



TRANSCRIPT OF PROCEEDINGS

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

10:02 AM, MONDAY, 22 NOVEMBER 2021

DAY 1

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OPENING REMARKS BY CHAIR

CHAIR: Good morning, everybody. I welcome everybody who is or will be following this, which is the Commission's 19th Public Hearing. The subject of this public hearing is ‘‘Measures taken by employers and regulators to respond to the systemic barriers to open employment to people with disability’’.

I commence by acknowledging the Gadigal people of the Eora nation on whose traditional lands Commissioner Ryan and I are sitting. I also acknowledge the Wurundjeri people of the Kulin nation upon whose lands Commissioner Galbally is sitting for the purposes of this sitting. I pay our respects to the Elders, past, present and emerging. I also pay our respects to all First Nations people who are participating in or following this hearing.

This hearing was originally scheduled to take place in July of this year. Because of the significant COVID-19 outbreaks and the restrictions that had been imposed in the eastern states of Australia over the past five months, we have had to postpone and in a sense relocate the hearing. We're not yet able to hold a public hearing at which witnesses appear in person in the hearing room, and nor can we as yet have members of the public attend the hearing. But we do hope that our first hearing in 2022 will mark a return to the public hearing of the Royal Commission in the fullest sense.

This hearing, as I've already indicated, I'm joined by Commissioner John Ryan AM in the Sydney hearing room. Commissioner Rhonda Galbally AC is participating in the hearing from Melbourne. Senior Counsel Assisting the Royal Commission, Kate Eastman SC AM is also in the Sydney hearing room, together with Ms Elizabeth Bennett SC and Ms Cathy Dowsett. We take the opportunity of congratulating Ms Bennett on her elevation to Senior Counsel. All witnesses, and I understand there will be approximately 40, will give evidence remotely, thereby presenting more than the usual IT challenges. A large number of parties have been given leave to appear at the hearing. Their legal representatives will also appear remotely. I'll take the appearances at the conclusion of these opening remarks.

This public hearing is the sequel to Public Hearing 9 which was held from 7 to 11 December 2020. At that hearing the evidence addressed the barriers to economic participation with people with disability in Australia from the perspective of people with disability themselves, including people with disability seeking employment or already in employment or who have experienced employment. Public Hearing 9, like all our hearings, including this one, was conducted within the human rights framework created by the *Convention on the Rights of Persons With Disabilities*, the *CRPD*. A number of the articles in the *CRPD* are particularly relevant to today's hearing.

The most significant for present purposes are Article 3, which states general principles; Article 5, which deals with equality and non-discrimination, and Article 27, which deals with work and employment.

The general principles stated in Article 3 include respect for inherent dignity and individual autonomy, non-discrimination, full and effective inclusion in society, and equality of opportunity.

5

Article 5 requires State parties such as Australia to:

10 *prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective protection against discrimination on all grounds.*

In order to promote inequality and eliminate discrimination, State parties are required by Article 5(2) to take all appropriate steps to ensure that reasonable accommodation is provided, and we have heard at other hearings about the notion of reasonable accommodation.

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Article 27 obliges State parties such as Australia to recognise the right of persons with disabilities to work on an equal basis with others. This right includes the opportunity to gain a living by work freely chosen in a labour market and in a work environment that is open, inclusive and accessible to persons with disabilities.

20

States Parties are also obliged to safeguard the right to work by taking, among other measures, appropriate steps to prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment.

25

Let me say something about the evidence at Public Hearing 9. The evidence at Public Hearing 9 included data relating to the respective workforce participation rates of people with disability and people without disability. We also heard powerful evidence from numerous people with lived experience of disability about their attempts to gain employment and what happened to them when they did secure employment.

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We heard that Australia has one of the lowest employment rates for people with disability in the OECD, and that there has been little progress to improve the rate of employment for people with disability in Australia over the last 25 years.

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The Australian Institute of Health and Welfare has documented that people with disability not only experience higher rates of unemployment, but tend to remain unemployed for considerably longer and, importantly, experience much higher rates of underemployment than the general Australian population.

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Expert evidence that we heard at Public Hearing 9 suggested that the pool of unemployed and underemployed people with disability in Australia is very much greater than the official figures might suggest. We also heard at that hearing that according to a study by the Australian Human Rights Commission, nearly half of people with disability in employment experienced discrimination or unfair treatment by their employers during the previous year.

45

During Public Hearing 9, people with disability told the Royal Commission of their strong, even passionate desire to obtain work and to flourish in employment. They emphasised, as one would expect, the personal fulfilment to be gained from paid
5 employment; the satisfaction of contributing to the Australian economy; and also, their satisfaction of making their entitlement to be accepted as an equal member of Australian society much closer to practical reality.

10 We also heard about the profoundly demoralising consequences when people with disability are repeatedly rejected by prospective employers for reasons connected with their disability. People with disability gave evidence that they had experienced discrimination by employers or prospective employers reflecting bias, conscious or unconscious, against them; misconceptions by employers or human resources staff about the capacity of people with disability to fulfil the requirements of a particular
15 job; employers assuming, wrongly, that people with disability create risks to health and safety for which employers may be made liable in some sort of proceedings; and employers failing to understand their legal responsibilities towards people with disability. In particular, discrimination on the ground of disability occurs with an employer does not make or proposes not to make reasonable adjustments for the
20 person with disability.

The hearing heard evidence about the barriers to employment participation in the labour force for people with disability. At the hearing, four categories of barriers towards economic participation of people with disability were identified.
25 Ms Eastman will say more about this. I will note that the four categories are: attitudinal, that is, biased assumptions made by prospective employers about the capacity of people with disability to do the job; environmental, such as the physical inaccessibility of premises and the access of accessible technologies or workplace environment; organisational, such as the lack of assistance or reasonable adjustments
30 to allow for a smooth transition into the labour force into employment; and structural, such as the lack of integration between income support programs and the labour market for people with disability.

35 As the Secretary of the ACTU who has provided a statement to this hearing points out, these barriers of course interact with each other. They should not be seen as entirely separate from each other.

We shall hear evidence today from Mr Graeme Innes AM, the former Australian Disability Discrimination Commissioner. Mr Innes will tell us of the struggles he
40 had early in his career to secure employment despite his legal qualifications. He also expresses the view that he is yet to observe the creation and implementation of a policy that has had a significant impact on the “abysmal labour force participation rate of people with disability”.

45 Mr Innes, who has vast experience in this field, considers the barriers to labour force participation were accurately identified in Public Hearing 9, and he uses that as a framework for his statement. The statement from Ms Kairsty Wilson, who is the

principal legal practitioner and CEO of Association of Employees With a Disability Legal Centre, also adopts the four barriers as the framework for her statement. That statement draws on her extensive experience as a human rights and industrial lawyer.

- 5 The present hearing will address how the barriers that have been identified can be broken down, and the role employers in both the private and public sectors can and should play in removing those barriers.

10 It is also important to point out that at Public Hearing 9 we heard evidence that some employers, with the active involvement of a number of organisations, had made strenuous efforts to understand the challenges and introduce innovative programs and policies that were designed to break down the barriers of people with disability in securing employment. These provided illustrations of good practice that deserve acknowledgment and warrant emulation.

15 Let me now address some other sources of information that inform this hearing. Public Hearing 9 is not the only source of material that informs the content of this hearing and the policy issues with which the Royal Commission will have to grapple. We published an Employment Issues Paper in May 2020 asking questions about
20 barriers faced by people with disability in entering or remaining in the labour force. We received 65 responses. They included large private sector employers such as the NAB, the Commonwealth Bank and Telstra, public sector employers such as the Commonwealth Government and State Governments, Commonwealth State and Territory statutory agencies, employers who might be regarded as on the borderline
25 of public and private sectors like universities, employment service providers, and business advisory bodies.

We published an overview of these responses in March 2021. That overview is available on our website.

30 The responses provided significant information on employment practices and many made constructive proposals to improve labour force participation rates by people with disability. Perhaps most importantly, they demonstrate that at least some of this country's largest employers are aware that our employment policies and practices
35 have largely failed people with disability and that the responsibility for correcting and addressing the errors of the past rests not only with governments but with all employers.

40 In April 2020 we published the Rights and Attitudes Issues Paper asking questions about community understanding of disability and the attitudes and behaviour exhibited by people without disability towards people with disability. We received 66 responses to this issues paper from people with disability, disability representative organisations, governments, statutory bodies, professional bodies, disability service providers, and academic researchers. The overview of responses to that issues paper
45 is also available on the Royal Commission's website.

The responses indicate that many people without disability, including many

employers, have a limited understanding of the concept of disability. The responses also suggest that non-disabled people in the Australian community tend to have negative attitudes towards people with disability. Perceptions are often based on stereotypes in that people with disability are perceived to be a burden on society or their families, incapable of making their own decisions or performing jobs even those for which they have qualifications, or, perhaps less intelligent or skilled than other people regardless of the nature of their disability.

This hearing, in a sense, represents the intersection between the responses to these two issues papers. We are examining the practical consequences of barriers to people with disability participating in the labour force and what employers, and particularly large employers, can do, and should do, to correct a situation which cannot be allowed to continue unaltered. We are also asking the impact that community attitudes have in shaping the relationship between people with disability and the labour market. The four barriers that I referred to earlier are the product of bias against and misconceptions about people with disability. This is also known as ableism.

When we talk about a human rights approach to the matters within the Royal Commission's terms of reference, the tendency is to focus upon the interpretation of particular articles, and the extent to which the Australian Government has conformed to its obligations under international law to implement the articles.

But, as Public Hearing 9 and this public hearing will demonstrate, the Australian Government is not the only body with the power, responsibility and resources to bring the aspirations stated in the *CRPD* closer to realisation. The entities with the power, responsibility and resources include employers both in the private and public sector. The article 27, right to work on an equal basis, will remain a largely empty promise or aspiration unless employers, especially large private and public sector entities, play their part in giving practical effect to the rights and aspirations articulated in the *CRPD*.

All employers, of course, need to understand and fully comply with their legal obligations under domestic legislation such as the *Disability Discrimination Act 1992* of the Commonwealth. The data to which Ms Eastman will refer shows that employers must introduce additional measures to increase the workforce participation rates of people with disability. This is not merely because the *CRPD* recognises the right to work as a human right. It is also because in stark economic terms people with disability, as was discussed at Public Hearing 9, constitute an underutilised national asset. There are large numbers of people who are willing and able to work productively but are prevented from doing so by community attitudes and employment practices that in many respects belong to another age. It follows from what I have said that it is not enough to focus on whether the Australian government has sought to advance the broad objectives stated in the *CRPD*, nor is it enough to rely on the enforcement of domestic laws to afford people with disability the fullest possible opportunity to participate in the economic life of the country and thus bring about, as our Terms of Reference envisage, a more inclusive society that

protects people with disability from violence, abuse, neglect or exploitation.

5 If these changes are to occur, community attitudes towards people with disability
needs to change. As we know, attitudinal and cultural changes are driven by a range
of forces. They include bringing to light cases that show the devastating
consequences of discrimination, leading to violence, neglect, abuse and exploitation,
but changes in community attitudes and practices are very difficult to achieve unless
those changes are driven by community leaders. And so it is with employers. They,
10 especially the large employers, have a responsibility to lead the way, not just by
adhering to their legal duties, but by promoting attitudinal and cultural changes
within their organisations and in the wider community.

In short, we all share the responsibility.

15 MS EASTMAN: Thank you, Chair. Are you going to take the appearances now?

CHAIR: Yes, we'll take the appearances. I think we're going to do it in a
streamlined fashion.

20 MS EASTMAN: I might start. I appear as Counsel Assisting the Royal Commission
with Ms Bennett SC and Ms Dowsett. Thank you.

CHAIR: Thank you. I think there is a document, is there not, that lists the
representatives? In fact the document is right here. Perhaps the easiest thing, rather
25 than attempt to do this by going around to many different sites, if I indicate the
appearances and if I have anything wrong, somebody will tell me.

For the Commonwealth of Australia, the appearance is by Mr Hodge QC with
Mr Dighton, and they are instructed by Gilbert + Tobin.

30 For the State of New South Wales, the counsel is Ms Furness SC with Mr Glover and
they are instructed by the Crown Solicitor's Office.

For the State of Queensland, Ms McMillan QC appears instructed by Crown Law
35 Queensland.

For Mr Olivieri, the counsel appearing is Mr Fitzgerald instructed by Doogue +
George, solicitors.

40 Kmart, the appearance is through Mr Woods and instructed by Gilbert + Tobin.

I understand that Australia Post will appear by solicitors but they can announce their
appearance when they are present at the hearing.

45 IBM, the solicitors are Jones Day and I understand that we will be advised of the
name of counsel appearing in due course.

Lendlease Australia appears through Ms Thew instructed by Herbert Smith Freehills.

Medibank is represented by King & Wood Mallesons, solicitors.

5 The National Australia Bank is represented also by King & Wood Mallesons, solicitors.

The Royal Melbourne Institute of Technology are represented by Corrs Chambers.

10 Telstra is represented by Seyfarth Shaw Australia, solicitors.

Woolworths Group Limited is represented by Ashurst, solicitors.

15 The State of Victoria appears through Mr Young QC and instructed by Minter Ellison.

WorkSafe Victoria appears through Ms Harris QC instructed by Minter Ellison also.

20 If I've made any mistake or there needs to be a correction to that, perhaps counsel or legal representatives appearing could tell me now. If not, I'll assume that I managed to get that more or less right. Thank you.

OPENING STATEMENT BY MS EASTMAN

25

MS EASTMAN: Thank you, Commissioners.

30 We also acknowledge and pay our respects to the traditional custodians on the lands on which we're meeting today. We pay our respects to First Nations Elders past, present, and also to all First Nations people following this public hearing.

35 Commissioners, in December last year you convened Public Hearing 9. The public hearing was led by people with disabilities who shared their experience about the barriers and pathways to open employment. We listened to the evidence of 35 witnesses, including people with disability, parents, supporters and advocates together with some academics. You heard about the experience of people with disability finding and keeping jobs. You also heard about the transition in and out of the workforce and their experience of discrimination and exploitation.

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45 Commissioners, one of the witnesses was Oliver Collins. He lived with a very rare neuromuscular condition. In February 2020, he was one of the founding members of the Diversability Networks of the Queensland Law Society. The network was established to promote greater participation from people with disability in the legal profession in Queensland.

At the time he gave evidence at Public Hearing 9, he was a solicitor in the dispute

resolution group at King & Wood Mallesons in Brisbane. Mr Collins told you about his various jobs and his career, but he spoke candidly about his personal experience and expectations. I want to quote a little parts of his evidence. He said this:

5 *I do not want anything to be different for me, in that I did not want stand out from a negative point of view because of my disability and wanted to be treated like everyone also. So I did not ask for anything. This helped me feel like I was making an equal contribution to the firm, and I was not increasing the burden on them in having me as an employee.*

10 *If I'm honest with myself, this put much greater pressure on me physically, as I worked through the pain and discomfort in order to achieve this. Those with disabilities should not be made to feel as if by requiring special adjustments or equipment their contribution in a workplace would be devalued or their*
15 *contribution would be worth less in any way than an able-bodied colleague because of the differing physical disabilities.*

Commissioners, you will recall that it was candid evidence. In April this year Mr Collins passed away. We know his passing was a great loss for his family. On
20 behalf of the Royal Commission we express our condolences to Oliver's families and his colleagues at work. We greatly appreciated Oliver's participation in the public hearing, and his evidence was relevant to the matters that we will consider this week with respect to attitudes and ableism.

25 We thank you, Oliver Collins.

Commissioners, you heard oral evidence with respect to Public Hearing 9 in March this year. At that hearing we submitted that there were recurring and common
30 barriers to the employment for people with disability and these barriers may be grouped into four broad areas --- attitudinal barriers, physical/environmental barriers, organisational and structural barriers. Chair, you've touched on these barriers in your opening remarks.

35 These barriers impair a person's enjoyment of human rights, of which the right to work is a core economic and social right. For some people with disabilities, these barriers result in violence, abuse, neglect and exploitation.

We concluded Public Hearing 9 by proposing a further hearing to provide you, the
40 Commissioners, the opportunity to hear from the public and private sectors from governments and other key bodies involved in the regulation of labour force markets in Australia. We suggested the Royal Commission may wish to inquire how employers and governments have addressed the systemic barriers we have identified. This would require an examination of the practices, policies and regulation of both
45 the public and private sector employers as well as governments and institutions responsible for regulating the labour market.

We suggested the intended purpose of a further public hearing could be two-fold:

- First, to explore what the employers and other key actors in this area are doing or not doing to address the systemic barriers identified in the hearing;
- Secondly, to explore potential measures to eliminate the barriers to open employment that cause or contribute to violence, abuse, neglect and exploitation of people with disability.

So this is the purpose of this public hearing. The focus will be on private and public sector employers. This means that there will only be a few witnesses with disability participating in this hearing to tell you about their personal experiences of finding and retaining employment.

So addressing the systemic barriers will not require you, Commissioners, to identify anything new. In fact, the issue is not what should be done but the issue really is why hasn't what we already know been done. To put it another way, there has been a lot of talking the talk, and at this hearing we will ask if there has been any walking the walk.

Previous inquiries and reports have identified and considered what needs to be done. These reports have also made recommendations. Commissioners, you should ask, why have the recommendations of past reports been ignored or failed? In March 2007 the Australian Safety and Compensation Council published a report called "Are people with disability at risk at work? A review of the evidence". In March 2007 the findings were as follows:

- First, contrary to a common perception of increased occupational health and safety risk for people with disability, a national study of employers in Australia found that workers with disability have lower number of occupational health and safety incidents compared to average employees;
- Secondly, with respect to workers compensation costs and occupational health and safety costs for employers, employees with disability are much lower compared to the average employee;
- Thirdly, the productivity of employees with disability is similar to that of employers without a disability.
- Employees with disability are longer serving and have less turnover.
- The report found that the actual cost of making workplace accommodations was quite low, and the economic benefits of employing people with disability exceeded the costs of those accommodations.
- The accommodations reported in the literature related to access but not accommodations related to safety.
- A third to half of people with disability requiring accommodation were not receiving the accommodations, and this was despite anti-discrimination legislation that required employers to make reasonable accommodation for people with disability.

Two years later, in 2009, the data available told us that 54.8 per cent of people with disability of working age, being people between the age of 15 and 64, were employed.

In 2009, the National People with Disability and Carer Council, on behalf of the Australian Government, published its report “SHUT OUT: The experience of people with disabilities and their families in Australia”. This report found that employer attitudes posed the biggest barrier and in 2009 the following matters were identified:

- First, entrenched discrimination and misconceptions about the adjustments required for some people with disabilities;
- Secondly, that the cost of making workplace adjustments was often overestimated and based on inaccurate estimates of the costs;
- Thirdly, other qualified candidates for jobs were screened out or simply overlooked because of their disability and concerns were raised about practices involving mandatory medical assessments being used in a way to screen out candidates with disability.
- Next, occupational health and safety requirements were also sometimes used as an excuse for both refusing and restricting employment opportunities, but at the same time there was confusion about the nature and extent of those obligations.

The National Disability Strategy 2010 to 2020 noted that a vast majority of people with disability can and do want to work, and they wish to be financially independent, as far as possible.

In 2011, in a report commissioned by the Australian Disability Network, Deloitte Access Economics undertook economic modelling that found that Australia will forgo substantial economic benefits if labour market disadvantage is faced by people with disability are not addressed. The modelling showed that if the gap between the participation rate and unemployment rate for people with and without disability could be reduced by just one-third, phased in and up to the present year, 2021, the cumulative impact on GDP would be in the order of \$43 billion.

The modelling showed the economic benefits for increasing labour force participation of people with disability could be significant. In 2014, the Australian Chamber of Commerce and Industry issued its report “EMPLOY OUTSIDE THE BOX: The Business Case For Employing People With Disability”. Perhaps unsurprisingly it found that if the business community does not take action now --- back in 2014 --- all businesses will be threatened in future years by increasing costs of labour. That report addressed the myths and stereotypes around employing people with disability, and it included some practical suggestions for addressing recruitment, practices, support and the evaluation.

Then, in October 2015, the Business Council of Australia released its report “Recognising Ability: Business and the Employment of People with Disability”. The BCA undertook a survey of its members with respect to the approaches of business to the employment of people with disability. It found this: boosting the active participation of people with disability will deliver individual, social and economic returns.

Then, as the Chair has noted this morning, in May 2016, the Australian Human Rights Commission published the Willing to Work report. The Willing to Work report found that employers, businesses and organisations that represent them have a critical role to play in recruiting, retaining, training people with disability, and it also noted the importance of there not being a one-size-fits-all approach. The Willing to Work report made some overarching recommendations to address systemic issues related to the employment of people with disability.

Notwithstanding the Willing to Work report and subsequent reports and inquiries, there appears to be little improvement; so, Commissioners, may I remind you of some of the available data concerning people with disability and employment in Australia.

The most recent data is 2018. That data tells us that 4.4 million Australians with disability represent 17.7 per cent of the Australian population. Of that group, there were 2.1 million people with disability who were of working age, that is, between 15 and 64. The labour force participation for that group was 53.4 per cent. That is lower than 2009, and it stood in contrast to an increase in the participation rate for people without disability then, in 2018, being 84.1 per cent.

The labour force participation rate was 38 per cent among the people of working age who live with autism spectrum disorders. The unemployment rate with people with autism spectrum disorders was 34 per cent --- more than three times the rate for people with disability and almost eight times the rate of people without disability. In the preparation of this hearing we asked the Australian Government why the rate of employment for people with disability has not improved. Their answer was to refer us to the various reports including Willing to Work.

So, Commissioners, we must ask why the investment in various strategies and initiatives have not succeeded, and whether a different approach is now required. One of those questions will be to ask if taking a human rights approach might make a difference. This is an approach that takes into account the *Convention on the Rights of Persons With Disabilities*.

Commissioners, you heard at the recent Public Hearing 18 there are a range of initiatives concerning the employment of people with disability, including the work done by the International Labour Organisation, and the approach described in the UN Guidelines on Business and Human Rights, so we ask whether those approaches could make a difference.

Commissioners, tomorrow you'll hear from the Australian Council of Trade Unions about its recently adopted Workers With Disability policy. The policy acknowledges unemployment, subminimum wages, insecure work, discrimination, violence, harassment, and minimal retirement to lead to high rates of poverty. These are matters that are entrenched and systemic for working people with disability.

The ACTU's policy identifies a range of areas for improvement, from worker

representation, wage fixing tools, flexible working arrangements, superannuation, insurance, and broader supports.

5 You will also hear from the Business Council of Australia. Ms Jennifer Westacott, the CEO, will tell you the Australian economy has undergone unprecedented periods of sustained growth for almost 30 years, but despite the overall strength of the labour market, policies, legislation, and a raft of government programs, the labour force participation of people with disability has fallen behind the rest of the population. She says there is a compelling economic case for increasing labour force
10 participation for people with disability.

Commissioners, over the next five days you will hear from 12 of Australia's leading companies --- indeed, they are iconic brands. You will hear about their recruitment practices, policies, and how they approach workplace adjustments for employees
15 with disability. We will examine whether their recruitment and employment practices are accessible for people with disability; what actions are they taking to provide accessible, safe and inclusive workplaces for employees with disability.

But, obviously, 12 employers is a small snapshot of all Australian employers.
20 However, based on the information provided to the Royal Commission, these 12 companies employ over 485,000 people. We asked each of the companies to tell us how many employees with disabilities are recorded in their employment records in their HR systems. Taking these companies together, only about 1.15 per cent of all of their employees identified as people with disability. I am going to show you now
25 a table which breaks down the rates of employment for our large Australian employers.

Commissioners, you will see the lowest rate identified in the 12 employers we identified was IBM. You'll see out of a total of 3,110 employees, only five people
30 with disability were recorded in the human resources system. That constitutes 0.16 per cent of employees at IBM who identify as people with disability.

You will see we have tracked through organisations such as Lendlease. It records 0.17 per cent. RMIT has employees in the order of 7,700. It employs 22 people with
35 disability --- 0.29 per cent. Medibank, 0.46 per cent; Kmart, half a per cent; Accenture, 0.74 per cent. Woolworths, which is the largest employer amongst this group employing over 200,000 Australians, has 1,705 people with disability recorded in its HR system constituting 0.85 per cent. Telstra, another large employer in Australia, close to 1 per cent at 0.99 per cent. Two of these employers make it over
40 the 1 per cent mark --- the Compass group at 1.90 per cent and Australia Post at 3.91 per cent.

Commissioners, we also asked McDonald's and the National Australia Bank. McDonald's collectively, through its own organisation, and its franchisees employs
45 over 110,000 people, but its HR system did not record the number of people with disability, and the same for the National Australia Bank. So the rates of employment among some of our large and iconic employer and brands in Australia is disturbingly

low.

5 The employers will tell you over the course of this hearing that these numbers might change if we look, for example, at the surveys that are done in workplaces or the census that might be undertaken. We accept, and we will explore during the course of this hearing, that when people are asked to disclose whether they have a disability on an anonymous basis, the numbers tend to be higher. Collectively looking at all of this information, none of these brands exceed 5 per cent.

10 Commissioners, the data is a key issue. Likewise, recordkeeping. There is a lack of a consistent approach among the Australian employers to recording and tracking data with respect to the employees with disability.

15 Commissioners, though, you will be aware of the *Workplace Gender Equality Act* --- a piece of Commonwealth legislation that deals with the collection and publication of data that identifies trends relevant to the participation of women in the labour force. Non-public sector employers with 100 or more employees must report annually against six gender equality indicators but there's no equivalent requirements in Australia for reporting for employees with disability, or any disability equality
20 indicators, so the absence of mandatory reporting requirements for disability means that there is limited, patchy and unreliable data.

25 It is not just the private sector. This week you will hear from the Public Service Commissioners, from the Australian Government, Victorian Government and the Government of the Northern Territory, about what the public sector is doing to attract, retain and promote employment for people with disability.

30 It is beyond the scope of this hearing to address the data and policies and indeed practices of each and every Australian State and Territory, so by reference to the three governments we will examine how the public sector approaches recruitment, their practices with respect to making workplaces accessible for people with disability, and what actions are taken to provide a safe and inclusive workplace.

35 We will also examine important employment concepts such as inherent requirements of the job and the approach to making reasonable adjustments, so let me tell you what the data tells us in relation to the employment rates of people in the public sector. I will put up a small graphic on this.

40 With respect to the Australian Public Service, the numbers of people with disability recorded in the HR system is 4 per cent; for the Northern Territory, it is 1.2 per cent; and for the Victorian Public Service it is 0.4 per cent. Commissioners, I give you this data with a cautionary note, and that is that each of the Public Service Commissioners will talk to the way in which data is collected and particularly for
45 Victoria the collection of data during the last year with respect to the impact of COVID-19 and lockdowns, and the response rate to various surveys, means that we have to treat the numbers that I've given you with respect to Victoria with some degree of caution.

Commissioners, the ideal, from targets set by the Commonwealth Public Service, was to achieve 7 per cent of employment with people with disability in the Australian Public Service in the period 2020 to 2025. There is a long way to go to reach that 7 per cent target before 2025.

Commissioners, I will now turn to how we'll conduct the hearing over the next five days.

10 This morning you will hear from Graeme Innes AM, a former Disability Discrimination Commissioner. He will tell you about his career and experiences seeking employment. We asked him to address a range of matters that are likely to be key themes and indeed recurrent themes arising in this hearing. He will address what needs to be done to increase labour force participation for people with disability.

15 Then you will hear from Robin Banks. She is the former Tasmanian Anti-Discrimination Commissioner. She'll tell you about her experience in working with Australian laws and processes for addressing disability discrimination in employment.

20 Later today you will hear from Peter Olivieri and a panel of experienced lawyers from AED Legal and the Victorian Legal Aid. They all work on the frontline. They provide advice and representation to people with disability.

25 Mr Olivieri is a client of one of the services and he will tell you about his experience in addressing disability discrimination at work.

30 Later this week you will hear from Sandra Parker PSM. She is the Fair Work Ombudsman. We'll ask her about the responsibilities of the Ombudsman under the *Fair Work Act* and the protections available for workers with disability such as Mr Olivieri.

35 You will also hear from Emily Howie and Lauren Matthews. They represent the Victorian Equal Opportunity and Human Rights Commission. They will also tell you about the rights and remedies available under the *Victorian Equal Opportunity Act*.

40 Commissioners, the evidence over the course of this week is likely to expose the need for better education and awareness about the rights of people with disability in the workplace. It will expose the need for practical guidance for employees with disability about how to exercise those rights. It will expose the need for practical guidance for employers to comply with their obligations, and also what to do in circumstances where there may be no adjustments that can be made, or there is a perceived or real clash of legal obligations, such as work health and safety, and non-discrimination.

There is also a need for practical tools for building, maintaining and committing to inclusive workplaces that come from and are led by people with disability.

5 Our final session today will be an opportunity to hear about some practices that have worked, and Ms Kristy Masella from the Aboriginal Employment Strategy will specifically touch on what needs to be done to increase meaningful and sustainable employment.

10 I have mentioned earlier that you will hear from the peak union and business organisations. Tomorrow, Scott Connolly, the Assistant Secretary of the ACTU will appear, and he will tell you that one of the objectives of the ACTU is to take all appropriate measures necessary to ensure secure jobs and income in decent employment. This includes protection from unfair treatment.

15 He will be joined by Melissa Donnelly who is the National Secretary of the Community and Public Sector Union, which is the major union for the workers in the Australian Public Service, the ACT and Northern Territory Public Services.

20 Together they will address a range of issues concerning the protection of worker rights, the experience of workers in the public sector, the development of public policies and why past initiatives have failed to meet their objectives.

25 You'll also hear from the Business Council of Australia tomorrow and some specific initiatives focused on increasing labour participation of people with disability.

Commissioners, we will then turn our attention to the private sector employers who I've mentioned earlier. Tomorrow and on Wednesday there will be a number of panels focusing on the recruitment practices and approaches to making workplace adjustments.

30 You will hear from representatives from Kmart, Woolworths, Compass, IBM, Telstra, McDonald's, the National Australia Bank, Accenture, and RMIT. On the issue of workplace adjustments, you will also hear how the public sector approaches these issues and you'll hear address from the Australian Taxation Office, the National Disability Insurance Agency and the Department of Social Services.

40 On Wednesday, we will examine work health and safety in the workplaces in Australia. Employers must manage risk to the health and safety of workers, customers, visitors and suppliers. There are comprehensive work health and safety laws in Australia to address workplace risk and to prevent death and injury. That includes workers with disability. Employers who fail to provide safe workplaces and breach the work health and safety laws can be open to prosecution.

45 Related to work health and safety is a requirement for employers to have workers compensation insurance. For persons who acquire a disability in the course of their employment, who want to understand the support for rehabilitation and returning to work, and whether indeed the approach to the treatment of workers who acquire a

disability has been different.

5 You will hear from Lendlease and Australia Post as employers with respect to their response to Work Health and Safety. But you will also hear from the Commonwealth and Victorian agencies responsible for developing policy and regulating work health and safety in workplaces.

10 We want to understand whether and how these regulators have addressed disability issues and specifically addressed the health and safety of workers with disability.

15 On Friday you will hear from the Department of Social Services and the NDIA about the Australian Government's overarching strategy, and we also, in the context of looking at strategies, want to consider a way forward. You will hear from representatives from Telstra, Medibank and Australia Post about their experience in building an inclusive workplace culture and will examine what specific actions employers should or could be taking to employ, retain, and promote people with disability.

20 You will also hear from Ms Christina Ryan from the Disability Leadership Institute. Ms Ryan gave evidence at the recent public hearing concerning the *Convention on the Rights of Persons With Disabilities* and she will build on her evidence from that hearing to focus on what needs to happen in Australian workplaces to prevent people with disability experiencing violence, abuse, neglect and exploitation in employment.

25 As always, Commissioners, there may be information and evidence presented at this hearing that some people may find distressing, and I'll just put up now the slide with the relevant contact numbers.

30 While that slide is up, I also remind those following this proceeding of the provisions in the *Royal Commissions Act* that have the clear object of protecting people who give evidence before the Royal Commission. I particularly want to draw attention to section 6M of the Act:

35 *Any person who uses, causes or inflicts any violence, punishment, damage, loss or disadvantage to any person on account of:*

40 *..... the person having appeared as a witness before the Royal Commission [any evidence given evidence before the Royal Commission, or producing a document to the Royal Commission] commits an indictable offence.*

The maximum penalty for committing such an offence is imprisonment.

45 Thank you, Commissioners. I think we're at the point of adjourning for morning tea and return with Mr Innes.

CHAIR: Thank you, Ms Eastman. It is now 11.00 am Eastern Summer Time. We will adjourn until 11.15 and we will resume with Dr Innes. Thank you.

ADJOURNED

[11.00 AM]

5

RESUMED

[11.16 AM]

10 CHAIR: Yes, Ms Bennett.

MS BENNETT: Before I ask that Mr Innes be called, could I please tender the private sector and public sector employment data that was displayed in Ms Eastman's opening and ask that that be marked as Exhibit 19-0?

15 CHAIR: Yes, and by data you mean the two graphics that were shown on the screen?

MS BENNETT: Yes.

20 CHAIR: They will be together become Exhibit #19-0.

**EXHIBIT #19-0 - PRIVATE SECTOR AND PUBLIC SECTOR
EMPLOYMENT DATA GRAPHICS**

25

MS BENNETT: Thank you, Chair. Now I ask that Mr Innes be called.

30 **MR GRAEME INNES, CALLED**

CHAIR: Yes. Good morning. Can you hear us? Apparently not.

35 MR INNES: Yes, Chair, I can.

CHAIR: Is it Mr Innes or Dr Innes? There seem to be two mechanisms.

40 MR INNES: Either is fine, really, Chair. I'm pretty relaxed.

CHAIR: In that case, I'll leave it to Ms Bennett. Thank you very much for coming to give evidence today. We appreciate your assistance and of course we have read your statement. Thank you very much.

45 CHAIR: Perhaps I should explain in case you're not aware, Commissioner Galbally is in Melbourne and I am in the Sydney hearing room together with Commissioner Ryan. Ms Bennett is also with us in the Sydney hearing room.

MR INNES: Thank you, Chair, I was at your introductory comments so I was aware of that but thank you for letting me know.

5 CHAIR: Thank you very much.

Yes, Ms Bennett.

10 **EXAMINATION BY MS BENNETT**

MS BENNETT: Thank you, Chair.

15 Mr Innes, you've made a statement dated 30 June to assist this Royal Commission; is that right?

MR INNES: Yes, it is.

20 MS BENNETT: Are the contents of that statement true and correct?

MR INNES: Yes, they are.

MS BENNETT: Thank you.

25 Commissioners, you'll find that at Bundle A Tab 45, with an attachment at Tab 46.

30 Mr Innes, you were the chair of the Commonwealth Disability Advisory Council of Australia during the drafting of the *Disability Discrimination Act* from 1991; is that right?

MR INNES: Yes, correct, it was the main function of the council while I was Chair. We really focused on development of that legislation.

35 MS BENNETT: You were then the Disability Discrimination Commissioner between 2005 and 2014; is that right?

MR INNES: Yes, that's correct.

40 MS BENNETT: You were also involved in the drafting the *UN Convention on the Rights of Persons With Disability*; is that right?

MR INNES: Yes, it is.

45 MS BENNETT: You've otherwise set out your extensive history and qualifications in your statement and curriculum vitae attached; is that right?

MR INNES: Yes, it is.

MS BENNETT: I want to start by asking you a few questions about the history of labour force participation in Australia for people with a disability. Can you tell the
5 Commissioners, based on your extensive experience, what that labour force participation has looked like for the last 30 years or so?

MR INNES: We've been employed at a rate approximately 30 per cent less than the general population during the last 30 years, Ms Bennett, and I've described
10 employers employing people with disabilities as abysmal, and I don't resile from that. We have stayed at that rate where we sit as the lowest of OECD companies for about 30 years as the Chair indicated this morning.

MS BENNETT: Has there been meaningful change over that period in terms of the
15 amount of workforce participation?

MR INNES: There has been a lot of talk. I don't think there's been significant change. There have been patches where employers at different periods of time have ramped up their efforts to employ people with disabilities, and some have been
20 successful, some continue to be successful, but overall, as a general comment, no, there has not been meaningful change.

MS BENNETT: What would a healthy workforce participation figure look like? What should we be aiming for?
25

MR INNES: We should be aiming to employ people with a disability at the rate that the general population are employed, around 83 per cent, I think Ms Eastman said this morning, and that should be our target. People with disabilities make up 15 per cent of the workforce, and we should be representing 15 per cent of employment in
30 public and private sector organisations through Australia, and it can be achieved. There is no doubt in my mind that it can be achieved, but there has to be a whole lot of change actually occur rather than be discussed in order for it to be achieved.

MS BENNETT: In your history working in this sector you've seen, I imagine, a lot of policies that have attempted to address that question. Have you ever seen an
35 effective policy address that question of disability?

MR INNES: I've seen some very effective policies, Ms Bennett, but they haven't been implemented effectively. So there is little point in having a policy --- I mean,
40 I think Ms Eastman or the Chair commented on the Commonwealth Disability Strategy which has been in place for 10 years now, just about to be replaced by a new strategy, but over that 10 years there's been little or no resources dedicated to that strategy and, of course, without dedication of resources, and without significant commitment by government, these strategies are not effective and that strategy has
45 not been effective. There are some great things in the strategy, but they haven't been implemented.

MS BENNETT: All right. I'd like to speak to you now about some of the key barriers that you talk about in your statement. I would like to do that by reference to your own story, if that's convenient. You completed your law degree in 1979; is that right?

5

MR INNES: Completed my law degrees in 1978 and College of Law in 1979 --- no, I'm sorry, completed the degree in 1977 and College of Law in 1978, so my first year of seeking employment was 1979.

10 MS BENNETT: Thank you. Can you tell us about your experience of attitudinal barriers when you came into the workforce as a new law graduate looking for work?

MR INNES: Well, I started to apply for positions in 1979 and indicated in my application that I was totally blind. I thought it was the right thing to do, to indicate that to employers, and I set out in my application what I would do to address the impact of that disability in terms of my work as a lawyer, and I didn't get any interviews. So I decided to take that section out of my application and, as soon as I did, I immediately began to get interviews. So the first time that employers would know that I couldn't see was when I walked into the interview room with my white cane.

20

I did about 30 interviews during that year, and I probably wasn't the best qualified applicant for all of those jobs, but I'm sure I was for many of them, and I didn't get any of those jobs. The only --- I realised at the end of that year --- no, I'm sorry, let me go back. I didn't get any of those jobs. At every interview employers didn't ask me about my disability and the impact of my disability. So I took the time at the end of the interview to inform them what I had achieved through university and College of Law, the impacts that my disability may have, and the strategies I'd use to address those impacts.

30

Even though I did that, I didn't get any of those jobs.

MS BENNETT: You remember what the response was from those employers when you had that discussion at the interview?

35

MR INNES: Most of the time they indicated interest, but clearly they didn't factor what I had said into their decision-making --- or, if they did, they didn't believe it. And I can only draw the conclusion that that was because of the negative and limited attitudes which we as people with disabilities experienced at that time, and still experience, to use a phrase that I often do, we experience the soft bigotry of low expectations.

40

MS BENNETT: I wanted to ask what you meant by that. I'm very interested in that phrase. Can you tell me a little bit about what you mean by that?

45

MR INNES: What I mean is people make assumptions about us, irrespective of whether we or others have put information before them which counteract those

assumptions, and those assumptions are usually limiting and usually negative. And if you set the bar of expectations low, then most people, just like the glass ceiling for women, won't rise above that bar. So that's what I mean by the soft bigotry of low expectations. So if you challenged people about that, they would say, "Oh, no, no, I'm very supportive of people with disabilities," but at the same time they make decisions which exclude us, because their assumption, despite all the evidence to the contrary, and Ms Eastman laid it out very clearly this morning with all the research that's been done, but despite all of that evidence, they still assume that we won't be able to carry out the job or we won't be able to carry it out to the same extent or with the same capacity as a person without a disability.

MS BENNETT: Is it the case, then, that when you wrote in your covering letters that you were totally blind, no one was interested in interviewing you, and then suddenly when you removed that, you found 30 law firms interviewing you, and that tells you something about what the impact was of disclosing that at that point; is that a fair summary?

MR INNES: Yes, it is. I believe that's exactly right. I think it's clear, and it's mirrored in the conversations which I've had with thousands of people with disabilities during my career. We have the same appearance. And the reason that we don't disclose is because we know there will be a negative impact and the only way to change that situation, and if I can divert to some of the figures that Ms Eastman quoted this morning, the only way for employers to get a real representation of the number of people with disabilities that they employ is to welcome people with disabilities, not discriminate negatively against us. So the responsibility for getting people to disclose and to indicate that they have a disability lies squarely with the employer. When the employer shows us that we won't be treated negatively, we will tell them about our disability and we will share any impacts that that has, or any adjustments that we may need.

MS BENNETT: Returning to your story in the 70s, perhaps now 80s, you ultimately obtained a legal job in consumer affairs. Was that a significant shift in your career?

MR INNES: Initially, after applying for the 30 jobs, I took a clerical assistant's job, which was the lowest level of the New South Wales Public Service, and one of my jobs was to answer the telephone and tell people the winning Lotto numbers. I used to joke in that job that I was the only clerical assistant in the New South Wales Public Service with a law degree. I moved from there to the Department of Consumer Affairs, and after a lot of conversations and encouragement and demonstration of my abilities at that department, I was given a chance as a clerk in legal and then as a legal officer. But what that required was for the supervisor of that section to change his attitude. And he, who was a colleague and became a friend, said to me, "Look, I'm not really convinced that you can do this job, but I'm going to give you a crack at it." So it just showed me that as other people with disabilities have learned, we have to prove ourselves at every step of the way in order to progress in promotions in the area of employment.

MS BENNETT: So it's not just when you're getting through the door the first time, it's each subsequent step after that; is that right?

5 MR INNES: Yes, that's right, and that's mirrored again by the experience of many thousands of people with disabilities. The joke in the disability field is "Find them a job and then forget them". So put people with disabilities in at the lowest level in the organisation and you can say, "Oh yes, we employ X number of people with disabilities", or in some particular section of the organisation which becomes like
10 some form of ghetto or sheltered employment where people with disabilities are placed and the numbers are counted in the figures, but we never have the opportunity to progress.

MS BENNETT: We've been talking about your experience some time ago. Is it
15 your evidence that that's what you hear from people is still the case today?

MR INNES: Yes, absolutely.

MS BENNETT: You speak in your statement a little bit about ableist language as
20 part of the attitudinal barriers. Can you tell the Commissioners what you mean by that?

MR INNES: I mean language which, in the same way as racist or sexist language, disempowers or hurts women and people from culturally and linguistically different
25 backgrounds, ableist language is hurtful to us but again also diminishes the role that we can play. The example I use, which is pertinent to me but there are many examples which are pertinent to people with other disabilities, but the example that I use is the very commonly-used phrase, well, that person turned a blind eye to that situation.

30 What they mean by that phrase is that they ignored the situation, or they didn't take notice of the situation, or they pretended it didn't exist, but they equate those actions to not being able to see a situation.

35 What that says to me and to many other people who are blind or vision-impaired is that it equates blindness to lack of care, lack of concern, or lack of paying attention.

Of course that's not the case, but that's the reaction that we have, and it also confirms the negative view of people who are blind or vision-impaired in that way.

40 MS BENNETT: Thank you. I would like to move to ask you a little bit about another of the barriers you identify in your statement, you refer to as organisational barriers. It seems to me that one of these, you refer to obtaining adjustments. Can you tell us about your experience in obtaining adjustments that you need to effectively work in a workplace?
45

MR INNES: Again, it's my experience, and I've been told by many others of the experience of obtaining adjustments, and it's usually, most often, the need for a

person with a disability to request the adjustment, to seek the adjustment, to argue for the adjustment, whereas the law actually provides that employers should provide reasonable accommodation for people with disabilities. Now, I'm not suggesting that employers do that without consultation with the person with a disability. Of course
5 there needs to be a consultation because every disability is different and people's needs are different, and the equipment that I might prefer to use might be different to the equipment that my colleague Professor Ron McCallum might prefer to use. But what I'm saying is that we shouldn't have to be the ones asking for it or lobbying for it. Employers should be saying to us, "Now we've employed you in this role, how
10 can we best facilitate the role in which we've employed you?"

MS BENNETT: You have been responsible in a number of senior roles for hiring and managing staff over a number of years. Can you tell the Commissioners about how you approach that question in your practice and your work life?
15

MR INNES: When I have assessed in my role as a manager people with disabilities, which I have, I have employed a number of people with disabilities in various roles, I look at their previous employment and work history, and qualifications, and I assess by what they have achieved and what they say in their interview they can achieve,
20 whether or not I employ them, so their disability is fairly irrelevant to that conversation. When they are employed, I initiate a conversation with them about "What might best facilitate your ability to continue to deliver, your ability to do this job?" And we have a conversation about reasonable adjustments and it might be a range of things, it might be --- it might be something as small as a sign on someone's
25 desk that says, "I can't hear you, so tap me on the shoulder when you want to speak to me," or something as small as that. It might be making a building accessible with the addition of a \$100 or \$200 ramp at the front door. It might be thinking about the location of an office, allowing a person to work from home more, which we've all learned is just as effective in many cases during the pandemic, but people with
30 disabilities have known that for the last 20 or 30 years. So anything like that which the person --- which may come up in the conversation, I may offer it, the person may raise it, or it may flow from a conversation that we have, but my aim as a manager is to make it as easy as possible for the person with disabilities to bring their best self to work.
35

MS BENNETT: Ms Eastman recounted in her opening some evidence from Public Hearing 9 about a person with disability working through pain because they were concerned about asking for adjustments. Is that a familiar story to you?

MR INNES: It's a very sad and very familiar story, yes. People with disabilities mask the impact of their disabilities and often don't tell employers about their disabilities and the reason we don't do that, if we can avoid telling people about the impact of our disabilities, is that we have learned from years of experience that we are likely to be treated negatively or discriminated against and that's why, as I say,
40 the responsibility to garner that information sits squarely with employers because employers need to show us that that situation is changing, and that we will be
45 welcomed in the workplace, not discriminated against.

MS BENNETT: Is one of the ways employers can do that is by proactively initiating a conversation about adjustments?

5 MR INNES: Yes, I believe it is, in the way I've just described. Another way is to
celebrate success in terms of the employment of people with disabilities, to note
achievement in terms of numbers of people with disabilities, to set up a disability
network in an organisation, because the ability to share peer-to-peer information by
employees with be disabilities is valuable, so employers, you know, can resource that
10 process and facilitate it.

And to introduce things such as disability passports, which I have described in my
statement, so that when an employer has agreed to a reasonable adjustment, that that
reasonable adjustment is effectively carried with the person with a disability if they
15 transfer or are promoted in their employment, and there's a number of other strategies
to which I've referred, and which the Australian Network on Disability indicates in
their training materials which will facilitate and demonstrate an employer who
welcomes people with disabilities.

20 MS BENNETT: I would like to understand your current views about targets and
quotas for people with a disability in the workplace and how that view might have
evolved over time.

MR INNES: Ms Bennett, I used to be opposed to targets or quotas for all the reasons
25 that get rolled out in opposition to them. I used to say that they just caused people to
fill the numbers, fill the spaces that people with lesser qualifications were appointed,
and that they caused token appointments.

I have now come to the view, which has been held for probably 10 or 15 years, that
30 the only way to get people with disabilities into employment is to set targets, and I
don't call them quotas because of the pejorative meaning that that word has gained
over the years. The only way to get people with disabilities into employment is to set
targets and then develop strategies to achieve those targets. So I have advocated for
that for all of the time that I was Disability Discrimination Commissioner.

35 One of the most effective way to deliver on targets is to include them in the KPIs of
senior leaders in the organisation --- the CEO and their direct reports. Because we
all know in business --- it's a really well known maxim, it's demonstrated again and
again, that what you don't count doesn't count; and if we don't develop strategies and
40 then develop strategies to deliver on those targets, the situation over the last 30 years
will continue where there will be a lot of talk but not much real action.

MS BENNETT: On that topic of ‘‘If you don't count, it doesn't count’’, does it
follow then that keeping accurate data and information about the levels of
45 representation of people with disability in organisations is important to all of these
initiatives?

MR INNES: It's critical. If you're going to set targets then you have to be able to measure your success, and so, yes, keeping accurate data is critical. And then demonstrating, as an employer, that you welcome the employment of people with disabilities, so that we then identify, as people with disabilities, because otherwise there will be underreporting. It is amazing the number of times I've seen in organisations where once an organisation --- and I say this to people that I'm encouraging to employ people with disabilities --- once you start employing people with disabilities, even though your numbers are low, your figures will actually jump more than the number of people you are recruiting or employing, because you will inevitably have employed people with disabilities in the past who have kept their disability a secret, because we know that we will be discriminated against if we make that information available.

So once it's shown by the employer that they are actually prepared to deliver on this process and to welcome people with disabilities, then people with disabilities will identify, and the figures Ms Eastman quoted and the disparity with the figures in government between anonymous surveys and data delivered as part of HR records, reinforces that point.

Ms Eastman, towards the end of her statement, made reference to the gender equality legislation, and one of my recommendations to the Commission in my statement is the enactment of similar legislation for people with disabilities, because until we start keeping and counting this data, we won't actually move the dial --- the needle on the dial in terms of employment of people with disabilities.

MS BENNETT: It seems that there is almost a circularity to encouraging people with a disability to trust an organisation. In order for people with a disability to trust that the policies will do what they say, they need to see people in the organisations being treated with respect. Is that fair?

MR INNES: You can't be what you can't see, so we need to see people with disabilities employed in jobs. We need to see people with disabilities on our television screens, in our advertising, and out and about in the general population, and we are starting to see that now. Figures such as Kurt Fearnley, Dylan Alcott, Hannah Gadsby, just to name three that jump into my head, I suppose myself in the last 10 or 15 years, Ron McCallum, a well-known labour lawyer; we are seeing people in senior roles with disabilities, so it is starting to change, but we need to continue that momentum and continue that change, because, yes, people will only declare they have disabilities to employers when they see either at a micro level with a particular employer or at the macro level in the general community, people with disabilities being included and accepted as part of the Australian community.

MS BENNETT: People with disability need to see inclusion. Do they also need to see accountability in senior levels of management in these employers?

MR INNES: I think so. They also need to see people with disabilities in senior employment roles so that it's demonstrably clear that that can occur. That example

has been given numerous times in the last 12 months to two years in the National Disability Insurance Agency, just to name one of many organisations who aren't delivering in this regard.

5 MS BENNETT: I would like to now turn to talk about some of the structural barriers. One of the key protections for people with disability is the *Disability Discrimination Act*. Without speaking in detail about the minutiae of that Act, can you talk to the Commissioners about some of the issues that arise for employees or potential employees who are trying to use a legal process to protect their rights?

10 MR INNES: Well, ironically, and it is ironic, because in the initial conversations back in the early 1990s the *Disability Discrimination Act* was only going to be established as covering the areas of employment, and following lobbying and encouragement, it was expanded to cover a broader range of areas. But it really is not effective at gaining or protecting employment for people with disabilities, and I've made numerous recommendations in my statement as to how the legislation could be more effective. Because it deals with individual situations, by the time you get to the point as a person with a disability that you want to lodge a discrimination complaint about your employer, the employer/employee relationship is significantly damaged. It wouldn't be otherwise if you hadn't got to the point of thinking that you needed to lodge a complaint. So there is significant damage, often irreparable damage.

25 In any mechanisms between employer and employee such as discrimination legislation or Fair Work legislation, we rarely see employees reappointed if they are dismissed. The norm is that damages are awarded. Whilst that's appropriate --- as appropriate for a person with a disability as for any other employee, it doesn't fix the employment situation. So, by the time the legislation comes into effect, it is virtually too late.

30 Added to that, the complaint process is --- the power imbalance in the complaint process is overwhelming. You sit down at a conciliation conference as a person with disability, often on your own or with a friend or colleague who doesn't have legal qualifications, and the employer regularly turns up with a team of lawyers.

35 The role of the conciliator is not to redress that imbalance --- I'm sure many of them do their best, I certainly tried to when I worked in that role --- but the power imbalance is significant.

40 Then, if conciliation is not successful in resolving the problem, the matter goes to hearing, and the same power imbalance is again reinforced. So the *Disability Discrimination Act* in my view has been pretty ineffective in addressing situations of employment with people with disabilities. It's been very effective in other ways but not in that way.

45 MS BENNETT: I'd like to ask you again about the impact of larger and perhaps more mechanised approaches to recruitment of employees generally, and the effect

that has, or that you perceive that it has, on people with disability. Can you tell the Commissioners about that?

5 MR INNES: Back when I was looking for my first jobs, there was some
chance --- not high, but there was some chance as a person with a disability that you
could get through the recruitment process. Recruitment these days has become very
much a production line process, and has become a process which many employers,
particularly large employers, contract out, and because there is no control of
10 recruiters and the way they operate, they systematise the recruitment process. What
that means on many, many occasions is that their systems exclude people with
disabilities right from the beginning.

15 Just to look at my own disability as an example, but there are many other examples,
if you have a recruitment process which requires a person to sit at a keyboard, at a
computer, and go through a particular testing process, these processes are often not
accessible for people who use a screen reader such as myself. So, immediately,
you're blocked from the process --- and there are many other examples of recruitment
where there is indirect discrimination, if you like, against people with disabilities and
they are knocked out of the race before they even get started.

20 MS BENNETT: Is an example of that, an example of a small organisation or a
personal relationship can lead to somebody --- much like what happened to you when
you received your legal job at consumer affairs, and the person said, "I'm willing to
give you a go, because I know you", in effect ---

25 MR INNES: Yes.

MS BENNETT: --- that personal interaction can lead perhaps to that person
overcoming their unconscious bias, is that a fair summary?

30 MR INNES: It can lead to a person overcoming their unconscious bias and it's also
not impacted upon by the systematised recruitment process that often mainly larger
employers use. So both those things can have an effect.

35 MS BENNETT: I'd like to briefly now turn to the levers that are available --- that
you see as being available to bring about change in this space, and you speak in your
statement about disability confidence, and I really want to understand what you mean
by that phrase. What is disability confidence?

40 MR INNES: Most people in Australian society, and this is mirrored by most people,
in employers who are making recruitment decisions, continue to make negative and
limiting assumptions about people with disabilities. So one of the techniques which
has been championed by the Australian Network on Disability and many of their
employee members is confidence --- is training around being confident working with
45 people with disabilities. And so that training provides the opportunity to take people
who are making recruitment decisions through a training process which tries to
address some of the conscious and unconscious biases about people with disabilities.

5 The best way to conduct that training is to have it conducted by people with disabilities ourselves, because we are a very powerful demonstration of the effective way in which people with disabilities can perform in jobs, and getting us out front of people making recruitment decisions is a very effective first step.

10 Also, things like mental health first-aid, where there are courses are readily available, can remove a lot of the negative and limiting assumptions which people make about people who may have a mental health issue, and assist people to know how to address that and what action to take if they run into an employee who begins to experience that, either a current employee or a new recruit.

15 MS BENNETT: Are there procurement or economic incentives that can be rolled out centrally by Government or other agencies that might assist in that?

20 MR INNES: Absolutely. One of the problems which many people with disabilities experience in employment is that they get into employment and the equipment, whether it's the desk they sit at, the software that's being used, some other piece of equipment at the employer is not accessible, and that has an impact on people's capacity to do their job.

25 So one of the ways in which government --- Federal Government and State Governments --- could drive the procurement process is to mandate --- at the moment there are some standards but they are voluntary --- is to mandate the requirement that any purchase made by Government must meet accessibility standards. What that would do, because Government are such a big purchaser of equipment, whether it's desks, chairs, software, whatever, that would drive the market to make their equipment accessible for people with disabilities. So it can have a real strong economic impact on making the workplace, as a whole, more accessible.

30 MS BENNETT: Thank you very much.

35 MR INNES: Sorry, Ms Bennett, can I add one more comment to that, which is -- and that's been demonstrated by the *Access to Premises Standards*-, because since the enactment of those standards maybe 10 or 15 years ago, building stock has been changing and has become more accessible and so access to buildings for people with disabilities is not so problematic, but it can't be done by voluntary schemes. There must be some mandated process.

40 MS BENNETT: Thank you. I want to make sure the Commissioners have the opportunity to ask you any questions of their own before we conclude.

DR INNES: Sure.

45 CHAIR: Yes, thank you, Ms Bennett.

I'll ask Commissioner Galbally first, do you have any questions of Mr Innes?

QUESTIONS BY THE COMMISSION

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COMMISSIONER GALBALLY: Yes, thanks very much, Mr Innes. I would like to come back to your comments about targets, and to get you to discuss a bit more fully the consequences as well as incentives, because you had some suggestions regarding private sector and government with efficiency dividends and tax breaks. That's my first question.

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MR INNES: Thank you, Commissioner Galbally. Well, some of the suggestions I made in my statement related to incentivising Government to employ people with disabilities by releasing them from the efficiency dividend which governments take routinely from government departments, if they employed a particular number of people with disabilities.

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The efficiency dividend, and I know this from my experience of working in government, is one of those things that just gradually creeps up on you because it gradually reduces the size of your budget, and it's the bane of many, many a government agency, particularly smaller government agencies, and to provide an incentive for them to not have to have their budgets reduced by employing people with disabilities seems to me a very good way to effect the numbers of employment of people with disabilities. This could be applied to the private sector in the form of tax breaks, where tax breaks of one form or another were provided if they achieved a particular target. But in order to do this, we would need data to be collected effectively, and so we'd need something similar to the gender equality legislation which I've already mentioned.

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COMMISSIONER GALBALLY: Would you apply such a process to the outsourced recruitment industry so that they, too, had targets, and they, too, had to report on those?

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MR INNES: If I were contracting with a recruiter, I would, as one of the deliverables on that contract, require them to present me with a percentage of people with disabilities as part of their candidate pool --- probably 15 per cent, because that's the number of us in the workforce --- and that could provide recruiters to do that. So employers who are serious about employing people with disability, for them that would be an easy step; they just need to put it in as a KPI in their tenders. Some organisations are already doing this in terms of their procurement. I sit on the board of Life Without Barriers, and one of the things we do in procurement is to require our suppliers to deliver, you know, accessible equipment, or to utilise suppliers who employ a certain number of people with disabilities. If more and more organisations were doing that, it's a very effective way to drive the market.

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COMMISSIONER GALBALLY: Yes. Could you tell us about the traffic light process that the South Australian Government used with Maurice Corcoran quite a

long time ago, and how that might apply today?

MR INNES: That was not only --- that was a reporting process in South Australia where government departments--- every government department, not just
5 departments which related to people with disabilities, or were delivering specific services to people with disabilities --- every department had to report annually, I believe, it may have been biannually --- on things to do with people with disability, not just on employment but on the delivery of services, et cetera, and the
10 employment -- the reporting was red light, orange light, green light- type- reporting. These reports went to the South Australian Parliament each year, and Ministers had to defend their Departments at estimates or equivalent Budget hearings around these reports. There is nothing like getting the attention of senior bureaucrats on an issue, but to mandate them to report on it and how they're delivering on it.

15 COMMISSIONER GALBALLY: Would that complement your suggestion about this being in performance indicators for Secretaries of government departments?

MR INNES: Yes, it could, and it could be incorporated equivalent to gender equality legislation. But yes, I would be mandating targets to Secretaries of Departments and
20 relating them to their bonus payments. It's the only way to get people to stop doing what they have done for the last 30 years and talking about this, and actually taking some action on it.

COMMISSIONER GALBALLY: Thank you.

25 COMMISSIONER RYAN: I was just wondering whether you might expand slightly more on the statement you made about underreporting of people with disabilities. It is usually presented to us almost as if it is the fault of the people who don't report, and I think your interesting perspective was that in fact that is a KPI for a business
30 itself. They can't complain that people aren't reporting because they are not very welcoming.

MR INNES: Thanks, Commissioner Ryan. I might expand on that by talking about a particular example. I'm on the board of a Disability Employment Service called
35 Job Life, and we employ between 70 and 80 staff. When the organisation commenced, I convinced the Board, and I think it's fair to say there was some hesitation, but I was able to be successful, to make part of our unique selling proposition that we would employ staff with disabilities. And we did that because we wanted to be able to show employers who we were going out to and trying to, if
40 you like, sell candidates with disabilities, that this could be done, and I couldn't see how we could do that effectively if we weren't doing it ourselves. So we did that, and we set some numbers around employment of people with disabilities, and made it one of our unique selling propositions.

45 Forty per cent of our staff --- the figure approximately --- it moves up and down, of course, a little bit --- are now people with disabilities. So it's completely possible to do this if you set a target and aim to deliver on it. I'm sorry, Commissioner Ryan,

I may have missed the answer to your question, but I thought that example was one way to demonstrate it.

5 COMMISSIONER RYAN: Can I get you to repeat --- did you say you have a business which has 40 per cent of its staff as people with disabilities?

MR INNES: Correct. It's a Disability Employment Service.

10 COMMISSIONER RYAN: I notice, again speaking from your own experience, an organisation of which you're on the board, Life Without Barriers, regularly reports that it employs 40 per cent of people with disabilities in its annual report. I am just wondering as to whether or not that sort of behaviour shouldn't be encouraged, because many of your recommendations to the Commission are about government. How might we encourage that sort of behaviour in the private sector, and I am
15 wondering whether or not your extension of your idea about procurement might be that anybody who has anything to do with government at all, in terms of purchasing or government purchases from them, that ought to be a mandated standard in their annual report, they regularly would do what your company does.

20 MR INNES: Yes, I don't see why that couldn't be a mandated thing for government procurement in terms of contracted services. When I began as a director of Life Without Barriers, about seven or eight years ago now, the culture didn't lean towards employment of people with disabilities. It was an organisation which provided
25 incredible support for people with disabilities, but we weren't employing people with disabilities. I used to joke that whenever I walked into a different Life Without Barriers office, the immediate assumption was that I was a client rather than a member of the board. But we've worked very hard since I've been on the Board --- and it's not just me, I'm not just claiming the credit myself to change that culture --- and we are gradually improving the numbers of people with disabilities
30 that we employ and one of the things --- and we've done a lot of the things that I've recommended in my statement. So we have made it part of the KPIs for senior leaders in the organisation, and we, as you say, regularly report on it.

35 COMMISSIONER RYAN: I was also wondering --- I was going to refer to your example in Life Without Barriers --- you've been on the board of that organisation for some years. Does it make a difference employing people or appointing people with disabilities to senior positions --- has that made a difference to the company that you are on the Board, and that there might be other senior people in Life Without Barriers who have disabilities too?
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MR INNES: Yes, without a doubt. And particularly for a disability service provider, it's essential that you have people with lived experience as members of boards. In fact, Life Without Barriers last week just announced the appointment of Kurt Fearnley to our board, so we have added to that approach, and I have been in the
45 media in the last two or three months advocating strongly for the appointment of people with disabilities to the boards of disability service providers, but I think it applies more broadly. I also sit on the board of the State Insurance Regulatory

Authority, I'm working now as a company non--executive director, and I believe that we have improved our employment numbers of people with disabilities in that organisation, and that it's partly related to the fact that I'm on the Board and actively encouraging that.

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COMMISSIONER RYAN: Finally, Mr Innes, your submission largely follows the presentation made by Counsel Assisting at the end of our last hearing that the barriers to employment are attitudinal, environmental, organisational and structural. Would you like to comment as to whether any one of those particular barriers are more important than the others? I am particularly, as I said, informed by your own experience that the simple change of your employment status from basically presenting yourself as a blind person at interview, changed remarkably from what occurred that you didn't get any interviews at all when you put it on your CV. Do you think maybe it's attitudes that make more difference than almost any of the others, particularly, as I said, environmental things you observed have improved significantly?

MR INNES: Yes, without a doubt in my mind it's attitudes which drives this change, and if we change attitudes amongst Australian society and we change attitudes amongst people making recruitment decisions in employers large and small, then we will actually start to deliver on some of those policies which have been much talked about over the last 20 or 30 years. And that's why when I left the Human Rights Commission, was involved in the founding of the Attitude Foundation, which aims to use television and social media to have people with disabilities share our stories and become involved in that attitude change. That's why one of my recommendations is that there should be a requirement in federal and state government advertising --- and employers, private sector employers could adopt this as well ---that people with disabilities are included at the level of 15 or 20 per cent of the faces we see in advertising, because Screen Australia has carried out research that the numbers of people with disabilities appearing on screen is woefully lower than the average in the population. And as I said to Ms Bennett earlier, you can't be what you can't see.

COMMISSIONER RYAN: Thank you.

CHAIR: Mr Innes, at paragraph 52 of your statement, you say:

..... as recruitment becomes a bigger industry and more formulaic

And you repeated this in your evidence a short time ago:

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..... the initial filtering of people has become more of a production line approach and the lack of reasonable adjustment excludes people with disability.

I think you gave in your evidence the example of a keyboard test that would in effect discriminate against somebody who used a screen in a different way.

On the face of it, if that were to happen, that would be a very clear example of direct discrimination in the process leading to the offer of employment. I'm just wondering why you say that that would have the effect of excluding someone, a blind person, for example, from the opportunity to gain employment. Are you saying that's
5 because employers don't understand their obligations, or have I misunderstood the *Disability Discrimination Act*, or is there some other reason?

MR INNES: No, Chair, I don't think you've misunderstood the DDA but you'll recall in my evidence I talked about the challenges facing people with disabilities in terms
10 of lodging a DDA complaint. I know many people over the years who have been excluded by recruitment processes which weed out people on the sorts of bases that you've described. Very, very few of them have lodged DDA complaints because they are disempowered by that process, they feel that their chances of success are not high, or they are just not aware of the legislation. So, whilst the legislation says the
15 right thing, what we need in recruitment processes is tools that actually put that law into effect.

You're probably, through your involvement with this hearing, Chair, aware of the well-known French jurist René Cassin who said --- and I know I'm going to misquote
20 --- it's not laws that need to change, but it's the whole fabric of society which needs to change to achieve equality and non-discrimination throughout society. This one of those legislations where your outlining of the law is absolutely correct, but the burden is heavily on people with disabilities to put that law into effect. What I'm trying to suggest is strategies whereby recruiters are required not to discriminate and
25 strategies such as procurement, as I said to Commissioner Galbally, can enforce that by getting recruiters to provide X per cent of candidates with disabilities as part of the pool they offer to employers.

CHAIR: One approach to the particular issue that you identify with your example is
30 to make it easier for an institution such as the Human Rights Commission to bring proceedings itself if there are examples that come to its notice of that kind, if I may use the word, of blatant discrimination. That would be a case, one would have thought, of blatant discrimination.

MR INNES: Yes, and if the Disability Discrimination Commissioner had the opportunity to complain on a class of people, he could work with the recruitment industry if he found there was an endemic practice which was discriminatory, to change that practice, and one of my other recommendations, as you would have seen,
35 is codes of practice which can become enforceable codes or enforceable undertakings, call them what you will, which prevent recruiters from carrying out
40 this sort of discrimination. They are commonly available in other laws, but not available under the *Disability Discrimination Act*. I'm sure my colleague and friend Ms Banks, when she gives her evidence, will talk to you much more about this sort of change, but it would be a mistake to assume that all of the discrimination which
45 the *DDA* outlaws is addressed by people with disabilities. The number of people who complain is infinitesimal compared to the discrimination which is out there in society.

CHAIR: Is it not the course that the most common form of complaint that comes to the Human Rights Commission is discrimination on the grounds of disability?

5 MR INNES: That's correct. It used to sit around --- I think it still does --- just under 40 per cent of the number of complaints. But there is only something like 2,000 complaints a year, so at 40 per cent that's roughly 800 complaints a year when we have 4.5 million people with disabilities in Australia. You can see the number of complaints is very, very small.

10 CHAIR: Thank you. We have a large number of candidates who could conceivably wish to ask you questions, that is, parties represented, but I'm going to assume nobody wants to ask you a question unless somebody leaps up and gives a particular reason for asking a question, otherwise we may be here for some considerable time.

15 May I assume that none of the parties wishes to ask Mr Innes any questions?

I shall take silence as assent and then to thank you, Mr Innes, for coming to give your evidence. It's been a very interesting hour and we're most grateful to you for the assistance that you have provided and the statement that you've also provided so thank you very much.

20 MR INNES: Thank you, Chair. It's an area about which I'm very passionate, so I'm very happy to be here.

25 CHAIR: I think we gathered that impression. Thank you very much.

THE WITNESS WITHDREW

30 MS BENNETT: Chair, we propose to tender the statements from today at the end of the day in one lot. Noting that, we would ask for two or three minutes just to reorganise the room for the next witness, Ms Banks.

35 CHAIR: We'll adjourn for a few minutes in order to adjust the room. Thank you.

ADJOURNED [12.15 PM]

RESUMED [12.18 PM]

45 CHAIR: Yes, Ms Eastman.

MS EASTMAN: Our next witness is Ms Robin Banks, and she joins us from

Tasmania.

MS ROBIN LYNETTE BANKS, CALLED

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CHAIR: Ms Banks, thank you very much for coming to the Commission to give evidence. We appreciate your attendance and the statement you provided us with. Just so you are aware, Commissioner Galbally is joining us from Melbourne. I am in
10 the Sydney hearing room with Commissioner Ryan. Ms Eastman is also in the Sydney hearing room and I'll ask Ms Eastman now to ask you some questions. Thank you.

15 **EXAMINATION BY MS EASTMAN**

MS EASTMAN: Thank you, Commissioner.

20 Commissioners, you have a copy of Ms Banks's statement in Tender Bundle Part A behind Tab 50, and a copy of Ms Banks's CV which appears at Tab 51.

Ms Banks, I think you've identified a few typographical errors and some amendments that you wish to make. If it's convenient to you, we might reduce that
25 all to writing and we'll circulate a copy of the corrections and the amendments to the Commissioners and also to the parties.

With the amendments that you have identified, is the statement true and correct?

30 MS BANKS: Yes, it is.

MS EASTMAN: May I formally introduce you. You are currently a PhD candidate at the University of Tasmania?

35 MS BANKS: That's correct.

MS EASTMAN: The topic for your PhD is an examination of whether and how discrimination law could be used by reference to a conceptual framework that incorporates learnings from other disciplines such as those of prejudice and
40 unconscious bias from psychology, and what effect this might have on dispute prevention and resolution. So could I put it this way. Let's step from the legal analysis and draw on other areas to perhaps look at more effective dispute resolution ways --- is that generally what your thesis is addressing?

45 MS BANKS: Yes, and it's also really looking at what the law can learn by acknowledging that there is a huge body of research, particularly in the social sciences, about the causes and effects of prejudice and stigma, and how they manifest

for different groups.

MS EASTMAN: Prior to commencing this PhD, you had an opportunity to really look inside the way in which the law works on discrimination. You were the
5 Tasmanian Anti-Discrimination Commissioner for seven years?

MS BANKS: That's correct.

MS EASTMAN: Before that, you were also the CEO of the Public Interest
10 Advocacy Centre?

MS BANKS: Yes.

MS EASTMAN: You've worked for a private law firm in which you've had an
15 opportunity, for example, to act for employers in discrimination claims?

MS BANKS: Yes, that's correct.

MS EASTMAN: You've also worked in community legal centres and also had an
20 opportunity to represent many people with disability in relation to employment issues?

MS BANKS: That's correct.

MS EASTMAN: So I might describe you as having the 360 in terms of all of the
25 different perspectives you can bring to the experience of people with disability in navigating employment, but particularly what to do and how to address experiences of discrimination. Would that be a fair summary?

MS BANKS: I think that's a fair summary. I also had the opportunity for a year to
30 work at the Canadian Human Rights Commission and see the way the law operates there and some of the significant differences about the Canadian approach.

MS EASTMAN: I want to ask you towards the end of the time that we have this
35 morning about some of the overseas models, so I might come back to ask you about the Canadian experience.

Thinking about your 360 approach, you've said in the statement that based on your
40 experience, there is a level of fear in the land of employers --- the fear of "What if I get it wrong, what if I make a mistake", and what the consequences might be. This may pick up on some evidence that Mr Innes has just provided to the Royal Commission, but standing in the shoes of employers, what is the impact of this fear that you have observed?

MS BANKS: In my experience, the impact is that people with disability don't get the
45 opportunity to enter employment, if that's the point --- that's the relationship at the time, so they are not seen as the preferred candidates, they may not even get the

opportunity to perform in an interview, for example, so there is an avoidance of the risk by avoiding having the person come into the workplace, and that fear is about ‘‘If we get it wrong then we'll face a complaint’’, which is certainly an overblown fear, but it's a fear nonetheless.

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In terms of a person with disability is in the employment situation and either they acquire a disability either through a workplace injury or otherwise, or they disclose an otherwise invisible disability, the experiences I've heard about indicate that that changes the nature of the relationship they have with the employer in ways that very often lead to the ending of that employment relationship prematurely.

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MS EASTMAN: Looking at the work that you're currently doing in understanding the effect of conscious and unconscious bias, it sounds that there is a bias held on both sides --- that the employers may have fear, and I know we are overgeneralising and I'm not suggesting this is every employer --- but if there is a sense on the side of the employer, then equally there is also a bias from prospective employee or an employee with disability picking up on that fear as to what the consequences might be. Is one of the issues how do we bridge the gap and unravel the fear on both sides?

15

MS BANKS: Yes, I absolutely agree the vast majority of people with disabilities that I know either as friends or colleagues or who I have provided legal services to are very afraid of disclosing disability, and obviously some people have no choice in the matter. So there is an expectation that if they disclose or if their disability becomes apparent, they will experience discrimination, and that's obviously, yes, a bias, because there are good employers out there and many who will do the right thing, but the culture --- unless the person has really strong confidence that the culture of the organisation is one of inclusion, full inclusion of people with disability, then there will be great hesitation on the part of the candidate or the employee to disclose the extent of their disability, or to ask for the adjustments that would make them the most effective employee they could be.

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MS EASTMAN: One of the issues the Royal Commission will examine this week is the approach taken by employers at --- we've loosely called it recruitment, but really this is the beginning of what is an employment relationship. You've addressed this in your statement, and I want to ask you a few questions about the approach.

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When we're talking about recruitment, we're talking about matters such as advertising jobs or the word of mouth in terms of how people might look for jobs. It's about the way in which applications have to be prepared, the extent to which the applications require personal information. It might be about the way in which interviews or selection processes work, and it might also cover the pre-employment checks. So when we're talking about employment, we're talking about quite a different range of activities that really sits with the employer in terms of the employer's responsibility.

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The first issue I want to ask you about is even the word ‘‘disclosure’’. If we think about the use of that word, disclosure suggests that you have something to hide or a

secret. Is the language of disclosure the sort of language that Mr Innes was talking about that carries an ableist overtone? Does it suggest there is shame in having to disclose something that's otherwise hidden?

5 MS BANKS: Not necessarily shame. I would certainly say fear in disclosing something that's otherwise hidden, and that fear for some people has borne out in negative consequences, unfortunately. Yes, there is a fear and in some cases it may be a shame or an anxiety that in disclosing, the employer will expect that there's going to be additional costs, and that that will change the way in which their application is considered.
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MS EASTMAN: Is there a better word than "disclose" and perhaps if we shift the language to "share". We're talking about an employment relationship here, aren't we?
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MS BANKS: The beginning of an employment relationship, potentially, yes. Yes, and if you use the language of "share", it would make it seem that it was --- there was a stronger trust relationship and that would be potentially a good thing, but people have to know that that trust will be reciprocated, that there will be in fact mutual trust, not one way trust.
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MS EASTMAN: The very essence of an employment relationship is one based on mutual trust and confidence between employer and employee. So should we start to be using language that more reflects the nature of an employment relationship based on trust and confidence?
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MS BANKS: Certainly that would be a positive development if we could do that.

MS EASTMAN: All right, but there is absolutely no requirement to disclose to a prospective employer that you have a disability. It's not mandatory in Australia unless there is very specific types of employment that asks those questions. You've said that your advice to people has been, if the disability is not visible, and they have asked you, "Do I need to disclose it", you've said "You don't need to tell people about your disability, and if you don't need to, then don't disclose it." Why have you given that advice and I think, to be fair to you, you say in the statement there are some consequences about adopting that approach. Can you tell us about the reason you have taken this approach?
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MS BANKS: Yes. The reason I have given that advice to people when the issue has arisen and where people have choice, because some people do have the choice, is because I have seen far too often that --- and almost universally --- that disclosure has led to negative consequences for the person with disability. And I think it is really important for people with disability to understand that the environment they are in is a safe environment to disclose, and to use that word "safe", it sounds like I'm talking about the experience of a lesbian or gay man outing themselves and knowing that it's safe to do so. It is a very, I think, similar problem, that people with disability need to feel safe, and that that knowledge about them won't be misused.
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There is the safety in terms of your employer, the relationship with your employer per se, but there's also safety in terms of the attitude of your coworkers. I have seen some fairly negative views of people with disability from coworkers where there is a view, "I have a right to know if that person has a particular disability, they are in my workplace." We all hold things private to ourselves and if that person's disability doesn't affect you in the workplace, then you really don't have a right to know. It's highly personal information for some people.

CHAIR: That's an important qualification, isn't it? I'm wondering about the situation if someone --- and I noticed your advice and I wondered about it --- someone applies for a job, they have a disability, they don't disclose it, they get the job and then immediately announce that they require reasonable adjustments and advise the employer of the reasonable adjustments. What is the reaction in that situation in your experience, if it happens, with the employer. Does the employer regard that as a reasonable course?

MS BANKS: I am not aware of a situation where that has happened. Where people require adjustments, my advice would be, you need to disclose it at some stage, and I guess it's a question about what the sequence is for the recruitment process. So for me, I don't think the employer should be considering the question of reasonable adjustment until the person is a preferred candidate, at which point they should be potentially asking all preferred candidates, "Are there adjustments you need in your work environment?" "Do you need flexible work hours", if you're a parent. "Do you need any other adjustments?" At that point, you do the work of determining what the adjustments are that are reasonable in all the circumstances, and what the costs of those adjustments are to the organisation, and then you make the final decision about whether or not that adjustment is feasible and doesn't impose an unjustifiable hardship.

The risk that I've seen --- and as I've said I've never seen a situation where a person hasn't disclosed and then needed reasonable adjustments --- yes, my advice would be somewhat different if it was clear they needed adjustments, but the reality is until you get into a work environment --- for some people with disability they won't know they need an adjustment because it's the nature of how the work is done that might give rise to the adjustment, not the nature of the work itself.

MS EASTMAN: Can I jump in there for two things. I have a lot of questions to ask you about adjustments related to the Chair's question, but I don't want to jump to that point yet. Secondly, can I ask you to slow down.

CHAIR: That was not directed to you; that was directed to me, so you need not apologise.

MS EASTMAN: That also gives me the opportunity for both of us to slow down a little so our Auslan colleagues can follow us.

I'll come back to this disclosure issue. Are we right in understanding that the

question of to disclose or not disclose is really going to depend on the nature of the particular job, and there has to be a two-way process on this. First of all, the employer has to identify whether or not it needs to know anything about a person's disability, and so to structure the disclosure that might be consistent, for example, with its obligations under the *Privacy Act*, if those obligations exist, and how we look at the collection of personal information including sensitive information, and sometimes we call it health information. That's step 1.

The second is the person who might be required to disclose also needs to understand the relevance of the information and the relevance of disclosing personal information for a particular purpose. So what I am putting to you is a framework that exists in privacy law, and if we take a privacy law approach to the disclosure, use, storage and treatment of personal information, would that be a way that we could better think about the approach to disclosure?

MS BANKS: Yes, I think it would be. I think it would be helpful. I'm also conscious of the provision, at least in the federal *Disability Discrimination Act* that prohibits the asking of questions about disability if the data is used for discriminatory purposes. So there is an interaction there as well with the existing provisions in federal discrimination law. But, yes, people do need to understand what protections there are around their sharing of the information about their disability and how it impacts on them in their day-to-day work activities, and I think a privacy approach is an interesting model to consider, yes.

MS EASTMAN: If you're talking about the relevance of disclosure, you're not talking about whether subjectively the employer or employee thinks it's relevant, but the relevance comes from the context of the work to be performed?

MS BANKS: Yes.

MS EASTMAN: Would that be a way of perhaps shifting the thinking around the collection of information that might give rise to a person's disability being disclosed or shared?

MS BANKS: I think so, yes, because it's not always relevant to the circumstances of the work being done, and there are many people I know for whom disclosing disability has never been necessary.

MS EASTMAN: You've seen in your time, perhaps the old approach was that anybody applying for a job --- and this used to be in some public sector employment, that you would have to get a medical clearance, and you would have to be cleared by, usually, the company doctor or a relevant health service before you would get a job. That practice has changed over time. To what extent has the requirement to have a medical test or undergoing psychometric testing been an issue that might give rise to some concerns about the employment of people with disability and related to this question that we're examining now on disclosure?

MS BANKS: To my knowledge, yes, things have shifted. I haven't been in direct employment advisory capacity for some time, but certainly as Commissioner I was made aware of continuing practices around medicals, and I'm glad you mentioned psychometric testing because I in fact received several complaints about the use of
5 psychometric tests and their impact on people who had any history of mental illness. So I dealt with a complaint involving the use of psychometric testing and the response from the testing agency --- so it wasn't the employer that did the testing, they had brought in an external provider --- and when I asked, "If somebody answered these questions in the affirmative, that they had any history of mental
10 illness or indeed any history of making a complaint of discrimination", which was interesting, "what impact would that have on your recommendation or that person's suitability for employment?" The response I got was a fairly blatant, "Well, we would advise against employing that person." It was irrespective of the relevance of mental illness or history of mental illness or how long ago it was to the current
15 employment situation.

So I think there continues to be a problem with the use of broad base testing regimes as a filter for employment. I absolutely support the right of employers to use medical testing if they can identify physical requirements for the job and they need to test a
20 person's capacity to fulfil those. I also understand that there are times when the insurance industry needs a baseline against which to measure if somebody is subsequently injured. Both of those are completely valid reasons, I think, to conduct medical examinations prior to the finalisation of an employment relationship commencing, but too often --- and I hope that the experience of people being
25 excluded from work because they have a medical that says: "This person has a medical disability and they can't do X" which is entirely irrelevant to the job, that that is a thing of the past. But I suspect we may not be there yet.

MS EASTMAN: Looking at the Commonwealth *Disability Discrimination Act* that
30 picks up not just a present or existing disability, but it also covers past disability, future disability and even imputed disability.

MS BANKS: Yes.

35 MS EASTMAN: I think it doesn't quite extend to a future imputed disability, but at least covers past, present, future and imputed disability. So it's quite a wide range of disabilities that could be picked up in medical clearance and psychometric testing; is that right?

40 MS BANKS: That's correct, and I would say it potentially does bring up imputed future because of the genetic testing provision. If you have a genetic history, that doesn't mean you are going to end up with that condition, but you may have a higher likelihood, and therefore there is some possibility of imputation in that case.

45 MS EASTMAN: In terms of acknowledging that employers may need to do some testing to work out a person's capacity, does that take us into the area of what is called inherent requirements of the job?

MS BANKS: Yes, absolutely.

5 MS EASTMAN: We see this language, “inherent requirements of the job”,
“inherent requirements of the position”, “inherent requirements of the work”, and
we also see language such as “genuine occupational requirements”. It can be a
variation of all those expressions. Are we right in understanding that the concept of
inherent requirements of a job is to look closely at the work that has to be performed,
10 and the employer can identify what is absolutely the core functions that have to be
performed, and they can be inherent requirements, but also the way in which work is
done, so it's an inherent requirement of jobs that you can perform that work safely for
yourself and for others who might be in your workplace? Have I very broadly
summarised the concept of inherent requirements? What have I missed?

15 MS BANKS: You have. I would say with a little caution about the way it is done,
because for somebody like Graeme Innes, for example, the way he does the job of
being a lawyer is different to the way I do the job of being a lawyer, because I can
read text in books and I can do things because I have vision that Graeme does
differently. I guess there's the way in the sense of safety and not impacting on other
20 people's safety in the work environment, but there is also --- it is not an inherent
requirement to do it the way it's always been done necessarily.

MS EASTMAN: Inherent requirement is not limited to workers with disability. We
see it also in other areas such as somebody's age might give rise to an inherent
25 requirement. I think we've seen our High Court of Australia talk about the inherent
requirements of the age of Qantas pilots --

MS BANKS: Yes.

30 MS EASTMAN: --- and that international legal obligations in terms of who can fly
planes to different parts of the world had an age requirement. That can be an
inherent requirement as well.

MS BANKS: Yes, so externally imposed requirements, legal obligations, absolutely.
35 Interestingly, in Australia, it's most expressed, I think, in disability law --- disability
discrimination law, whereas in, say, the Canadian framework, the idea of a bona fide
occupational requirement applies across the board.

MS EASTMAN: In your experience, how do employers fare when they're trying to
40 work out the inherent requirements of the job? Do we have standard systems or
processes that employers have to follow to identify inherent requirements of the job,
or is it an employer-employer job-by-job type of approach?

MS BANKS: It certainly seems closer to the latter than the former. I think we have
45 failed to provide the kind of guidance and resourcing that employers need to do that
work well. Having been an employer myself, I have looked for what's available to
help guide that, and I certainly haven't found much in the way of useful guidance,

and I think that comes back to the level of resourcing available to things like the Australian Human Rights Commission, but also a sense that the work of the statutory authorities is really very complaint-focused rather than working with industry and, when it does that work with industry, the Australian Human Rights Commission, I think, really does drive quite significant positive change, but there hasn't been a lot of that in the employment space, as Graeme identified, and I also would identify. We don't have a standard that guides employers on how to comply with their obligations under the *Disability Discrimination Act*, no.

10 MS EASTMAN: We might ask some of the employers this week about whether they use inherent requirements as part of their recruitment processes, or in the adjustments area.

15 One of the other areas that you identified is whether employers have a good understanding of the legal obligations around reasonable adjustments but also the practical aspects of it. I'm going to try to again summarise at a fairly high level what the concept of reasonable adjustments mean. This is language we see in the Commonwealth discrimination law, the *Disability Discrimination Act*, and we see some variations of it in some of the State and Territory legislation.

20 But essentially, at a Commonwealth level, the concept of a reasonable adjustment is anything that a person might identify as an adjustment; secondly, it has to be an adjustment for a particular individual rather than be an adjustment to a system; and there is no requirement to offer a reasonable adjustment unless it will avoid a person with disability being discriminated against, and that discrimination might be what we call 'direct discrimination', so treating a person less favourably on a comparative basis to a person without a disability, and the reason for the less favourable treatment, or a reason is the person's disability --- or something we also call 'indirect discrimination', which is a bit tricky to navigate, but essentially you're required to do something to meet a condition or a requirement, and if you can't meet that condition or requirement, and the requirement is unreasonable, that is what's called indirect discrimination.

35 So adjustments are relevant to enable the person with disability to meet the condition or requirement. So that might be using a keyboard, for example, to pick up the example that the Chair raised with Mr Innes earlier.

40 So that idea of reasonable adjustments is not sort of something that sits alone in Australian law as a positive duty; is that right?

MS BANKS: I think that's an accurate --- largely accurate reflection, yes. Yes.

45 MS EASTMAN: Secondly, the adjective "reasonable" is completely irrelevant in terms of the way the law is applied in Australia in the DDA. So a reasonable adjustment is any adjustment that does not impose unjustifiable hardship on the employer. It's got nothing to do with the reasonableness of the way somebody might behave, the way somebody might act, or whether an employer thinks what they have

done is reasonable. It's got nothing to do with reasonableness?

5 MS BANKS: I would agree with that. I do think it potentially does some work, but it hasn't done this work, and that is that the adjustment reasonably responds to the particular need of the person. It's an adjustment that is fit for purpose, but I'm not sure it adds very much in that sense, but, yes, it wouldn't be a reasonable adjustment to do something that doesn't address the person's need but changes the work environment. I would also ---

10 CHAIR: Sorry, Ms Eastman, to be clear about it, I take it that the foundation to the questions you've been asking about reasonable adjustment is the definition of "reasonable adjustment" in section 4 of the DDA ---

15 MS EASTMAN: That's right.

CHAIR: --- for people who might be trying to follow this, such as Commissioner Ryan, "reasonable adjustments" means, under the Act, "an adjustment to be made by a person is a reasonable adjustment unless making the adjustment would impose an unjustifiable hardship on the person". So the proposition you are putting is that unless the adjustment imposes an unjustifiable hardship, it is by definition ---

MS EASTMAN: An adjustment.

25 CHAIR: I wanted to give people the opportunity to follow.

MS EASTMAN: This is one of the issues I wanted to raise with Ms Banks, is that for something that was really intended to be fairly straightforward, it's become very confusing ---

30 MS BANKS: Yes.

35 MS EASTMAN: --- for everybody --- for a person with disability to know what an adjustment means, but also for the context of employers to know what they have to do or not have to do. So even the language "reasonable adjustment" is unhelpful, isn't it?

40 MS BANKS: Yes, I would absolutely agree, and it's where the absence of really well-resourced guidance systems, and I would point to something that I think Dr Innes pointed to, which is the idea of an employment equity approach, as we see in Canada, where the Commission there actually can assist --- provide guidance to employers about: what kind of processes do you need to have in place, to interrogate the question of whether adjustments are needed, and, if so, what do you do to determine what is a reasonable adjustment in all the circumstances?

45 At the moment, yes, I'm sure there are many of the specialist discrimination lawyers around the country in private practice giving that advice, but it's available to those who can afford to do that --- but, yes, it's confusing and there is no doubt that a much

more nationally consistent approach to understanding it and implementing it across the employment sectors would be a huge benefit.

5 MS EASTMAN: But a good starting point would be perhaps to ask the person with disability, “What do you need to do your job?” We heard in Public Hearing 9 from Dr Beth McInally that something as simple as moving the microwave from a top shelf to something she could use would be an adjustment to enable her to do her job. So sometimes it could be a very small or simple matter.

10 MS BANKS: Absolutely.

MS EASTMAN: In terms of reasonable adjustments, in your experience have you seen in corporate Australia a designated person in an organisation who might be called, for example, the chief reasonable adjustments officer? Is that something you
15 have seen something corporate Australia been embracing so far?

MS BANKS: I'm not aware of that. Generally, in my experience, the question of reasonable adjustments has been left to human resources personnel and/or the person who is the direct report for the candidate's position, and when I was in private
20 practice I was actually asked once by the employer, “We've got this person who is a candidate. What do we need to do to adjust the workplace for them?” My response was, “You need to ask them whether there are any needs arising from their disability to enable them to not just do the job but do it as well as they can do it”.

25 MS EASTMAN: I want to bring you back to the Chair's question and perhaps unravel some assumptions behind it. It doesn't necessarily follow that you have to give your full details of the disability that you have to enable the adjustment to be made; is it not the case that if you focus on the work to be done, then the adjustments can be made without having to disclose your full medical history, all details about
30 your disability, because the adjustment might be relevant to some aspects of your lived experience with disability, but not absolutely everything?

MS BANKS: Yes, that's correct, and as I said, sometimes you won't know that you need an adjustment because you haven't seen the way the work is done in that
35 workplace. Obviously, with some jobs, it may be really obvious from the outset, but sometimes --- so, for example, I have a colleague who has both vision and hearing impairments, and so different work environments affect that person's ability to do their job as well as possible, so they need to avoid glare, they need to avoid a lot of background noise. It may be that it is an open plan office, in which case it's harder
40 for them to do their work well, and if it's a glass box type office, that would make it harder for them, whereas if it's a standard work environment where you have your own office, you can set up the desk in such a way that the glare doesn't affect the screen, and you've got the more --- the quieter environment, there is no adjustment at all really needed. So it's very context-specific and very job-specific, it seems to me.
45

MS EASTMAN: It's the case, isn't it, where there may be some situations where it is not possible to make a reasonable adjustment, so there may be circumstances where

there is not going to be something that can be done to enable a person to perform the jobs or meet inherent requirements? Do you agree that any obligation to make a reasonable --- obligation has to be based on the fact that the adjustment is capable of being made?

5

MS BANKS: Yes. Yes.

MS EASTMAN: In the time I have, I want to move to the area that you have really looked at in the last few years in some detail and, also, as the Commissioner, which is complaints about discrimination. If we put it in an employment context, the possible points where complaints might arise might be at the recruitment phase, or, if a person has been employed in relation to the terms and conditions of their employment, issues around promotion within employment and the opportunity to be included in the activities of a workplace and, then, the third area might be at the end of an employment relationship, so the way in which employment may come to an end. It might be forced termination, or it might be a decision to resign. So issues of discrimination can arise at each of those touch points; is that right?

10
15

MS BANKS: Yes, that's correct.

20

MS EASTMAN: When we talk about complaints of discrimination, and you've addressed this in your statement, essentially you're focusing on complaints that are available under the various statutory regimes at a federal or state level; is that right?

25

MS BANKS: Yes, federal, state and territory laws that prohibit forms of discrimination on the basis of disability, yes.

MS EASTMAN: From what you saw in your work as the Tasmanian Commissioner and generally, how frequently did you see employers looking to offer some sort of complaint resolution dispute mechanism before you go to these bodies with the statutory functions? I am interested in one that is disability-specific. You have lots of grievance policies and you can make complaints and do things. Have you seen any example effective on the ground in workplace dispute resolution models for people with disability?

30
35

MS BANKS: I'm struggling to identify a systemic approach that would respond positively to your question, but I am --- I certainly have seen situations where employers have had an issue raised with them in relation to disability, they have gone to their legal advisers, and in this case I'm thinking about external legal advisers, so corporate law firms, where the law firm has sufficient expertise and understands that preventing the dispute is better than getting into an adversarial fight about whether or not it's unlawful discrimination. So I have seen some very good work by legal advisers assisting their clients to resolve disputes before a complaint is made.

40

MS EASTMAN: Would it be best practice that accessing the statutory schemes might be towards the last resort end rather than the first resort end in terms of dispute resolution?

45

MS BANKS: I certainly think that would be the ideal. I think the reality is, as your previous witness indicated, a very small percentage of incidents of disability discrimination end up as formal complaints made under discrimination law, and not necessarily because they have been resolved but just because the person faces so much discrimination that it's about which one do you choose to pursue. The other --- I guess one of the things that participants in my interviews have said --- I've interviewed people as part of my PhD, and I've interviewed a number of people with disability --- the very strong theme that has come out of those views is that many, many, many organisations treat disability discrimination as voluntary, the law as voluntary, compliance with the law. And so really, if we could systematise a compulsory compliance with the law and proactive mechanisms, we would be light years ahead of where we are at the moment and it would prevent complaints.

MS EASTMAN: We're going to hear after lunch from some witnesses who are on the frontline of advising clients about which statutory scheme to follow and what to do if an issue arises. I am interested in whether you've seen this experience. Some of the issues that arise are: where do I go? Do I go federal or state or territory? Things around time limits for making complaints, things around who bears the onus of proof if a complaint is made, how long the process might take, the cost of making complaints, whether you need a lawyer or not, and then, if you work your way through all of this, what are the outcomes that are available.

Are these issues coming up in your research in terms of any one or more of those issues really being key matters that we need to look at for improving systems of dealing with complaints under the statutory schemes?

MS BANKS: I would say all of them have come up. The one that has come up probably loudest and clearest in terms of the federal scheme is the risk of a costs order if you go --- if it doesn't resolve at the Human Rights Commission level, people quite understandably --- people with disability are fearful that if they lose, and, you know, it's not --- even with a good complaint it's not guaranteed you'll win, that they face the loss of home and a whole lot of other things because of an adverse costs order. So costs impact, definitely. Access to legal representation is a significant problem that many people have raised, and expert legal advisers. It's a complex area of law, as I'm sure the Commissioners have become aware, and it is not an area of law that somebody could effectively dip into and say, "I'm across this, I can give you advice on it." Not all advisers, including not all advocacy organisations, understand the difference between the federal and state scheme, so if they are aware of the federal scheme, which is probably the scheme that's better understood by many people, they don't necessarily even look to what the alternative is at the state or territory level, and certainly there are less risks going through state regimes, because there is no costs risk. And it's happening much more locally to you, and certainly for people in Tasmania and the smaller jurisdictions, that seems to matter a little bit.

The remedies are certainly important. I guess the overarching question, though, is one of a legislative scheme that relies on the most disadvantaged people in society

pursuing the public good of equality, and the continuing reliance on individuals who are affected and not having really any systemic mechanism or prosecutorial mechanism available in the vast majority of jurisdictions in Australia.

5 MS EASTMAN: We're going to hear from the Fair Work Ombudsman later this week. Under the *Fair Work Act*, she has functions that enable her to prosecute employers for breaches of the *Fair Work Act*. They might be things like not providing employee's pay slips or underpayments and the like. Have you looked at the *Fair Work Act* as a way of better protecting the rights of workers with disability,
10 in terms of it being a no-cost jurisdiction, but also the capacity of the Commissioner to commence prosecutions? I'll ask her later in the week what sorts of things she can actually take up by way of prosecution, but is that something that you feel has made its way into the options that are offered to people with disability who have employment issues?

15 MS BANKS: Certainly if the Fair Work Ombudsman has the authority to pursue discriminatory conduct through a prosecutorial model, that would be a fantastic development. I'm not aware that it's as clear as that, so I think it's an important question. I think there is also --- one of the things that a number of people have said
20 to me, including particularly lawyers and legal academics and complainants - people who have complained - is the complexity of the law and the fact that you have Fair Work with some discrimination provisions effectively, and then you have the discrimination regimes under the Australian Human Rights Commission and the state and territory authorities.

25 But it's complex. There is a lot of choice and it's not always clear which choice should be made. Certainly I think a prosecutorial model, at least for systemic practices --- but even then I think about, you know, for a person with an intellectual disability who experiences workplace discrimination, is it reasonable to expect them
30 to have the wherewithal to pursue it? Some people will, there is no doubt, and I've certainly received complaints from people with intellectual disability, but the pressure on them and the risks that they bear are so enormous that it seems that it is a hindrance to the law being effective.

35 I think that with all of those factors that you identified, they hinder the law being effective and they lead to that view that I have already alluded to, that people see - the respondent or the obligation-bearer seeing it as voluntary.

40 MS EASTMAN: You've set out in a lot of detail some suggestions about addressing some of the statutory schemes that might level the playing field, if I can use that metaphor, but you have also been very influenced by some models overseas and particularly the Canadian experience, so in the time that I have, and I know the Commissioners might have some questions of you, can I ask you to tell us what is it
45 about the Canadian scheme that you think has made a difference in the labour force participation for people with disability, but also the protection of rights while in employment?

MS BANKS: There are two aspects of Canadian --- sorry, three aspects of Canadian discrimination law that I think are particularly interesting and have seen a different way to Australia. One is that their *Employment Equity Act* which came into force in 1995 is the equivalent of our *Workplace Gender Equality Act* and rather than just focusing on equity or employment opportunities for women, it focuses on opportunities for women, First Nations people, for people with disability and people from visible minorities, so people who experience systemic barriers to employment. So the work that is done in that Commission is really about working with employers to promote awareness of how they can audit their practices and change their practices to make them disabilityinclusive- and inclusive of those other marginalised groups. That, it has always been a great disappointment to me that in Australia we are still in the situation where what we have is gender equality and agency effectively, but nothing beyond that, given the outcomes for those other groups.

The second is that the approach to the defence of *bona fide* occupational requirements in Canada went through something --- ‘revolution’ is probably not the right word, but there were two very significant decisions in 1999 and 2000, which just coincidentally happened to be when I was there, that really clarified that the defence of *bona fide* occupational requirements ---

MS EASTMAN: Is that our inherent requirements?

MS BANKS: Yes, it's equivalent but it applies to all areas of protection. The case in Canada was a gender case, not a disability case. Where the Supreme Court said, “If you're going and try to rely on this defence, here are some steps you have to have gone through to show that that defence is available, you can't make it up as you go along and then come and ask for it.”

The sort of messaging it felt like was coming from the Supreme Court, if I can get away with this, was to say, look, at that stage in Canada we'd had discrimination law for 30 years, and too often that defence was used after the fact to avoid liability. And really, what they were saying was: it is time to do the work to look at the inherent requirements --- the *bona fide* --- before you make the decision, identifying how those inherent requirements are core to the purpose of the role, and that you have tailored them to be minimally discriminatory, and you've considered whether or not there are adjustments that could be made to accommodate a person with disability in any event.

So a much more rigorous approach, I think, to that defence than we see here in Australia. That's the second thing.

The third thing is that in Canada, as was the case in Australia when the Human Rights Commission had the jurisdiction to hear cases, the Canadian Commission appears as a Friend of the Court or Counsel Assisting in, for a long time, all cases that went to the tribunal in Canada, but now in about 80 per cent of the cases. So the decision-makers are always given access to very high-level legal interpretation guidance, assistance with applying the law to the facts, which means that individuals

on both sides, complainants and respondents, are less reliant on having highly expert legal representation themselves, because the law is made clear by the Counsel Assisting.

5 So those are three elements of the Canadian system that I think are really beneficial.

The other model that I referred to from overseas is the model that exists in the US where the Department of Justice has a particular role in investigating and prosecuting breaches of various US civil rights legislation, including the *Americans with*
10 *Disabilities Act*.

MS EASTMAN: Thank you. I've probably encroached on the time that the Commissioners might wish to ask you questions. Commissioners, we have 3 or 5
15 minutes.

CHAIR: We would never regard it as an encroachment, Ms Eastman.

Yes, Commissioner Ryan.

20 COMMISSIONER RYAN: I don't have any questions.

CHAIR: Commissioner Galbally.

25 **QUESTIONS BY THE COMMISSION**

COMMISSIONER GALBALLY: I'd like to ask you about, Ms Banks, your PhD
30 and your exploration of prejudice and unconscious bias for dispute resolution, a very serious matter for gender. I would like you to discuss it with regard to disability and what you're exploring.

MS BANKS: In five minutes or less.

35 CHAIR: Probably quite briefly I think, Ms Banks.

MS BANKS: Thank you. It's an extraordinarily good question, Commissioner Galbally. There are aspects of the way in which we as human beings make decisions that are affected by things that are other than hard and fast evidence. There is a lot of
40 research, particularly in social psychology, that helps us to understand the nature of those unconscious biases or heuristics which we use to shortcut decision-making. They influence all of us, but if we deny that we are affected by them, we're much more likely I guess to allow them to continue to impact.

45 I note that the Australian Law Reform Commission is currently doing a reference on judicial impartiality and they have done a very good background paper on unconscious bias or biases or prejudice in decisionmaking- as they affect potentially

the work of decision-makers and quasi decision-makers. A lot in that background paper reflects some of the work that I'm looking at applying. I think there are some changes that come out of that work to the way in which we undertake the decisionmaking-, and who does it, because the vast majority of decision makers in
5 Australian discrimination law are not people who will have experienced the kind of discrimination that people complain of. That makes it harder for those decision makers to necessarily understand the nuances and complexities of discrimination, particularly as it is experienced by people with disabilities.

10 There is one aspect of the research that I'm looking at which is a model to understand prejudice that means that what people with disability experience as prejudice-based behaviour is much more likely to be paternalistic, overprotective and avoiding putting the person in a situation where they may have to perform at a high level. It's described as a 'pitying approach' that is driven by a view that people with disabilities
15 are less competent than others.

This model, which is Susan Fiske's work in the USA particularly, says that different characteristics drive different forms of prejudice. So some prejudice is outright hostility, some prejudice is sort of pitying and underexpectation type of prejudice,
20 and that looks very different in terms of what the discrimination is that it drives. So Graeme Innes I think talked about the burden of under expectation, and that's certainly a particularly disability-directed form of prejudice-based behaviour; certainly Aboriginal people talk about it as well. It's all that kind of work and thinking how could this reshape the way in which we think about discrimination and regulate it in the law.
25

COMMISSIONER GALBALLY: Thank you.

CHAIR: A very concise description of your PhD thesis, if I may say so. As far as
30 the drafting of the legislation is concerned, one has to be very careful not to criticise too much Parliamentary Counsel or drafters. My own experience with drafting of legislation and people who draft legislation is that it is an astonishingly difficult thing to do and generally done very well. When you apply section 5 of the DDA with the rather odd definition of "reasonable adjustment" what you get is something like the
35 following: an employer discriminates against an employee if the employer fails to make the adjustments the employee requires to do the job satisfactorily, unless providing the adjustments would impose unjustifiable hardship on the employer. That's effectively the combination. Professor Julius Stone very famously said that the law contains categories of indeterminate reference; "reasonableness" is one of
40 them. Another one is "unjustifiable". All that's happened in these definitions is that the category of indeterminate reference has been transferred from "reasonable" to "unjustifiable". I'm not sure it's all that difficult to understand. I think it's to do with the vagueness of the relevant criteria, which again I'm not sure is unique to this particular area. That is the end of the soliloquy.
45

MS EASTMAN: Probably to just throw in the mix there, section 11 of the Act. I have no further questions.

CHAIR: I'll make the same assumption as previously, that is, there are no further questions to be asked of Ms Banks. I thank you for your evidence today and for the statement that you've provided to the Royal Commission. It's been very helpful.
5 Thank you very much.

MS BANKS: Thank you for the opportunity.

10 **THE WITNESS WITHDREW**

CHAIR: It's just after 1.15 Eastern Summer Time. I take it that we will resume at 2.15.

15 MS EASTMAN: At 2.

CHAIR: That's not what the draft says.

MS EASTMAN: I think my program ---

20

CHAIR: I'm looking at the wrong draft, am I?

MS EASTMAN: 2.00 pm.

25 CHAIR: We'll resume at 2.00 pm.

ADJOURNED

[1.16 PM]

30

RESUMED

[2.01 PM]

35 CHAIR: Yes, Ms Eastman.

MS EASTMAN: Commissioners, we now have a panel of Ms Kairsty Wilson, Ms Melanie Schleiger and Mr Peter Olivieri.

40

MS KAIRSTY WILSON, CALLED

MS MELANIE SCHLEIGER, CALLED

45

MR PETER OLIVIERI, CALLED

CHAIR: Thank you very much for coming to the Royal Commission to give
evidence in a panel today. We're grateful for your assistance. To explain where
5 everybody is, at least everybody relevant, Commissioner Galbally is joining the
hearing from Melbourne, I am in the Sydney hearing room with Commissioner Ryan
on my right. Ms Eastman, Senior Counsel Assisting, is in the same room as
Commissioner Ryan and myself. I'll now ask Ms Eastman to ask you some
10 questions.

EXAMINATION BY MS EASTMAN

15 MS EASTMAN: I might start by introducing everyone.

Ms Wilson, can I start with you. You are the Principal legal practitioner and CEO of
the Association of Employees with a Disability, the shorthand is AED, and that's a
community legal centre; is that right?

20

MS WILSON: Yes.

MS EASTMAN: You prepared a statement for the Royal Commission on 12 July
this year. Have you a copy of it?

25

MS WILSON: Yes.

MS EASTMAN: Are there any changes you wish to make to the statement at all?

30 MS WILSON: No, there's not.

MS EASTMAN: Can we take it the contents of the statement are true and correct?

35 MS WILSON: Yes.

MS EASTMAN: Ms Schleiger, can I turn to you. You are the manager of the
Equality Program at Victorian Legal Aid?

40 MS SCHLEIGER: Yes, that's correct.

MS EASTMAN: You've made a statement for the Royal Commission on
5 November this year?

45 MS SCHLEIGER: Yes.

MS EASTMAN: Are there any changes to your statement?

MS SCHLEIGER: No, there aren't.

MS EASTMAN: Are its contents true and correct?

5 MS SCHLEIGER: Yes, they are.

MS EASTMAN: Mr Olivieri, I'm going to ask a few questions before I come back to the two lawyers and ask them. You are a person with disability, and do you mind me saying you have a heart condition?

10

I think we need to get you off the mute so we can hear you. I'll ask my colleagues here whether they can assist.

MR OLIVIERI: You've got me now?

15

MS EASTMAN: Yes. Welcome, Mr Olivieri. You are a person who identifies as a person with disability?

MR OLIVIERI: Yes.

20

MS EASTMAN: You had a dizzy spell when you were on a night shift back in July 2017; is that right?

MR OLIVIERI: That's correct, yes.

25

MS EASTMAN: That dizzy spell meant that you had to get some medical advice and medical treatment from your doctor?

MR OLIVIERI: Yes.

30

MS EASTMAN: After you experienced the dizzy spell, you needed to take some time off work?

MR OLIVIERI: Yes.

35

MS EASTMAN: But you still felt a little bit dizzy and unwell when you went back to try to resume your normal working duties; is that right?

MR OLIVIERI: That's right, yes.

40

MS EASTMAN: After a period of time you got a call from your employer --- and I am not going to identify your employer --- you were ready to go back to work but your employer said he didn't have any more hours for you?

45 MR OLIVIERI: That is correct, yes.

MS EASTMAN: Your memory is that your employer never asked you how you

were or how your medical condition might affect your ability to do your work; is that right?

MR OLIVIERI: That is correct. No questions whatsoever.

5

MS EASTMAN: You had some surgery to have a pacemaker inserted?

MR OLIVIERI: Yes.

10 MS EASTMAN: After that you felt you should be able to get back to work to do the job that you'd been doing for a long time; is that right?

MR OLIVIERI: That is correct. The cardiologist that put the pacemaker in said, 'You'll probably miss a couple of days, you'll be a little bit sore, but if you feel up to it you can go straight back to work'.

15

MS EASTMAN: You were gutted, weren't you, when your employer said you'd no longer have your regular hours?

20 MR OLIVIERI: Totally, yes.

MS EASTMAN: You were very concerned about losing your income?

MR OLIVIERI: Yes.

25

MS EASTMAN: You thought, 'What am I going to do about this? What are my rights in this situation?'

MR OLIVIERI: That's correct.

30

MS EASTMAN: In terms of working out your legal rights, the first step is you spoke to some friends and colleagues; is that right?

MR OLIVIERI: That is right, yes.

35

MS EASTMAN: Can you tell me how did you work your way through to end up with Victorian Legal Aid, because it took a little bit of time, didn't it, and going through a number of different people before you got to the Victorian Legal Aid.

40 MR OLIVIERI: Yes, that's correct. Originally I went to an advocate where we had a phone hookup with Fair Work, I think it was. It wasn't resolved at that. It was then moved on to a VCAT hearing and nothing was resolved at that mediation. They then said that they couldn't take me any further, because solicitors, barristers, everything, had to be involved. So I then went to a law firm that I had some dealings with, and got all my paperwork, went there. After a couple of weeks I got a phone call to say, 'Look, we really would be the only ones that will make any money out of this. It's really not to your benefit to have us represent you. Why don't you call Legal Aid?'

45

That's what I did.

MS EASTMAN: When you contacted Legal Aid, I think you were actually surprised that anybody would call you back from Legal Aid; is that right?

5

MR OLIVIERI: Well, the first phone call, I got on to somebody that I really don't think knew what he was doing, I think he might have just been the work experience guy on the day, and he couldn't help me whatsoever. Through a friend or a lady that I was going out with at the time, she said, 'No, ring them back, ring them back.'

10 Then after the second phone call I got on to a guy as well, explained my situation, and he said, 'Look, I'll take your number and somebody will ring you back.' I hung up on from that phone call and said, 'Yeah, yeah, yeah, it won't happen.' And then that afternoon, I got a phone call.

15 MS EASTMAN: So you then met up with the lawyers from Legal Aid?

MR OLIVIERI: Yes.

MS EASTMAN: The Legal Aid lawyers engaged a barrister as well to assist you with the hearing in the VCAT, the Victorian Civil and Administrative Tribunal; is that right?

20

MR OLIVIERI: That is correct.

MS EASTMAN: I think you formed a view --- and I am just going to put this in, Commissioners, as a plug for barristers --- you had a barrister, you described her as a dog with a bone, she was a real go-getter, and you were completely confident and were very happy with the way she represented you?

25

MR OLIVIERI: Extremely, extremely, yes.

30

CHAIR: Very unusual perception.

MR OLIVIERI: I haven't had a lot to do with the legal aspect.

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MS EASTMAN: The experience of being represented gave you confidence, didn't it, that you were going to get a fair outcome for the issues that you wanted to raise; is that right?

MR OLIVIERI: That's right. Until I got to Legal Aid, I still thought that I was having an unfair dismissal case, until they said, 'No, it's a disability discrimination case.'

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MS EASTMAN: I think during the process you were a bit unclear about what law is applying to me and which court or tribunal do I have to go to, and it was all a bit confusing, wasn't it?

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MR OLIVIERI: Totally. Totally, yes.

MS EASTMAN: But at the heart of it, you felt you had really been given a raw deal by your employer and you wanted to take some action because you felt it was unfair?

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MR OLIVIERI: 100 per cent.

MS EASTMAN: By losing your job, that has had an impact on you financially?

10 MR OLIVIERI: Yes, it did, yes.

MS EASTMAN: Notwithstanding that you lost your job, you weren't able to get your job back through this process, were you?

15 MR OLIVIERI: No, no.

MS EASTMAN: So the outcome was something other than to get your job back, and you've had to move on and look at different options for your life in terms of employment; is that right?

20

MR OLIVIERI: That is correct, yes.

MS EASTMAN: Thank you very much for sharing that experience.

25 I want to turn to legal practitioners on the panel.

Is Mr Olivieri's situation something that is unique, or is this a situation that comes across your desks on a frequent basis?

30 Ms Wilson, can I start with you?

MS WILSON: Yes. We have, over the 20 years I've worked in this space, basically I have represented thousands of people in similar situations --- obviously different circumstances, but yes, it is very common that --- well, a couple of things, that they don't have the access to justice, they find it very difficult to find representation. We are --- around Australia we're the only specialist legal centre, community legal centre that only specialises in this particular area. There are some in other States where there is just a couple of lawyers who do it part-time. It's a shame because really there is such a need for that representation, and the knowledge dealing with the situation that Peter has described, yes, it is common, unfortunately, but it's something that really needs to be addressed.

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MS EASTMAN: Can I ask you a little bit about the legal centre that you operate. I think you've said you're the only specialist legal centre with respect to these issues. Can I just narrow down on issues. Are you a legal centre that really focuses on the rights of people with disability in the context of employment and that's the primary focus of the legal centre?

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MS WILSON: Yes, we're actually funded by the Department of Social Services under the National Disability Advocacy Program, so we're not funded the same way that the other community legal centres are funded. We are funded specifically to
5 represent people with disabilities in the area of employment and education, but around 70 to 75 per cent of our clients have employment issues, the other 25 have education issues. There has to be a link between the disability and the issue, the employment issue.

10 MS EASTMAN: We might talk in a moment about some of the cases that you've been involved in and the systemic issues that arise. But in terms of getting a sense of your caseload on an annual basis, you've told the Royal Commission of the information that you have been able to provide to us, looking back at the financial year of 2018 to 2019, you had a caseload of about 300 clients. Would that be sort of
15 indicative of what the case load would be?

MS WILSON: It has been in the past. In the past 12 months it's been less --- approximately 150, a lot of that is to do with COVID and a lot of the clients haven't been working, and obviously in Victoria people haven't been going
20 anywhere, so our caseload has dropped off. We are getting 2, 3, 4, 5, up to 6 calls a day now for assistance. Obviously if they don't fit the criteria we can't do anything about it but our caseload has increased a great deal in the last little while.

MS EASTMAN: In terms of the legal services that you provide, do you charge your
25 clients to represent them or to advise them?

MS WILSON: No, there are no fees whatsoever. The only responsibility that the client has is the disbursements, but again we try and seek ways to potentially, you know, alleviate that sort of cost, so if the client will speak to the doctor, sometimes
30 the doctor won't charge, whereas if we write as a legal letter, they will turn around and charge anything from 800 to 1500 for a report.

MS EASTMAN: Sorry, just to interrupt, for people following us, 'disbursements' is a little bit of a shorthand term we use as lawyers, and that might be the cost of
35 photocopying ---

MS WILSON: No.

MS EASTMAN: --- it could be the cost of getting a report from a medical
40 practitioner, sometimes disbursements can be additional costs like hiring a barrister. Is that what you mean by disbursements?

MS WILSON: All right, no, what I meant by 'disbursements' is filing fees and doctors' reports. So the client doesn't pay anything for photocopying. That's all
45 included. They don't pay --- we would go through Justice Connect to find a barrister pro bono, or we had a hearing last week and one of the staff did it himself. So we will do everything we can to ensure that the clients don't have the cost of the actual

hearing. And we do obviously talk to them about, depending on the jurisdiction, as to whether there is a cost risk, but we do a lot at VCAT and also Fair Work, obviously, where there is that ---

5 MS EASTMAN: I am going to ask you about the different places you can go. Can I finally ask you how many lawyers are part of the team at AED Legal?

MS WILSON: There are two others at this stage.

10 MS EASTMAN: Can I turn now to Victoria Legal Aid, so Ms Schleiger, can I ask you, you are the manager of the Equality Law Program. Can you tell the Commissioners what is the Equality Law Program and what legal services do you provide to people with disability in the context of employment matters?

15 MS SCHLEIGER: Yes. The Equality Law Program at Victoria Legal Aid is a small team of lawyers who specialise in the area of discrimination law. We provide advice and assistance, including representation to people with complaints of discrimination in arrange of areas, including disability. We also provide assistance in other areas of discrimination such as sexual harassment, race discrimination and so on.

20 The majority of our work is in the area of employment. We also provide assistance in relation to discrimination in the area of education and other areas that are covered by discrimination laws.

25 We provide assistance in a range of jurisdictions, including under the *Fair Work Act*, Federal anti-discrimination laws and the Victorian *Equal Opportunity Act*.

MS EASTMAN: How many lawyers are in your team?

30 MS SCHLEIGER: There are 5.6 FTE lawyers, including myself, which means really five lawyers working primarily on discrimination matters, as well as undertaking strategic advocacy in various focus areas.

35 MS EASTMAN: In terms of the cost of the services provided by Victoria Legal Aid, it's a process, is it not --- I think you describe this or the statement of Mr Olivieri has described it --- is you have to make an application for Legal Aid, and there is some criteria that has to be satisfied before a person will be represented by Legal Aid; is that right?

40 MS SCHLEIGER: It depends on the stage of the matter and the intensity of assistance that's provided. So we provide telephone advice, or now it's --- previously it was also in-person advice to people, and there is no financial eligibility criteria at that stage. However, the matter does need to relate to a discrimination inquiry.

45 Beyond that, we can provide assistance under what's called a minor work file, and that's limited legal assistance. And there is slightly more rigorous eligibility criteria at that stage. But in order to receive a formal grant of Legal Aid, which is required

for us to provide representation in litigation, there is eligibility criteria under our funding guidelines.

5 MS EASTMAN: I want to ask both of you --- and Mr Olivieri, jump in if you have some observations that you want to make in your experience --- about some of the issues that arise for people with disability who look to the law, and to statutes or laws like the *Disability Discrimination Act* or the *Equal Opportunity Act* in Victoria or the *Fair Work Act* to stand up for their rights. In an employment setting, the issues might arise at the time that they are seeking a job at the recruitment stage. It might
10 occur when they are in employment in relation to the terms and conditions of their employment, how much they are being paid. It might apply to whether they are promoted into jobs, but it also arises at the point of termination, which was Mr Olivieri's case.

15 I wanted to ask you, with respect to each of those stages, in your experience, are people with disability aware of their rights at these different parts of the employment experience? Ms Wilson?

20 MS WILSON: I would say on a whole, no. I think particularly during the period of employment, the majority of people with disabilities wouldn't know of their rights. There is obviously concern, for example, disclosing what their disability is, how will they be treated, will they be treated differently if they disclose, like obviously Peter was in his case. So at termination, though, I think that there is perhaps a little bit more awareness, because it is occasionally on the news and that sort of thing, about
25 people being terminated from employment and that. So, yes, I think at that time they might be aware that they do have rights. They often don't know about the time restraints, though --- you have 21 days to put in your application. We often --- not so much often but we do get cases where they are out of time and then we have to decide, is it worth the fight to try --- because you have to have a hearing as to see if
30 the jurisdictional argument --- so basically to see whether we can get it past the line of it being out of time, or we then have --- should we go, depending on the employer and themselves, do we go to VCAT or the Australian Human Rights Commission to try and put in a complaint. We also weigh up what the position is; have they had years of being discriminated against while they are in the workplace, and therefore if
35 we go to VCAT, for example, or Australian Human Rights we can bring in that situation as well as pain and suffering as well as compensation ---

MS EASTMAN: Can I jump in there, because that sounds like a lot of things to know about if you are --- knowing about your rights. I'll come back to some of that
40 detail, but the question is really about awareness of rights. Am I right in understanding that people might have greater awareness of their rights if they are terminated from their employment, but less so in relation to what happens while they are in employment or the steps around getting a job? Am I understanding ---

45 MS WILSON: Yes, I would say that's the case. I think it's very much --- it's particularly while they are employed they don't want to do anything that might jeopardise their employment, too. We do get a number of cases where their

employment is at risk because of their disability and the situation. So, yes, there is a lot of fears and knowing what rights do they have and how can they get those rights --- who is going to support them in having their rights addressed.

5 MS EASTMAN: Can I ask, is it a similar experience for Victoria Legal Aid in terms of awareness of rights?

MS SCHLEIGER: Yes, it is, and I think it goes to your earlier question, Ms Eastman, about whether Mr Olivieri's experience in knowing where to turn to for
10 help is unique. I don't think it is unique at all. I don't think many people would be aware that Victoria Legal Aid can provide assistance with discrimination law matters, unfortunately. Much of our work is invisible --- matters very rarely go to hearing. Most of them settle and most settle on confidential terms, so it is difficult for people to know where to go, it is difficult for people to know where to get quality
15 legal assistance, because it is a complex area of law, discrimination law and employment law, and you need to have expertise in both areas to provide really meaningful assistance to people.

So I think that is the initial major hurdle that people --- well, perhaps a second hurdle
20 that people face and the first is knowing that there is a legal option available or options available to them and I think as Kairsty mentioned, there are two issues --- people just having an awareness of their rights, that perhaps there is something they could do if they face disability discrimination during recruitment or during employment and then, also, wanting to take that action, given the potential
25 adverse consequences that can flow from exercising one's rights or making a complaint.

In terms of termination, at that stage, one of the reasons I think that people might come to us more regularly at that stage is both because, as Kairsty said, perhaps there
30 is greater awareness that there are legal rights and options if you're unfairly or unlawfully dismissed for a discriminatory reason. Also, we receive referrals from other organisations that people might contact, such as the Fair Work Ombudsman or Human Rights Commissions, so they might not come initially to Victoria Legal Aid, but they might come to us once they have contacted another agency and have been
35 referred to us.

MS EASTMAN: Can I ask you both this. Sometimes when we think about worker and worker rights, we might ask whether or not there are unions who represent workers at the workplace. In both your experiences, have you seen that there are
40 union representatives who can provide advice and assistance to workers with disability in the workplaces that you've come across? Perhaps if I start with you, Ms Schleiger.

MS SCHLEIGER: Sometimes there are and sometimes there aren't. But I should
45 qualify that by saying I wouldn't see the vast bulk of work that unions would be conducting, so I'm not probably best placed to say.

MS EASTMAN: Ms Wilson, have you seen union delegates or union officers involved in assisting workers with disability know what their rights are?

5 MS WILSON: I have over the years. We have worked with a number of union delegates, so they often bring clients to us and we will work together in representing them. I think the difficulty is that they don't know --- whilst they know the industrial law, they don't, working with people with disabilities, sometimes they are not sure what actions they can take. So, yes I have, but not in a great deal --- not often and it's not all unions that I have seen in there. It's just a few.

10 MS EASTMAN: I wanted to ask you about if someone comes and seeks your services, the description that you have both given sounds to me like a very complex situation that there might be different laws and different processes to follow. Is the starting point to be really clear about what outcome or what remedy the person is seeking, and that determines what options might be available?

Perhaps start with Victorian Legal Aid. Do you start with what does a person want to achieve out of a legal action and would that determine what steps you take?

20 MS SCHLEIGER: Absolutely. That's our starting point, is to identify the person's interests. It may be that discrimination law isn't the solution and isn't the best way to address that person's interests, but that is always an excellent starting point because it can help us to really target the best possible avenue to help that person achieve their goals.

25 MS EASTMAN: Ms Wilson, in your experience, do you look at what outcome the person is seeking?

30 MS WILSON: We do. However, we also have to look at do they meet our criteria, which sounds awful, but we are funded to represent people in those particular areas, and it has to relate. So if the issue doesn't relate to the disability, so they might be employed and something else has happened and it doesn't relate to the disability, then they don't fit our criteria, so we would have to refer them to somewhere else. So just because a person has a disability and they are employed, it doesn't mean that we can do it. That sounds awful, I know, in some ways, but because our funding is limited, we do have to abide by those guidelines.

40 But in saying that, when we talk --- obviously we talk to each client beforehand and we work out --- if there is any way in the slightest that we can fit them into the criteria, we will. Then we will look at a number of things to basically work out where we're going and what remedies. So we talk to the client obviously about what they are looking for, and that often dictates to us where we're going to go with the case.

45 CHAIR: I don't want to intrude on Mr Olivieri's privacy, but if possible, I would like to understand what the basis of Mr Olivieri's claim was. I take it that the claim was that he was dismissed by reason of disability; is that the basis of it? Does anybody

know? I may be under a misapprehension. I thought that either Ms Wilson may have been ---

MS SCHLEIGER: No.

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MS EASTMAN: No, it was about --- Ms Schleiger, do you want to answer this before I jump in?

10 MS SCHLEIGER: Victoria Legal Aid represented Mr Olivieri at VCAT after the mediation at the hearing, and it was a claim of discrimination on the grounds of disability. He had a number of claims but, yes, it was basically discrimination on the basis of his disability.

CHAIR: Was there also a workers compensation claim?

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MR OLIVIERI: No.

MS EASTMAN: It was brought under the Victorian *Equal Opportunity Act*.

20 CHAIR: No, I understand that, but I'm a little puzzled why there wasn't also a workers compensation claim.

25 MS EASTMAN: Perhaps if I can use that, Chair, to come back to this question about working out which pathway you follow, it might depend on the outcomes that people are seeking. If you start by saying what does the person want to achieve, there is a couple of factors then that follow. One might be, how long will it take to possibly achieve that remedy? How much will it cost to achieve that remedy? And what are the processes available to a person in achieving that remedy? Do they have to go straight into a court hearing, or are there other options of private resolutions through a mediation or conciliation. Can I just ask again the legal practitioners, are they factors that you take into account?

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35 MS WILSON: I'll jump in there. Yes, they are. What we would do, depending on the matter, it might be that we would start off with actually trying to organise a meeting with the employer so that we can assist them in trying to resolve --- do they need some workplace modifications. There are obviously different areas that you can go to get some of these modifications. It might be that the employer doesn't recognise the disability. There is a range of things. So we will try to start from the ground and then work our way up. Obviously it's not in anybody's best interest to go straight on to hearing, so as I said, we will try and start at the beginning and then, depending on the situation, if it's termination, we will look at whether we go through Fair Work or whether we put in a complaint, or if it's too late --- it just depends on the stage, but it's basically we try and have a meeting first with the employer, then we put in a complaint and always ask for a mediation, because a mediation allows

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45 the parties an opportunity to meet with an independent person, independent umpire, and they have an opportunity to say before it goes to hearing. Probably 95 per cent settle at mediation or conciliation, because it gives our client the opportunity to have

a say, to have some control in the outcome, whereas if it goes to hearing, it's out of their control completely. It's whatever is the decision at the end of the day. So that's what we look at.

5 MS EASTMAN: From Victoria Legal Aid, let me use a hypothetical. Somebody has lost their job and the outcome they are seeking is that they would like to get their job back, so they would like to be reinstated, there are some pretty tight time limits, aren't there, to bring a claim concerning unfair dismissal to the Fair Work
10 Commission, and different time frames for the *Disability Discrimination Act* and another different time frame under the *Equal Opportunity Act*? If somebody needs a quick remedy and they want to get their job back, how do you work through what the best options might be for the client?

15 MS SCHLEIGER: Yes, as you mentioned, there are a whole range of factors that would influence our decision about which jurisdiction we think someone should take to pursue a remedy, and whether the person wants their job back is a key factor for us to consider. And often, the Fair Work Commission is a good option because you can proceed with your dispute fairly quickly and get to a conciliation fairly quickly.

20 Having said that, you have to make a complaint within 21 days if it relates to a dismissal, whether that's unfair dismissal or a General Protections application, and that is a really quick time limit for someone with a disability who may have other factors going on in their life. They may be in a state of crisis and they may not be able to process legal information that quickly or seek legal assistance or be aware of
25 their legal options. So it's really problematic. And even the longer time limit under the *Disability Discrimination Act* is still, we say, not long enough. There are a whole range of reasons why someone might not be able to meet the current time limits under discrimination law.

30 MS EASTMAN: In both your experience, if somebody wants their job back, it's important, isn't it, for there to be a process to get a quick outcome, because the longer it takes to resolve the dispute, the less likely it is that someone will be able to get their job back, in your experience?

35 MS SCHLEIGER: It is my experience, but it is also fairly rare, in my experience, that clients come to us and have been dismissed from their job as a result of their disability and do want their job back after an initial period of negotiation with their employer. Often that process can be so off-putting that they no longer want to work
40 for their employer, the previous employer, anymore.

We can achieve, sometimes, really great outcomes for clients who haven't been dismissed from their job and contact us prior to dismissal. Often times we'll stay out of the picture but let the client know what their rights are, and work through with them how to have a productive conversation with their employer. Sometimes that
45 can achieve really positive outcomes.

I can also answer the Chair's question about workers compensation claims, because

I think it's a really pertinent question and we often do advise people to make a workers compensation claim. We don't provide assistance in the area of workers compensation, so we would refer clients to other law firms who specialise in that area. Sometimes we work collaboratively with workers compensation firms on clients' matters, because it is very complex when a client has both a workers compensation claim and a discrimination claim, and sometimes even another --- a superannuation insurance claim. So disability discrimination in employment can raise a number of legal options.

10 But like other claims, as time moves on, that workers compensation option becomes more challenging for the individual to pursue.

MS EASTMAN: Ms Wilson, I think you mentioned earlier that sometimes you have clients who have experienced discrimination in their workplaces over a long period of time. By that do we understand that there might be a range of different things that have happened to them at work that could be acts of discrimination in isolation, but when you put it together, it might cover treatment over a longer period of time, and that treatment adds up to a person feeling that they have experienced discrimination or harassment, for example?

20 MS WILSON: Yes, that's correct. When they come to us, and that's when we talk to them about what their options are, because if you go through our unlawful termination --- we only do unlawful terminations because obviously the termination, we're alleging that it's because of the disability, so we don't do unfair --- so when we look at that, it's really only the termination that is decided upon, whereas if we put in a complaint either at Australian Human Rights or at VCAT, we can get the whole picture. So, leading up to what's happened in the last few months or the last few years, we can put all of that in there and present that as a whole.

30 MS EASTMAN: Can I ask you on that, though, is it not the case that if you're going to bring a claim like that, that the onus is then on the person with disability to say, this is how they prove the discrimination has occurred? How do you do that if there's been a lot of things that might have happened to somebody over a long period of time? Is that hard?

35 MS WILSON: It is hard at times. I guess what we do is we hear what the client says. Sometimes, obviously, the client doesn't remember the dates, but there's enough information that's there that we can bring together a picture. So it's basically telling a story. This is what's happened over --- and it might be that the person has been there for 10 years and the first seven years were great, and then there is a change of management and then things start going wrong. You can pick when the things have changed, the attitude towards the client has changed.

45 Yes, it is hard. However, often the clients don't realise, but they do have --- they can picture it to certain events that might have occurred, so the timing, we can work out the timing of when things occurred, or they might actually have something, a letter that we can attach to the complaint that will give some of that background as well.

MS EASTMAN: I'll ask both of you, on this question of onus of proof --- you both address this in your statements as being an issue that the Royal Commission might want to look at --- am I right in understanding that the question about the onus of proof being on the person with disability to prove all of the elements of discrimination can be difficult, but if you have some *Fair Work Act* claims, the onus of proof is on the employer to almost disprove that disability was an operative cause? How does that question of the onus of proof impact on a person with disability getting justice if they have experienced discrimination?

10 Perhaps I'll start with Victoria Legal Aid. Has that come up on the question of proof?

MS SCHLEIGER: Yes, it's regularly a problem. It's very problematic for employees in particular. We often talk about employers having this monopoly on knowledge and evidence. So it's difficult for employees to get witnesses to disability discrimination to speak up on their behalf when those witnesses are still employed by the former employer or still have a relationship with the former employer.

20 We think that it would be really helpful if there was a shared burden of proof at least, or one that shifts to the employer once the employee establishes a prima facie case of discrimination.

MS EASTMAN: I'm conscious of the time and I know the Commissioners may have questions for you. If you reflect on all these issues that we've talked about today, about the different laws, you've all said it's complex, Peter has talked about knowing about his rights, what are the reforms you think would make a difference?

30 Peter, can I start with you? Looking at what happened to you, what do you think would make a difference, what would you like to change?

MR OLIVIERI: Probably because people like myself don't understand the legal side of things. Most people today, if you walk down the street now and say 'Hey, you've just got sacked, what would you do?' 'Oh, ring Fair Work'. Until I was in contact with that advocacy, I wasn't aware of the 21 days, and probably a lot of people would turn around and say, 'Well, what's the 21 days?' And you have to have your application in within the 21 days. That was one thing, my employer came back, when they were asked 'Why didn't you contact Peter because he'd already made a claim', and they sort of obviously weren't under the understanding of the 21 days, either, because they said, 'Because he made the claim so quickly.'

45 I think, under my knowledge, that was a get-out by them anyway to use that. I just think, for the average Joe that goes through this, that doesn't have a law degree, it's a total black hole. Where do you go other than go to a legal firm or whatever, and then be told, 'It's going to cost you a fortune'? I really think most people --- and I was inclined to do it myself, just back away and not go on with it.

MS EASTMAN: Ms Wilson, what are your suggestions for change? I know you've set them out in some detail in your statement, but what would you like to tell the Commissioners?

5 MS WILSON: I guess I would like to see more legal centres specifically for people with disabilities --- not just obviously employment and education. Employment and education are huge areas, and there is such a need. If we advertised, we would just be inundated by calls. We get referrals from Fair Work, we get referrals from all over the place, law firms, unions. So it would be great if there were more throughout
10 Australia. It's just such a need.

Also, education. I think education for people with disabilities but also for employers, because I've attended meetings and I've been told that I'm not allowed to speak. Nobody tells me --- that sounds awful, but I'm there, I'm representing my client, and
15 I will represent my client. Our clients have got a right to representation, but often employers don't know that. It's all very well the union could go in there, but so can we, we can represent the clients in the workplace if they need to.

Also, I think the employees need to understand that they can have a support person there, and a witness. When you talk about the evidence and the burden of proof, if an employee attends a meeting and they have a witness with them, at least that is somebody else who has --- even if they don't say anything and they just take notes, it is so important, and that is something that I think is really lacking, is that it's just not
20 known that you can have a support person, and in fact you should be offered one.

25 MS EASTMAN: Ms Schleiger, what are your suggestions for change? We haven't been able to go through all the detail you provided in your statement about some of the features of the Victorian law, about positive obligations and the like, but from your experience, what would you like to see change and what would you like to say
30 to the Commissioners?

MS SCHLEIGER: I agree with Peter and also Kairsty's points. In addition to those points, I think that currently the legal, social and financial penalties for employers who fail to comply with discrimination laws are non-existent, really, unless a victim
35 of that discrimination chooses to complain or take legal action, as Peter did. That's a very heavy burden for victims of disability discrimination to bear, and it doesn't promote inclusive workplaces. So my takeaway point, I guess, would be that human rights Commissions should have greater powers to enforce discrimination laws, including the power to seek penalties for non-compliance, and I think that
40 discrimination laws are much more effective if there is the threat of penalties or sanctions for non-compliance, so I think that's critical.

MS EASTMAN: When you talk about penalties, are you talking about something equivalent to the civil penalties that exist in the *Fair Work Act* or something
45 equivalent or something different?

MS SCHLEIGER: Yes, that's right, civil penalties.

MS EASTMAN: Commissioners.

CHAIR: Commissioner Galbally, do you have any questions of the panel?

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QUESTIONS BY THE COMMISSION

10 COMMISSIONER GALBALLY: I would like to refer, Ms Schleiger, to your paragraph 41 about intersectional discrimination and particularly with regard to women, as to when you look at the UN Committee and the complaints about women in Australia with disabilities. What is your experience in your practice about women coming forward?

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MS SCHLEIGER: I would need to take that on notice in order to provide you with a breakdown in terms of the number of clients with disability who are women, and we can do that for you.

20 However, my observation as a practitioner is that there is a range of ways in which people with attributes that mean that they are not the kind of, I guess, white male, breadwinner, full-time worker norm, experience discrimination more than other people, and so women experience discrimination in a whole range of ways. We see, for example, that women who experience sexual harassment often develop a
25 disability as a result of that experience. So the experience of disability can result in discrimination that can be unique because that person is a woman and the discrimination might involve an element of, say, gender harassment as well, but, conversely, people with particular attributes can develop a disability as a result of the discrimination that they experience.

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COMMISSIONER GALBALLY: Thank you. I also wanted to ask you a question about your comments on non-disclosure clauses and the inability to speak out and how that prevents systemic change. I'm sort of interested in your submission which sort of implies that this isn't the route to systemic change as it currently stands
35 bringing individual cases --- it's about rights, but not systemic change.

MS SCHLEIGER: Yes, that's right. As I said, much of the work that we do is invisible, and much of the work that our clients do in bringing complaints of discrimination is invisible --- and that work is really, really hard. It takes a huge
40 amount of energy to make a complaint of disability discrimination, and it can be an incredibly frustrating situation for clients to not be able to speak openly about that experience. I think it's a real loss to the community for not to be able to learn from that experience and improve on our culture and our workplaces by building on the lessons that have been uncovered by those numerous situations that happen around
45 Australia every day. So it is a loss. I should say not every person who experiences discrimination wants to speak, wants there to be public discussion or discourse about their experience, so I think we do need to be very careful about the solution to that

problem, but currently the culture among practitioners and conciliators, and I think courts and tribunals and commissions, is too far in favour of just accepting or promoting confidentiality terms as the norm or non-disclosure agreements as the norm.

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COMMISSIONER GALBALLY: That relates to my final question which is to you and Ms Wilson, that you both imply that there aren't significant visible consequences for employers, including even the size of settlements and, also, that reinstatement is not very likely as Mr Innes discussed this morning, that by the time you get to that stage the relationship is pretty far gone. The visible consequences to employers seem lacking. You both refer to that.

MS SCHLEIGER: Yes, that's correct. We have clients who achieve what legally we would assess as a successful outcome, who feel that the consequences for the employer were not just and would not deter other employers from behaving in the same way.

COMMISSIONER GALBALLY: Yes.

MS SCHLEIGER: That, to me, that means that our laws are not doing their job properly, they are not effective at preventing discrimination or really meaningfully changing employer behaviour. That's particularly the case for our clients, who are often on a lower income and the compensation is tied to their earnings in most cases, because there will be a component for lost income, past and future, that will ordinarily be the bulk of the compensation claim.

That also is, I think, a terrible situation, that it's cheaper to discriminate against some workers than it is against others, and employers aren't paying the true cost of that discrimination.

30

COMMISSIONER GALBALLY: Thank you.

CHAIR: Commissioner Ryan.

COMMISSIONER RYAN: Just a couple of quick questions for Ms Schleiger.

You used a term I had not heard before, and it could just be my ignorance, but you referred to something called a shared burden of proof. I've not heard that expression before. Can you explain it to a non-lawyer like myself?

40

MS SCHLEIGER: Yes, certainly. I don't think it's something I coined but I don't know who did, so apologies for not being able to attribute that.

My understanding of the meaning of that term is simply that both parties play a role in either proving or disproving that the discrimination occurred. So initially it's up to the person alleging the discrimination to demonstrate that it occurred, and then the burden shifts to the employer to show that if there was --- that it didn't occur.

45

5 COMMISSIONER RYAN: The other technical question is, with regard to the case
I can see the argument you make for that, is it possible that confidentiality clauses
are sometimes used as a bit of a bargaining chip to get employers to concede and
therefore, if it were to disappear altogether, there might in fact be more contention
over claims, whereas sometimes employers will concede more readily, because they
won't be exposed to --- they won't have public exposure. Could there be an adverse
10 impact for some people with disabilities making a claim if there were to be a limit on
confidentiality clauses?

15 MS SCHLEIGER: I do share that concern, and that's why I think the solution needs
to be very carefully considered, because I think there is a risk that respondents will
say, 'Well, here's our offer with settlement with a confidentiality clause and here's
our offer of settlement without, and you choose', but at the same time, at least that's
an improvement on the current situation because I don't think that's happening at the
moment. I think that the sense that confidentiality terms are a given is so entrenched
in legal culture at the moment that it's very difficult to even have a discussion about
not including them.

20 I have had two conciliators in different jurisdictions say to me, 'That's just not how
this is done'. When I've said, 'Hang on, we haven't agreed to a confidentiality term',
the response has been, 'We're not even going to go there.'

25 COMMISSIONER RYAN: Thank you.

CHAIR: Mr Olivieri, if any of the questions I'm about to ask you cause you any
difficulty, you don't have to answer, but I'm just interested in some aspects of your
case.

30 Were you a member of a union at the time you were dismissed?

MR OLIVIERI: No, I wasn't.

35 CHAIR: When the matter was resolved, was that done as the result of a hearing with
the decision or the result of a mediation or conciliation?

40 MR OLIVIERI: Both, really. We had set down for three days in VCAT starting on
the Wednesday and then on the Friday morning, there was one person from them to
give evidence, and then they called my barrister in to make a settlement.

CHAIR: So it was settled in the course of the VCAT proceedings?

45 MR OLIVIERI: Yes, yes, it was.

CHAIR: I don't want to know anything about dollars, but was the outcome a
payment of compensation of some kind to you?

MR OLIVIERI: Yes, it was.

CHAIR: But not any reinstatement, of course, to your previous position?

5

MR OLIVIERI: Never mentioned.

CHAIR: What's your understanding of why the employer either dismissed you or didn't return you to your job? What's your perception of it?

10

MR OLIVIERI: I believe that they didn't fully understand what had happened --- I think they thought that I had had a heart attack, and I think they never sort of went out of their way to find out, 'Okay, I've now got a worker that has a pacemaker involved, what precautions should I do?' I believe that maybe there should be a bit of a hotline somewhere where employers can ring and say, 'Look, I have a bloke that just prolapsed three discs in his back. I haven't put him off. What should I do?' I don't think there's anything in the system --- like in my case, 'Okay, he's had a dizzy spell, he's had his heart stop for a little while. Do I have any cause to worry?' 'No, we put a pacemaker in, he has a pacemaker, he's better than he was before.'

15
20

CHAIR: You are not attributing any malice on the part of the employer; really, your view of what happened is that the employer didn't understand your particular position and whether you were capable of doing the work?

25

MR OLIVIERI: Yes, and, look, in emails to and fro or text messages saying 'I've had this done', my cardiologist actually spoke to my boss and explained to him exactly what was going down, and there would be, you know, no long-term problems with me returning to work.

30

CHAIR: Thank you very much. That's very helpful. Thank you. I am sorry if I'm taking a bit of time. I just want to make a comment.

One of the characteristics of the law these days is specialisation, sub-specialisation and sub-sub-specialisation. I understand why in the case of each of you, Ms Wilson and Ms Schleiger, you can only offer advice or representation if the problem that comes to you can be characterised in a particular way. I don't make any criticism of that, but I merely comment that that is one of the consequences of the degree of specialisation that we've come to in the law. It would be very much better if there were agencies that could actually address a problem and determine what is best for that person regardless of the pigeonhole into which it all falls. I only mention that because it's not confined to disability; it's a problem across the legal system that we now have, that specialisation has become so pervasive and so narrowly defined in many areas that we're moving away from solving a person's problem and moving towards categorising the problem and determining into which pigeonhole it falls. You can take it for what it's worth. It's just an observation.

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MS EASTMAN: Chair, can I add that this is a matter that the Royal Commission will look at in its work with respect to the access to the justice hearing. One of the issues also relevant is the terms and conditions on which legal services are funded, and the extent to which the funding arrangement also, at times, restricts the types of matters that the legal services can take on.

CHAIR: Yes. I have had some modest familiarity with these issues over the decades.

All right, well, thank you very much for coming to the Commission and giving evidence. We very much appreciate your assistance. Thank you, particularly, Mr Olivieri, for sharing your experiences. That's extremely helpful to us. Thank you, Ms Wilson; thank you, Ms Schleiger.

15

THE WITNESSES WITHDREW

MS EASTMAN: Thank you, Chair. We've run a little over time, but if we could adjourn for 15 minutes for afternoon tea and then we'll return with the final session for today.

CHAIR: Yes. It's now eight minutes past 3. Is 3.25 too long? We'll adjourn until 3.25.

25

ADJOURNED

[3.07 PM]

30 **RESUMED**

[3.26 PM]

CHAIR: Yes, Ms Bennett.

35

MS KRISTY MASELLA, CALLED

MS BENNETT: Thank you, Chair. This afternoon we have Ms Masella, the CEO of Aboriginal Employment Strategy.

Ms Masella, can you hear me?

MS MASELLA: Yes, I can, thank you.

45

MS BENNETT: Thank you.

Commissioners, Ms Masella has not provided a statement, but a summary of her CV can be found at Tender Bundle A Tab 1.

CHAIR: Yes.

5

Ms Masella, thank you for your appearance at the Royal Commission and for your assistance, which I'm sure you'll give to the Royal Commission. Just to indicate where people are located, Commissioner Galbally is joining this hearing from Melbourne, I'm in the Sydney hearing room with Commissioner Ryan on my right, and Ms Bennett will be asking you some questions also from the Sydney hearing.

10

I will now ask Ms Bennett to ask you some questions.

15 **EXAMINATION BY MS BENNETT**

MS BENNETT: Thank you, Chair.

20 Ms Masella, can you tell us a little about your cultural background and where you're from?

MS MASELLA: First I'd like to acknowledge that I'm on Gadigal country today and pay my respects to Elders past, present and future. Yes, I'm an Aboriginal and South Sea Islander Murri with cultural connections to central Queensland, but I'm also part of the Aboriginal community of Sydney city.

25

MS BENNETT: Can you tell us about your current role?

30 MS MASELLA: Yes, I'm the CEO of the Aboriginal Employment Strategy which is a national Aboriginal not-for-profit employment and group training company.

MS BENNETT: Can you briefly tell the Commissioners a little about your professional history that might be relevant?

35

MS MASELLA: I have worked in Indigenous Affairs for almost 30 years across New South Wales, Queensland and the Northern Territory. I guess I'm a generalist across the area of Aboriginal affairs in that I've worked across most portfolios in Aboriginal affairs. I particularly focus on social justice, community development, and I'm very pleased I've been able to work in Aboriginal employment and training for the last seven years.

40

MS BENNETT: Tell the Commissioners a little about how your organisation works, what its function is.

45

MS MASELLA: Sure. So the AES is a government-funded service that's available to all Aboriginal people across the country. We're not an employment service that

has a compulsion to engage with our service; it's a service that Aboriginal people engage in by choice. Our offices are staffed by local Aboriginal and Torres Strait Islander people and a very small number of non-Aboriginal people in the 16 locations that we operate.

5

MS BENNETT: What are the kind of services that you provide to people who are your clients?

10 MS MASELLA: So anything employment related, from talking to people about career options, to supporting interview preparation, résumé preparation, addressing barriers to employment --- and that can be all sorts of barriers, from unstable housing to leaving domestic violence relationships, to supporting with childcare, to equipment, training, licensing, building confidence --- you name it, any barrier that a person might experience we help to support to address those barriers.

15

Then we also provide ongoing support --- once a person is placed into employment, we provide mentoring and other types of life coaching for at least six months post-placement, and also provide support to the employer to make sure that placement is successful and positive for everybody.

20

MS BENNETT: Just to go back to the kinds of barriers that your clients often face, do they arise principally from health and housing issues that they bring with them to your service? Can you tell us a little bit about how they present to you?

25 MS MASELLA: Yes. It's usually, as I said, the Aboriginal candidates come to the AES by choice, so we will know very little about the candidate when they present to an AES office. So we do spend quite a bit of time getting to know that candidate around their aspirations for a job or for a career, understanding them as a person, where they've come from, their family life, and their strengths, skills, in order to be able to find a really positive match for aspiration and skill set capability, to a
30 hopefully really positive employer.

MS BENNETT: We have been talking a lot today about barriers to people with disability to employment. Is that something that features in the clients that present to
35 you?

MS MASELLA: Absolutely. We work with all Aboriginal people, so we work with Aboriginal young people, older people, women, men, Aboriginal people with disabilities, so whilst we're not a disability service provider per se, we work with
40 everybody in the community, so that does require a level of understanding around supporting Aboriginal people with disabilities. A lot of our clients, during our time in understanding who they are and their career aspirations, will actually disclose whether they have a disability, so we can understand what services they might be accessing outside of the AES, getting them to disclose to us, are there any particular
45 needs around that type of disability that they disclose to us. But we do spend some time, also --- a lot of our clients don't use the language of disability, so, for example, we will, through often long conversations in getting to know somebody, someone

will disclose whether they've got particular mental health issues, what I've come to know as psychosocial disability, and often they won't use the language, like I said, of disability, so getting to know those types of barriers for that particular candidate, we will often refer them back to their GP or to the Aboriginal Medical Service to
5 actually get them to have that conversation with a professional about that particular thing that they have disclosed to us in order for them to identify or better understand what that issue is and access appropriate resources and services.

10 But it also enables us to better service them, to be understand I guess what would be a good fit for a particular industry or employer.

MS BENNETT: Is it fair that almost all of the clients that access your service, in addition to being Aboriginal or Torres Strait Islanders, often have an experience of what we would call disability but perhaps is not necessarily identified in that way?
15

MS MASELLA: Absolutely. I guess we're not surprised by that in that most Aboriginal people face multiple barriers, so we have been --- we have become very good at supporting candidates with multiple barriers. So understanding them certainly helps support the candidate into a role and success in that role, but in the
20 main, those conversations are more about their strengths and their asset, what they can do, rather than what they can't do, and actually attempting to map out a pathway where it's about a career, not just a job.

MS BENNETT: I'd like to come back to that proposition in a moment about a career rather than a job. Before we do that, I just want to understand, how do you go about identifying recruitment opportunities for your clients?
25

MS MASELLA: Typically, we work across every sector and industry, from small family-owned businesses to tier 1 companies and international companies, but we
30 don't just work with anybody. We are quite particular in the types of employers that we work with. We want to make sure that they are on the same page as us around values. We have had some experience with employers approaching the AES given the current climate of Aboriginal procurement targets in a lot of government contracts, where they will come to us to source Aboriginal workers so they can tick
35 the box. So we're quite mindful about, I guess, people's intentions around approaching AES.

Generally, we have been around for 25 years now so we have become very good at identifying employers who are genuine, who are inclusive, who are willing to work
40 with us to actually design culturally appropriate, culturally sensitive all-round inclusive employment practices, so we have some really solid relationships with employers who are willing to do that. Yeah, so ---

MS BENNETT: How do you distinguish between the box-tickers and the ones who
45 really want to walk the walk?

MS MASELLA: Again, it's about really spending time to know who we are working

with or who we might work with. I've often had first conversations where, for example, a large corporation who have a very large diversity and inclusion team and have approached AES for support, but it became very clear, early on in those conversations, that they were experts in diversity and inclusion, but when I asked
5 them how many Aboriginal people they had employed, the answer was one, maybe two Aboriginal people nationally. So I guess, for me, I'm like, well, if you're experts you don't need our help, but by virtue of having only two Aboriginal people across your company in Australia, the proof is in the pudding, as I say.

10 So you get to interrogate their approach, I suppose, about how they do things, whether they are willing to take a different approach. I often flip their recruitment practice on its head, and people will embrace that if they are actually genuine about being inclusive of everyone in our communities, or if they are quite rigid in their
15 approach, that is a very good indication that their company, their work culture is not going to be a welcoming, friendly, inclusive workplace for Aboriginal people or for others.

MS BENNETT: I'm interested in this process of how you ask them to flip their process on its head.

20 MS MASELLA: Yeah.

MS BENNETT: What sort of changes have you asked to see from companies that had to increase their level of inclusion?

25 MS MASELLA: They will often have a certain type of interview approach, certain type of questioning, panel make-up, where the interviews are held, other type of interview process testing like psychometrics, who participates on those, how that's run, so, often that, with a lot of employers there's, like, a process mapped out and,
30 you know, they may or may not want to change that process, so we'll often recommend recruitment to change up the location where the recruitment, the interview occurs.

We might encourage Aboriginal people as a group to go through an interview
35 process together so there is cultural safety, there are opportunities for Aboriginal candidates to provide peer support for each other. We will help redesign interview questions to make sure that they are designed and asked in a way that is going to provide the best responses from Aboriginal people.

40 MS BENNETT: Pausing there, as part of your role, you actually engage with the HR department about what kinds of questions would be appropriate for particular clients to draw out their strengths; is that right?

45 MS MASELLA: That's correct, yes.

MS BENNETT: Is there ever a concern expressed that that somehow is not going to provide an outcome that reflects the job that is on offer or something?

MS MASELLA: Yes, well, or not fair and equitable for other participants who might be going through the same process. So I often have debates around 'Will Aboriginal people get an unfair advantage if we do it differently?' So I kind of
5 challenge them on that and say, 'No, your current process is actually excluding Aboriginal people, so unless you do it differently, you're actually providing an unfair advantage to non-Aboriginal people through that process.'

MS BENNETT: Can I flip that back to see if I understand it.
10

The status quo of an interview process, for example, it seems what you're saying that produces a workforce that is overwhelmingly non-Aboriginal and non-disabled, is that fair enough?

MS MASELLA: Yes, correct.
15

MS BENNETT: And that if you expect it to look any different, you need to change the way you go about those processes that relate with that situation?

MS MASELLA: Absolutely.
20

MS BENNETT: This is the conversation you are having with those employers, and those ones are the ones that engage with you around how it can be done differently?

MS MASELLA: Absolutely, yes.
25

MS BENNETT: Thank you. So is there resistance from employers about providing --- we've been talking about adjustments but perhaps we don't need to be restrained by that language --- about adjustments that people might need to the way
30 that their workplace operates to accommodate them. Do you find there is resistance to that, or are people open to it?

MS MASELLA: I think there is usually some initial resistance, but the good employers will generally work with us on that. We intentionally build quite close
35 relationships with potential candidates and employers. I think when people see the value of an individual and as personal relationships are built, these people are more willing to accommodate any special requests, make any adjustments --- when they actually get an appreciation of the value-add that that person brings to the organisation. I don't know --- we're used to working with --- again because of the
40 diversity in Aboriginal and Torres Strait Islander communities, we are extremely diverse, I guess we have been quite successful in getting employers to really embrace that difference in so many ways, whether it's Aboriginal women who have disabilities themselves but who are also critical carers of family members who also have disabilities and the impact that has on their ability to work certain hours or
45 requiring additional flexibility.

So, again, it's just about really interrogating organisations about 'You've done it this

way for so long, but if we change it to this way, is it really going to make a material difference to how the work is done?' We've seen it in the world of COVID, how people thought we could only do it one way, and yet COVID has flipped that on its head. We've taken a similar approach around, 'Okay, you've done it this way and
5 that's okay, but let's do something different where people feel valued in your organisation, you're going to get more personal buy in from the workers and their families, you're going to have more retention and loyalty to your company by really providing a real work culture not just for Aboriginal people or Aboriginal people with disabilities but for all your workers where they feel included' ---

10

MS BENNETT: And if you ---

COMMISSIONER RYAN: Can I just ask a question; I'm a little unclear as to who the clients are that you are working with. Are you working with employers to make
15 them better employers of people who are Aboriginal, or are you working with individual First Nations people who are seeking jobs? I wasn't quite sure.

MS MASELLA: Both. So we actively work in identifying employers that we'd like to work with and provide Aboriginal candidates, but obviously we're working on the
20 ground and across communities with unemployed Aboriginal people looking for employment. So we invest equal amounts of time in relationships with employers as we do with the Aboriginal candidates, and all sectors, private, public, local.

COMMISSIONER RYAN: I wasn't quite sure. I can follow this a bit better now.

25

MS BENNETT: Do you find that over time the attitudes of employers shift the more exposure they have had to your organisation and to the candidates you place with them?

30

MS MASELLA: Yes, absolutely. I'd be worried if we didn't --- so again it's those relationships.

MS BENNETT: Yes.

35

MS MASELLA: I do believe, whilst we work exclusively with Aboriginal and Torres Strait Islander people, I do believe that challenging employers to do things differently with the diverse Aboriginal and Torres Strait Islander candidates we have, I do believe it's had a flow on effect to other people outside of our community to get employers to think differently about their approaches to recruitment and, also, how
40 they --- their work cultures and their overall inclusiveness and support of other workers that they would employ also. I'm quite proud of that, that we've been able to influence their approach.

45

MS BENNETT: We were talking before about adjustments and about the way that a workplace might need to change after a person is engaged to work for them. Is there a time that you specifically start to raise those issues? Is it before a person is recruited, during the recruitment, or is it afterwards?

MS MASELLA: It can be all of the above. So if someone we identify a particular barrier upfront, we will --- if there's a particular employer that we think would make a really great match for that candidate, we'll have some upfront conversations about whether an adjustment can be made --- usually again because of the relationships we have with employers, there is a high level of success in getting the employer to make that adjustment. Sometimes other barriers appear after someone has commenced employment, and because we provide mentoring support not only to the candidate but also to supervisors, we've had to, I guess, mitigate some of those and address those halfway through, or even on people's transition into other opportunities or to promotions, we've had to, I guess, be creative and help employers find some solutions if they think they've presented with a barrier, we just get them to open conversations about what could be an option, and even finding sometimes an even more positive solution to what we'd hoped for in the beginning.

MS BENNETT: You speak about the ongoing mentoring, this is something I want to understand. So you assist a candidate for a job to find an employer that suits them. You assist them to engage with that employer in a way that allows them to showcase their strengths, and then when that employer engages them, you stay engaged with the candidate that you've placed; is that right?

MS MASELLA: That's correct.

MS BENNETT: And you provide ongoing monitoring and mentoring; is that right?

MS MASELLA: That's correct.

MS BENNETT: Can you tell us about what's involved in that and the importance of that ongoing engagement.

MS MASELLA: It's very much individualised and it looks very different for every candidate that we support. Some candidates require quite intensive support along that journey. Others, it might be just particular touch points through their employment, kind of check in that things are going okay. Often, if we have an Aboriginal person who has some particular mental health issues, it's around maybe providing them with specialist Aboriginal counsellors to you know, often we're just helping them prepare and stay on track with what their GP or mental health professional has advised them. So just helping them keep on to that routine or advice that specialist has provided them to make sure that they can continue to engage in employment, and that that is successful, so basically whatever it takes to support someone stay in a job, have a really positive experience, and keep that job long-term so they can actually start to build a career.

MS BENNETT: That's what I wanted to come back to. You talked earlier about not just a job, a career, and particularly from the perspective of people with a disability or who might face episodic challenges or ongoing challenges, is there an expectation --- do some employers have an expectation they will just stay in the one

job? Is that something you need to challenge?

MS MASELLA: Yes. I mean, some candidates don't necessarily articulate career. They might just say: I really want to feel like I can contribute, that I can earn an
5 income to support myself and my family, access --- to buy a home, or if they have children, give their kids the best of opportunities in the world. So some people are just wanting to work, and they won't often talk about careers and just want stability, certainty in employment, where others will certainly have aspirations to progress, and employers are really excited by that, that they can, I guess, build a pipeline of
10 Aboriginal candidates coming through their organisation where they can continue to grow, they can develop pathways within their organisation for more Aboriginal people to progress. So there is certainly an interest in those corporate partners that we're working with to actually help facilitate that and showcase Aboriginal talent and the diversity that it is, so, yeah, absolutely, we've seen some great commitments from
15 employers.

MS BENNETT: Do you have any sense of how long clients that you have placed remain in the jobs for? Do they have strong retention?

20 MS MASELLA: Yes. I'm not sure with others, but I know certainly AES we're quite successful in the majority of our Aboriginal people that we place into employment, a significant portion do not ever return to the world of unemployment, which is something we're very proud of. There are some statistics around saying if you can support a candidate stay in employment for six months, every month after
25 that the likelihood of becoming unemployed continues to reduce at a significant rate. Certainly investing in that mentoring and other life supports and life coaching that we provide certainly delivers significant returns for our community and their families to reduce that terrible cycle of unemployment in our communities that we have.

30 MS BENNETT: Do you find it has a ripple effect for both the people around the candidate that you place and the employer itself?

MS MASELLA: Absolutely, yes. Absolutely. You see, adults that we have supported into employment, it's been nice to sort of monitor that impact and sort of, I
35 guess, in very informal ways, we certainly don't keep data on how that affects families, but we have seen a bit of a trend where adults who have come from families where there is intergenerational unemployment, where they have been able to secure a job and hold it for over 12 months. The kids are doing better at school, there is greater engagement, they are talking about careers with their kids. So definitely seen
40 flow-on effects. There is a certain level of cultural un-safety in a lot of industries and a lot of sectors, so the more Aboriginal people we can get employed, those are the organisations where there is a nice trickle flow-on effect for more Aboriginal people coming to that employer for work.

45 MS BENNETT: We've talked a lot today about overcoming the barriers that your clients often face, and I want to summarise what I understand some of those barriers to be to see if this is right.

Is it fair to say that a lot of the candidates that you're placing into roles can face barriers that relate to unconscious bias or what we've called attitudinal barriers? Is that fair?

5

MS MASELLA: Yes.

MS BENNETT: They also face some structural barriers, like the intergenerational unemployment or difficulty getting to a workplace, getting the workplace to engage with them in a different way that showcases their strengths; is that right?

10

MS MASELLA: That's correct.

MS BENNETT: These are things we hear, in this Royal Commission, in a range of different contexts. So I wonder if I can draw together what I understand to be the core of your organisation's approach. Is it fair to say that you engage closely with the person and with the organisation, and try and draw them together in a person-focused way?

15

MS MASELLA: Yes.

20

MS BENNETT: What do you think is the best practice to provide support and encouragement for people to overcome barriers of that kind?

MS MASELLA: For us it's very much about trust and relationship, and many of us come with a whole lot of weakness, including myself. If we focus constantly on our weaknesses of what we can't do, then none of us would be in a job. So it's very much identifying strengths, or a strength-based approach. Helping people identify what they are. Often we will work with candidates who can't articulate what their strengths are, don't know what they are good at, don't know what industry they feel like they could be successful in --- again, it's that relationship in getting to know somebody and helping identify strengths and celebrating those, building confidence and actually, like I said, building those relationships with employers where they --- the candidates themselves can see those strengths that they have are an asset, they are a valuable asset that an employer sees value in, so it's not about 'I'm working with the AES, I'm Aboriginal and they are going to give me a job because I'm an Aboriginal'; it's about saying 'These are your strengths and in the world of Australian workforce, they are valuable assets and this employer is actually lucky to have you as part of this team, let's celebrate those.' We all have weaknesses, but that doesn't --- they don't define us, you know, so it's often very much a strengths-based approach to how we work with candidates.

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MS BENNETT: I think in a discussion we had before today, you said something like 'if someone is recruiting for a box, we're very successful in giving them a triangle'. What do you mean by that?

45

MS MASELLA: I think it builds on the comments earlier about - - often recruiters,

HR teams, so-called diversity inclusion experts have this idea about what they think they want or what's going to work, and because it's, usually, no one has ever challenged them on that, so I don't know really how to describe that really well, but it's around challenging them on these preconceived ideas about what's the perfect match or the perfect process. We've surprised people on when they have wanted a box and we've given them a triangle, they have come back and said, 'You know what? We were wrong about that, and actually this person that you referred to us has not only met all the requirements, but they have brought a very different element to the workplace, and we would never have typically recruited for that capability and actually now it's a key capability that we're going to start including now and looking for because we've seen the positive impact it's had on our work culture.'

MS BENNETT: Can I ask you about your success in general, so feel free to beat your own drum now. Your organisation has been a reasonably successful one. Can you tell the Commissioners how you measure that success?

MS MASELLA: Yes. I guess the secret recipe of success is around relationships and trust and a strength-based approach. That's the secret recipe for AES. How we measure it is very easy. I guess the fact that Aboriginal and Torres Strait Islander people continue to come to our service by choice, the repeat business, the engagement we get by communities, that's a measure of success. The fact that we support over a thousand Aboriginal and Torres Strait Islander people into employment each year, over 150 young Aboriginal and Torres Strait Islander people into traineeships and apprenticeships, we have one of the highest national retention rates post-26 weeks in the country --- and we work with a lot of candidates who aren't job-ready and sometimes that takes a month, or many months, to actually get somebody job-ready, and that takes a significant amount of resources, and we do our best to be able to do that. A lot of people have been written off, counted out, and we don't give up on our community, we work with everybody, and if that means taking a little bit longer with somebody, then that's what we do.

Those successes, when you see somebody who --- there was a case where an Aboriginal man with a disability, he was 45 and never ever had a job. We worked with one of our really great supportive employers to actually create a position just for him and, you know, we met his mum and she was crying with joy about how proud she was to see her son for the first time in his life have a job where he felt valued, he could contribute to the family. It also took a lot of pressure off the mum in having to support him, and now he was the one supporting the family.

So there are loads of wonderful success stories when you just don't write people off. Everyone has something quite unique to bring, and it's about identifying those and celebrating that with everybody.

MS BENNETT: Ms Masella, thank you for your evidence. I'm going to ask the Commissioners if they have any questions.

CHAIR: Yes, thank you very much.

Commissioner Galbally, do you have any questions?

5 COMMISSIONER GALBALLY: Thank you so much for your evidence. No questions, thank you.

CHAIR: Thank you. Commissioner Ryan.

10 QUESTIONS BY THE COMMISSION

COMMISSIONER RYAN: Yes, just a couple.

15 I would like a little bit of information about your organisation. I take it you're an employment service. Are you specifically a Disability Employment Service or a general employment service?

20 MS MASELLA: We're an Aboriginal and Torres Strait Islander employment service.

COMMISSIONER RYAN: You are funded, I imagine, by DSS to assist people to find jobs, are you?

25 MS MASELLA: We're funded by the National Indigenous Australians Agency.

30 COMMISSIONER RYAN: That's a special category. You were talking about, you are a bit choosy about the employers you choose to work with, and you say unless they have their values and so on of that nature. Can I say that it seems to be that --- is it because you're able to be choosy about the employers you work with? That sounds like you have a lot of people wanting to work with you, which I don't think is the experience of people with disability, but is that true?

35 MS MASELLA: We've certainly got employers that fit into the category of --- we've selected them by choice, but maybe --- there are certainly employers that are new on the block too, Commissioner, as well, who we don't have a proven track record with, but I guess we engage with them and make a commitment to work alongside of them. Certainly in the world at the moment, there are significant shortages in workforce around the country because of COVID. We are seen as a solution to their challenge, 40 so I guess we do it as a condition of working with us. Sometimes they do it terribly, too, though, Commissioner, and sometimes they do it well, so we also don't count out employers also. They make mistakes, they get it wrong, we will invest in building those relationships, doing the education. We have to be as equally flexible as we ask them to be in their approach as well. Most people in the world are good people, and 45 people are willing to make --- yeah, do things differently. Sometimes it takes a little bit longer by our investment in getting it right. For example, if we're working in a small community where there are limited jobs, we don't have the luxury of choice to

say, 'There is one employer in town with jobs going. How are we going to make it work?' We don't say we don't like them because they don't have the same values. We're like: 'What can we do actually to work with them?' Find some common ground, find some key elements that we do see in common and continue to influence, educate, and to make us feel confident that if we place someone with that employer, that it's going to be not only a culturally safe but a supportive, inclusive environment for candidates.

COMMISSIONER RYAN: The reason I asked you about the environment you were working in is, generally speaking, there is a perception that finding employment for Aboriginal people is difficult, as it is with people with disabilities. Is there something working more recently for people who are First Nations people that we could possibly apply to the employment of people with disabilities? You mentioned, for example, some companies come to you because of procurement requirements and so on. Is that an example of a program that's working well for Aboriginal people that might just as easily be applied to people with disability to assist Disability Employment Services that have the kind of environment that you have to work in?

MS MASELLA: Good point, good point. There has definitely been some significant positives with that approach, but there is also a lot of risk with that approach as well. I'm trying to think of an example I can give you. On the basis of that procurement policy, people will employ Aboriginal people for a week, and then lay them off. They will count them as a number against that policy, so actually it can be quite harmful to Aboriginal people if it's done the wrong way, and I think that's a risk for anybody who comes under a 'special measure' type of approach.

The good thing is, though, in that government procurement policies, there are targets for women, targets with people from that local community. There are people who --- returned servicemen and women are included in those. It's actually quite diverse in what the New South Wales Government's actually requesting of companies who are securing government contracts, so it's much broader than Aboriginal people, thankfully.

What we love to do is provide them with Aboriginal people, Aboriginal women, Aboriginal women with disabilities, Aboriginal women with disabilities from that local community. Like I said, our communities are diverse. We're not just Aboriginal people. We also are young people, we're women, we're people with disabilities, we're people with non-English speaking backgrounds, so we're quite diverse. So, Commissioner, the answer is, yes, there is benefit in that, but again there is some risk also.

COMMISSIONER RYAN: Thank you very much. Thank you, Mr Chair.

CHAIR: Thank you very much. I assume that none of the represented parties wish to ask Ms Masella any questions. On that assumption, I shall thank you, Ms Masella, for coming to the Royal Commission and giving your evidence today. We very much appreciate the assistance that you've provided. Thank you.

MS MASELLA: My pleasure. Thank you very much.

5 **THE WITNESS WITHDREW**

CHAIR: Ms Bennett, are you going to tender some documents?

10 MS BENNETT: I am. There are a number of documents from today. If I could go through them in order with a proposed exhibit number. Would that be the most convenient?

CHAIR: Yes. I take it they are the documents recorded on this piece of paper?

15

MS BENNETT: They are.

CHAIR: Why don't you go through them and then I shall do whatever I'm told to do.

20 MS BENNETT: There is the statement of Graeme Innes AM dated 30 June 2021 and his attached curriculum vitae and we ascribe those Exhibit Numbers 19-1 and 19-1.1 respectively.

25 There is then the statement of Robin Banks, and the attached curriculum vitae, which we propose to be 19-2 and 19-2.1 respectively.

There is then the statement of Ms Schleiger which we tender as Exhibit 19-3.

30 The statement of Kairsty Wilson, which we propose to be 19-4.

And the biography of Ms Masella, which we propose to be marked 19-5.

CHAIR: All of those documents will be admitted into evidence and be given the markings that you have indicated. Thank you.

35

EXHIBIT #19-1 - STATEMENT OF DR GRAEME INNES AM DATED 30 JUNE 2021

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EXHIBIT #19-1.1 - CURRICULUM VITAE OF DR GRAEME INNES AM

EXHIBIT #19-2 - STATEMENT OF MS ROBIN BANKS

45

EXHIBIT #19-2.1 - CURRICULUM VITAE OF MS ROBIN BANKS

EXHIBIT #19-3 - STATEMENT OF MS MELANIE SCHLEIGER

5

EXHIBIT #19-4 - STATEMENT OF MS KAIRSTIEN WILSON

EXHIBIT #19-5 - BIOGRAPHY OF MS KRISTY MASELLA

10

CHAIR: I take it that concludes us for today; is that right?

MS BENNETT: It does, Chair, yes.

15

CHAIR: Do either you or Ms Eastman wish to foreshadow what will happen tomorrow so that people following these proceedings eagerly will know what is to occur?

20 MS BENNETT: The morning will commence at 10.00 am with a panel comprising the Australian Council of Trade Unions and a representative of the CPSU to give some evidence around those issues at 10 am.

CHAIR: That takes us up 'til?

25

MS BENNETT: Then the Commission will be hearing from Ms Jennifer Westacott AO from the Business Council of Australia before the lunch adjournment. After that, there will be a panel on recruitment, from which the Commission will hear a panel of Australian employers: Kmart, Woolworths and Compass. After lunch the
30 Commission will hear about recruitment perspectives, including positive neuro-diverse employment practices and we'll be hearing from IBM, Telstra and Services Australia. That will be the day tomorrow.

30

CHAIR: Very good. Thank you. In that case we shall adjourn until 10.00 am
35 Australian Eastern Summer Time tomorrow.

35

**HEARING ADJOURNED AT 4.13 PM UNTIL Tuesday, 23 November 2021 AT
40 10.00 AM (AEST)**

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