank or an office of some sort, then they will try and accommodate, but it's not really

something that they have to do, I guess.

5 MS EASTMAN: Have you had any discussion with social enterprise delivering the training program about what happens at the end of the training program in terms of finding Charlene employment and what type of employment options might be open?

10 MS OWEN-TURNER: Yes, I did speak with Charlene's team leader, we had that discussion and it is pretty much what I just said earlier on, they will try and fit her in if they can, so she will go from trainee to trainer, which some have managed to achieve, but it is very limited.

And also, in terms of employment, if she is lucky enough to get spotted online, and they get employment in that sense. So there is a bit of luck there.

15 MS EASTMAN: You also have a very strong view that in addition to the training program which has that skills-based focus that you also want Charlene to continue her education?

20 MS OWEN-TURNER: Absolutely. Charlene is very keen to learn, and I think she's said it numerous times. I had to write it down for her because she has a tendency to digress, so just to keep her focused, but those are her words, pretty much.

25 Charlene is very consistent in a lot of ways, and she wants to learn. She always tells me that. That's why it is a little bit heartbreaking when she initially said she wanted to go to university. I knew it wasn't .....

CHARLENE: (inaudible)

30 MS EASTMAN: Charlene, you've told us this morning that there is nothing that you don't like about TAFE, you really like going to TAFE?

CHARLENE: It's okay. I like to learn, to help people.

35 MS EASTMAN: You like to help people.

Ms Owen-Turner, tell us a little bit about the TAFE course that you thought might be a course that would meet Charlene's ambitions to work in an office. Is there a course at TAFE that allows Charlene to pursue those interests?

40 MS OWEN-TURNER: Yes so, the year before and this year, Charlene has been going to TAFE. And it is more around office skills, office behaviours, mock job interviews, which is in line with what she does at the training program. So I just thought that that would complement, so that's how I sort of built her week.

45 MS EASTMAN: So the TAFE course is what, it's two days a week?

MS OWEN-TURNER: It was originally two days a week. And that course finished

a year ago, and I was advised that she was no longer going to be re-enrolled in that particular course.

MS EASTMAN: What happened?

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MS OWEN-TURNER: Well, I panicked a bit because she's not --- as much as Charlene has completed the days she had to be there and also completed the curriculum, some of them, there were still some skill gaps there that she wasn't competent, based on the transcript. So my idea was if this is the only option she had, 10 I would rather she continued doing it again even though some would be repetitive, at least it reinforces the learning and it sinks in in a lot of ways, but I was advised that that was not possible because there is only one unit in this particular TAFE, and there are more students coming through graduating that would need the spot, which I completely understood, but again my primary obligation is to Charlene, to try and 15 find her something else. So I, I guess, pestered them a lot and said "What about if I put her in a basic computer class in the mainstream", and they said --- I knew she wasn't going to cope on her own. You know, "If I find someone that can support her, would that be okay?" Apparently it's against TAFE policy so that window was shut. So I had to, you know, find out, "So what do I do now? There has to be something 20 for her". It is a little bit unfortunate because for any other individual, if you wanted to be a doctor, a lawyer, you've got avenues, you can choose. There is a vast array of opportunities and options for you, but I felt that there wasn't much for her, and so ....

MS EASTMAN: That's okay. Take your time. And if you need a break.

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MS OWEN-TURNER: That's okay. So eventually she got into another TAFE. So -- and I got great news as well on Monday ---

MS EASTMAN: Yes, tell us what happened on Monday.

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MS OWEN-TURNER: She is going to be re-enrolled again the following year, which is great.

MS EASTMAN: So one of the things for you is this ambition for Charlene to be 35 independent and to fulfil her wishes and ambition; at the same time, how do you make sure that you can find the right opportunities for her? And sometimes there is that tension about how we do that?

MS OWEN-TURNER: Yes. I found that I pretty much had to --- once she finished 40 high school, I was pretty much on my own, trying to navigate and find out support for her, or how to get in to do more studies, further studies.

I think one of her challenges and difficulties as a person that is Down syndrome is it takes longer to learn. So I think there should be an individual program for her or for 45 people like her that can help transition and get to that stable work environment that they can actually sustain.

MS EASTMAN: You've also had some private tutoring for Charlene, so one of her former teachers ---

MS OWEN-TURNER: That's correct.

5

MS EASTMAN: --- has come to work with Charlene, and the 2 of them work together on communication and reading.

10 So, Charlene, today when you wrote out the questions that you wanted me to ask, and you wrote the answers, and you highlighted, and as you were reading, you had your finger going through to make sure that you didn't speak too quickly.

CHARLENE: I do.

15 MS EASTMAN: So you've really practised a lot before coming to give evidence because you didn't want to speak too quickly and you wanted everybody to hear everything you wanted to say; is that right?

CHARLENE: Yeah. Yes.

20

MS EASTMAN: Ms Owen-Turner, can I ask you about the future. And this is something I think which really comes from your statement of this wish for a life for Charlene that meets her expectations and supporting Charlene in the choices that Charlene wants to make. What do you see the future holding?

25

MS OWEN-TURNER: It's a bit of a difficult question to answer, I guess. There is some want in what I see. If she continues on with the trajectory that she's in now, with family support, she will be okay. But to be completely independent, I think there is a lot of work there, before she gets there. But what I want for her .....

30

MS EASTMAN: It's okay.

MS OWEN-TURNER: It's completely different --- I want her to achieve what she wants to achieve .....

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MS EASTMAN: And part of that is to have the right supports in place?

MS OWEN-TURNER: That's correct, yes.

40 MS EASTMAN: And those supports are not just you and your family, but also getting that right support from NDIS and the other supports; is that right?

MS OWEN-TURNER: That's right.

45 MS EASTMAN: And you are a little nervous, aren't you, at the moment about the NDIS funding review that is coming up just before Christmas?

MS OWEN-TURNER: Yes.

MS EASTMAN: Why are you nervous about that?

5 MS OWEN-TURNER: There is a lot of things that I've been hearing from other  
parents that have had their meetings. I'm hearing that they are cutting their funding,  
they are not getting the amount that they need for the level of support required by the  
individual, and I just --- I'm not sure. It's basically I'm not sure --- I'm okay, thank  
you.

10 MS EASTMAN: Charlene, would you like some more water? We can do that.  
I have a spare jug here.

15 CHARLENE: I need to help my mum. She's a little bit upset right now.

MS EASTMAN: We'll top you both up. Thank you, Charlene.

20 Sorry, Ms Owen-Turner, I interrupted you. Just that uncertainty about knowing what  
is happening. Where do you get information about the NDIS and the SLES scheme  
and these other government supports? How do you find information out?

25 MS OWEN-TURNER: A lot of information I got from when she was in high school.  
And the rest of it I pretty much made up on my own of what I can do. I research  
online and just listening to what other parents are doing. That's pretty much it. Until  
just a couple of days ago I got in with a consultant, and she was very helpful, and  
said she will try and support, but that needs to be approved, also to be funded,  
because you have to pay her to do it.

30 MS EASTMAN: So you are hoping to get some certainty with the funding review so  
that you can make some decisions about what Charlene's next steps might be; is that  
right?

MS OWEN-TURNER: That's correct.

35 MS EASTMAN: You want --- you have the firm view that Charlene can be a very  
productive member of the community if she just has the opportunity and is provided  
with the supports that she needs?

40 MS OWEN-TURNER: Absolutely. As you can see, she is a confident girl. She just  
wants to do what she wants to do and what she is told to do. She absorbs  
information. She is kind. And she is generally just really, really helpful. She does  
try as much as she can, and I do believe that with the right level of support to  
transition to that independence and then employment, she would absolutely be  
a great addition, I guess, I forgot what I was going to say ..... She will definitely be  
45 a great contributor in society, absolutely.

MS EASTMAN: Charlene, your mum has been doing a lot of talking and I've been

talking to Mum. Is there anything else you want to tell us today about what you would like to do, working into the future?

5 CHARLENE: Okay. I want to help protect my mum because she was upset in my place. I was so worried.

MS OWEN-TURNER: I'm okay.

10 CHARLENE: She's okay. She's confident. She's a dependent, reliable person.

MS EASTMAN: So Mum's a pretty good person?

15 CHARLENE: Yeah, I can look after her, and give her food and water and wipe tears off eye.

MS OWEN-TURNER: Thank you.

20 MS EASTMAN: You also have a puppy that does a lot of barking so you have to help with that bad behaviour, you have to help Mum with that too?

CHARLENE: Yes, because I have to take care of her poops, and give her water. She's really sad. I try to help.

25 MS EASTMAN: Can I thank you both very much for sharing your experiences with us today, and I think we will really look forward to seeing what Charlene does in the future.

30 Subject to the Chair's request to the Government about the extension of the Royal Commission, I expect, Charlene, we might have to get you to come back and tell us how you are going into the next year or so. Would you come back and talk to us again?

CHARLENE: Yes, sure.

35 MS EASTMAN: That would be great. Thank you, Commissioners.

Charlene, I think I said to you I have 4 bosses today, so the 4 bosses might want to ask you or your mum a question. I will check with them.

40 CHAIR: What I will do, Charlene, is ask each of the Commissioners if they have a question, so I will first ask Commissioner Galbally who on the screen from Melbourne if she has any questions.

45 CHARLENE: Okay.

COMMISSIONER GALBALLY: Well, I'd like to thank you very much for your evidence, and no questions today. Thank you.



CHAIR: Now I will ask Commissioner Atkinson who is in Brisbane.

5 COMMISSIONER ATKINSON: No, thank you, Charlene, and thank you for showing so much concern for your mum.

CHARLENE: That's all right!

10 CHAIR: And I will ask Commissioner Ryan now, who is with me.

COMMISSIONER RYAN: Thank you both very much, I've learnt a lot from you today but I don't have any further questions because you've explained yourself so well. So thank you.

15 CHARLENE: It's okay.

CHAIR: And I would like to thank you, Charlene, and you, Ms Owen-Turner, for coming and giving evidence.

20 Charlene, during these hearings, one of the things that's happened quite often is the questions have been asked and the answers have been very, very long. Your answers were brief, to the point and very clear. It was a pleasure to listen to you giving evidence. Thank you very much.

25 CHARLENE: It's okay. I thank you.

CHAIR: So thank you both for coming and giving evidence to the Commission. It has been extraordinarily helpful to us. Thank you. I wish you both all the best.

30 MS EASTMAN: Thank you both very much.

#### **THE WITNESSES WITHDREW**

35 MS EASTMAN: Commissioners, today is a little bit different. It is Human Rights Day and I know some people may be wanting to tune into the Human Rights Day oration as well, so we will have a morning tea break a little bit earlier and we thought we would break for half an hour, till 11.45.

40 CHAIR: Who is giving the Human Rights Oration?

45 MS EASTMAN: Rosemary Kayes who, Commissioners, you have heard give evidence on a number of occasions in this Royal Commission, and last year she was awarded the Human Rights Medal, so the Australian Human Rights Commission has invited her back to give the oration this morning, which is probably about 15 minutes in.

I'm giving you a very extra morning tea until midday Sydney time, 11.00 am Brisbane time.

5 CHAIR: Thank you.

All right, we will adjourn until noon Sydney time, 11 am Brisbane time. Thank you again.

10

**ADJOURNED** [11.18 AM]

15

**RESUMED** [12.03 PM]

CHAIR: Yes, Ms Zerner.

20

MS ZERNER: --- we have referred to as Riley.

CHAIR: Sorry, we don't have you on screen. Now we do. All systems go.

25

MS ZERNER: Chair, that wasn't Riley, so just we're waiting until Riley comes onto the screen. There we have Riley now.

CHAIR: Good morning, Riley. We can't hear Riley.

RILEY: Good morning, how are you today?

30

CHAIR: Very well. I will now ask Ms Zerner to say something. We'll get it right in the end.

35

MS ZERNER: Thank you, Chair. Chair, if the affirmation or oath could be administered to Riley, please.

CHAIR: Yes, thank you very much. Riley, if you wouldn't mind following the instructions of my associate and she will administer the oath to you. Thank you very much.

40

**"RILEY", SWORN**

45

CHAIR: Thank you, Riley. Now Ms Zerner will now ask you some questions.

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

MS ZERNER: Thank you, Chair.

5 Riley, you have provided the Royal Commission a statement, haven't you?

RILEY: Yes.

MS ZERNER: And you had the chance to read that recently?

10

RILEY: Yes.

MS ZERNER: And the contents of the statement are true?

15 RILEY: Yes.

MS ZERNER: I ask Riley's statement please referred to, it's at Tender Bundle A, Tab 13, and I ask that the statement is tendered into evidence and marked as Exhibit 9.20, please.

20

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

**EXHIBIT #9.20 - STATEMENT OF MS "RILEY"**

25

MS ZERNER: Thank you, chair.

Riley, you are a mother of two boys?

30

RILEY: Yes, I am.

MS ZERNER: They have been diagnosed with ADHD and autism, and diagnosed at the ages of 7 and 8, isn't that right?

35

RILEY: Yes.

MS ZERNER: They are now teenagers?

40 RILEY: Yes. Going on 35!

MS ZERNER: Being a mother with a disability, your primary focus has been to care for the boys, hasn't it?

45 RILEY: Yes.

MS ZERNER: And it is the case that you were able to apply for a carer's pension in

2012?

RILEY: Yes, that's correct.

5 MS ZERNER: And in addition to caring for your boys, you've also wanted to work over that period of time, haven't you?

RILEY: Yes.

10 MS ZERNER: Why is that? Why has work been important to you?

RILEY: For several reasons. Not only the obvious financial gain, but also to show the boys that girls can work and do just as well as they can in the workforce. And also just to keep myself active and, you know, functioning more than just being  
15 a housemum and a wife.

MS ZERNER: You live with the condition of scoliosis, that's right, isn't it?

RILEY: Yes.  
20

MS ZERNER: And there has been a deterioration over time?

RILEY: Yes.

25 MS ZERNER: We'll come back to where things are at at the moment, but it causes you some pain and you have physical limitations, is that right?

RILEY: Yes.

30 MS ZERNER: Can you just tell us how your scoliosis affects you in physical activities when you are applying for work or undertaking employment?

RILEY: So I would say the biggest limitations are being able --- not being able to sit  
35 for too long, or stand for too long, or lift heavy items. And also not being able to bend. I find that if I bend quite a lot, I start to put bones out and that sort of thing. And also just daily wear and tear really impacts a lot on what I can do every day. Every day is different. And that not only affects my ability to do things at home, but also at work.

40 MS ZERNER: And I think you've said you have good days and you have bad days; is that right?

RILEY: Yes.

45 MS ZERNER: Right. And it's the case, isn't it, that you've recently been diagnosed with autism level 2, ADHD, and some mental health issues with depression, is that right?

RILEY: Yes, and I also have PTSD as well.

5 MS ZERNER: They are recent diagnoses. I would like to come back to those a little bit later on and just explore with you at the moment what the impact of scoliosis has been for you; is that okay?

RILEY: That's fine.

10 MS ZERNER: You say in your statement that you have told employers in the past about your scoliosis, and you also say that you like to be truthful and not to lie by omission, to be upfront and honest. But it's the case, isn't it, that you've had to really think about "Do I tell or do I not tell"; is that right?

15 RILEY: Definitely.

MS ZERNER: And in making that decision, what influences you as to whether you will disclose your disability or not?

20 RILEY: So it might be the vibe that I get off the person that I'm talking to, the interviewer. It might be what I previously know of the company. Also it might be the working conditions. But mostly what I perceive about the person interviewing me as a whole.

25 MS ZERNER: And there's been occasions where you have disclosed and you've been successful and we will come to those, but there have been a number of occasions where you have told an employer and you've not been successful. Can you tell us a little bit about those examples of when you've disclosed and what's happened?

30 RILEY: Yes. I've had many times where I've either called an employer about a position, or I've gotten to an actual interview and I've told the employer about my back problem, and I've either been shut down and excluded from the interview almost immediately, or I haven't made it to the next round of interviews. So I've had  
35 one primary interview and no more.

MS ZERNER: And have there been occasions where, for example, you might have a discussion over the telephone and you might disclose your disability and what happens in that regard?

40 RILEY: Sometimes I've just been hung up on. As soon as I say I've got scoliosis, they are no longer interested in hiring me.

MS ZERNER: And how has that made you feel when you've disclosed your  
45 condition and then it hasn't progressed further?

RILEY: Frustrated, angry, somewhat disadvantaged because I haven't been able to

find work for myself. And I haven't had that chance to use my life skills and my knowledge to help other people in the workplace, which is what I always try and do.

5 MS ZERNER: Can we turn to the positives, and there's been a few occasions where you've been successful and you've been able to disclose to your employer about your scoliosis and what impact that has upon you. At paragraph 7 of your statement, if you've got that in front of you there, there are a number of examples you set out in paragraph 7.

10 RILEY: Yes, I've got that in front of me.

MS ZERNER: The first one was when you were employed in a factory.

RILEY: Yes.

15

MS ZERNER: Can you tell us a little bit about what happened there and what the alternative role you were provided?

20 RILEY: So in that position, it was a factory job in the food industry. They required that I lift 20-kilo, 15-kilo boxes onto a pallet and keep stacking them until they were stacked above the height of my head, which I couldn't do. I told the floor manager at that time, and he gave me the position up a little bit further on the line, which was to stick Disney characters onto the outside of cereal packets before they go into the box. So that was my primary job after I told him about my back problem.

25

MS ZERNER: And were you able to manage that workload once you'd made that disclosure and had that agreement with your employer?

RILEY: Yes.

30

MS ZERNER: Moving on, you talk about working on a farm and that you indicated you couldn't do planting or fertilising, as I understand, is that because of the bending over, et cetera?

35 RILEY: Yes, and also the physical digging, because they expected you to plant trees as well. So the alternative there was to help prune the trees in the winter, and then in the summer on that farm I would be moved to the cool room to the packing department. But at that time the cool room wasn't up and running, so they got me pruning trees instead.

40

MS ZERNER: There is another job referred to there which is the manufacturing job. I will come back to that a little later on if we can.

RILEY: Yes.

45

MS ZERNER: We go to the government department.

RILEY: Yes.

MS ZERNER: You went into that position and you disclosed your disability and what was the situation in that role?

5

RILEY: So I was fitted with an ergonomic chair which was solely for use by me. And I was also given the option of walking up and down the length of the office, which was quite lengthy, just when I needed to get up and move around.

10 MS ZERNER: And is that important in your condition of having those breaks and being able to move around?

RILEY: Yes, it is.

15 MS ZERNER: I want to now move to another role that you've had, or another job that you've had over the time, and that was with the fast-food restaurant?

RILEY: Yes.

20 MS ZERNER: And you've outlined that in your statement. On this occasion it was one of those decisions that you decided not to tell the employer that you've got scoliosis. Can you tell us why on that occasion you decided not to disclose?

25 RILEY: One of the ways I primarily communicate is through my perception of other people using body language, tone of voice, environment, all those factors. The interviewer, at that stage, to me, I didn't feel I could trust him with that knowledge. So I chose not to disclose my scoliosis to that actual individual who was the franchisee of the fast-food chain.

30 MS ZERNER: And you were able to get the job and you started the role initially and it was work you could do with your condition; is that right?

RILEY: Yes.

35 MS ZERNER: And you were managing that but then there was a change in the role and that really affected you physically in relation to your condition. Can you tell us a little bit about that?

RILEY: So are we talking about the fast-food role?

40

MS ZERNER: Yes.

45 RILEY: The initial role was getting orders ready, in the bags, changing bins, sweeping floors, looking after bathrooms. When I changed roles, I was expected to do all of those tasks as well as physically move through a gap of about 6 to 8 inches from one side of the restaurant to the other. And that proved difficult because it wasn't actually enough space for me to get through quick enough. Also I had

a headset that I had to wear where there was constant chatter from the drive-thru window, and I was expected to not only serve customers at the front but also listen to the headset and physically place orders and look after two different sections at once. So I felt that I could do the first role, no problem. As soon as the second role was  
5 added, it was too much overwhelming for me and I couldn't complete it properly.

MS ZERNER: And you tried to have a discussion with your boss, didn't you, about the additional role? Can you tell us what happened when you had that discussion?

10 RILEY: Yes. So my boss informed me that if I couldn't do the two roles at the same time, every day, that my hours would drop significantly. I was working four to five days a week, just a couple of hours a day during school hours. I went down to one or two days a week.

15 MS ZERNER: And did you feel comfortable or raise the issue about your condition as to how that was impacting upon you?

RILEY: Can you please rephrase the question?

20 MS ZERNER: Did you raise it with your boss how the additional role was impacting upon you physically and how you were feeling?

RILEY: I tried to tell him as much as I could because at that time we didn't actually know about the ASD and the mental health role, that that played in the overwhelm,  
25 so I tried to tell him as much as I could, but it probably wasn't a correct evaluation of what I was trying to say at that time.

MS ZERNER: All right ---

30 RILEY: It was masked a bit.

MS ZERNER: You talk about the overwhelming feeling. That is reflecting back now that you know the diagnosis, is that right, as to what that might have meant for you in that job?

35 RILEY: Yes, now it makes sense. Back then it didn't make sense why I couldn't manage the two. I just felt that it was very overwhelming, and for some reason I couldn't juggle the two jobs, I could only do one. But now it all makes sense.

40 MS ZERNER: All right. I want to now turn to a different topic if I can, Riley, please, and I want to take you to your experience with the Disability Employment Services.

RILEY: Yes.

45 MS ZERNER: In your statement you indicate that you have used Disability Employment Services on a couple of occasions, that's right?



RILEY: Yes.

5 MS ZERNER: I want to take you to the manufacturing job which I mentioned a little bit earlier in your evidence.

RILEY: Yes.

10 MS ZERNER: As I understand it, you saw an advertisement for the job.

RILEY: Yes.

15 MS ZERNER: And then you contacted the organisation. Can you tell us a little bit about what happened and how then you contacted and started engaging with the Disability Employment Service?

20 RILEY: Yes. So I found the position in my local paper, and because I'm quite artistic I thought that would be a good role for me. So I organised an interview with the CEO of the company, and about 20 minutes later after talking to him and showing him examples of my own work, he informed me that he didn't think the role was right for me, and that he thanked me for coming and speaking to him. So I was a little bit discouraged about that. I went to the employment agency and I mentioned to him that I been to an interview with this company and I really wanted to work there because it was something that I'm interested in. And I got a very proactive job consultant, and they actually went and spoke to the manager of the specific tasks that I was doing. Not the CEO, just the manager of the room. They organised to get me a trial, which was five days. I did that, and it looked like I was going to lose the job because I couldn't pick up the task quick enough. And I actually went outside and there was another element to the job that I could do and I felt that I would succeed at, so I asked if I could try that position instead, and I virtually did that position on my own unsupervised for 2.5 years.

35 MS ZERNER: And isn't it the case that you started training people after that once you got into that role?

RILEY: Yes. So the manager asked me to actually train a new girl and show her how to do all the tasks that I was doing.

40 MS ZERNER: Can I take you back when you finished that --- or you are coming to the end of the five-day trial.

RILEY: Yes.

45 MS ZERNER: You were feeling that perhaps it's not going to work out, but were you looking for other opportunities, were you?

RILEY: I was because I knew that it was something that I could do. It was just there

were a couple of pointers in the other side of the job that I couldn't do. One was working the computerised machine, I couldn't quite pick that up in five days, and one was lining logos up on clothing, I couldn't quite pick that up in five days.

5 So I knew that if I switched to the other side of the job, I could quite reasonably do that on my own. And I also felt that the manager was watching over my shoulder at the time and I felt quite nervous about that at the time. So in the other department of that job, she wasn't there. I could work unsupervised, and I could basically just get it done when I felt like I could do it, and not be constantly watched. Which made me  
10 more relaxed.

MS ZERNER: Did you try and set something up for yourself to help yourself in the role in the sense of putting some structure around what you were doing to help you be able to do that role?  
15

RILEY: Yes, so the person above me that I used to work under, she used to come out in the morning and write me a list of all the tasks that I had to do that day from priority to not so important. And I just used to work through that list on my own. It was very rare that I would get to the end of that list at the end of the day and wouldn't  
20 be almost to finishing that list. It was probably only one or two things that needed to be done. When you had a lot bigger jobs than some, of course it used to take longer, but I still used to find that there wasn't much left to do for me at the end of the day on that list.

25 MS ZERNER: Did you find the structure of having that list helpful for you?

RILEY: Yes, very helpful. It sort of gave me a direction of where to go, what was most important, and it also gave me a sense of being able to work on my own, because I think I work better on my own. And just being able to do it in my own  
30 time and set the course for the day.

MS ZERNER: And reflecting back now on the diagnosis that you've had, do you think that is related to having that of having that structure and working by yourself?

35 RILEY: Yeah, I do. I have figured out, since I've got this diagnosis, that I do work better on my own. I think just having that list and being able to be left on my own and work through the problems of the job on my own was really good.

MS ZERNER: And we were talking earlier about that disclosure issue in regards to the scoliosis. In this particular job, did you tell them about your scoliosis and what happened with that?  
40

RILEY: So I told them about the scoliosis. I used to have a chair that I could sit on if I felt that I needed to sit down to do one element of the job. In another part I used to put boxes on a chair, so instead of reaching down to the floor and grabbing things out of the box, the box was on a chair at basically my level, so I just used to reach  
45 over. So those were the two main strategies we had in place.

Also, for sweeping the floor, I also had a little dust and broom set that had a longer handle, so I could use that really well. I don't think there were any other strategies that we put in place, after that.

5

MS ZERNER: You say in your statement that you really wanted to work four days a week.

RILEY: Yes.

10

MS ZERNER: But there was a problem with that. Can you tell us what the problem was with that?

RILEY: Yes. So when you are either on a carer's pension or on DSP from Centrelink you are required to report your earnings every fortnight. And Centrelink take into account your travel time as part of that earnings process. So not only can you only earn so much before your payment is impacted, and the more you earn, the more it is impacted, the travel time you spend away from your dependants, if you will, is taken into account as well. So I was working five days a week and then we moved towns, so I was having to drive two hours each day to get to work. So that two hours every day actually equalled a day's work, and it impacted my payments to where if I didn't scale back one day I would have been taken off payments.

20

25

MS ZERNER: And at this stage that was in relation to the carer's pension, wasn't it?

RILEY: It was, yes.

30

MS ZERNER: You refer in your statement to something that you witnessed at this job in regards to another lady who had the same condition as you have --

RILEY: Yes.

35

MS ZERNER: --- that is the scoliosis. Can you describe what happened and what you observed in regards to this particular lady?

RILEY: So the workplace that I worked in was very toxic. The manager obviously wasn't happy that benches and tables needed to be put at a certain height for my co-worker, and a lot of snide remarks and comments and, you know, things were said behind her back. And it seemed that those measures that were put in place for her were more of a hindrance than a help. And if the co-worker said that she needed adjustments made it was a storm in a teacup, a storm in a teacup was made of her situation. So it was a big drama and, you know, it was an inconvenience and she just wasn't treated fairly, in my opinion.

40

45

MS ZERNER: So the co-worker, did she actually request that there be adjustments to benches for her to be able to manage her condition; is that what happened?

RILEY: Yes.

MS ZERNER: And that was implemented, but there was a lot of, you refer to drama, around that?

5

RILEY: Yes.

MS ZERNER: Did that impact you --- and you said earlier in your evidence that you like to be honest and upfront about disclosing your condition.

10

RILEY: Yes.

MS ZERNER: When you saw that, did that affect you and what you think you would do in regards to disclosure of your condition?

15

RILEY: Yes, it did. I sort of looked at the treatment that this lady was receiving and just basically decided that I wouldn't say anything and just head down, bum up, basically. Just keep to myself, keep under the radar and just not disclose anything. When I did disclose that I might be on the spectrum, because at that stage it was a "might be", not a definite, I was laughed at in that workplace.

20

MS ZERNER: You left that workplace, didn't you?

RILEY: Yes, I did.

25

MS ZERNER: And then you had a break from work for a little period of time; is that right?

RILEY: Yes, I did. And I chose to look after my children while I was still looking for work.

30

MS ZERNER: And one of the aspects of looking for work is, and I think you referred to it earlier, that you look for work that is in school hours; is that right?

35

RILEY: Yes.

MS ZERNER: And in the role that you were able to secure was the school crossings supervisor?

40

RILEY: Yes.

MS ZERNER: As I understand it, you again approached a disability employment agency to assist you with this. Can you just explain what happened with the agency?

45

RILEY: In relation to the interview or in relation to the operation?

MS ZERNER: I will take it back a step if I can. In regards to --- let's break it down.

As I understand, you had a break from work?

RILEY: Yes.

5 MS ZERNER: And then you approached a disability employment agency and said, "I would like you to help me get work".

RILEY: Yes.

10 MS ZERNER: What did they have to do to be able to help you?

RILEY: Once they identified a task that was suitable for me, we actually started the process of putting together a fresh resume and identifying references and getting references written and verbal from them. And then approaching the organisation and putting in that application on my behalf.

MS ZERNER: And did the employment agency have to get funding to be able to assist you?

20 RILEY: Yes, they did. I found out that Centrelink funds people who are looking for work two years at a time. When your two years are up, you are automatically exited from the system, and that DES consultant needs to re-apply to Centrelink for another block of two-year funding to help you look for work.

25 MS ZERNER: So they were able to help you find this particular job of the school crossing supervisor. And then in regards the application process, you weren't successful on the first occasion ---

RILEY: No.

30

MS ZERNER: --- but you went back and asked them for assistance. What did they do?

RILEY: In the interview?

35

MS ZERNER: You weren't successful in the first job. You then went back to them for coaching in regards to, "How can I get this job?"

RILEY: Yes. I went back to my employment consultant and told her the question that had tripped me up in the interview and she actually got onto her computer, typed in the question, and then came back with an answer of what the correct thing to do was, and we were able to move forward through that. So when I went through the interview again, the interviewer tried to trick me with the same question, again, and I was able to clarify that that was the trick question, give the right answer, and get the position.

45

MS ZERNER: When you say "trick question", is it that it was phrased differently

than the first time and so you had to try and spot the question that was the trick question?

5 RILEY: Yes. So the question the first time around wasn't worded properly, and it was designed to trip you up. The second time I went for the same job, it was the same question but re-worded again so it was designed to trip you up again.

10 MS ZERNER: But you were able to identify what the question was and you had the right answer?

RILEY: Yes.

MS ZERNER: So you were successful in getting that job?

15 RILEY: Yes.

MS ZERNER: You had some training and you talk about the consistency or inconsistency of the training. Can you tell us a little bit about that?

20 RILEY: When I went for the training of the position, it was a week long. You were put with a different supervisor each day for the whole day. They would run through their way of doing things, also the proper way to do things. But every crossing supervisor had a different way of operating that crossing, and I found that incredibly confusing. I actually came away from that training more muddled than I was when I  
25 started.

MS ZERNER: I think you say, "If I just had the manual and I read the manual from the beginning to the back" ---

30 RILEY: Yes, I would have been better.

MS ZERNER: I understand with your recent diagnosis and scoliosis, you've now gone on to Disability Support Pension; that's right?

35 RILEY: Correct.

MS ZERNER: And this job, I understand that the hours, there has been an effect with regards to your pension with that. Can you just tell me what that's about? I think it had something to do with travel again, is that right?

40 RILEY: Yes. So the employer has decided that this year they would give travel money for people who had to travel an extended distance from home. It was so many cents per kilometre, and that added up for me, on this particular crossing, to be \$80 a day of travel money without my earnings included. So with my earnings  
45 included, it was \$140 per day. That created massive problems for me with Centrelink because there was one fortnight where I earned \$1,000. At least \$700 of it was travel money, apart from my wage. So that brought my pension down to \$40

for two weeks instead of almost 900. And they mentioned to me that if I kept getting this travel money, that they would consider cancelling my pension.

5 MS ZERNER: And you are trying to navigate to change where you are actually doing the job from so that you don't have that travel time, is that right, or the travel money?

RILEY: That's correct.

10 MS ZERNER: Can you tell us about recently you have had some circumstances where you had some medical advice in regards to your scoliosis, and what has happened with your employment in that regard?

15 RILEY: Yes. So I have been advised by a scoliosis specialist in Melbourne that I need to wear a back brace for three years. I did not disclose my disability when I started with this position because I'm legally not obliged to. And also my working --  
- my employment consultant advised me not to in order to get the job. So got the job, have been doing the job for about 10 months no problems. I've missed one day in ten months because I had a migraine and I couldn't obviously concentrate as well  
20 so I took the day off.

When I told my supervisor that I needed a back brace, she mentioned to me that I might not be able to keep my job. So she went back to her supervisor to clarify the situation, and came back to me and said, "My supervisor has asked that you get  
25 capacity assessments from this scoliosis specialist in the city, and until then you cannot work". So they put me off work on that day. It took 3.5 weeks to get the capacity assessments back from the specialist.

30 Just before I stopped working, I was offered a part-time position with this employer, of going from a casual work basis to a part-time basis on my own crossing instead of travelling everywhere, so when the capacity assessments weren't forthcoming in their time that they would have liked them to, they actually threatened to withdraw the part-time position.

35 After that happened, I was able to contact them and say, "Look, this is getting pretty dire, I need them now", and they passed them on. I immediately passed them on to my supervisor that day who then passed them on to her supervisor. The supervisor of my supervisor came back to me and said, "You cannot work until you get a GP assessment, a physio assessment and all your pre-employment checks done again".  
40 So they've chosen to ignore the scoliosis specialist in the city and his recommendation, which was that I was cleared to do the job with little to no hassles at all, required to do the job, they've chosen to ignore that advice and make me get GP clearances and extra physio clearances in order to satisfy their capacity.

45 So I actually feel like I'm being discriminated against in my own workplace, and also being denied the chance to earn wages because I have a back problem.

MS ZERNER: And you are working through all of that at the moment, aren't you?

RILEY: I am.

5 MS ZERNER: To try and get a resolution.

RILEY: Yesterday I actually approached Victorian Legal Aid and got some legal advice, and I think the lawyers are trying to get onto me today.

10 MS ZERNER: Okay.

Can we move to a different topic. You are obviously work through all of that, but I want to go to the recent diagnosis in relation to the autism, the PTSD, et cetera.

15 RILEY: Yes.

MS ZERNER: We talked earlier that when you reflect back on your life and the jobs you've had, there has been a number of instances, for example, the noise and being able to work by yourself, you can see back now that there has been some impact on you and your employment; is that right?

RILEY: That's correct.

MS ZERNER: In regards to those recent diagnoses, have you considered future strategies about future employment as to how you might manage those?

RILEY: Yes. I've implemented a practice now I do every week, which is I have one day at home, just to unwind from the week, regroup and re-centre myself to go back to work next week. I also think that the next position I get, whether that be with my current employer or another employer, I'm going to disclose because, again, I don't like lying by omission. I'm hoping I can learn extra strategies that will make working easier for me. I definitely think working by myself is a good strategy as well.

MS ZERNER: I want to go to the future. You talk about in your statement that you are concerned about younger people coming through ---

RILEY: Yes.

MS ZERNER: --- and the less amount of jobs. People coming through that are younger and more experienced, and because you are getting older, that is a concern you have; isn't it?

RILEY: Yes, it is. I have found, in my working history, that for me it is hard enough to get a job with my physical and mental disabilities, but as I get older I am going to be facing age discrimination pretty heavily. So I feel that my chances of getting a position in the future will be severely limited.



MS ZERNER: There is one other issue you raise in your statement, and that is in regards to superannuation and your concern about ---

5 RILEY: Yes.

MS ZERNER: --- having a disability and the limitations that has had and the impact that has had on your superannuation?

10 RILEY: Yes. I feel that this issue in particular is a very big issue that not only faces me but faces people that have a disability when they are trying to find employment, because it's okay to have a job and to get superannuation paid, but over time, especially in my circumstance where you have had a lot of breaks in employment opportunities, the fees and charges from the superannuation companies still get  
15 charged to you. So it diminishes your super over time. And I think we don't have that same opportunity to amass a good super amount for when we are older as a result.

MS ZERNER: Riley, you will be pleased to know that I've come to the conclusion  
20 of the questions I had. What I will do now is hand you back to the Chair to see if the Commissioners have any other questions for you. I would like to thank you for the effort and energy you've put into helping with your statement and then to give evidence today. Thank you.

25 RILEY: No worries. Thank you very much for your time.

CHAIR: Thank you, Riley. I will now ask each of the Commissioners if they have a question. So you can clear where everybody is, Commissioner Galbally is in  
30 Melbourne, Commissioner Atkinson is in our Brisbane hearing room, Commissioner Ryan is with me in our Sydney hearing room. I will first ask Commissioner Galbally if she has a question.

COMMISSIONER GALBALLY: Thank you so much for coming today. It is really  
35 terrific to hear your story. Very important. I have no questions, thank you.

CHAIR: Thank you. Commissioner Atkinson?

COMMISSIONER ATKINSON: Yes, thank you, Riley for your evidence and, I  
40 agree, pretty much everything has been covered very well. Thank you.

CHAIR: And Commissioner Ryan?

#### 45 **QUESTIONS BY THE COMMISSION**

COMMISSIONER RYAN: Yes, I have no question. Your submission is great and

detailed. Perhaps one small clarification, you referred to something called the carer's pension, I think you mean the Commonwealth Carer Payment, don't you? It's a payment that goes on top because you are caring for your sons, that's why you get that, isn't it?

5

RILEY: Yes.

CHAIR: Riley, I would be grateful if you could help me on what you said about the effect of the travel allowance.

10

RILEY: Yes.

CHAIR: I wasn't entirely clear. I take it what happened was that you were given an allowance because you were travelling considerable distances from your home to the place where you were performing your work?

15

RILEY: Yes, that's right.

CHAIR: Did you incur travel expenses in order to get from your home to work?

20

RILEY: No, just the cost of my petrol, that was all.

CHAIR: And running your car too, that would be an expense, wouldn't it?

25

RILEY: Well, it is, and that's the reason why they give the travel allowance.

CHAIR: I think, if I remember rightly, there is a requirement that your car has to be comprehensively insured before you get that payment; would that be right?

30

RILEY: I'm not particularly sure about that. My car is comprehensively insured anyway. So if that is a requirement, it fits that requirement, but that was never discussed with me as a condition.

CHAIR: My question was, or was going to be, whether any allowance was made by Centrelink for the cost that you incurred in travelling from home to work, or whether they simply regarded the amount that was paid to you as a travel allowance as income?

35

RILEY: They class it as income and that's why you need to declare it every fortnight.

40

CHAIR: So you got no allowance from Centrelink for your cost of petrol or anything else in running the car?

45

RILEY: No. So those costs were covered by the employer with the travel allowance that they give you, which is included with your wages every fortnight. There was nothing from Centrelink. They actually decrease the amount of your payment in

relation to how much earnings you have and how much travel earnings you get. So I don't know if you remember me saying that one fortnight I earned \$1,000 ---

CHAIR: I remember that.

5

RILEY: --- yes, and 700 of that was travel allowance. However, my pension went from \$900 almost to \$40 as a result for the fortnight.

CHAIR: Yes, it reduces by 50 cents in the dollar after a certain amount.

10

RILEY: Yes.

CHAIR: Riley, thank you very much for coming to give evidence so clearly and for the statement which you have made and which we all have and have read. We are grateful for you coming to the Commission and assisting us in that way.

15

RILEY: No worries. I would like to thank the Commission for the opportunity to speak and tell my story on behalf of the thousands of us that can't or haven't got the know-how of where to go to speak in Commissions like this. I think it is really important for people to have their say, and I'm grateful that you have allowed me to do that today.

20

CHAIR: Thank you very much, Riley, we appreciate that. Thank you.

25

Ms Eastman?

#### **THE WITNESS WITHDREW**

30

MS EASTMAN: Commissioner, the next witness joining us is John Baxter. We may need to wait a little moment until Riley finishes and we can Zoom Mr Baxter in.

CHAIR: Good afternoon, Mr Baxter. I think we can see you onscreen. Can you hear us? We can't hear you.

35

MR BAXTER: Try again. Good afternoon.

CHAIR: Good afternoon. We can hear you now. Thank you very much. Thank you for coming to the Commission to give evidence. I will ask Ms Eastman to introduce you and we will get the oath and affirmations.

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MS EASTMAN: Commissioners, you will see we are joined by John Baxter, who is coming to us from Victoria today. Firstly, to deal with the oath and affirmation.

45

CHAIR: Mr Baxter, if you would be so kind as to listen to the instructions given by my associate who is with me in Sydney, and she will administer the oath to you.

Thank you.

**MR JOHN CHARLES BAXTER, AFFIRMED**

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CHAIR: Thank you, Mr Baxter. I will explain just where everybody is in case you are not clear about it.

10 Commissioner Galbally, who is on the screen, I hope, in front of you, is in Melbourne. Commissioner Atkinson, I hope also on the screen, is in our Brisbane hearing room. And Commissioner Atkinson helpfully waved. In the Sydney hearing room with me is Commissioner Ryan, and I am of course in the Sydney hearing room and so is Ms Eastman. That's where we all are and you are in Victoria.

15

MR BAXTER: In Melbourne, yes, sir.

CHAIR: Thank you, Mr Baxter. I will now ask Ms Eastman to ask you some questions.

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

25 MS EASTMAN: Let's deal with some formalities. Can I confirm that you are John Baxter?

MR BAXTER: Yes, John Charles Baxter, yes.

30 MS EASTMAN: And you've prepared a statement for the Royal Commission dated 4 December this year?

MR BAXTER: I did.

35 MS EASTMAN: You've got a copy of the statement with you?

MR BAXTER: I do.

MS EASTMAN: And what you said in the statement is true; is that right?

40

MR BAXTER: Correct, it's true.

MS EASTMAN: Commissioners, a copy of the statement can be found in your Tender Bundle Part A, behind Tab 14. Could you receive the statement into evidence and mark it Exhibit 9.21.

45

CHAIR: Yes, that can be done.

**EXHIBIT #9.21 - STATEMENT OF MR JOHN CHARLES BAXTER**

5

MS EASTMAN: Mr Baxter, you have done advocacy work for the First Peoples Disability Network for over 15 years and you are a passionate advocate for reconciliation and cross-cultural understanding; is that right?

10 MR BAXTER: Yes, ma'am.

MS EASTMAN: And you've been a counsellor with Reconciliation Victoria for a number of years?

15 MR BAXTER: Yes, I have.

MS EASTMAN: And you were a founding member of the Aboriginal Disability Network of Victoria?

20 MR BAXTER: That's correct.

MS EASTMAN: And your advocacy work has taken you to places such as representing the First Peoples Disability Network at the United Nations in Geneva? And you made a presentation to the UN in New York?

25

MR BAXTER: That's correct, yes. I felt very privileged that, well, one being a person with disability, but also being an Aboriginal person. It has given me the opportunity to be able to not only see sometimes the disadvantage that these people may face, but be able to hopefully be a voice for the community as well, and working with organisations like the First Peoples Disability Network. As an example, one of them was over to New York in the United States with the launch of an art exhibition, a photographic art exhibition called "Unfinished Business", and I was able to speak at a forum there at the Museum of Tolerance.

30  
35 MS EASTMAN: I want to start with your current role, because you tell the Royal Commission in your statement that when you think about your current job, you just pinch yourself because you went for so many years trying to find meaningful employment. But even still, after 4 years in this job you still pinch yourself --

40 MR BAXTER: Yes.

MS EASTMAN: --- and your job is the Aboriginal Partnership Coordinator for the Brotherhood of St Laurence; is that right?

45 MR BAXTER: That's right.

MS EASTMAN: What do you do in this job?

MR BAXTER: It's --- the Brotherhood of St Laurence NDIS. The Brotherhood of St Laurence itself has many different avenues that they work with helping support members of the community, but this specifically is with the National Disability Insurance Scheme. Myself being an Aboriginal person with disability, we help support initially other Aboriginal employees at the Brotherhood. We help participants who are looking to start a plan with the NDIS. We work with other officers as well to make sure that we have culturally safe spaces and we work with other organisations as well in partnership to ensure that the service that we provide is consistent across the board.

MS EASTMAN: And in your job over the last 4 years, you've got to see a lot about the experience of people with disability finding work and keeping their jobs; is that right?

MR BAXTER: Yes, ma'am. Yes, we find that one of the things we endeavour to encourage people to do, by assisting them through the NDIS and providing them with either aids or aiding equipment, a wheelchair or walking cane, something of that nature, or service provision, having a professional come and assist that individual with their mobility and getting around, is their independence and self-determination. We find, if people, they can truly take control of their own lives, then make good positive decisions and choices for themselves, then it builds their confidence and then they are more likely to be able to get out in the community and do meaningful -- - whether it be voluntary work or community activities or paid employment.

MS EASTMAN: We're going to talk a little bit about the key messages that have come from your experience and the barriers to finding employment, but we thought that we might start with telling the Royal Commission a little bit about your own journey in life, and your experience of finding jobs and the different types of work that you've done. So, can we start at the beginning?

MR BAXTER: Yes.

MS EASTMAN: After you were born, you had to have some surgery in the hospital.

MR BAXTER: That's correct.

MS EASTMAN: When you left the hospital, instead of going back home to your own family, were you taken to a children's home?

MR BAXTER: Yes. Yes. I was born in a tiny town of a place called Robinvale, which is up near Mildura in the far left-hand top corner of Victoria. At roughly 3 weeks old I was transported down to the Royal Children's Hospital where I spent approximately 2 years, this was in 1960 and 1961, with corrective surgeries, physiotherapy, getting some splints made, et cetera, and getting fitted with a wheelchair. I was probably too young for a wheelchair at that age. But when that course of medical treatment had finished, instead of returning me back to my parents

who were still living up in Robinvale, I was sent to initially a baby's home and then eventually being fostered out to a non-Aboriginal family in the Eastern Suburbs.

5 MS EASTMAN: And you say you grew up in a happy home and you say you are grateful for that, but it was in your teenage years that you learnt more about your birth family. And when you were 17 you met your father, your sisters and some extended family.

10 MR BAXTER: Yes.

MS EASTMAN: You've been quite modest in describing this in your statement as an extraordinary moment that had a profound impact on you. Mr Baxter, what was that like when you met your father, your sisters and an extended family?

15 MR BAXTER: Well, I think in the time leading up to that, I had these preconceived ideas and the model parents that you would like to have, and I was wondering how many siblings, et cetera, et cetera. Look, I recall the day as if it occurred yesterday. It was a bleak weekend and we stayed in a motel in another town --- there is not much accommodation in Robinvale --- and we walked into this house, packed to the  
20 rafters with people, all who were strangers to me, but were all relatives and all very much family. And it was just one of those extraordinary circumstances in life and you realise that you are part of a far larger picture, that people look quite similar to what you did. And I suppose, just to cut all the take-homes I had from that, was, not only had I been wondering did I have a family and how many brothers and sisters,  
25 et cetera, but a lot of other people knew of my existence but didn't know what had happened because the child services in those days weren't very forthcoming in informing parents and families of what had happened to children that were removed, their well-being, welfare.

30 And sadly you go through the information many, many years later, and you read the letters written by your parents enquiring as to how I am, to which there is either no reply or just a curt reply saying that I was too young at the time, or they didn't feel that it was the right time to respond to that, if you could ask in a couple of years time et cetera, et cetera.

35 You kind of realise that it was a tremendously heartbreaking experience for my parents and my family who were far more aware of that situation. It also became a real thing in my life that I've really had to put into a safe space, and you realise because you can't go back and change the past, and what has happened has happened,  
40 you somehow have to deal with it.

I know it doesn't really sound like much of an answer, but you've got to own the situation, but let --- make sure that the situation doesn't own you.

45 MS EASTMAN: And it's one of these moments, wasn't it, that that sense of identity, both as a First Nations man but also as a person of disability, bringing those together, that's what created that profound impact; is that right?

MR BAXTER: Absolutely. Absolutely. It is kind of realising, straight off the bat, the areas of familiarity and commonality within our family, even though we had never , I'm still quite surprised, with no offence to my sister, just how alike I am to her, which is a bit of a funny old statement if you'd had the chance to meet her. But we think very much alike, and I don't know whether it is something in the gene pool or we're just lucky, I suppose, but, yeah, it is a very interesting circumstance, and it took quite a while for us to get used to and to know each other, because initially we didn't really have any common points of interest, and we had to learn what they were and sort of build up on that.

But I think the point that I was a person with a disability, they weren't sure what to take of that either, but being the family and community that they were, they thought, all right, whatever, if he needs help, he'll ask for it, or if he gets stuck, we'll see what happens, I suppose.

MS EASTMAN: A very strong theme that comes through your statement, and I am going to take you back to when you were at school, is this sense for you of connection to family and community. That sense of connection and importance to you starts when you are at school and you went to a special school for primary school and a mainstream all-boys school for high school. A part of the challenge in high school was no focus on integration or access. So I want to ask you about high school and that sense of belonging and connection. What was the big challenge for you at high school?

MR BAXTER: Oh, my goodness. Sorry, my first response was just getting through the day. In my primary schooling, going to a special school that was a school of persons with disability, you were just one of the crowd and there wasn't anything different about you. With high school, it gets to --- an all-boys school at that point was sort of very interesting --- boys can be rather bullish and fairly tough, and just to add to that charm, parts of the building was a 3-storey building with no elevators, we didn't have any teacher's aides or no supports in that way.

I think the staff that were there at the time really didn't have any training or teaching on what we do with this individual. You made friends as you go along, but, you know, unfortunately I experienced quite a significant amount of bullying throughout my high school years. And people would, you know, take the books and what have we. I remember I had to replace the school bag multiple, multiple times. They had great fun, you know, in taking that and throwing it away or whatever they did. It caused me a great deal of anxiety. I generally wanted to succeed. I found school was quite interesting and it did have the opportunity to build on a broader social basis. And I suppose it was my first taste, if I can call it as such, of the real world. But everything comes with a price. And I thought, well, if I'm going to make it in general, then I've got to stand up to these challenges, and I've got to do the very best I can. You know, with the support of the foster family that I had, and a couple of mates that I went to school with, and I had tutors that helped me out with my education. But that, you know, it was a tremendous challenge being able to try and



keep up, to be able to recall and be able to get the assignments in. It was just a really tough time. Genuinely a very tough time.

5 MS EASTMAN: And when you reflect back on school, you now ask yourself, well, what was the impact of your experience in school in your attitudes and your thoughts about work. And when you left school, you went straight into a four-year printing and graphic arts apprenticeship, and you thought it was good because it gave you a steady wage and guaranteed employment for 4 years. What happened a few weeks after you finished the apprenticeship, what happened next?

10 MR BAXTER: It was about 3 weeks after I finished the apprenticeship and got my certificate, and I got my notice saying that, "Your services were no longer needed". To be honest, that came as a shock. I thought that I was operating at least at the same capacity as other employees in that endeavour. The work wasn't overly challenging or anything like that. We were making, I don't know if you recall them, the old Mills & Boon romance novels.

MS EASTMAN: Vaguely I recall those!

20 MR BAXTER: For me that was one of the things we did. Funny the things you remember. It really did come as quite a shock, and I thought, well, obviously we have to expand to try and find meaningful employment. You've had a taste of that now and you most definitely wanted to live as independent a life as you possibly could. But I suppose the reality of the situation, as a person with disability, and what positions I was physically capable of doing, always crept up. You would be reading the "wanted" ads or going to interviews and writing CVs et cetera, and you kind of realised quite quickly that for all the hard work and rewording the statements, once if there was a face-to-face interview, it got to that point, it often continued that we kept falling short.

30 MS EASTMAN: So you found it very hard to get another job after that apprenticeship ended, and at that time there weren't disability support agencies around or anyone really to assist you to find new employment. So it meant for you looking at the classifieds in the newspaper and applying for jobs.

35 MR BAXTER: That's right, yes.

MS EASTMAN: And it got to a point, didn't it, that you just ended up doing a lot of voluntary work in your 20s and 30s?

40 MR BAXTER: Yes.

MS EASTMAN: So where you were not able to get actual paying jobs, you still wanted to be doing something and you went, "Okay, I'm going to do some voluntary work". And so you did things like --- some interesting work, didn't you? You helped out with the PA and the audiovisual systems at your church, but you taught Religious Education for 23 years --

MR BAXTER: Yes.

MS EASTMAN: --- at a local primary school. That is a pretty long stint.

5

MR BAXTER: Yes, I met an amazing individual, a gentleman who was older than I, and said that he had been doing the same task for about 20 years. And I set a goal for myself to be able to try and match that achievement. Look, I feel truly honoured to be meeting some amazing people along life's journey that have really lifted me up and encouraged me and supported me and given me amazing advice along the way. Not just to give up and just end up sitting in front of a television and just relying solely on a disability support pension, but you are worth far, far more than that. And if you continue to keep striving to achieve your goal then, you know, at some point you will achieve those goals.

15

MS EASTMAN: I think 23 years of teaching religious education in a primary school gave you this wish to want to go into teaching, but you didn't have those qualifications. But, you say that it improved your social skills and it really gave you this knack for being a very good public speaker. And that has really then led on to the advocacy work that you are doing.

20

MR BAXTER: Yes, ma'am.

MS EASTMAN: Now, there are some other work opportunities that you've had. We've agreed we won't name any of the past employers, so both you and I have got to be careful around this.

25

MR BAXTER: Tip-toe around this.

MS EASTMAN: You had a job in the 1990s that we'll describe as a government business enterprise.

30

MR BAXTER: Yes.

MS EASTMAN: You got this job by applying to an ad in the classified, and it's a job you had for 5 or 6 years.

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MR BAXTER: Yes, 5 or 6 years, yes.

MS EASTMAN: In a sense would you say it was a little bit of a dead-end job because you were never offered the opportunity to progress or advance in that role; is that right?

40

MR BAXTER: No. Everybody who starts off employment --- within their agency starts off in a tier 1 level, if you like. And depending, I guess, on your own desires on where you want to go within the agency, the organisation, you can do additional training, you can move from one office to another, and you can learn new skills as

45

you go. And that's what I endeavoured to start doing. And you will have yearly reviews, assessments, and at one point within those 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 with this employer.

5

MS EASTMAN: And that employment didn't end well, did it?

MR BAXTER: No, ma'am, it did not. We sort of got to a point where they really weren't quite sure what to do with it. I guess I just thought I was a bit superfluous to their needs, even though I had transferred to 3 or 4 different locations. They ended up doing what I would refer as an illegal transfer from one department into another, and I initially thought that would have provided greater learning opportunities, et cetera, but very soon realised that actually wasn't the case. They were just looking for somewhere to locate me where I hopefully wouldn't be too much bother to them and just be out of the way.

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15

MS EASTMAN: One of the other jobs that you had for a number of years is working as a taxi driver. I assume that is a taxi driver in Melbourne; is that right?

20 MR BAXTER: Yes, oh, yes.

MS EASTMAN: What was life as a taxi driver like?

MR BAXTER: I really enjoyed that job. A good friend of mine encouraged me to apply for the position. I thought there is no way I can do that, a lot of hard work, tremendously long hours, you might have to carry somebody's groceries back to the car and putting their bags in and out if they're going to the airport, et cetera. But I fell into that position quite nicely. I love driving. I got my driver's licence when I turned 18. I realised that gave us a tremendous amount of independence and freedom, which I still to this day just absolutely love. We should have found that you were able to build up a course of clients over a period of time, and do what we refer to as the "school run", where you go to a school at 3.30, pick up a group of students and just deliver them off to their various homes.

25

30

35 If you knew those jobs in advance, it actually made the job fairly easy. Of course there is a lot of times sitting there doing nothing as well, but I think probably all taxi drivers have experienced that.

MS EASTMAN: Right. I will move to the next topic that we wanted to talk about, which is the barriers to employment, and the Commissioners have your statement.

40

Commissioners, this starts at paragraph 35, and we are going to run through some of the key barriers Mr Baxter has seen over his time for employment of people with disabilities, but particularly people from Aboriginal and Torres Strait Islander communities.

45

Mr Baxter, the first one you identified is the advertisement of jobs and recruitment.

Why is this one of the key barriers that you have identified?

MR BAXTER: A number of reasons for that. One, sometimes a position is advertised just within the general classifications, and so an Aboriginal or  
5 non-Aboriginal can apply. There is a provision where you can have a specific role that is tailor-made for an Aboriginal and Torres Strait Islander person, but in most of the roles that we're dealing with, it is open to anyone who feels that they are qualified for that position, that includes people who know a great deal about Aboriginal  
10 culture, for example, or they've been working with people with disability for a very long time. So they don't actually have to be a person with disability or they don't have to be Aboriginal, which I find is a very interesting concept. And, within that, I think that a lot of Aboriginal community persons, especially those from more remote areas, really struggle within their educational situation. Actually, I was just listening to a report, I think it was just yesterday, that seemed to state that as well.  
15 And, therefore, if you don't have the qualifications the same as our peers, then on a selection, when you are up there to try and get a position, often you are knocked back simply because you don't have enough qualifications and sometimes enough experience as well to be able to fulfil that role.

20 MS EASTMAN: The next one is the access and modification. You say you still find some office buildings very difficult to access. I want to ask you what you say about when it comes to modifications, based on both your personal and professional experiences, you feel as if the onus is very much on the person with disability to approach their supervisors to make requests. And then there is this tension because  
25 sometimes you need to be more disabled to get the modifications, but you also need to be less disabled so you can try to fit in. Can you just explain to the Royal Commission that tension of being more or less around modifications and access?

MR BAXTER: Yes. Look, sometimes it can almost appear to be a bit of a curse to be too mobile and too agile in what you do, and also have the concern of, "Oh, I  
30 better not speak up, I better not say anything." And so some people tend to struggle through various scenarios in silence, which is concerning for myself. And you think you need the avenue to be able to speak up --- look, I know within my own employment situation one of the supervisors that I connect with quite a fair bit, he  
35 knows me quite well now, and if there is an issue of concern to myself in relation to my disability and my capacity to work, for example, the amount of time I would need to take off if I need to get either some form of treatment, or getting calipers that I wear, getting them fixed or repaired, things of that nature, I'm always careful and conscious because we are all designated a certain amount of sick leave per year, try  
40 and not cut into then taking annual leave off to try and get these things that are necessary for me to fulfil that role at work. So therefore I can, the same as anyone else, within my work be able to fulfil the job duties.

45 Parking is one I think I may have mentioned as well. In a number of the offices, there is very little in the way of good on-street parking, especially in the winters down here in Melbourne anyway. Sometimes we had to park some distance away from an office. We actually have an office that is actually quite hard to access. And

it is just an additional layer of difficulty for someone like myself. You have to picture in your mind trying to hold an umbrella or wrapped up in an awkward raincoat, and trying to get down the street in the heavy rain. It does cause quite a bit of difficulty. And being able to have a discussion with an employer and stationed at an office that has good parking access, that has good disability bathroom facilities, for example, that has a workstation that is easily accessible, it makes --- it makes 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. And I sort of feel at the moment that the office I work at is a good office, that it surrounds a carpark which is very handy, and it has very good facilities in it which I can access on a daily basis.

15 MS EASTMAN: And that very much links into your next point which is employer attitudes. You've told the Royal Commission that one of the key issues is employer attitudes and acceptance of the individual, and that has an impact from the very start of a person looking for work in an organisation. So, from a First Nations perspective, what are the issues with employer attitudes for First Nations people with disability?

MR BAXTER: I think --- which I understand, for a lot of organisations, to them, specifically employing Aboriginal and Torres Strait Islander persons for a specific role so that those individuals can be reaching out into the community, is probably a little bit left of centre, and maybe it's a space that some employers haven't entered into so far in their work. The company I work for at the moment has a Reconciliation Action Plan, and I feel very fortunate I've been able to participate within that process and provide some advisement and recommendations as to how that could be formulated. We are looking at a variety of different things from things like "sorry leave", that if you have somebody passing in your community, and how is that placed within the employer, and the amount of time that potentially you could take off. Also doing celebration, doing events and dates that are important to members of the Aboriginal community, like NAIDOC Week which we have just celebrated in this COVID year in early December. And are we permitted to --- it's more than are we permitted to go and participate in various events, but is the employer themselves willing to embrace those activities, those events, and those celebrations which I'm very pleased to say our employer has. We did an online forum and meeting, we brought some Elders in, and they shared their reflections of the early days of NAIDOC. And it really brings this to a different level of understanding. You know, often within the advocacy work I do, they will say, "Oh, yeah, have you ever met an Aboriginal person?", and I get the story of "oh, when I was up in the Northern Territory or up in Darwin". And sometimes these stories aren't terribly positive. And I said "Well, you are talking to an Aboriginal person now". And they would go, "Oh, wow, that's kind of neat". And you sort of share a little of your own story, and why it is important to have this role of reconciliation where you realise there are many different community groups that can work together. You know, we shouldn't be isolating individuals and looking at them as something as

different just because we may not know a great deal about what that community group has to offer.

5 MS EASTMAN: Right. The last one you have in the statement is training and support, and that's a big issue in terms of the right type of training and support, but also the impact on families who live outside major cities. What are your observations about training and support and what could be done better?

10 MR BAXTER: I think it is an ongoing process to encourage --- well, it's 2 ways; one is to encourage people to apply for positions, because they do have experience. I find a lot of Aboriginal peoples have experience of working within their own communities, but don't count it up as experience, working in a voluntary basis. But the other is with the employers as well, to say, well, if this individual may not have the qualifications of somebody who lives in a major city region, what can we do to be able to support them, either within the way that a position is advertised, where it is advertised; can we offer a traineeship an apprenticeship, have mentoring available?

20 Even during the course of working with my current employer, I've done with the Australian Indigenous Leadership Council --- I think it is council --- I've done some leadership and training courses to just help assist myself in becoming a better employee and having better, hopefully, leadership skills. You know, the encouragement and also the allowing people to then have the time to be able to do those courses, I think is really, really important.

25 MS EASTMAN: And leadership and role models is an area that you've identified as also important. But your message to the Royal Commission in terms of recommendations is the focus should not just be on helping people get employment, but you really want to emphasise that it is helping people keep their employment because by the time they've lost their job, it is too late. So you've said that to the Royal Commission as one of the key areas of recommendations.

30 Before I ask the Commissioners if they have any questions of you, are there any other matters that you wanted to tell the Royal Commission in terms of your recommendations or suggestion for change?

35 MR BAXTER: I don't think so. I think --- well, I'm very grateful that I'm able to present here this morning. So I would like to thank the Commission for allowing me to speak. I sort of feel, and it's probably my upbringing, the family that I grew up with, they're very --- the glass is always half full, and always looking at the positive aspects of things. And, you know, even though you might get a lot of knock downs, then it's not how many times you get knocked down that matters, it's how many times you get up that is important. And I think, or I hope, that within my advocacy work and even to the Commission, you say if we can be an encouragement to others, that there are a lot of success stories out there that sometimes just need to be heard.

40 I think that is really, really important. And I suppose whether you are a person with a disability, whether you are an Aboriginal and Torres Strait Islander, or whether you are in a unique position where you are both, an Aboriginal person with a disability,

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we all have many talents and many things that we know that we might even not realise have just been gifted to us over time. And being able to turn that around into something meaningful that not only supports yourself, but supports the rest of the community as well, is just such a tremendous tool to have. And I feel very  
5 privileged to be able to do so.

MS EASTMAN: Mr Baxter, thank you for your very wise words and sharing your life journey and story with us.

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## **QUESTIONS BY THE COMMISSION**

CHAIR: Thank you very much, Mr Baxter.

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Commissioner Galbally, do you have any questions?

COMMISSIONER GALBALLY: First of all, thank you so much for that. It was really great to hear it. Just a little thing: with the Reconciliation Action Plan at the  
20 Brotherhood, do they --- I assume they also have a disability action plan? Or maybe --- I don't want to embarrass you.

MR BAXTER: I don't know! I'm sure they have good solid policy there because they do employ quite a number of persons with disability, which is very, very  
25 encouraging. I'm sorry, I just don't know.

COMMISSIONER GALBALLY: Well, anyway, you made the point that it is the double whammy of the two coming together and it is really good to hear that there is a very positive employment.  
30

I just wanted to also clarify right back at the beginning of your story, when you were removed after hospital, and was that into a children's home for children with disabilities or a general ---

MR BAXTER: It was a general --- it's not there anymore. It was just a children's home in the Eastern Suburbs. In that era where I currently live, which is in the same general area, was almost the outskirts of Melbourne. And I've heard said that these facilities were generally put on the outskirts of towns and what have we, you know, they probably --- probably to draw less attention to themselves, I would guess. But,  
40 yes, that was a babies home that I was in. So, yeah.

COMMISSIONER GALBALLY: Thank you. Thank you so much.

MR BAXTER: Thank you.  
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CHAIR: I will ask Commissioner Atkinson in our Brisbane hearing room if she has any questions?

COMMISSIONER ATKINSON: Thank you, Chair.

5 I just wanted to say, Mr Baxter, as an ally of the First Nations brothers and sisters at the Commission, I wanted to thank you for your, what I might call deadly evidence.

MR BAXTER: Thank you very kindly, that's very nice to hear.

10 CHAIR: I will ask Commissioner Ryan?

COMMISSIONER RYAN: No, I don't have any questions but thank you, Mr Baxter, for your evidence and telling us your life story.

15 MR BAXTER: Thank you, sir.

CHAIR: Mr Baxter, I do have a question. You indicated that you taught for 20-odd years Religious Education at a primary school, and that you really had aspirations at that time to be a teacher but you didn't have the qualifications. I'm wondering whether anybody ever suggested to you during that period that you could get the tertiary qualifications that you needed to become a teacher, and, if they did, what obstacles there were to pursuing that path.

MR BAXTER: No, sir. No. I also may have thought that going through challenging times and getting, you know, a deal of rejection from various employment opportunities that you thought maybe you'd reached the peak of the capacity as far as that went. And you thought, "Well, I could just do this little job here". Yeah, look, I don't know. It was a fun thing to do. The school that we connected with were tremendously supportive, which I was very grateful for, and it is a whole program that was alive in those days. It is no longer being taught down here in Melbourne anyway, so --- but I suppose it was just an opportunity that I had. It kept me occupied, it kept me motivated, which was great. And I suppose it then encouraged me to go out and to try a variety of different opportunities, whether it be on a voluntary basis, socially or within an employment structure. I suppose at the end of the day when you look back on all this, you are grateful for the opportunities you have. Sometimes you learn some very good lessons, sometimes the hard ways, but for myself I'm very pleased that within the position I have at the moment that it is a good, strong meaningful job, and has a lot of opportunity for it and it allows me to be able to communicate with the Aboriginal community and far beyond that. So, yeah, I sort of really feel I've achieved a great deal in the time I've had.

40 CHAIR: Well, you certainly have. One more question, is the Brotherhood still in Fitzroy?

45 MR BAXTER: It is, sir, yes.

CHAIR: I think it might have changed from the 1970s when I used to visit there from time to time. There weren't so many cars around, I think.



MR BAXTER: It's a pretty busy street these days.

CHAIR: They even had their own football club but that is another story.

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MS EASTMAN: We had a discussion about whether AFL would make its way into Mr Baxter's evidence, and I was doing well right until this point.

MR BAXTER: Nearly got there!

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CHAIR: That wasn't a reference to the AFL, but that was a reference to the VFL, which as Mr Baxter knows is a very different concept.

MR BAXTER: That's right.

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CHAIR: Thank you very much, indeed, for giving your evidence. I join with my colleagues in thanking you for sharing your experiences with us. We wish you success and fulfilment in the role that you have found, and we have benefitted enormously from your evidence. Thank you.

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MR BAXTER: Thank you very much, Commissioner.

MS EASTMAN: Commissioner, that takes us to the lunch break. Can we return at 2.30pm Sydney time, 1.30pm Brisbane time.

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CHAIR: Yes, we'll adjourn until then.

**ADJOURNED**

**[1.35 PM]**

30

**RESUMED**

**[2.34 PM]**

35 CHAIR: Yes, Ms Eastman.

MS EASTMAN: Thank you, Commissioners. Our next witness is Suzanne Colbert AM. She's joining us in the hearing room here in Sydney. So we'll first deal with oaths and affirmations.

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CHAIR: Yes, thank you.

Thank you, Ms Colbert, for coming to give evidence at the Royal Commission. If you would be good enough to follow the instructions of my associate who is very close to you in fact, at 1.5 metres away. If you would follow her instructions to take the affirmation, please.

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**MS SUZANNE COLBERT, AFFIRMED**

5 CHAIR: Thank you. Ms Eastman will ask you some questions.

**EXAMINATION BY MS EASTMAN**

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MS EASTMAN: Before we do this, there is a disclosure that we wanted to make, and that is that your organisation is currently offering two paid internships at this Royal Commission through your organisation, "Stepping Into" Program, and that your organisation has also provided the Disability Confident Workforce training to

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MS COLBERT: Correct.

MS EASTMAN: I just make those disclosures at the outcome.

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Now, can I confirm that you are Suzanne Colbert?

MS COLBERT: Correct.

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MS EASTMAN: And you are the CEO of Australian Network on Disability?

MS COLBERT: That's right.

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MS EASTMAN: And you've made a statement for the Royal Commission. You have a copy with you?

MS COLBERT: I have.

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MS EASTMAN: And are there any changes or amendments to the statement at all?

MS COLBERT: No changes or amendments.

MS EASTMAN: And what you've said in the statement is true?

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MS COLBERT: That's correct.

MS EASTMAN: Commissioners, could you receive into evidence a copy of the statement and mark it Exhibit 9.22.

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

## **EXHIBIT #9.22 - STATEMENT OF MS SUZANNE COLBERT**

5 MS EASTMAN: There are a number of additional documents that accompany the statement, and we'll go to those in due course if we need, to but if you could mark them 9.22.1 through to 9.22.8.

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

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### **EXHIBIT # 9.22.1 TO #9.22.8 - ANNEXURES TO STATEMENT OF MS SUZANNE COLBERT**

15 MS EASTMAN: All right. Let's get started. You have been the CEO of AND, if I can use the abbreviation, for 20 years?

MS COLBERT: Correct.

20 MS EASTMAN: And you've just announced your retirement, is that right?

MS COLBERT: I have.

25 MS EASTMAN: And so I'm going to ask a lot of questions that really pick your brains about what you have learnt over the 20 years of the work that you do, but let's start at the beginning. So what is AND and why did you found it?

30 MS COLBERT: So the Australian Network on Disability is a business disability network founded to help employers understand more about the barriers and the way that they can be more welcoming to people with disability.

35 Generally, businesses don't have a good understanding of the needs and requirements of people with disability, and 20 years ago they weren't particularly insightful to the needs of their customers with disability. My experience after 20 years of trying to get people with disability into employment was that without system change, helping individuals into jobs was a bit like buying tickets to a plane which was never going to take off. We needed to actually encourage employers to open their doors and to get a better understanding of the skills and talents of people with disability, so that people with disabilities could take their rightful place in employment, and also  
40 ensure that they were treated well as customers.

MS EASTMAN: And the constitution of AND sets out the purpose, and you've repeated that in paragraph 13 of the statement. So what is the principal purpose of  
45 AND?

MS COLBERT: So the principal purpose is facilitating internships, promoting employment for people with disability, encouraging good corporate citizenship,

taking employers along the journey to real disability confidence so that they can be inclusive to people and acceptable with disability.

5 MS EASTMAN: In terms of the organisation itself, is it just you or is there a staff, do you have a board?

MS COLBERT: So we are a company limited by guarantee, we have a board of 13 people. We have 23 ---

10 MS EASTMAN: Can I ask you to pause. I've just got a message to say we need to do some technical adjustments, so let's do that.

Do we need to do a little test to see if that is working?

15 All right, so I was asking you about your corporate structure. So company limited by guarantee and you have a board.

MS COLBERT: Yes, so we have 13 people on the board. We have 23 employees located in Melbourne, Canberra and Sydney, and a diverse range of roles involved in the organisation.

20 MS EASTMAN: And are there any people with disability on the board or employed by AND?

25 MS COLBERT: Yes. We have 3 people on our board who have disability and we have around 7 people with disability on our team who have disability.

MS EASTMAN: Now, I want to ask you about when you say that you are a business network and you are working with employers, without identifying any particular organisation or entity, can you give us a bit of a sense about the employers that you work with, public, private sector, not-for-profit, do they have to be over 100 employees, are they small business; can we get a sense of the nature of employers that you work with?

30 MS COLBERT: Yes. We work with employers from the private sector, and the public sector, and not-for-profit. Not-for-profit is a smaller percentage with most of our members being from the public and private sectors. The kind of industries that we work with in the private sector are banking and finance, a whole range, property and business services, legal services, health and community, insurance, a range of ---  
40 really quite across the board, including some mining companies.

MS EASTMAN: And do those employers come to you or have you gone out to the employers to gently persuade them to join the network? How does it work?

45 MS COLBERT: Initially we spent a lot of time knocking on doors and encouraging employers to join. But in all fairness, over the last two or three years, I think bolstered by the NDIS, more employers have demonstrated an interest in making

progress on the employment of people with a disability.

5 MS EASTMAN: So if an employer, be it either public sector, private sector, corporation or sole trader says, "We're interested in understanding more about AND, how do we become a member", what do employers have to do?

10 MS COLBERT: I would say we are mostly set up to work with large organisations who have a HR or a corporate social responsibility, or a corporate affairs in their structure. For small business, they can really decide to just employ a person with disability, they don't need my advice or the advice of our organisation. They can just decide.

15 For large organisations, the more complicated their systems and processes, the more difficult it is for organisations to open their door. We have to help large organisations create an authorising environment, and that means ---

MS EASTMAN: What does that mean?

20 MS COLBERT: It means a clear message from the top, from the Chief Executive, that "As an organisation we want to be accessible and inclusive to people with disability as employers and customers". If the leadership at the top does not say that, then you would have to consider the organisation to be passive. And so given, if the organisation is passive, then middle managers are less likely to take a risk when they are going through a recruitment process or less likely to know how to support  
25 a customer with complex needs, and really no progress is made. So, having senior leadership make a commitment for the organisation, is critically important.

30 Beyond making a commitment, which of course we help them to do, there are then some practical things that help an organisation to accommodate different ways of doing things. And so we help them learn those different ways of doing things. As an example, if a deaf person applies for a job, and they fill in their online job application and they don't want to put in their mobile phone number because they don't want somebody ringing them, but then they can't upload their application, so they are immediately excluded, they've not even been able to apply for the job.  
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So we help organisations to understand those small things that can make an enormous difference to whether somebody can even initially apply for a job, let alone be considered.

40 MS EASTMAN: Can I come back to the leadership issue? So if it has to be the top-down approach, and you need that commitment at the high leadership level, do you apply any sort of test before somebody or an organisation can become a member, to just ascertain or satisfy for yourself that yes, this is an organisation that has the commitment at the high leadership level?  
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MS COLBERT: No. We ask them a series of questions why they want to join, what are they hoping to achieve. Sometimes we agree that we're not the right organisation

for them. But my view has always been to let's bring them into the tent, expose them to the leaders from other organisations and other influencing dialogue and conversation and written materials that are more likely to bring them along the process.

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So there is a series of qualifying questions about their intention and what they are hoping to achieve, because we don't want to have a list of passive organisations. And we do check on that. We certainly make sure that our members are utilising the opportunities that come from being a member. So we monitor that. I have certainly, people will tell you, called them and said, "Why haven't you done anything, you haven't made much progress, what is happening for you?" So, we do not encourage, we do not support a passive approach to membership. It's not about ---

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CHAIR: May I ask, you mention that you have large companies as members. Of the 50 ASX companies, how many members?

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MS COLBERT: We only have 23 in the top 100 of the ASX companies. So I would say that multinationals that are influenced by their US headquarters are more likely to participate. So Australia has not been quite so regulatory or advocacy-focused on employment of people with disability, but the US headquartered companies have often made substantial progress.

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CHAIR: Do you have any of the four big banks?

MS COLBERT: Yes, our four big banks have all made excellent progress, primarily or partly because they have a big customer base and accessibility of their banking products is very important from a customer base as well.

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CHAIR: Do you encourage members to develop a Disability Action Plan?

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MS COLBERT: We do, and we measure that annually when our members do our Access & Inclusion Index. They voluntarily report on 10 areas of their business, and commitment is one of those areas.

CHAIR: I think Dr Gauntlett from the Australian Human Rights Commission will tell us tomorrow that only 7 of the top 50 ASX companies have a Disability Action Plan.

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MS COLBERT: Yes.

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CHAIR: Why?

MS COLBERT: My experience is that B2C, business-to-customer organisations are more likely to create a Disability Action Plan. There is very little forums or discussion points where would a CEO from a top 100 ASX be stimulated or to consider a Disability Action Plan? Who would do that? Whose role is that? Even the Australian Institute of Company Directors does not play a leadership role in

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promoting businesses to be inclusive of people with disability. Is it the Business Council? No. I mean, who were you hoping that encouragement would come from?

CHAIR: You're asking me?

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MS COLBERT: I'm asking the community. So, from a community perspective, who do we expect to do that encouragement of the top 100 ASX? Is it the ASX themselves? Well, they don't in fact would have a Disability Action Plan.

10 CHAIR: I would have thought the public relations departments would be a good start.

MS EASTMAN: In terms of the membership of AND, there is at the present time 308 organisations who are members --

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MS COLBERT: That's correct.

MS EASTMAN: --- and if you look at the combined work force of the 308, you estimate that to cover about 1.7 million Australians.

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MS COLBERT: That's correct.

MS EASTMAN: I will come back to the area of action plans and details of what you understand to be the barriers.

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MS COLBERT: Yes.

MS EASTMAN: For your evidence we are going to take a different approach. We've heard this week from people with experience of seeking jobs and retaining jobs, their sense of what the barriers might be. And we've asked academics, but I'm interested to ask you from working with employers what some of the employers say. But before we do that, I want to ask you about some of the programs and services that AND is involved in. One is the "Stepping Into" internship. Can I mention that in the context of that connection that you have with this Royal Commission. What is the "Stepping Into" Program all about?

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MS COLBERT: So one of the best predictors of ongoing employment is work experience during the time of study. The "Stepping Into" Program was developed after we had lots of calls from law students with disability who feared that they were never going to get an opportunity. So we asked law firms to come together and to design a program where law students with disability could be given a fair chance to demonstrate their skills and capabilities. And so the first program was "Stepping Into" Law. We set that up entirely separately from a summer clerkship so that there was no competition or comparison as a pilot program. Over time ---

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MS EASTMAN: Can I pause you there. Why is that because --- and again for the lawyers following, we often think now that a summer clerkship is a little bit of a rite

of passage. It is your opportunity as a law student to see what life might be like in a large law firm, a medium-sized law firm, in-house, or in Government --

MS COLBERT: Yes.

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MS EASTMAN: --- so summer clerkships can be important.

MS COLBERT: Yes.

10 MS EASTMAN: Why separate out the opportunity for law students with disability from the regular summer clerkship program?

MS COLBERT: When we looked at the data, firms received about 1200 applications for around 50 summer clerkships. So, in that situation, what the firm does is take the fastest route to get from 1200 applications to going to interview. And the method for doing that will be often if a student has missed a semester, perhaps there has been a -- grades aren't in the top 2 or 3 per cent, et cetera. And so all of those opportunities are excluded based on the data. And so a better way would be to develop a more personal approach so that those students were not automatically excluded, and by developing the "Stepping Into" Program as a winter program, over time we found that once those firms learnt about the benefits and capabilities of law students with disability, they then could do things differently. But we needed to find a way to introduce that talent to firms that they wouldn't have otherwise met. And that is the point of the internship program, is that employers meet skilled and talented university students with disability that they would not have otherwise met if they took their digital or mechanical traditional recruitment and selection processes.

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CHAIR: So what happens now? Has it changed since 2005?

MS COLBERT: Yes. So it is not run as a winter clerkship or a winter internship now for law firms at all because the learning process has changed. There is a range of models, but what some organisations will do is put aside two or three roles for university students with disability. If they are going to take on, I don't know, 30 summer clerkships, they will then say, "Let's put 10 per cent of those for students with disability", but still exclude from the mechanical process because there is often a very good reason why a university student with disability academic transcripts look different, and a very good reason they might not have done extracurricular activity, they haven't had a gap year and travelled overseas. So it's a way of giving the university student with disability a chance to be interviewed and compete for a role.

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CHAIR: Under the current system, such a student with disability forms part of the general intake?

MS COLBERT: That's right.

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COMMISSIONER ATKINSON: Ms Colbert, can I ask you something. This is from my own interest point of view. Have you thought of doing the same with courts,



because one of the routes for new law graduates is to become an associate for a year and then go to the bar; indeed, amongst our Counsel Assisting we have people who followed that route. Have you thought of approaching courts or bar associations with a similar proposal?

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MS COLBERT: We haven't approached bar associations. One of the important aspects is what we would call a demand-led program. We don't have a supply of --- we don't have a talent pool of people. It is entirely market-driven. So if the bar association, and --- and that is the appeal for students because they are genuine roles. And the probability of winning one of those roles is higher than putting your hat into a ring of a very broad pool of talent. So it is demand-led, and we're happy to support any organisation to support the program, and be only more happy to have a further conversation follow-up on that.

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15 COMMISSIONER ATKINSON: Thank you.

MS EASTMAN: So about 1500 students with disability have completed internships and these have all been paid internships, is that right?

20 MS COLBERT: Yes.

MS EASTMAN: How successful is this program? Have you got any data on whether the program translates into sustainable employment for young people?

25 MS COLBERT: Yes. So we find that if we make a comparison based on graduate outcomes, which measures employment four months after graduation, 80 per cent of students who have done "Stepping Into" internship are employed four months after graduation. So this is in many disciplines, not just law.

30 A higher number of successful interns are working full-time in comparison to university students who haven't done an internship, and of those who are working part-time, a higher percentage are working part-time because of the choice --- because they choose to work part-time. Also, for the students who have undertaken an internship, less of them are in casual work. So we have looked at that over several cohorts, we've just actually won a --- been awarded by the Zero Project looking at excellence in employment programs. It is a global award. So the program has been well-recognised. We do measure outcomes.

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40 We also ask every student, after their internship, for feedback and we ask every supervisor for feedback. When, this summer, for example, we have 187 internships available from our members, we had 700 university students with disability apply. We interview every single one of those university students with disability. Of course they are not all going to be successful based on the numbers game, but we do absolutely encourage them to participate in our PACE Mentoring program. And what we've seen before ---

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MS EASTMAN: That's the next one I want to ask you about, is PACE Mentoring.

So I'm happy to go into PACE Mentoring now.

5 MS COLBERT: The point I want to make here is people need different steps in the journey. So we've had situations where if a student wasn't successful at winning an internship, they then went into PACE mentoring, had mentoring support from one of our employers, then re-applied for the internship and then was successful based on the additional coaching and mentoring support that they've had, and then been able to transfer into graduate programs. So people need more steps in the journey sometimes, and that's what we aim to do.

10 MS EASTMAN: So the PACE Mentoring is the Positive Action Towards Career Engagement.

15 MS COLBERT: That's right.

MS EASTMAN: It's a mentoring program. Before I ask you about that, the Commissioners heard yesterday about this practice called creaming, churning and parking. How do you reconcile the internship program with those concepts of creaming, the suggestion that you take the best or the most ready applicant with disability and find a place for that person. Has that been an issue that you've had to look at in the context of the "Stepping Into" Program?

25 MS COLBERT: I think if I can recall, one of our successful interns, he was a man who had not quite finished a Masters in Accounting but he was also a man on the autism spectrum with cerebral palsy who had a speech impairment and a hearing impairment. So if it is creaming based on his ability because his capacity to do that work, and he was a good fit for that job, yes, maybe he had the best academic transcript. But if it's creaming in relation to disability I would say no, because there is nothing wrong with recruiting skilled and talented people, but I would hate to think that our program demonstrated over time a higher placement rate according to the impact of disability.

CHAIR: How do you define disability for the purposes of that program?

35 MS COLBERT: We absolutely define it in accordance with the University Disability Support Officer guidelines. So if the university has deemed that the student is receiving support through their disability program, that is adequate for us. We do not --- we don't pass on details to our members of the student's disability either. That is an issue between the student and the member. We do pass on information about workplace adjustment requirements. So we don't ask for medical support but if the student is getting support through the disability support unit of the university, that is adequate for us.

45 CHAIR: Do all universities apply the same criteria for that purpose?

MS COLBERT: I don't feel equipped to answer that, but you would certainly hope so. We deal with 42 universities. I haven't looked at the data.

CHAIR: And the 1500 students referred to in paragraph 24 of your statement, I take it they are all university students?

5 MS COLBERT: That's right, because the point of the program is to have paid work experience prior to graduating, because that is what helps them become more competitive on graduation.

10 CHAIR: Ms Eastman referred to the possibility of creaming. We may be talking about the same thing: I would imagine there is a risk that a student with disability would elect to go through the program you run because there is a better chance of that student getting into the intern program than if the student went into the general intake that whatever the industry or company was. Is there not a risk that what has happened is that some students with disability who would get in through the ordinary  
15 program are in fact getting in through your program?

MS COLBERT: I guess it is a comfort level for the student to be able to share that information. So when they come through our program they are sharing information that they do have disability. So I would think that a number of students who don't  
20 want to give that information to an employer would still go through --- compete through the main door, particularly if they think their academic transcript would help them compete. So it really should be the personal choice of the individual whether they want to share that information.

25 CHAIR: Thank you.

COMMISSIONER RYAN: Can I just ask a question about how this is financed. It is common to provide some sort of incentive to the employer to take people on. As I understand the two that you've mentioned in your statement, are that the pay received  
30 by interns is below what a graduate might otherwise receive from a company, but above a certain minimum that you describe.

Additionally to that, they are employed by you, not by the company, so I presume that makes it easier for the employer that when it comes to the end, they don't have to  
35 make a difficult decision to keep the person on.

MS COLBERT: Yes.

40 COMMISSIONER RYAN: Is there any other incentive?

MS COLBERT: No, actually only a small percentage come through our payroll. Maybe 10 or 15 per cent come through our payroll. And, no, the employers pay for us to coordinate the program. So they pay \$3,900 for us to attract and interview and shortlist the student, and then --- they don't pay graduate wages because the student  
45 isn't yet a graduate, but they do pay in accordance with who the --- generally as they would a clerkship, et cetera, so absolutely the same salary.

We do make it easier from an administrative perspective, particularly with some government agencies because the onboarding and payroll for what might be a four-week placement it might take them --- from efficiency and swiftness. We want to have the student onboarded before they have to go back to university, and sometimes if that process is very slow, it is easier for us to support that.

COMMISSIONER RYAN: You are different from DES in that there is no government-funded financial incentive for the employer?

MS COLBERT: It is entirely funded by the employers. There is absolutely no financial incentive whatsoever. In fact, they are investing in the student because they see it as a valuable pipeline talent for them.

MS EASTMAN: I'm conscious of the time and I really want to get into the barriers, but can you tell us something briefly about the PACE Mentoring program and how that works and its success? And also the Connect50 program, which has been somewhat disrupted because of COVID-19 in terms of reaching out to some of the regional areas.

MS COLBERT: Yes. So the PACE Mentoring program, also funded by employers, where we ask our members to mentor either an unemployed person with disability or a university student. The purpose of that is for joint learning. So the mentor will learn about the lived experience of the jobseeker or student with disability, understand the perspective and the challenges, and hopefully impart wisdom about career directions, how to find a job, assist with resumes, et cetera. And around 33 per cent of people in the last group of mentors who applied for a job while being mentored successfully found a job. The purpose isn't employment, it really is coaching and mentoring and building that network, and this year we took the program digital, to respond to COVID-19. So it is very much about seeing people leaders in our members volunteering to learn that perspective, and to impart their wisdom to people who are entering the workforce or are looking to continue their work with that student or unemployed jobseeker. That is really the purpose of that program.

MS EASTMAN: And Connect50?

MS COLBERT: Connect50, is quite a data-driven program. Victoria in particular had regional skill shortages. In four locations they had good universities, and we noticed that the students who were seeking internships in those universities generally had to go to Melbourne or go to a capital city. We saw the linkage between what if those students could stay in their local region, and our goal was to connect employers in that region with students who would be graduating in that region so we could have more people from regional Victoria staying with their family and support network, not feeling like they have to move to a capital city for work and making that connection. But, yes, COVID has gotten in the way of that program, particular.

MS EASTMAN: When I made some opening remarks to tell the Commissioners

what to expect during this hearing, I made reference to the Access Economics Report, and AND commissioned that report back in 2011.

MS COLBERT: Yes.

5

MS EASTMAN: That reveals that there are economic benefits to Australia in increasing the opportunities for employment for people with disability. What brought about you commissioning that report?

10 MS COLBERT: We have always tried to harness the influencing power and insights from executive leaders. I've been supporting a champions group of senior public servants in Canberra, and they felt that there would be some real benefit from having a strong business case for Australia to increase employment participation and that more data was required. So we got sponsorship from the Business Council and  
15 Westpac. It is more effective to bring people together, to work together, to create that argument. And we asked Deloitte Access Economics to create that report for us because it was a piece of work that had not really been done and it was a way of looking at the enormous cost, not only to individuals with disability who are excluded from the workforce as a result of their disability, but the cost to us is that as  
20 a country and as a community, from having poor progress and poor employment participation.

MS EASTMAN: And that report made a number of recommendations and said, if we assume over the next decade to 2021, which is just around the corner, these might  
25 be the results. But those recommendations were never implemented, were they?

MS COLBERT: No.

MS EASTMAN: But you still have a view that the recommendations arising from  
30 the Deloitte Access Economics report still remain relevant today; is that right?

MS COLBERT: I do. And, in fact, as far back as 20 years ago, similar recommendations were made about how we can increase employment participation for people with disability. So it's been a long-acknowledged challenge, and I think  
35 there are some tangible solutions, but we would need to choose to act.

MS EASTMAN: And that report provided barriers to employment by people with disabilities. You have a list in paragraph 41. If we reflect back that this is 9 years ago, some might say very little has changed and the barriers you identify in that  
40 paragraph are still ongoing barriers, is that right?

MS COLBERT: That's correct.

MS EASTMAN: I want to get into the barriers because in addition to the findings in  
45 the Deloitte Access Economics, we asked you, in coming to the Royal Commission, to identify the barriers that you have seen from the young people with disability who you work with, and people generally, and employers to say what are the barriers and

why. So can I take you to some of your work in what is called the Disability Confidence Surveys. They are directed to business and to try and get a sense from business as to a little bit like the temperature, what is the concerns, what is the level of confidence, particularly around the confidence of a business to take on new employees.

So your Confidence Surveys, paragraph 52, have been undertaken in 2015, 2016, 2017, and covers 500 small-to-medium businesses. And you have asked them about their attitudes towards employees and customers with disability. I'm interested in when you say this:

*The Confidence Surveys highlight that despite positive community attitudes in Australia, there still seems to be a significant knowledge gap and a great deal of ignorance when it comes to including people with disability in work.*

MS EASTMAN: So, pausing there, I just want to understand when you say "a positive community attitude in Australia". We've heard during the week that one of the barriers is the attitude of employers. I'm interested in whether you are talking about a sort of big-picture community attitude or an attitude at a very grass level, individual-by-individual basis.

MS COLBERT: Yeah. I think from a big picture. Firstly, when we ask about attitudes, it's pretty easy for people to say "good", and say that they have a positive attitude; that can be done fairly easily. So I don't think measuring attitudes really gets to the heart. It's not like measuring behaviour. So that comes into play, certainly. So even if there is a positive attitude, the ignorance is vast. So most employers don't think that they have work that is relevant and suitable for people with disability.

MS EASTMAN: Why?

MS COLBERT: Because they can't imagine it. They can't imagine how a blind person could make a great lawyer. They can't imagine ---

MS EASTMAN: I have one sitting behind me!

MS COLBERT: They can't really imagine how a deaf person could be excellent at customer service.

MS EASTMAN: Why is that? Is it just outright bias, is it unconscious bias, what is it?

MS COLBERT: People --- people are very focused on themselves and the things that they most care about. So people are focused on themselves, their passions and their fears. So if you are running a business, the fear button will be about cost and risk. So you may have a positive attitude towards people with disability in your community, but you may also believe that governments and charities are looking after people with disability.

MS EASTMAN: So "I'm all for it, but not in my backyard, but government and charities have that field covered"?

5 MS COLBERT: That's right.

MS EASTMAN: Do you think now, also, well, NDIS has that covered, do you see there is a perception in the community that someone has disability, that's now the NDIS, that's not for us as private sector employers; do you get that sense at all?

10

MS COLBERT: That may very well be the case that the narrative could be, "Well, those people are being looked after now by the NDIS", and that's why it is really important that we change that conversation and focus that we are all in it together. It's our country, everyone should have the chance to work and we should have a view of leaving no one behind.

15

MS EASTMAN: The Employer Mobilisation Project, you speak about that in your statement as well. What does that project seek to do and then I'm going to ask you about some very specific findings out of that project.

20

MS COLBERT: It really --- one of the things that that project did was to segment employers. This segmentation has been done before in various forms, but maybe not so much in the detail here. So what they found in this segmenting was that weighted, only 4 per cent of employers really had the capability and the flexibility to routinely and systematically be inclusive of people with disability.

25

MS EASTMAN: 4 per cent?

MS COLBERT: 4 per cent.

30

MS EASTMAN: Is that because there is no incentive or that there is no sanction in terms of employers opening up to employing people with disability?

MS COLBERT: There are neither incentive or sanctions.

35

MS EASTMAN: All right. Let's have a look at some of the barriers that employers identified emerging from that project.

Commissioners, this is paragraph 56 of the statement. Just in the time that we've got, sadly we won't be able to get through all of them because there is many, but let's focus on a few. One is physical issues and environmental constraints. And so it is the rough or extreme worksites, the lack of adaptive technology, not having a lift or wheelchair accessible bathrooms and this being a limitation.

40

I might say to you, have we not had disability standards for premises for a number of years? Why is this still a barrier?

45

MS COLBERT: Well, firstly, this is a bit of an erroneous belief because only 5 per cent of people with disability use wheelchairs. And so as an employer making an assumption that when we are talking about people with disability, we are talking about people who use wheelchair. Actually, 95 per cent of people do not use  
5 a wheelchair. And so this comes back to the fear and holding stereotypes that are completely outdated and come from a place of lack of understanding.

MS EASTMAN: What about these "red tape" hurdles? So the difficulties  
10 complying with worksite requirements that don't allow or make it difficult to provide flexibility, modifications or adjustments?

MS COLBERT: I think that is a complete furphy for want --- it's once again lack of understanding. And employers are required to have safe work practices, safe  
15 worksites for everybody. And some of their employees who don't have disability today may acquire a temporary or permanent disability in the future. So a safe working environment is the right of everybody, and it is just the assumptions that are deeply held that we've not really been able to get cut-through on key messaging.

MS EASTMAN: So this links in with the area of risk management --  
20

MS COLBERT: Yes.

MS EASTMAN: --- is the risk of hiring a person with a disability, and that that  
25 might create a risk of injury in the workplace. But let me try to put a perspective from the employer.

The employer might say, "We have very stringent strict liability requirements under work health and safety laws in this country, and there is no margin for error. And so  
30 if we have to comply with our legal obligations for work, health and safety, why shouldn't we be able to take these risks into account?"

MS COLBERT: Well of course you absolutely can. But if you looked at the data, you would say --- you would know that people with disability have less workplace  
35 accidents and injuries than other employees, and are more likely to be compliant with work health and safety procedures. But, once again, ten tonnes of fact outweighs one ounce of perception.

MS EASTMAN: Fears of the unknown, and you touched on this coming back to  
40 when I was asking you the question about why and you said that people were concerned about themselves and fear. The fact that it is described as fear of the unknown seems to suggest a lack of knowledge about people with disability and the employers have said in responses, "We don't know how to act and we don't know how to accommodate mental health or disability in the workplace". And then saying  
45 the recruitment of people with a disability is a bigger hurdle than retaining people with disability, but if you can never get in the door in the first place, it probably doesn't matter that it is easier to retain. So where do you think this fear of the unknown comes from?



MS COLBERT: I think what it really speaks to is the need for an employer to have a trusted adviser, so that when they are presented with situations they feel that they have a trusted adviser that they can ask questions of, and not be embarrassed and not feel at risk of asking those questions.

MS EASTMAN: Your organisation does disability confidence training so, what, you go into organisations and say, "It is okay to ask somebody questions, or this is how you might want to phrase particular questions or talk about issues". So how do you overcome the fear of the unknown with just a trusted adviser; is that enough?

MS COLBERT: I think by providing some useful questions that help people to feel safe, some practical questions that help people feel informed and safe and educated. Obviously in that disability confidence training we aim to give a perspective, a different perspective than the stereotypes that people walk around with in their heads every day as well, because those stereotypes are often outdated, irrelevant, and might come from a very small experience. So perspective is important. Education, equipping with sensible questions, recognising that there will be some areas of concern and focusing on those and moving past those are all valuable activities.

MS EASTMAN: And this tendency to see the disability rather than the person, and that probably links with what you've described here as extremism, which is the tendency of employers to think of the most extreme examples, so where things can go wrong, and then use that as a reason not to employ people with disability. Where do these notions come from?

MS COLBERT: Once again, entirely based on fear and unrealistic fear. People also have very grave concerns about how they are seen by their colleagues and by --- certainly by the people that they report to. And I think I've mentioned previously I remember having a conversation where a senior person said to me, "This could be a career-limiting move if we get this wrong". And so, through that process, I learnt that the important role is to really help the employer understand the reality aspect of their risk and the perception aspect of risk and fear, and to help position inclusion of people with disability as a good thing to do, rather than to be something to be afraid of.

MS EASTMAN: At an organisational level, thinking about the organisations that you've worked with, what are the barriers in the structures of the way in which organisations approach recruitment and retention of employees that create the barriers for people with disability?

MS COLBERT: Well, the more we automate, the more barriers that we often create for people with disability. I mentioned before about if you can't upload a job application because you don't put in your mobile phone number, but there are automated systems and potentially AI in the future of course will exclude many more people. So apart from the automation and recruitment and selection process, it can start before that in the way we describe jobs by not being clear about the inherent

requirements of the role, it makes it very hard for people with a disability to know whether they could actually perform that role.

5 And then it can be an inequitable recruitment selection process. So if you need Auslan and didn't have a chance to ask for an Auslan interpreter, and you are invited for an interview, well, then you get turfed out at that point. If you need an accessible interview room and you are not provided that, once again you lose. So we really need to help employers ask questions to make it easy for candidates to say what they need to be included in the process. And then, from the onboarding processes, there  
10 are still government departments where new employees can't use the HR system because it hasn't been designed or purchased with people with low vision in mind.

So there are hurdles at many, many points of the process and particularly as it becomes more automated.

15

MS EASTMAN: So why isn't a law like the *Disability Discrimination Act*, which covers discrimination in employment, both in the areas of recruitment, terms and conditions of employment, and the definitions we know of disability discrimination are treating people less favourably, compared to a person without the disability in the  
20 same circumstances, or also this area of discrimination, called indirect discrimination --

MS COLBERT: Yes.

25 MS EASTMAN: --- and requiring everybody to comply with the same practice or policy? Why aren't the discrimination laws doing more work in these areas? Do you have a view about that?

30 MS COLBERT: Well, discrimination law is very passive. And my experience of knowing many enthusiastic candidates looking for employment who have disability is that always asking for things to be done differently, always knowing that things haven't been designed with you in mind and then ultimately being rejected is absolutely corrosive, and is emotionally wearing, exhausting and tiring.

35 MS EASTMAN: So you put the *Disability Discrimination Act* on top of that and say, if all of that has happened to you, you as the person with disability have now got to be the person who brings forward a complaint?

40 MS COLBERT: That's right.

MS EASTMAN: And bear the cost, the time and the emotional resources to pursue a complaint.

45 MS COLBERT: Yes.

MS EASTMAN: That seems that the obligation is on the person with disability to be the one to have to say to an employer, "Hey, you haven't made the accommodations

that I need".

MS COLBERT: That's right.

5 MS EASTMAN: How effective then is a complaints system that puts the onus on the victim of discrimination to have to carry that through? How effective is that?

MS COLBERT: Not. Not effective, and that's why we've seen no --- we've had no learning --- where are the cases that have helped employers along for the last ---  
10 more than 25 years of the DDA, learn how, what steps they need to take to be more accessible and inclusive to people with disability. Where are those cases? Where is the learning? Every time we walk into the Human Rights Commission, we are asked to sign a confidentiality agreement, so --- as the person making the complaint, so actually no one is ever going to learn from any conciliation complaint, no one is ever  
15 going to learn because it's all behind closed doors.

I wrote in 2008 to the Government to say, please consider that when an issue is of public interest, that it should be raised as a matter of public interest, and the Human Rights Commissioner should be given the power to say "Let's bring this one  
20 out in the open so we can all learn from it".

MS EASTMAN: We might ask the Commissioner tomorrow those questions.

I want to finish on a positive note if possible, notwithstanding the fact that for 20  
25 years these intractable problems have remained, what could be done. You do give us some ideas about a way forward in paragraph 57. What would you like to tell the Royal Commission about the measures that you've identified, and I can see I'm very close to time. The Commissioners can read paragraph 57, but in your view what is the key factor that may make a difference?

30 MS COLBERT: So, we really have to put people with disability and employers at the heart of the employment support system. We spend almost \$4 billion a year on an employment support system that is about a transaction that has nothing to do with the satisfaction and the goals of people with disability or employers. So that  
35 investment and co-design is critically important. We also need to focus on long-term evidence-based programs and to understand, if I just can make this point, we cannot solve long-term problems with short-term thinking. And so, investing in a one-year ILC grant or something like that, a one-year-something is not going to be a ripple in this massive ocean. And that importance for evidence-based programs, et cetera, we  
40 do have a fantastic program called the National Disability Recruitment Coordinator and JobAccess, it is Australia's best-kept secret. So we really need to pass that information on, we need some innovation and to invest in more than one program so that people with disability have much more choice over their career destiny with absolute support, without rigorous milestones and --- look, I could go on.

45 From a practical perspective, we could look at government's role as a purchaser, as a policy-maker and a program owner and an employer. As a government, across our

three levels of government, their purchasing, procurement power could leverage, like we do for women and like we do for Indigenous, why aren't we leveraging our supply chain? They do it very successfully in Victoria, and we really need to be leveraging their supply chain.

5

We should not be paying billions of dollars to recruiters who are not Disability Confident Recruiters. We should be drawing a line and say, "If this recruitment company that we spend billions with each year cannot accommodate the needs of jobseekers with disability, why are we investing?"

10

We've got to be really following the money here, and influencing the supply chain, and influencing all the key players to come together, because we are in this together and we need to commit to long-term thinking and long-term solutions beyond a one-year or a three-year ILC grant.

15

MS EASTMAN: I feel like we've only just touched the surface --

CHAIR: Indeed.

20

MS EASTMAN: --- but thank you so much for sharing your insights over the 20 years that you've been at the frontline of some of these concerns. Thank you very much.

MS COLBERT: Thank you.

25

MS EASTMAN: The Commissioners may have some questions.

MS COLBERT: Thank you.

30

### **QUESTIONS BY THE COMMISSION**

CHAIR: Yes, I'm sure the Commissioners do and we may have to ration the time in order to ensure that we can fit in what we have to do for the rest of the day, but I will start with Commissioner Galbally?

35

Commissioner Galbally is in Melbourne.

40

COMMISSIONER GALBALLY: Yes, thank you very much for that evidence. I would like to ask about your final paragraph 58 on improving accountability where you say, unlike the education standards and transport standards and building standards, there is no standards set or accountability in this area.

45

I presume that would also encompass the topic of targets and holding organisations to account, especially in the public sector. I wonder if you could speak about that, please.

MS COLBERT: Thank you. So there have been previous working parties looking at whether we did in fact need employment standards. That was probably around the period of maybe 2006 or so, and of course I remind that I work for an employer  
5 organisation, if you ask them to come around the table and talk about whether they would like more regulation, then I think you can probably guess the answer. But beyond standards, we don't even have guidelines. And so before we get to the question of standards, should we be giving employers guidelines? We do not have a guideline for employers on how to make workplace adjustments. So I feel that we  
10 are in a unique position in Australia with WA, Victoria, NSW, Queensland, and the Australian Public Service currently all having targets for the employment of people with disability. I fear that they won't meet those targets. But if we were to help those jurisdictions, and if we were to work together with those jurisdictions to develop those guidelines and then help private sector organisations with those  
15 guidelines, even that would be a breakthrough before we get to regulations. But we have so little, the investment has been so poor.

COMMISSIONER GALBALLY: Thank you.

20 CHAIR: Thank you. Commissioner Atkinson?

COMMISSIONER ATKINSON: No, thank you very much for your evidence. It's been most enlightening and encouraging. Thank you.

25 CHAIR: Commissioner Ryan?

COMMISSIONER RYAN: Within seconds of you starting speaking you mentioned something: you said American-based companies seemed to be more attuned to this than Australian ones. What do you think might be the reason for that? Could it be  
30 the *Americans with Disabilities Act* 1990, or what makes the difference?

MS COLBERT: I wouldn't want Australia to emulate the view that America has towards its *Americans With Disabilities Act* 1990. However, when they passed section 508 for government procurement more than 20 years ago, that did rather  
35 move the market, and so influencing through supply chain. In fact, during the Obama Administration, suppliers to the Federal Government were asked that 7 per cent of new hires be people with disability, and that they would report and comply with that. That was very, very successful, and that led to over 100,000 new people recruited both in the Obama Administration and more than that in the supply  
40 chain. So, in fact, the US has a higher proportion of people with disability in its employment, and the UK is doing fairly well as well. So we've had quite a hands-off approach, and we are paying the price for that.

COMMISSIONER RYAN: The other thing I wanted you to respond to or highlight,  
45 is paragraph 43e of your submission refers to there being no enterprise-wide approach to facilitate the large-scale employment of people with disability across Australia. I assume you're referring to the fact that most of the DES programs, for

example, are targeted at smaller enterprises. Aren't the Qantas and the public sector --- are they not able to access these?

5 MS COLBERT: That's right, the tragedy here is that actually the Department of Social Services has competitors in the market, which is the Department of Prime Minister and Cabinet, and the Department of Jobs, et cetera. So the other --- so Prime Minister and Cabinet and Jobs go to employers and will offer an enterprise approach to disadvantaged jobseekers. So, in the Indigenous Program in particular, a company will say, "We will recruit 300 people, Indigenous Australians over the  
10 next two or three years", and Government then will grant \$16 million or something to help the company build their capability to put in all the supports that are required to as in system changes et cetera and genuinely invest in the company to make what is in fact a social change, a cultural change, a business change.

15 CHAIR: Thank you. Thank you very much. I think, from your recent comments, we perhaps have to be a bit careful about drawing lessons from the United States. Their experience is so different. They are so affected by race in that country and the concept of quotas and the disputes about the extent to which there should be preference given to certain groups within the community and the retreat from the  
20 *Civil Rights Act* and so on and so forth all make comparisons to the United States to be very dubious, indeed, not to mention the astonishing low wages that they pay people that --- fortunately, whatever our inequalities, we haven't reached that point. May I endorse by what has been said by my colleagues. It has been very interesting and most stimulating. Thank you very much for your evidence.

25 MS COLBERT: Thank you very much.

30 **THE WITNESS WITHDREW**

MS EASTMAN: Thank you again. Commissioners, we are going to have a short adjournment to reconstitute the hearing room here in Sydney.

35 CHAIR: How long do we need?

MS EASTMAN: 10 minutes.

40 CHAIR: Very well. We shall resume at 3.50 Sydney time, 2.50 Brisbane time.

MS EASTMAN: Thank you.

45 **ADJOURNED** [3.41 PM]

**RESUMED** [3.54 PM]

CHAIR: Yes, Ms Eastman.

5 MS EASTMAN: Our final witnesses for this afternoon include Associate Professor Jennifer Smith-Merry who joins us on the screen and Professor Buchanan who is here with us in the hearing room. We are going to make a panel work, notwithstanding that our witnesses are in different locations. So we first probably need to do oaths and affirmations.

10

CHAIR: Thank you.

Thank you, Professor Buchanan, thank you, Professor Smith-Merry for joining the Commission and being prepared to give evidence in the panel which we hope will work effectively today. Would you please, if you don't mind, follow the instructions of my associate who is in the Sydney hearing room to take in Professor Buchanan's case the oath, and in Professor Smith-Merry's case the oath as well. Thank you.

15

20 **PROFESSOR JOHN BUCHANAN, SWORN**

**ASSOCIATE PROFESSOR JENNIFER SMITH-MERRY, SWORN**

25

CHAIR: Thank you very much. Ms Eastman will now orchestrate the panel.

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

30

MS EASTMAN: I will start with Associate Professor Smith-Merry.

Can I confirm that you are Jennifer Smith-Merry?

35

A/PROF SMITH-MERRY: Yes.

MS EASTMAN: You are the Director of the Centre of Disability Research and Policy, and the Head of Discipline Behavioural and Social Sciences in Health at the University of Sydney?

40

A/PROF SMITH-MERRY: That's correct.

MS EASTMAN: And you hold a Bachelor of Arts with Honours, a Graduate Certificate in Applied Law, a Graduate Certificate in Education Studies (Higher Education), and a PhD in Social Policy?

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A/PROF SMITH-MERRY: That's correct.

MS EASTMAN: Professor Buchanan, you are John Buchanan?

5 PROF BUCHANAN: Yes.

MS EASTMAN: And you are a member of the Business Information Systems Discipline in the Business School at the University of Sydney?

10 PROF BUCHANAN: Yes.

MS EASTMAN: And do you hold a Bachelor of Arts with Honours, a Bachelor of Laws, a Graduate Diploma in Economics and a PhD in Work and Organisational Studies?

15

PROF BUCHANAN: Yes.

MS EASTMAN: You have both provided us with a joint outline of evidence in relation to the matters that we're going to talk about this afternoon --- I give the qualification --- in the time available. We'll do our best to cover as much as possible and the research you've undertaken is truly fascinating so I hope that we can do justice to that.

20

25 Can I start perhaps this way: you have undertaken a project for the NSW Department of Industries. Can I ask you, Associate Professor Smith-Merry, to tell us what is this project and why did you become engaged in this project?

A/PROF SMITH-MERRY: So we were contacted by the NSW Government, the then Department of Industry, the project subsequently moved to the Department of Education.

30

In order to look at disadvantage, the way that students with disadvantage experienced vocational training and education in NSW, particularly in the context of Smart & Skilled, which is a training package the NSW Government administers. And we focused on disability as a case study of disadvantage. And the NSW Government, in terms of their interest in disability, they had observed a lot of churning of people through qualifications, so people doing a large number of qualifications but then not ending up in employment. And the aim of vocational education and training, from the Government's perspective, is in order to improve employment outcomes, and for that reason, they subsidise the involvement of people with disability, and other forms of disadvantage in Smart & Skilled so they can do fee-free courses, for example.

35

40

MS EASTMAN: I will ask you about some of those component parts in a moment. But the result of this research was the publication in August this year of a report called "Disadvantage, disability and vocational education and training: A research report", which the Commissioners have as part of the Tender Bundle. I will come to the tenders shortly.

45



What I wanted to ask both of you is to tell us a little bit about your findings, but before we get to the findings, can we start with an overview of the project and the methodology that you used.

5

Professor Buchanan, do you want to take that question?

PROF BUCHANAN: Sure. We put together a team that had expertise in both the labour market, vocational education and deep expertise in the domain of disability. So I and my colleagues were strong on the labour market and vocational education, and Jen and her team were strong on disability.

10

We thought it was important, in answering the questions posed by the Department, to do policy research, statistical analysis, particularly descriptive statistics, and then do a qualitative set of studies to bring the rich processes to life. I've worked in the Public Service for seven years, as had my colleague who worked on this, and we from the start always recognised that policy is a domain itself that needs to be studied, it's not just something that falls off at the end once you've done your infocomm analysis, and so we had a deep engagement with how policy in this domain had evolved, and that was written up by my colleague Bruce Smith.

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We were very lucky, and you don't see this very often, the Department basically threw open all their administrative information systems, so they were giving us raw data on how people with disability engage with the vocational systems. Maybe I don't get out enough, but this was one of the most exciting parts of the project because you could actually get to particular courses and particular institutions and see who was doing what. So in that sense the Department was incredibly generous and took a lot of risks because they don't usually expose that level of detail. Then, having got the statistics --- can I also say on the statistical side, they gave us a completely open sky to bring in whatever statistics we liked. So, as you will see from the report, we didn't just look at people with disability in the stats, we actually said you had to anchor this analysis in a broader labour market understanding of the evolution of work, and in particular the evolution of labour demand, and the nature of segmentation on the supply side of the labour market.

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And then, having done that work, Jennifer and her team did the qualitative work. I worked with and assisted them, but I was very much a support person, that was Jen's side of it, and we as a matter of research design thought it was important to look at two contrasting local labour markets, so we looked at Western Sydney and the local labour market around Bathurst and Lithgow.

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I can go on and on, but that's the guts of it: policy research, statistics broadly defined and with rich depth from their administrative systems and two local labour market studies looking at the dynamics and workforce development within them.

45

MS EASTMAN: This may sound like an obvious question to which we should all know the answer, but when you talk about vocational education and training what,

are we talking about, just TAFE, for example, or was it a broader concept?

5 PROF BUCHANAN: No, that's a really good question. The way I define it is vocational education and training is the space within the education system that sits between schools and universities. And it is the space in the labour market that sits between entry-level jobs and professional work, which is a very big, loosely defined space, and how that space is configured varies dramatically around the world. Whereas most countries around the world have universities and they have schools and they are kind of identifiable, the actual form of vocational education takes ---  
10 varies radically in countries around the world.

MS EASTMAN: So this is not disability-specific, this is really open in the true sense of the word?

15 A/PROF SMITH-MERRY: Yes.

PROF BUCHANAN: Yes.

20 MS EASTMAN: And what I think you were doing, and I think Associate Professor Smith-Merry --- can I use "Jen"?

A/PROF SMITH-MERRY: Yes.

25 MS EASTMAN: It's late in the afternoon, so ---

A/PROF SMITH-MERRY: Please do!

30 MS EASTMAN: --- I will do economy of words. But when you said at the beginning about disadvantage and particularly disability, again, can I just be clear about when you talk about disadvantage, what are you referring to?

PROF BUCHANAN: Well, see that is ---

35 MS EASTMAN: Either of you can jump in on this.

40 PROF BUCHANAN: This is where we took the policy research very seriously, because --- and that is I think one of the --- the report is very rich, we are very proud of it, but we actually spent quite some time getting across the history of how these categories had emerged. And to cut a long story short, vocational education, throughout most of its history in Australia, has basically been an extension of the apprenticeship system. It came out of a kind of --- the emergence of the trades and the underpinning knowledge of the trades, but ---

45 MS EASTMAN: That takes us back to the old notions of blue collar or white collar distinctions.

PROF BUCHANAN: Absolutely, but with the Kangan Report which came out of

the Whitlam Government, there was a vision that Australia needed to offer something to people who didn't go to university and who left school and still had talents to develop. At about that time, as we all know, that was a very ambitious and inclusive and expansive vision of adult education. But, at exactly the same time, the long boom ended, and so the Kangan Report came out with this expansive vision, and almost an unintended consequence is that the vocational education system then became a shock absorber for the labour market. So whilst there'd been this expansive vision, it also took on this role in absorbing for people who couldn't find work.

5  
10 MS EASTMAN: When you say people who couldn't find work, is this where it becomes a pathway through for people who identified as disadvantaged ---

PROF BUCHANAN: Yes.

15 MS EASTMAN: --- and whether disability is a cohort of disadvantage, or separate?

A/PROF SMITH-MERRY: Yes.

MS EASTMAN: Jen, can I ask you about those concepts?

20  
A/PROF SMITH-MERRY: Yeah, so the Smart & Skilled Program in NSW has the following people as categories of disadvantage: Aboriginal and Torres Strait Islander students, students with disabilities, long-term unemployed people, welfare recipients and their dependants, dependants on a person receiving Disability Support Pension, asylum seekers and refugees, people experiencing domestic or family violence and their dependants, and young people previously or currently in out-of-home care. So that is the current categories of disadvantage under Smart & Skilled, and they are all groups that the Government feel needs extra support in order to gain employment.

25  
30 PROF BUCHANAN: They build on the Kangan categories, so if you look on page 24 of the report, it is quite interesting from the notion of disadvantage has never been defined in an academic sense, it's almost been a policy discourse, and the categories that Jen read out essentially are an evolution of those categories from Kangan.

35  
40 MS EASTMAN: You then had access to quite a lot of material. As you say, the doors were opened. How did you go about the process of undertaking the critical analysis of the VET policy, the quantitative mapping of the scale of disadvantage, and then the quality of data collection? How long did this take and what approach did you do, and I think there is some aspect of taking some in-depth interviews?

A/PROF SMITH-MERRY: Yes.

45 MS EASTMAN: Jen, I will ask you to summarise, obviously, what took a very long time. I think it is helpful for the Royal Commission to understand the method and the approach that you took to the research, which in turn then can help us understand the basis of the findings.

PROF BUCHANAN: Jen, I will do the statistics and you do the qualitative.

A/PROF SMITH-MERRY: Yes.

5

PROF BUCHANAN: With the policy research, we got a colleague of mine, Dr Bruce Smith, who has done a PhD in education policy and practice in Australia and worked as a senior public servant in Canberra for 30 years, and he's now an associate of Jen's centre, he wrote that chapter which got across both the  
10 continuities and the changes within the notion of disadvantage. Because you've got to remember, that NSW wanted us to look at disadvantage, and so we had to anchor this in the framing of what is defined as disadvantage and how have those categories changed, which is why on page 24 we've shown that deep continuity.

15 Bruce is a very skilled historian and it is basically historical policy research. I couldn't quantify it. I would guess Bruce spent a month to 6 weeks, but building on his best knowledge of education history and the public sector policy and practice.

The statistics is very much based on descriptive statistics, it's not advanced  
20 econometrics or machine learning. It is very much looking at how you bring together material collected through quite diverse sources to get a rich picture of the context. That was done by me. Like I say, I don't get out enough, I really like just getting in there and immersing myself in bucketloads of data and trying to present them in a way which tells a story.

25

So my first training is in history, but I always try and tell a story with the stats. As I mentioned earlier, we anchored it in that insight of Beveridge and Cane, that if you want to understand a problem and its roots, you don't necessarily look at the end  
30 point. So Beveridge and Cane made the point that a lot of people have been studying the unemployed. In the 19th century they used to call it the Social Question, and it was all about looking at the problem populations.

The big shift of Cane and Beveridge is saying you don't look at the problem, you look at what is causing the problem, so you don't look at the unemployed, you look at  
35 unemployment as a dynamic. So that's why there is that stuff on the nature of labour demand upfront, which then provides the context, so thinking about what is the size of the populations now and how they embedded in the vocational education and training system.

40 So the flow of the chapter took quite a while to work out, but that was, I guess, the equivalent of 2 months' full-time work spread over an 18-month period.

As I said, the back half of that is the very detailed runs we got off the department's system. I could go on and on and on, but I think the main thing to note about what  
45 I was doing in the chapter on the statistics was establishing that you could use the people with disability subpopulation as a powerful specialist group to shed light on the problem of disadvantage.

So there is a sequence we're looking at: the labour market at large, the vocational education system within it, we're looking at the disadvantage within that and then we're taking the people with disability as the pointy end to get into the raw detail, and we explain how you can move through those different levels of aggregation with heresy to shed light on the different developments. But then you can only get so far in mapping out the scale of the problem with the statistics, that's where we flick to Jen to get down into the generative mechanisms.

MS EASTMAN: All right, and Jen, what was the approach taken? This part involves the in-depth interviews?

A/PROF SMITH-MERRY: So we did 71 in-depth interviews in order to really understand the experience, that sort of multidimensional experience of disability in relation to vocational education and training, and then the transition from vocational education and training and into employment.

So as part of that we spoke to 16 people with disability, 6 family members and carers, then vocational and educational trainers, employers and disability support workers, all with an interest in either employment or vocational education and training.

MS EASTMAN: Sorry, in terms of the people with disability, we've just referred to disability in our discussion so far in a very generic sense, but were there any features of the nature of disability?

A/PROF SMITH-MERRY: Yes.

MS EASTMAN: What can you tell us about that, just so we have a context in understanding the work that you were doing?

A/PROF SMITH-MERRY: Sure thing. So we did ask people about that. I will just refer to that here. So we had 10 participants had a form of physical disability, 5 had intellectual disability, 3 had autism and 6 had mental health diagnosis. So a number of people had 3 or more types of disability. So it was that that they were talking about.

MS EASTMAN: I'm really keen to get into the findings --

PROF BUCHANAN: --- (overspeaking) ---

MS EASTMAN: --- is there anything else we need to say on methodology?

PROF BUCHANAN: --- two other parts of method: the Department was very keen at the outset to involve the sector at large, and we had 2 policy workshops which they called hackathons, appropriated from the IT sector. But it was basically a workshop where we talked to representatives from people with disability, their carers, their

educators, Disability Employment Service, and we got them all in a room and we argued key issues out at 2 points, at the commencement of the project, and the workshop and initial findings.

- 5 There were also 2 very intense workshops within the department itself to kick the tyres hard on what we were finding.

MS EASTMAN: Right.

- 10 PROF BUCHANAN: So it's not just --- once again this was not done --- I've been a policy researcher for 30 years, and this was one of the freest projects I've been involved with. They weren't having these events to draw a circle around what we could and couldn't say, they were very respectful of what we found and wanted to make sure anything we found would hit the target. They weren't necessarily happy  
15 with the way we hit the target, but they wanted to be sure we at least the target in terms of how to think about engaging their interventions in the bulkhead system.

MS EASTMAN: Okay. So there wasn't happy news in the findings?

- 20 PROF BUCHANAN: No.

MS EASTMAN: So tell us about the findings, and I will ask you whether these were findings that you at the outset expected to see or whether there were some interesting findings that may give us an inkling as to where we go to from here. I will open up  
25 to both of you, whoever will want to go first in starting to talk about the findings.

PROF BUCHANAN: Well, I give an overview, Jen, and then you come into the deal, is that all right?

- 30 A/PROF SMITH-MERRY: Yeah, why don't you give the quantitative overview.

PROF BUCHANAN: We pulled the overall findings together on page 112, so if you wanted to get in it in a nutshell, on page 120, the way you pull all our insights together is to think about the notion of labour flows, the flows of learning and labour.  
35 If you look on page 119, there is a formal outline of what all the pathways are for somebody making the transition from education to work if they have a disability.

CHAIR: Can I just make sure I've got the right pages?

- 40 MS EASTMAN: Sorry, I'm not sure that the pagination you've got in the Tender Bundle is the same, so I'm just trying to check that we can match those numbers.

COMMISSIONER ATKINSON: If you could give us a paragraph number in the report, that might help because it also has paragraph numbers rather than pages.

- 45 PROF BUCHANAN: It was section 8.2.2.

CHAIR: Thank you very much.

MS EASTMAN: It should have some coloured charts with that.

5 PROF BUCHANAN: Yes.

CHAIR: Very good.

10 PROF BUCHANAN: I can see you have the right chart.

MS EASTMAN: Just let me put this on just so we keep a record for the transcript, so for the document reference CM D20/43164 and then at the bottom of the page 128, and then the red graph is page 129.

15 Our numbers might be a little out of sync from yours but we'll do our best to follow along. It might be late in the day to see if the team can perhaps put this up on the screen if that's helpful. The page 129.

20 PROF BUCHANAN: We can still explain it --

MS EASTMAN: Okay, go ahead.

PROF BUCHANAN: --- and you used the expression "it wasn't a happy finding".

25 MS EASTMAN: Yes.

PROF BUCHANAN: I think it's a bit too global because what we show on that diagram, that one, is that where the system works well, it works exceptionally well.

30 MS EASTMAN: Yes.

35 PROF BUCHANAN: So I interviewed, along with Ivy, some exceptionally good educators in Western Sydney, and very dedicated principals in Sydney who spend a lot of times developing programs and have deep links with employers, they have very engaged Disability Employment Service support people and a network of employers who want to do the right thing. And that's the flow. That's the top flow.

MS EASTMAN: So that is the good practice.

40 PROF BUCHANAN: That is the good practice. But the tendencies within the system are to deviate from that practice because, first of all, there is a lot of under-resourcing, a lot of the DES' are under-resourced, given the scale of the challenge. Many employers, first of all, are not engaged at all and in some cases are only engaged marginally and often for opportunistic reasons.

45 So we said whilst there is the idea of a best-practice flow, there is a downward tendency to what we call the compliance-driven flow. So the challenge, and because

we were writing for the Vocational Education Department say, "What can you do this in this space?" That's like the second big positive finding we found. As a legacy of the Kangan intervention, NSWTAPE and the Adult Community Education sector have built up specialised entities that have deep expertise in helping people with disability navigate the complex world that is both education and work.

So that's, if you like, a second positive finding, but our empirical finding was that that legacy is withering, and we didn't quite explain it, but under Smart & Skilled, the thing we were actually brought in to formally evaluate is what is called the "loadings". So whilst the Kangan vision of support for people with disability was that you built up specialised expertise that would provide support, the idea of the loadings is that you disperse those funds to individual training providers so that, for instance, if you are providing a Certificate II in Basic Education, you will get 10 per cent on the \$450 fee. So if you have someone with disability, they will get an extra \$45.

If you have somebody doing a construction apprenticeship, that course costs \$13,000 so you will get an extra \$1,300. We found this was not actually a terribly effective way of putting support in.

The second finding was where you had this constellation of expertise, it did make a difference, but that is withering. And the design principle of Smart & Skilled, which is part of the training market vision, how you do these things, is actually not nurturing a critical mass of expertise.

MS EASTMAN: Right. Can I ask you why? Did you get any sense? Is it the lack of expertise or under-resourcing or complexity of systems, have they changed?

PROF BUCHANAN: It is a design principle. Whilst the categories of disadvantage have remained stable, and I mentioned that to you earlier, from Kangan through to Kirby, through to the VEETAC Report in 2011, the underlying structure of the vocational education system has changed. The vision that came out of Kangan is that vocational education should be essentially run like schools and universities, there should be a critical mass of funding, a block of funding, there should be resources devoted to curriculum pedagogy and a sense of professionalism.

With the shift to competency-based training, there has been a shift away from that notion and the idea is that you could have a training market, people buy the competency they want, structured around very narrowly-defined qualifications, and so the model for supporting people with disability was to attach a loading to the operation of funds flowing through a training market, whereas the Kangan vision was you built up critical mass of expertise within an institutional base.

MS EASTMAN: On that market approach, though, if there is greater supply than demand, how does that sit with this model?

PROF BUCHANAN: Greater supply ---



MS EASTMAN: So there is more people being trained and available for employers, but fewer jobs, then employers can choose who they want.

5 PROF BUCHANAN: Yes, but that is under any system. TAFE is churning out a whole lot of qualified people, that is a problem of the deficient demand. The problem with the loadings is that private providers are not geared up to have --- these units can sometimes have 5, 10, 15 people in them in TAFE, they provide people with advice on course selection, they can provide them with advice on how to do  
10 study. They can provide support to the student in the classroom. If you are a private provider with 500 students, you can't have that kind of expertise, and this is where fragmenting funding around a particular student in a particular course is problematic.

A/PROF SMITH-MERRY: Yes.

15

PROF BUCHANAN: So that is a summary of the overall framework, but Jen and her team got a lot more detail on how that actually plays out.

A/PROF SMITH-MERRY: So I suppose we added colour to those findings. So do  
20 you want me to explain from a qualitative perspective?

MS EASTMAN: Yes, please.

A/PROF SMITH-MERRY: So in terms of, I suppose, some underlying points that I  
25 could make about it is that on the whole, people felt that they were getting a good experience from vocational education and training. But that good experience is very much tempered by an environment of, I suppose, poor disability confidence amongst people with disability.

30 So people felt, because of the stigma and discrimination that they had dealt with through their lives up until to that point, and sort of a layering of disadvantage. So people come into vocational education and training with this whole experience of having lived in an environment where people with disability are marginalised because of stigma, because discrimination but because of all sorts of other things like  
35 poverty or other unconnected things like people living in rural areas. People were coming in and lacking confidence in completing their education. But then, in terms of really relevant to this inquiry, making the step into employment and feeling confident in being able to do that at the end of a qualification as well. So, that really impacting on them.

40

And then, a lack of disability confidence within the vocational and education training system. So people talked about it being very patchy. They would go to one provider and have an excellent experience because the trainer was very up on disability and really understood it, whereas going to another provider --- even within TAFE, not  
45 just TAFE as opposed to Registered Training Organisations --- then they were not having such a good experience.

And then also that lack of disability understanding being a problem when they went to seek employment, because employers were basing their understanding of their abilities and attributes on social stigma and that sort of stigmatised environment, rather than understanding really about disability. So poor disability understanding in the community was really impacting on people.

We made an effort to talk to providers both within TAFE and Registered Training Organisations so that we weren't just focusing on TAFE. And, like John was saying, TAFE was better set up for supporting people with disability because of the large size but also a long history of supporting people. Whereas Registered Training Organisations could be quite small and not have the capacity to do that. So that is a real problem because it's meant to be an open market where people can go wherever they want to go to get the skills they want, but they are not getting the disability support to enable them to get the skills unless they are going to a larger organisation.

Similarly, people in regional and rural areas, and we focused specifically on a rural area as one of our case studies, were not getting always the support that people got in the city --- which is a common thing, but it is worth pointing out because we don't have an even playing field for people with disability across Australia in terms of the regions.

MS EASTMAN: Go ahead. Sorry to interrupt you.

A/PROF SMITH-MERRY: That's okay. I think some of the things that really helped were where there were good cross-sector collaboration, so where vocational education training organisations were strongly embedded in the community, they knew the employers in the community and knew the disability support providers. When there were good connections across all of those sectors, there were better outcomes for people.

I think that there was a tendency amongst some vocational education suppliers to say "Oh, well, disability is all done by the NDIS now, we don't need to do anything now. Disability is the NDIS". I think that is still a prevalent understanding, and of course a lot of these people, they didn't get NDIS support that we spoke to. So, yes, I think that is important too.

Another really important thing was exposure to work was seen as essential for people getting employment. That's not just because it raises the confidence of people to go into the workforce and that they have those skills, but also it means that employers have more exposure to people with disability as well, so that programs where there were exposure to work were helpful all around. So, let me know what else you want me to talk about. There is a huge amount of stuff.

MS EASTMAN: There is. And I'm mindful of the time. The next thing I want to ask you is where do we go from here and other factors, but I might pause to see if the Commissioners have any questions that they want to ask you about what you've said

so far and the particular findings?

Commissioners?

5 CHAIR: Yes, Commissioner Galbally?

COMMISSIONER GALBALLY: Yes, I would like to ask a question about RTOs, but especially TAFE courses actually discriminating against people with disabilities.

10 We heard this morning, for example, about a young woman with Down syndrome who was pretty good at computing and wanted to do basic computing, and they said, "No, there is no way we can have you". And then she was sent to a disability-specific course that didn't sound like it was what she had wanted to do. Back in the old days, of course, not a long time ago, you could ring up and say you  
15 wanted to do computing at your local adult training and they would say --- if you said you were disabled, they would get you to do disabled computing, because they got a special loading for that. And I wondered about all of that, thanks.

A/PROF SMITH-MERRY: Yes. So there was --- it worked both ways. Some  
20 people were not able to do their course of choice because it was not offered in an accessible format or in the sort of format that they needed. So often --- there's been a congregating of courses and it is particularly problematic for people with disability in rural areas where they might not be able to do a course online. So then they are stuck with the courses done in person in their own area, which is quite  
25 limited. But also some people are being pushed into courses that were completely inappropriate because of the Disability Employment Services or JobActive services pushing them into an inappropriate course because of some sort of, I'm not quite sure how it works, but them getting some sort of incentive to put people into a certain certificate level. So they talked of --- quite a bit about that being a problem.

30 There is this idea that "People with disability, if we can get them into any course, then that's okay", or "If we can get them into any job, then that's okay". But what we are forgetting about is careers, we're just thinking --- our bar is so low that we think any course, any job but we are not thinking about actually people with disability  
35 having careers like anyone else. And I think that the system is set up for the "any job, any course" thing, as long as it is ticking off.

PROF BUCHANAN: Can I back you on that, Jen, because in the policy hackathons this issues was discussed. And the problem that was reported was that often people  
40 with disability were picking courses that they thought they would like, like apparently Animal Studies is quite popular, but the prospects of employment are quite remote. So there is --- I'm not discounting what you heard this morning, but from the policy hackathon that we picked up, that was more the issue that the educators were reporting, and they weren't stopping people. They were saying,  
45 "Well, what would you like to do?", and the default for a lot of people was not necessarily terribly practical.

That said, the data in our report and summarised in section 3.6, most people with disability concentrate their studies in one of six areas, and that does include ICT and they are in areas of relatively high demand. So whilst we hear about these imperfections, like Jen said, we will talk about what is not working, but for a lot of people this is working. There are imperfections, but it's not like a complete disaster. That said, we are a bit worried that the legacies that have kept the current system going are atrophied. At the moment, there is a infrastructure to work with.

MS EASTMAN: I will just check, any other questions Commissioners?

CHAIR: Yes, Commissioner Atkinson?

COMMISSIONER ATKINSON: My question is how can we extrapolate this, or can we? It is excellent qualitative and quantitative research, which is the brilliance of both sides of research brought together. Can this be extrapolated to other States and Territories? Are we likely to find the same results if we replicated the study?

A/PROF SMITH-MERRY: I think the thing that would be different would be in terms of the way that TAFE funding has reduced in other States. So NSW has a relatively --- and John can talk about this more eloquently than me, but NSW still has quite a robust and strong TAFE system, whereas in other States it is a much higher rate of Registered Training Organisations as opposed to TAFE.

PROF BUCHANAN: I think that is exactly right. We haven't validated it to that extent, but it is well known that NSW has preserved a central infrastructure in a way that misdemeanour other States haven't, much like in COVID. NSW defended its public health infrastructure in a way the other States haven't. This is probably the high watermark for Australia. This is not typical.

CHAIR: I don't have a question, more of a lament. I have become increasingly confused as the week goes on. It's true that I start from a high basic conclusion the reason is --- there may be a number of reasons, but the reason from the evidence is this is all astonishingly complicated. I see in that Section 4 you've attempted to integrate the NDIS and the DES and every other program that you can think of. What we have in fact is we have six States, two Territories, and as you just said, they will be very different. The funding, as I understand it, at TAFE and these other private organisations is different; the private organisations don't, generally speaking, have a very fantastic history for outcomes. To integrate those into a system where you are seeking to provide assistance to people with disability seems to me to have all sorts of complications of the kind you've identified, but I suspect that there are many others.

How on earth do we go about rationalising all of this between Commonwealth and State programs, bearing in mind that the ground changes on an almost monthly basis?

PROF BUCHANAN: Look, that is a question I've done a lot of thinking about and

a lot of work on.

--

CHAIR: Good!

5 PROF BUCHANAN: --- and my starting point is don't give it to the Commonwealth.

CHAIR: Don't give it to the Commonwealth?

10 PROF BUCHANAN: Don't give it to the Commonwealth?

CHAIR: You've just warmed the cockles of Commissioner Atkinson's heart!

15 PROF BUCHANAN: I've watched this space and I've researched in this space now for 30 years, and by and large, anything that is good that has survived has been because the States have held in there and stopped so many dumb ideas coming from Canberra. Can I say, I was trained as a public servant in Canberra and I am a product of that system. And I've actually written a submission to the Productivity Commission around this stuff which I'm happy to share with you.

20

CHAIR: By all means.

PROF BUCHANAN: But the really interesting thing, I think, is Australia's response to COVID has shown what can happen when you have creative federalism.

25

CHAIR: I wish I hadn't asked you this question.

MS EASTMAN: It is quite convenient to me because this is the next topic I wanted to finish on.

30

PROF BUCHANAN: So Australia does --- and in this space, it was working towards the kind of creative federalism around an institution called Skills Australia. That was a federal body but it didn't dictate. It saw its role as facilitating amendment but with coherent leadership. It is quite a complicated art, but to me, in something as complicated as vocational education, you've got employers, you've got unions, you've got educators, you've got different State Governments having a role. You have to have a sense of negotiating coherence, trying to come in over the top. We've had --- I mean Hewitt keeps talking about a similar problem in the UK, he calls the VET system in the UK the world's biggest trainset, because policy-makers come along every couple of years and dis-assemble it and then re-assemble it. Australia's VET system has a similar sort of problem. And so for me, I think you've got to have a creative federalism.

35

40

45 And can I say, when I was a young radical, I was committed to destroying the Senate and getting rid of the States, that was kind of the institution I was raised in. The older I've got, I've actually come ---

CHAIR: You are now an old radical?

5 PROF BUCHANAN: Well, some people would never recognise me from what I was, but I've watched a lot evolve. And for me, I think the trick is to actually get dynamic federalism. It's not getting rid of the Commonwealth and handing it all back to the States, but actually getting it working together, and for me, just the finish line, you saw that work really well in Australia around the AIDS crisis and you've seen that work really well around this crisis. So there is an element within Australian public policy that allows this thing to happen. That's the sentiment i think we should  
10 ---

CHAIR: Have you then unscrambled the NDIS egg? In your terms, it's been superimposed and indeed has overtaken the State programs.

15 PROF BUCHANAN: That was negotiated, though, and the States went along with that, and the States were quite clear about what was going on.

CHAIR: No, I wasn't implying they didn't know what was going on, I'm just saying the Commonwealth has come in over the system.  
20

A/PROF SMITH-MERRY: And it is a very static object in that system, so all the other parts have to move around the NDIS and in relation to it. So it adds that type of complexity, I think.

25 CHAIR: I've identified the next research project. Thank you.

MS EASTMAN: I suppose we will just come back to the final paragraph in the outline of evidence, which is paragraph 16. I think you've touched already on some of these. But I might just start with Jen.  
30

In terms of possible new directions for policy, mindful that we too don't want to become trainset devotees, how does one approach this, Jen? Have you got any views from the research that you've done as to where to from here?

35 A/PROF SMITH-MERRY: Well, John is better at the bigger picture, but in terms of what has worked in other jurisdictions or what they've tried in other jurisdictions, then disability employment quotas have been used in many European countries to some effect.

40 And what that does is it means that organisations might feel enabled to have people with disability because of that external driver, but then become more confident about --- because they have people with disability in their organisations that actually understand disability more, and so therefore their workplace develops because they are sort of forced to take people with disability. The problem is, for those people  
45 with disability it can be problematic in terms of coming into an organisation that's not prepared for them. And it doesn't work with everyone, but that is something that has worked in European countries, so they have taxation breaks, for example, for

employing people with disability or penalties in the case of Germany where the companies will pay a penalty if they don't reach a certain quota for employees with disability.

5 MS EASTMAN: On that, we've heard that some companies are happy to pay the penalty because the penalty is a smaller cost than the costs associated with implementing a target. So is that a concern in terms of how targets and penalties might operate?

10 A/PROF SMITH-MERRY: Yes. So it's not going to do very much --- well, it does less for companies that are already not onboard with disability. So things like flexi-jobs or extra money given to organisations employing people with disability, it's always companies that are already on the page with disability that find those things attractive, but smaller companies with no experience, they are not going to  
15 take it on. So we're not meeting that part of the sector with those types of approaches.

MS EASTMAN: Yes. John, any final views from you --

20 PROF BUCHANAN: Sure.

MS EASTMAN: --- on new possible directions? And I note there are procurement issues, but I'm interested by this idea of a creation of a competitive disability market that takes into account the concept of mass unemployment, underemployment and  
25 joblessness.

PROF BUCHANAN: Sure.

MS EASTMAN: For people with disability on the edge of that is that a way of  
30 putting them in the centre of that. Is that what you've got in mind?

PROF BUCHANAN: Yes, look, I would respond to your question "where to from here?". I see it in two ways: what is the deep underlying issue that you've got to be thinking about in the long run and then what can you do in the short run? You know,  
35 the material I summarised there from the OECD on joblessness is worth reading. It's only 2 or 3 pages. The OECD report is about 70 pages long. No one cites it because it is too rigid and very detailed. But when you grind through it, it is a huge finding; 23 per cent of the workforce, jobless, right.

40 MS EASTMAN: Pre-COVID?

PROF BUCHANAN: Pre-COVID.

MS EASTMAN: So post-COVID what are the numbers going to be like?  
45

PROF BUCHANAN: They will be north from there. And so the shadow of that is over everything that we're looking at. Where you have that amount of excess labour

in the labour market, you have a deep problem. Everyone has been running around Australia saying that Australia is the envy of the Western world, 30 years of uninterrupted growth, unemployment rates are 5 per cent, we've been living in a fool's paradise. In the bottom reaches of the labour market, it has been extremely unpleasant for a very long time.

MS EASTMAN: And who is in that bottom group?

PROF BUCHANAN: I'm sorry, it has only taken me 30 years to get to this point, I haven't followed the disability data. I've been a labour market researcher. But when I put that time series together, I just sat back and thought "wow", that stability of stagnant workforce is pretty interesting. You might have noticed I quoted the Disability Commissioner was looking in the year 2000, back 20 years, and saying nothing has changed. So that's what happens to the most vulnerable members of a society when the economy is operating at less than a full employment level. So there is a big structural problem there which --- this isn't a Royal Commission into full employment. That's for somebody else ---

CHAIR: --- (overspeaking) --- we've got everything else!

PROF BUCHANAN: And this is something I mentioned when I was talking to Counsel beforehand, COVID has come right in the middle of this Royal Commission. I put the challenge to you: what does a disability-friendly recovery look like? You know, I think when you are in the middle of a crisis, the way you start out has a huge impact on the way in which the recovery evolves. And I would -- my suggestion, like I say, the NSW Government is asking for this advice, but I would be saying we should be looking at a disability or a disadvantage-friendly recovery. You don't say, "We'll wait until we get growth back and then look after them". That never happens. We now have 30 years of evidence of that. Right, we've had 30 years uninterrupted growth and you've had that standard participation rate.

So, for me, I think there --- that's got to be the big vision. And I heard Commissioner Sackville on Radio National talking about your report about the impact of COVID and you made the simple, powerful point: 'we've got to start our policies with the most vulnerable and work from there'. We don't look at them as an after-thought, they become the reference point. Brilliant starting point for thinking about the employment policy for coming out of COVID. That's a big call. That's the big picture. I think you can do --- and that will be hard to shift. But I do think you can do something around the ideas that Jen's been talking about. I think the idea of quotas, supported by tax breaks, is really good. I started life in the public service in 1983 coming out of the recession then and I worked on the Community Employment Program. And the vision of that program was you had to give people some experience of work so that they could jump the queue. It was recognised it would take years to get unemployment down but you wanted to spread the jobs around so it wasn't concentrated on the most vulnerable. If you have a quota supported by tax, you will at least try and get the participation rate up. The overall



underemployment rate might remain high, but you have quotas there, you will get more people into positions than would otherwise could.

5 We've seen --- you might have noticed in my report, the Indigenous crowd has done better than the disabled because they've had clear targets and a concerted campaign, Closing the Gap. They haven't solved the problem, but their participation has gone up a full 8 per cent from 40 per cent. In labour market terms, that's really big. That is really significant.

10 The final suggestion that I would make in the medium-to-short-term is Australia does have some really good institutions and they are often overlooked. I know TAFE has been rundown, but there is still an infrastructure there. We discovered in NSW you still have these constellations of expertise. Let's work with them. Let's revitalise them before they die off. There is another institution, called Group Training, which  
15 actually came out of the crisis of the 1970s and 1980s. The apprenticeship system was on the verge of serious collapse in construction and engineering and group apprenticeships schemes emerged as basically ethical labour hire. Individual employers were scared. They didn't want to take on apprentices. So local councils or local employer associations took on the role of employer and then identified  
20 fragments of jobs which the apprentices could be sent to. That meant what was latent demand could become manifest demand by overcoming the coordination problem of having a central employer called the Group Training Scheme. And I think if the Commission is interested in that stuff I'm happy to write you a discussion note on how you could take this principle of sharing the risk. Look, you  
25 know, life is really hard. You know, I've been studying workplaces now for 30 years. It is harder now than it has ever been. Being an employer is not much fun. You just can't simply mandate that employers do this. And I cite the example there on the overseas experience. The Norwegians sling a lot of support on. If someone puts their hands up to take on somebody with disability in Norway there's is  
30 a support system that comes from what we would used to have called the Commonwealth Employment Service. That is what we've masterminded here with the notion of group training. You have another body that actually takes the full responsibility for employment but then shares the obligation of actually defining the job, training them on the job, handling performance issues, that is shared. That way  
35 you take can take the sting out of any quotes. Say you give a quota in the tax system, it's not just stick and carrot, it's also active support with something like a group training scheme coming around.

40 MS EASTMAN: We could continue. I'm conscious of the time but I want to ---

CHAIR: You keep saying that.

MS EASTMAN: I know, but this time I will stop.

45 I wanted to thank both John and Jen this afternoon for the generosity of their time and their thinking about these issues.

And, Commissioners, you have the material which I would ask you to mark the outline as Exhibit 9.23 and the accompanying material, including the report, as Exhibits 9.23.1 through to 9.23.4. I won't ask Commissioners if you have any further questions, and suggest that concludes the evidence for today.

5

**EXHIBIT #9.23 - OUTLINE OF EVIDENCE BY PROFESSOR JOHN BUCHANAN AND A/PROF JENNIFER SMITH-MERRY**

10 **EXHIBITS #9.23.1 TO #9.23.4 - ANNEXURES TO OUTLINE OF EVIDENCE BY PROFESSOR JOHN BUCHANAN AND A/PROF JENNIFER SMITH-MERRY**

15 CHAIR: Yes. I also thank you both very much for your evidence. For myself, I've only had a chance to skim the papers that you've done, the research, but I intend to look very carefully at them when time is a little less frantic like the second half of January. But your evidence has been extremely stimulating, very interesting. You have raised some structural questions that I think are unavoidable for us to address.  
20 Whether we can actually resolve them is perhaps another question. But you have pointed out, I think, very clearly the dimensions of the issues that need to be addressed. So thank you both very much for your contribution to the work of the Commission.

25 A/PROF SMITH-MERRY: Thank you.

PROF BUCHANAN: Thanks for inviting us.

30 **THE WITNESSES WITHDREW**

CHAIR: I think we can now adjourn until 10.30 Sydney time tomorrow, 9.30 Brisbane time. Thank you.

35

**ADJOURNED AT 4.54 PM (ADST) UNTIL FRIDAY, 13 DECEMBER 2020 AT 10.30 AM (ADST)**

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