



---

## **TRANSCRIPT OF PROCEEDINGS**

---

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

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

**PUBLIC HEARING 19**

**09.33 AM, FRIDAY, 26 NOVEMBER 2021**

**DAY 5**

**MS KATE EASTMAN AM SC, Senior Counsel Assisting**  
**MS ELIZABETH BENNETT SC, Senior Counsel Assisting**  
**MS CATHY DOWSETT, Counsel Assisting**

CHAIR: Good morning, everybody. This is the final day of the 19th Public Hearing of the Royal Commission dealing with the measures taken by employers and regulators to respond to the systemic barriers to open employment to people with disability. We commence, as always, with the acknowledgment of country.

5

We acknowledge the Gadigal people of the Eora Nation on whose traditional lands Commissioner Ryan and I are presently sitting. We also acknowledge the Wurundjeri people of the Kulin Nation upon whose lands Commissioner Galbally is sitting in Melbourne. We pay our respects to their Elders, past, present and emerging. We also pay our respects to all First Nations people who are participating in or who may be following this hearing.

10

Yes, Ms Bennett.

15

MS BENNETT: Thank you, Chair. The first witness this morning is Christina Ryan, founder and CEO of the Disability Leadership Institute.

20 **MS CHRISTINA RYAN, CALLED**

CHAIR: You probably know where we are all located but just to reiterate, Commissioner Galbally is in Melbourne, I am in the Sydney hearing room with Commissioner Ryan on my right. Ms Bennett SC is present also in the Sydney hearing room.

25

I will now ask Ms Bennett to ask you some questions, but thank you again, for assisting the Royal Commission.

30

**EXAMINATION BY MS BENNETT**

MS BENNETT: Ms Ryan, before we begin, I want to frame your evidence in terms of where you come in the proceedings because, Commissioners, this week you have heard the evidence from a range of witnesses about the barriers that people with a disability face in employment. The week was commenced hearing from Mr Graeme Innes, who identified barriers like attitudinal barriers, structural barriers, physical barriers, organisational barriers, to name a few.

35

40

The evidence this week has explored those issues and as I said at the beginning, Ms Ryan is the CEO of the Disability Leadership Institute. She is a leader in this space and her evidence today is focused on identifying key areas for change. With that very brief introduction, which by no means identifies the breadth and depth of Ms Ryan's experience, I would like to talk to you directly, Ms Ryan, about those key changes.

45

Before I do that, can you remind the Commissioners and those watching who you are and what your organisation does?

5 MS RYAN: Sure. Thank you, Ms Bennett. As you've said, I'm the CEO of the Disability Leadership Institute, which I founded in 2016 and I've been doing that for five years. I'll make it clear at the outset that I identify as a disabled person.

I have come from a long background of work in the community sector.

10 I recommenced my paid work about 20 years ago, as part of the sector development team at the ACT Council of Social Service, providing management consulting, adult learning and development for the entire community sector workforce in the ACT. I also provided advice on governance, management, human rights implementation, human resources and charitable entity structure, amongst other things. And, of  
15 course, interconnected with the COSS network around the country, providing a detailed view of workforce issues and pressures. Ultimately, I led that sector development team as one of ACTCOSS's deputy directors.

Prior to this current role, I was the CEO of Advocacy For Inclusion for 8 and a half  
20 years, which is an NDAP funded organisation for National Disability Advocacy Programs. Advocacy For Inclusion provides individual, self and systemic advocacy to disabled people in the ACT.

I also sat on the board of the national peak body at the time, the Disability Advocacy  
25 Network of Australia for four years during this period, including 18 months as the Chair. I have represented women with disabilities on the NGO delegation to the CEDAW treaty reporting process, the women's rights treaty, and on the Australian delegation at the Commission on the Status of Women, both at the United Nations in New York. I also attended the COAG summit addressing violence against women in  
30 2016 as one of three disabled delegates.

In 2017, I was awarded a Westpac Social Change Fellowship when I was  
establishing the DLI, which I used to examine diversity structures, what worked and  
what didn't, with a view to understanding where disability diversity sat and what  
35 might assist in progressing this underdeveloped area.

I am now a leadership coach and I provide professional development programs to  
disability leaders, including a supportive community of practice through the  
Disability Leadership Institute. I also do professional speaking engagements,  
40 including regular appearances in the media, conference panels and keynote addresses.

I'll make it clear that the DLI is not a representative organisation, nor do we provide  
systemic advocacy. We are a professional development organisation.

45 MS BENNETT: Ms Ryan, I'm deeply sorry to interrupt. I have received a note and the interpreters would be assisted if you could slow down ever so slightly. I am very

keen that as many people as possible hear your evidence. We are in no rush and I'm very keen that people hear what you have to say. I'm sorry to have interrupted your flow, so please continue.

5 MS RYAN: Thank you, Ms Bennett. It's the end of a long week for me and for you as well. I'm sure we're all very tired.

As I was saying, the DLI is not a representative organisation, nor do we provide systemic advocacy. My statement is based on professional experience, my  
10 observations and communications with disability leaders over several years and I'm here to share my expertise.

Just a small insight into the DLI. It was founded to address the ongoing lack of disability leadership development programs in Australia. It now has members in  
15 over 20 countries.

During the establishment phase, it quickly became clear that there was no ongoing leadership development options for disability leaders globally. So in 2016, the DLI undertook the first survey of disability leaders to better understand their experiences and aspirations.  
20

This survey showed a few outcomes: leaders with disabilities are operating almost entirely under their own resources and within their own circles of engagement. Many established leaders are regularly mentoring several emerging leaders to ensure some continuity for leaders with disabilities over time.  
25

There was little executive management training and support. Most had been gained on the job. Training and development for leaders with disabilities is ad hoc, with no particular consistency in training received by anyone who completed the survey  
30 across governance, management or community representation roles.

There was no specialist disability leadership training mentioned by any of the respondents. There was no evidence that either public or private sector employers had targeted people with disability as leaders and providing training or leadership coaching to progress their careers. My Westpac fellowship the following year concerned this.  
35

Fifty-five per cent of respondents to the survey said any training they received had not led to any leadership opportunities, or was irrelevant to the work they had subsequently undertaken in both leadership and representative roles.  
40

Seventy per cent of respondents had experienced barriers to undertaking leadership opportunities and development. A particular barrier seemed to be the ablest expectation that leadership is only possible within the current paradigm in which it sets. Leaders with disabilities were expected to operate without consideration that they might do so in a different way to existing norms, not just to accommodate the disability requirements ---  
45

CHAIR: Ms Ryan, I think it may be a little more helpful to us if Ms Bennett could ask you some questions, if you don't mind, and if you respond to those questions.

5 MS RYAN: Certainly. Thank you, Chair. I'll just complete a couple of extra points. I do understand.

The majority of survey respondents considered their leadership work to be a private activity, even those employed by organisations as leaders were still self-funding the extra costs of their disability. Approximately 60 per cent of these respondents had received awards, ranging from academic recognition to Australian of the Year and Order of Australia awards. That's a summation of the survey we undertook. Thank you, Ms Bennett.

15 MS BENNETT: Thank you. I would like to turn to the key changes that you consider to be available levers to effect change. As I understand, one recommendation or perhaps key change or lever you have identified concerns procurement policies. Can you tell the Royal Commission about your views on that topic.

20 MS RYAN: Indeed. I'll just outline that I have clumped these under three areas of change and the first one is exploitation. I do use words like "exploitation" because I think we do need to be disrupting this conversation and telling it like it is. I think we've had a week of understanding that as it is is not necessarily doing the job.

25 My first recommendation under the "Exploitation" heading is that organisations should be developing disability procurement policies which specifically state a preference for disability-owned and led businesses --- and I don't mean sheltered workshops when I say that -- which are their preferred providers for all disability related consulting policy and program work. We do not know of any disability-specific procurement policies.

30 There are other specific procurement policies to target specific minority groups within the population. For example, the Federal Government has an Indigenous Business Procurement Policy. So I am suggesting something along the lines of that.

35 MS BENNETT: Is it fair to say that is targeted at two separate ideas: first, to encourage the flourishing of those organisations and, second, to encourage cultural change in the organisations with which they engage? Is that a fair summary of what that is directed to.

40 MS RYAN: Yes. It's a couple of things. One of them is that there is a much higher rate of selfemployment in the disability community than in the wider community. This is something we've known for a while, but recent research undertaken by Professor Simon Darcy at the UTS Business School has told us this, and illustrated that disabled people run their own businesses. We set up businesses and are self-employed. Some of those are sole trader consultancies. Many are actually

employing numbers of other disabled people, including the Disability Leadership Institute, for example.

5 At the moment, it's a very tough market to break into for disability-led businesses, but something else that is almost an ongoing cultural assumption, I think we could call it, is that disabled people work for free or for very low money. So there is often an assumption that these people will be available to support big consulting firms, for example, who gain government contracts, or available for private organisations, including service providers, for free, pro bono.

10 Of course, one of the longstanding imperatives of governments over many, many decades has been to increase the levels of disability employment. That's why we are here this week, of course. This almost completely runs counter to this assumption that disabled people should work for free, particularly when we are working for ourselves and using our expertise and qualifications.

15 A Disability Procurement Policy would not only be a leadership example, but it would also carry the message that employing disabled people happens in multiple ways, and the expectation that disabled people should be paid for their time becomes more of a cultural assumption than the current expectation, which is that many of us are available pro bono or, indeed, for the distribution of gift cards, which is still a very common practice as well.

20 MS BENNETT: That is addressing the practical, being paying people properly for their work and expertise, and the cultural embedding and displacing an unconscious, perhaps, bias in favour of asking people to give their time for free or not recognising the value of the work. Is that what that key change is directed to.

25 MS RYAN: I think it is. To be brutally frank about it, I think there is often an assumption that we are just glad to be called on, to be got out of the house, when in reality many of us are very busy.

30 A couple of weeks ago one of my members at the DLI was asked to participate in a video project for a large service provider. They were clearly paying the video-maker but they expected her to be providing her time for free. She runs her own consulting business, so that means she is taking time out from her work to be supporting them in their marketing, without any suggestion she should have been paid. When she asked for payment, when she said, "My time isn't free, here's what it will cost", they decided she wasn't what they were after, so she didn't go ahead with making the video with them.

35 MS BENNETT: I think this is connected with another area of key change you have identified, which is that policies be developed along these lines in organisations, including government. Can you tell us what policies of that kind would be directed to.

40 MS RYAN: Indeed, and this is a community wide response that we could make; that

we develop policies across all organisations not dissimilar to some of the modern slavery policies that many organisations have now developed around procurement, which talk about how disabled people will be engaged for their expertise, or whatever work it is --- speaking, content generation --- which outlines the payment protocols, including the assumption that all people should be paid for their expertise and time.

I think governments have a leadership role to play in this, but I think it's also something our private sector needs to be doing. As I've said, when I am a supplier for a large organisation, I am required to fill in multiple annual surveys to remain a supplier, which talk about how the DLI has responded to the problem of modern slavery and how we are addressing it, what policies we have in place. But there is no similar policy around the payment or the expectation that the expertise and advice of disabled people will be something that organisation pays for, so policies that talk about that.

This also cuts into the one I have already mentioned, the policy of using gift cards as payment, which is something I seem to advise organisations on every week, about how they can avoid doing this. There are very few people who don't want to be paid for their time. Even though there are arguments around the difficulties this might present to people who live solely on the Disability Support Pension, I am yet to meet a single person on the Disability Support Pension who is not interested in earning income, a fair and just income, for their work.

So we need to address this area. We need to make sure there's not only a policy around paying people, but there's disability procurement policies that back it up to make it a preferred way of injecting expertise into organisations.

MS BENNETT: Again, to place that in the context of this week, it seems these are policies that have the effect of enabling disability-led organisations to flourish, and that creates cultural change within the organisations that go on themselves to employ people with disability, as one key change to shift that attitudinal barrier we have been hearing about this week. Is that your view, Ms Ryan.

MS RYAN: I think it is. We also need to be aware, with that higher level of self-employment, perhaps disabled people work a bit differently, and that's fine. That's the glory of disability diversity, that's what we want. So we want to be recognising as a society that that is not just valid but valued, and it will be something that people are able to consistently sustain over time.

It will provide a leadership example over time for those organisations which want to increase their internal disability workforce, because the presence of disabled people in the space, but particularly as valued expertise from outside, will illustrate how disability is valued by that organisation and the diversity that it brings.

MS BENNETT: That can lead, can it not, to a culture where people with a disability might feel safer with that organisation, to see it leading by example or actually

putting its money where its mouth is, to put it simply. Is that part of your aim in putting forward these ideas?

5 MS RYAN: Hopefully over time. Let's be careful about not seeing this as a silver bullet. Valuing people is the first step in equality, I think. So valuing disabled people is the first step in illustrating that we think this particular part of our community, the disability community, is valuable, that what they have to say as speakers, as consultants as advisers is useful and we treat it as any other external expertise.

10 That is the starting point. It won't be the silver bullet that changes internal culture. There are multiple other factors we probably need to add to that.

15 MS BENNETT: I would like to move to some of the other factors. I think the next item you were to address related to recruitment, which is something we have heard a lot about this week and the barriers people with disability can face in getting through the door. I am very interested to hear what key changes you have identified in that space.

20 I think research and tracking data are two areas you have identified as important. I am very interested to hear your views about how data and tracking can be used in an appropriate and respectful way in organisations.

25 MS RYAN: I'm always interested in data. It's interesting how little of it is collected around disabled people. Often an excuse is provided that people will be offended if they are asked if they are disabled or not. I don't think so. There's a box to tick: Are you disabled? Are you not disabled? It's as simple as that. We do it for gender, we do it for cultural diversity, we do it for First Nations people, so let's do it for disability.

30 What we don't have is a really good picture about how disability employment is travelling. We have data from some organisations, not all, and it's not necessarily quality data, around the numbers of disabled people in organisations. We have that from two sources; we have the open, identified people and we have the anonymous survey data.

35 What we really need is to understand how many people are staying with an organisation, how long they are there, and what levels they achieve. So are they coming in at entry level and staying there or are they moving up over time? Are they 40 come in and leaving six months later? We know an awful lot of people who do that, which is a really solid indicator of the work safety environment, I would suggest.

45 So we need data on people coming into organisations, but also what happens to them once they get there. We need that to be shared in annual reports. We need to know that organisations that are receiving government funding or contracts are actually providing this information to government as part of their contractual obligations.

I reiterate the suggestions of Robin Banks, who appeared the other day, in that regard. I think there is a very big gap in this space, and I think it would be useful data to provide insight for organisations into what is going on. Are they managing to retain people or is there a revolving door? Particularly in the more senior echelons of organisations, where we have strong anecdotal evidence that openly identifying as disabled is an extraordinarily risky thing to do the more senior you are.

MS BENNETT: We have heard some evidence this week from organisations which say that the voluntary nature of disclosure makes that very difficult. Is that your experience, that the voluntary nature of disclosure makes that very difficult, or is it a matter of culture again?

MS RYAN: I'm going to call that one out as an excuse. I think it's straight up an excuse. When people know they are valued for their disability and they are not simply a number that is helping percentages, they have a reason to be openly disabled in their workplace.

At the moment, there is not a hell of a lot of reason to be openly disabled if you can somehow conceal it. This will shift when it's a valuable thing to be a disabled person, when you are valued for your diversity, when you are recognised for bringing something more to the organisation than a box to tick.

It's an excuse to suggest that people will be disadvantaged in some way if they are not openly identifying. In fact, providing a reason to openly identify might shift the dial for a few people.

MS BENNETT: Thank you, Ms Ryan. I would like to talk for a moment about merit and its role in recruitment. Tell us, does it have a role?

MS RYAN: No, I think it should be chucked out the window. Merit needs to go. I know that many organisations pride themselves on appointing on merit.

I am going to refer to a report that was put together by the Male Champions of Change and the Chief Executive Women a few years ago, 2016, 2017. They investigated this concept of merit. Let's admit, they are looking at gender, that's their gig but, fundamentally, we are all talking about diversity.

What the now called Champions of Change and the Chief Executive, Women discovered is that merit is a trap. When we appoint people on merit, we end up with people who look like we do. They come from the same background, the same networks, the same education, a similar looking CV, so the same types of organisations that they have moved through on the way to their current role.

Fundamentally, it's a really good way of not getting diverse people into your organisation of whatever kind. So merit is a problem, it's not a solution. Everybody likes to think they are appointing on merit. What they are doing is appointing in a narrowcast-space, which is basically repeating their existing workforce. We need to

discard merit as a recruitment criterion in favour of more holistic recruitment practices.

5 Deloitte put out a report at the beginning of 2019 which identified that competence is what needs to be the factor. At the moment, confidence is often what gets people through an interview process, and we need to look at competence. So we chuck merit out the window and start looking at competence. Does this person have a track record? Can they do the job? Are they able to move into it with some level of proficiency, given that everybody has a settling-in period?

10 This will assist with diversity but it will also recognise that disabled people might have a very different path to employment to other people. We see this across many diversity areas. People aren't necessarily going to come through the same schools, the same networks, the same opportunities and the same CV. So, across all manner of cultural differences, across gender we know it's different and we also need to recognise that disability is one of those factors.

15 We need to look not at formal qualifications. Obviously you need to be a barrister to be here today, so that's one you have to have, and you need to be a doctor to be in a room, but we need to look beyond formal qualifications to looking at competence to do the job.

20 I will cite a particular example here and that's Qantas's international pilots. Alan Joyce is one of the Male Champions. He actually introduced this report when I first became aware of it. He said they made a decision to go differently on how they recruit international pilots, because if they kept going the way they were going, there would never be any women international pilots for Qantas.

25 I will now highlight the fact that only a few years later, the Chief Pilot at Qantas is a woman. That's because they made a decision to shift how they recruit people. Nobody is suggesting these pilots are not highly competent people. Qantas isn't going to risk their safety reputation. It's not about taking lower hanging fruit, it's about how you take people into the organisation and how you move them through the organisation into the positions that you want.

30 We need to get rid of merit. It's a barrier, it's causing us problems.

35 CHAIR: Are you really seeking to discard merit or are you redefining merit? This is something that has been a debate, for example, in the United Kingdom in terms of appointments to judicial office. Nobody suggests that the concept of merit should be removed, for the reasons you give. You don't want someone flying an aeroplane who will fly it into a mountain.

40 MS RYAN: Exactly.

45 CHAIR: So there is a certain minimum technical competence that is required. But the concept of merit can be broadened, can it not, to include the sort of things you are

referring to?

MS RYAN: Perhaps it has become distracted into meaning something it really doesn't.

5

CHAIR: Yes.

MS RYAN: And that is, you must have this particular --- we see, for example, positions advertised and at the bottom it says you have to have a degree in X. That degree is not necessarily what you need to do this job. You need expertise and knowledge in that field. You need an analytical mind that does this and that. But you don't necessarily need, for example, a social work degree to be a policy officer for a community organisation, and yet social work degrees are insisted on.

15 There are many, many positions in the women's violence sector, and I have done a lot of work in that space, where that social work degree has prevented incredibly qualified disabled women from even applying for that position. Whereas what they were looking for was someone who is good at policy, knows the area very well, and is able to understand what the change making needs to look like in that space.

20

So there are certain qualifications that are required, as you say, for certain expertise areas like the law and like medicine. But many, many, many areas do not require these.

25 One we could look at, for example, is it's very hard to get into the public sector anywhere these days across all public sectors unless you have a degree in something. Why? What's that about? You don't necessarily use your degree. I've known people who are employed based on an agriculture degree when, in fact, they are employed as something completely different.

30

So what we are talking about is we want people who are competent at analysing problems, at writing, at how they put and construct arguments, those sorts of things. We need to think about this differently.

35 Merit has become almost a catch phrase of recruiters, particularly professional recruitment firms, and I think it's a distraction and it's getting in the way.

At Qantas, they went out and sought women who are experienced in STEM, the science, technology, engineering and maths sciences from universities. They directly found women from universities in these fields and shipped them straight into the Qantas engineering division, so they learnt about planes from the ground up.

40

CHAIR: I think that's a good way to learn about a plane.

45 MS RYAN: I think so, but it's not how --- most international pilots come through from airforce pilots. Apparently that's the main pathway.

COMMISSIONER RYAN: It's very similar to what happens in the Indigenous employment area.

5 MS BENNETT: I think you would agree, Ms Ryan, there are areas of intersectionality here?

MS RYAN: Oh, absolutely. There's always intersectionality in disability. It is a highly intersectional space. We can learn a lot from other diversity areas.

10 A big thing to talk about today, particularly under this heading of "Recruitment", is there is almost a reinventing of the wheel in disability. We have become obsessed with coming up with new ways. Why don't we learn from the successes in other diversity areas, other intersectional spaces, because there is a lot to be learnt. Not just from First Nations peoples, and there's an awful lot to learn from there, but  
15 gender, culturally diverse people, et cetera.

Instead of reinventing the wheel and setting up endless working parties and committees, let's ship across some useful techniques and fit them to purpose. I think the merit trap is a really good heads-up in that space.

20 MS BENNETT: Thank you. I want to make sure I don't miss out any of the key changes you want to talk about today. I think you want to talk about leadership in disability-led organisations. Have you identified areas for change in those spaces?

25 MS RYAN: I will recommend that there need to be identified disability positions. We have these in other areas. We've been talking about First Nations areas this morning. Recently the head of the Torres Strait Regional Authority was advertised, the CEO. It's a 6-figure salary of a government statutory agency. It is an identified position. Only a First Nations person can be the head of that authority.

30 Yet we have nothing like that in disability that I am aware of. The CEO of the NDIS, for example, would potentially be one of those positions, and the heads of the various offices for disability around the country. But we also need to think about things like service providers. Any one which is disability focused should be  
35 considering whether they have a disability-identified position in these spaces.

But we also need to start moving broader into the private sector and perhaps thinking about how diversity officers and some of those areas need to be identified as disability specific positions as well.

40 MS BENNETT: That leads into your third area, safe workplaces I think you term it. You identify the need for employers to take responsibility for the provision of adjustments rather than expecting employees to advocate around those issues. I would like to draw out, if I can, is one of the things you are identifying there, for  
45 example, specific officers or people who have responsibility for those issues in private organisations? Is that something you are looking to identify ---

MS RYAN: I think so. I have actually called this section "Assimilation" as well. I will use the word and I have used that quite specifically. I know it's a confronting word, I accept that.

5 People with disabilities are in a position where we find ourselves trying to look non-disabled or act non-disabled to fit in. So when we are talking in this particular area, we are talking about that dilemma, and it means we're not safe, we don't feel safe.

10 My recommendations are quite specific in this area. Many disabled people find themselves continuously advocating around not only their own workplace adjustments and requirements but around other disabled people in their workplace. It must go back on to the employer to be responsible for this. Whether it's accessing JobAccess and making sure that process is followed through, that's a very simple example, or whether it's taking responsibility for harassment.

15 We know the very high levels of bullying experienced by disabled people in the workplace, which have been researched and shown to be at least double that of other people. Some agencies I have spoken to say their figures show three or four times the levels of bullying than non-disabled staff.

20 We need employers to take responsibility for stopping these things from happening. We need them to be stepping in. We need employers to be making sure that adjustments are made and that people actually have what they need, that they don't spend six months waiting for the software, waiting for the particular hardware or  
25 waiting for something to happen. Prepare, make it happen in advance, follow it up, take responsibility from the top. From the top.

MS BENNETT: Speaking of the top, I think the last area of change that you identify concerns specialist disability leadership programs in the private sector. I think we  
30 were talking before a bit about the public sector, but can you tell the Royal Commission about what you see is an area of opportunity around targeted leadership programs in the private sector?

MS RYAN: Well, actually across all sectors.  
35

MS BENNETT: I'm sorry. Thank you.

MS RYAN: I'm unaware of any across any sectors at all, to be frank. This is something that was shown not only in our survey in 2016, but during my fellowship  
40 in 2017. Most organisations have not even thought about it, it hadn't even occurred to them. Yet they were running women's leadership programs, about half of them were running Indigenous leadership programs, increasingly they were running culturally diverse folk leadership programs, yet nothing anywhere about leadership programs that were suitable specifically for disabled people and that supported  
45 disabled people to learn in a safe environment where they were able to be open about not just their leadership but about how they do their leadership.

So we do need to be growing this space. Clearly, the DLI is doing it. This is not a plug for us but clearly we are doing it. We are doing it because it is not being done anywhere, and it needs to be. This should be a very large industry, yet there is barely anything happening.

5

I'm still aware of only one organisation, because I'm delivering it, which has an in-house disability leadership program. I think this will change the dial. When we talked earlier about openly identifying, this is the sort of thing that becomes a carrot, if you like, an attractive option for someone to then become open about their disability, because they want to take part in this.

10

MS BENNETT: Ms Ryan, I have enjoyed our discussion this morning. I will hand you over to the Commissioners to see if they have any question for you.

15

CHAIR: Thank you. Commissioner Galbally, do you have any questions of Ms Ryan.

## QUESTIONS BY THE COMMISSION

20

COMMISSIONER GALBALLY: First of all, thank you very much. That was very valuable.

25

Picking up safe workplaces and the issues of adjustments, how do you think that should be made top down? How can we get the CEOs and the heads of organisations to take that on board?

30

MS RYAN: I think what we have learned from the diversity area generally is when CEOs and executive leadership team people take responsibility, changes happen. What we see in a lot of examples is that the responsibility for these things is, sort of, farmed out down the line in a way which means the CEO can almost --- you know, they are not even tracking the data. So we need CEOs to be the ones driving this stuff.

35

Internationally, the organisations that have done well around disability diversity, it's because it's coming from the top, the responsibility, not just for adjustments but also for making sure the numbers are changing, for making sure people are moving up, that the leadership pathway exists and it's happening, it's effective, and that people stay, that they are valued rather than finding their job untenable once their disability becomes known. So that notion of it coming from the top is really important.

40

Where we have seen the changes in gender balance in organisations, it's because a decision was made right from the top for it to shift. I will cite the example of Westpac. They made a decision that by their bicentenary a couple of years ago, they would have 50 per cent women in their leadership, and they got there.

45

COMMISSIONER GALBALLY: So the suggestion Graeme Innes made on Monday to put that into KPIs for, say, secretaries of government departments so they have to report on it, you would support that?

5 MS RYAN: Absolutely. We should also start that anyone receiving government funds, whether it's a funding agreement or a contract, should be reporting their disability diversity statistics, including that tracking data on where people are sitting and what the pathways are, so it becomes a KPI, an expectation of doing business with government, reporting on these matters. It also places it back into the  
10 responsibility of not just the executive team but the boards of those organisations to be monitoring, keeping track of it and insisting on change if it isn't happening.

COMMISSIONER GALBALLY: Thank you.

15 MS RYAN: Thank you, Commissioner Galbally.

CHAIR: Thank you. Commissioner Ryan, do you have any questions.

COMMISSIONER RYAN: Thank you, Ms Ryan. What you have said this morning  
20 is incredibly perceptive and, I must say, incredibly innovative by comparison to what I have heard before.

I am interested in putting a brave proposition to you. You would be aware of the fact that the Commonwealth government has a proposal to increase disability  
25 employment in the Commonwealth sector by 7 per cent. To be frank about it, it does appear that an enormous amount of the effort is targeted towards getting the existing cohort of people who work for the public sector to reidentify themselves and, consequently, nothing actually changes.

30 Would you accept a more modest target, but one which was more effective in bringing additional new recruits into the public sector and investing in them, so that at the end of a period of time we may not have as large a number, but we might have something that is more visible, more realistic and something which people will find --- there will be actual people who don't have jobs today, with all the  
35 competence they need to work in the public sector and there will be a decent number of them that people will be able to see and hear. That will mean some change to how the target is described, but it might be more effective.

MS RYAN: It's not just the Commonwealth, a number of states also have these  
40 targets at about the same levels at the moment, 6 or 7 per cent. I think there is no reason why 15 per cent shouldn't be the target. That's the number of disabled people of workforce age in this country. I think that's what they should be aiming for.

45 What they need to be doing, in my estimation, is targeting the top. It is about those leadership programs. It's about graduate intake, it's about fast-tracking, it's about identifying who is there and making sure we keep them.

I do know of a few agencies, one in particular that I work with a fair bit, but there are others, which are shifting the dial because they are making sure the disabled people who are there are valued, they are provided with training, and they are known to be future leaders in the organisation. Because of that, more people are feeling  
5 comfortable about being disabled in that agency. It's not the silver bullet, like anything is not the silver bullet, but it's these things that will make a difference.

It makes it more attractive to openly identify. It means those people in the middle echelons are actually going to start thinking, righto, there is leadership potential for  
10 me and I can be open while I do it.

One of things many people say to us at DLI, and it came through first in the survey in 2016 but it's still a very common conversation, is "I can't be more senior than X because my disability isn't going to manage it." So the recognition that management  
15 only looks one way, that there won't be flexibility offered, that it isn't safe, that you have to be putting in 50-hour weeks and you'll be in rooms where nobody cares whether you have captions or not. This is still a very widely-held understanding of what being more and more senior as a disabled person equates to.

20 So, it is only when we have illustrations of that not being the case. We don't just want people moving into these spaces --- we certainly need them --- but we also want an understanding that leadership can look different and that it's okay not to be burning out, it's okay not to be working stupid hours, it's okay to have flexibility. We have identified that with women, with maternity leave and child rearing  
25 responsibilities, so what's the problem?

I like to be disruptive, Commissioner Ryan. I think it's important. What we've been doing for decades isn't working. Same nail, bigger and bigger hammer. We need to  
30 chuck out the hammers and the nails and come at this in a different way. I don't think we'll see any change otherwise. We'll be here in another three decades having the same conversation. How depressing.

COMMISSIONER RYAN: Indeed. Thank you so much for your evidence. It has  
35 been very interesting and insightful.

MS RYAN: Thank you.

CHAIR: Thank you, Ms Ryan, for coming again to the Royal Commission and giving us the benefit of your experience and ideas. As Commissioners Ryan and  
40 Galbally have indicated, your evidence has been extremely interesting, a little provocative, and very helpful. Thank you very much.

MS RYAN: Thank you, Chair.

45

**THE WITNESS WITHDREW**

CHAIR: I think we are to have a short adjournment.

MS BENNETT: Yes, five minutes, if it please the Chair.

5

CHAIR: It's now 20 past 10. We will resume in five minutes time.

**ADJOURNED**

**[10:20 A.M.]**

10

**RESUMED**

**[10:25 A.M.]**

15 CHAIR: Yes, Ms Eastman.

MS EASTMAN: Thank you, Commissioners. Our next witness is the Fair Work Ombudsman, Ms Sandra Parker.

20

**MS SANDRA PARKER, CALLED**

25 CHAIR: Good morning, Ms Parker, and thank you very much for coming to the Royal Commission to give evidence today. Thank you also for your statement.

30 Just to explain where everybody is, Commissioner Galbally is joining the hearing from Melbourne and I am in the Sydney hearing room of the Royal Commission together with Commissioner Ryan on my right. Ms Eastman is also in the Sydney hearing room. I will now ask Ms Eastman to ask you some questions.

MS EASTMAN: Thank you.

35 **EXAMINATION BY MS EASTMAN**

MS EASTMAN: You are Sandra Parker?

40 MS PARKER: Yes.

MS EASTMAN: You are the Fair Work Ombudsman?

45 MS PARKER: Yes, I am.

MS EASTMAN: You have prepared a statement for the Royal Commission dated 2 September this year. Do you have a copy with you?

MS PARKER: I do.

MS EASTMAN: Are there any corrections to the statement?

5

MS PARKER: Just two, thank you, Ms Eastman, very minor. In paragraph 52, I wish to advise you that the new Fair Work Ombudsman website is now live and launched as of 23 October, and our information on employers with disability was published on 11 November. We already had that information on our websites but it consolidates it all.

10

MS EASTMAN: Pausing there, that is not so much a correction to the paragraph but some additional or updated information?

15 MS PARKER: Yes.

MS EASTMAN: Could I characterise it as that?

MS PARKER: My apologies.

20

MS EASTMAN: There is a second one?

MS PARKER: There is one more, very minor. Paragraph 61, just correcting it. That paragraph says we have 4 per cent of employees identified as persons with disability. That percentage should be 7 per cent.

25

MS EASTMAN: Does that come from records within the human resources system, or does that come from an employee census survey? You may be aware that the Royal Commission has heard over the course of this week that there is data recorded in HR systems, and there is also information available to agencies through the employee census, and we see discrepancies in the numbers. So is the 7 per cent in the HR system or from some other source?

30

MS PARKER: That's from the APS census results that were just released.

35

MS EASTMAN: Okay. 7 per cent is the census one.

MS PARKER: Correct.

MS EASTMAN: Was the 4 per cent based on what was recorded in the Fair Work Ombudsman human resource records?

40

MS PARKER: That was also from the census.

MS EASTMAN: From the census, okay.

45

MS PARKER: That's all.

MS EASTMAN: With the additions and clarification, are the contents of this statement true and correct?

5 MS PARKER: Yes, they are.

MS EASTMAN: I want to start by asking you some questions about your role. We will start in terms of your background and your appointment as the Fair Work Ombudsman. Then I want to turn to some of the statutory responsibilities.

10 You assumed the appointment of Fair Work Ombudsman in July 2018 and you have a five-year term?

MS PARKER: Yes.

15 MS EASTMAN: Prior to that, you have held a number of very senior roles in the Commonwealth Public Service; is that right?

MS PARKER: That's correct.

20 MS EASTMAN: One of the roles you held was to be the head of the Office of the Australian Safety and Compensation Council. Is that the agency which is now known as Safe Work Australia?

25 MS PARKER: Yes, it is.

MS EASTMAN: We heard from Ms Baxter, the present CEO of Safe Work Australia, about the role of the agency. When you were the head of the Office of the Australian Safety and Compensation Council, did that involve developing national policy on work health and safety and workers' compensation?

30

MS PARKER: Yes, it did.

MS EASTMAN: You have come to the role of the Fair Work Ombudsman with a very detailed knowledge, can I ask, around work health and safety, and workers' compensation; is that right.

35

MS PARKER: Yes, I have some experience in that area.

MS EASTMAN: But it is not your function, as the Fair Work Ombudsman, to regulate work health and safety issues specifically; is that right?

40

MS PARKER: That's correct.

MS EASTMAN: You don't have a prosecutorial role in relation to whether there are any breaches in relation to work health and safety laws; is that right?

45

MS PARKER: No, I don't have that role.

MS EASTMAN: But there are some aspects of the way the *Fair Work Act* operates, and we'll be probably come to these a little later, that touch upon issues around work health and safety, in part; is that right?

MS PARKER: Yes, and we do work closely with those agencies.

MS EASTMAN: Looking at your role as the Fair Work Ombudsman, it is impossible, is it not, to silo off work health and safety from the day-to-day regulation and activities between employers and employees in Australian workplaces?

MS PARKER: Insofar as they affect workers. We have a fairly specific role, of course, under the *Fair Work Act*. As you say, we can't traverse into work health and safety areas.

As an example, briefly, during the whole pandemic we worked very closely with the work health safety agencies around advice to employees. There was definitely an overlap between what employers can actually do in standing down workers, returning them to work, all of those different aspects and, of course, their requirements to create a healthy safe workplace for their employees.

MS EASTMAN: Turning to the Office of the Fair Work Ombudsman and your role, it is a role established under the *Fair Work Act* and that Act sets out the particular functions you have to discharge. You set those out in paragraph 16 of your statement.

In summary, your functions are very broad, aren't they: to promote harmonious, productive and cooperative workplace relations, and to promote and monitor compliance with the *Fair Work Act* and Fair Work instruments.

Pausing there, for people who might not be familiar with what Fair Work instruments means, that means modern awards and enterprise agreements. If people are unfamiliar with modern awards and enterprise agreements, a modern award is a document that sets out terms and conditions relevant to a particular workplace, and that's really approved by the Fair Work Commission; is that right?

MS PARKER: That's right?

MS EASTMAN: A modern award sets out what is the baseline level. It will set out, for example, rates of pay, it might set out some particular conditions about the way in which work is done. I am trying to deal with modern awards in a very cursory way, but is there anything else you would like to add in terms of describing of what a modern award is?

MS PARKER: They are, as you say, the baseline, so they provide a whole range of levels. You have the base level worker coming in. Let's say it's the restaurant and

caterers award. They provide the base level, what wage you should be getting, what penalty rates you should be giving, what hours of work, if you get meal breaks, if you get overtime rates, it includes information on apprentices. Then it has all the other levels as well, so once you are promoted to the next level and the next level.

5

They are quite comprehensive documents. They can be quite complex. My agency provides advice on that and tries to make them as simple as possible for people to understand.

10 MS EASTMAN: That is one of the big functions, isn't it, of your office, to provide information to employees and employers about what their respective rights and responsibilities are under modern awards?

15 MS PARKER: Yes, we see that as a fundamental role and a very large percentage of our role is to educate people and assist them through those means, yes.

20 MS EASTMAN: When we talk about modern awards, the way modern awards work under the *Fair Work Act* is they apply to particular types of work and areas of work. You just mentioned restaurants, but there is a fast food award, there is a hairdressers' award, there is a teachers' award. So depending on what the particular occupation or industry might be, there will be an award that might be referable to that particular area?

25 MS PARKER: Yes.

MS EASTMAN: Say if I were a 17-year-old and I was starting my first job and I'm going to work in a cafe in my local suburb. There will be a modern award that will cover me; is that right?

30 MS PARKER: That's right. We have a tool that allows you to go in and have a look at that and work out the approximate hourly rate you should be getting, the sort of breaks you should be able to have, what sort of conditions you should be working under, and so on.

35 MS EASTMAN: Even if I didn't know the name of the award, I could describe the type of work I am doing or who I might be working for, and if I put that information into the parts of the Fair Work Ombudsman's website, up will come everything I need to know about my working conditions and the safety provided to me as a worker under the modern award; is that right?

40

MS PARKER: That's correct, and if you are still unsure, you can contact us via our call centres and our staff will explain everything to you.

45 MS EASTMAN: Modern awards are quite important for people to know what their minimum rate of pay should be and whether, for example, they are entitled to overtime or penalty rates. So it is an important tool, isn't it, for workers to understand, at least, what their pay entitlements might be; is that right?

MS PARKER: Absolutely critical. We try very hard to educate people on these, so they understand their entitlements.

5 MS EASTMAN: If there is a breach of a modern award, then the *Fair Work Act* says if you think there has been a breach of the award, action can be taken to enforce a worker's rights if there has been a breach of the award; is that right?

MS PARKER: That's right.

10

MS EASTMAN: One of the functions of the Ombudsman is if there has been a breach or a failure to comply with a modern award, then the Ombudsman has standing or can take action for the employee of a breach of the award, but you would make that decision based on the overall compliance program you have. Just so that  
15 no one is under the misapprehension that they can ring you this afternoon for every entire breach of every award and the Ombudsman would act, you make decisions strategically and in accordance with a compliance program as to what breaches you might act on; is that right?

20 MS PARKER: Just to make a slight --- we do actually help everyone who contacts us. What I would say is if there has been --- so we don't really prioritise calls that come in. What we do prioritise is what I call our proactive work, which is going out and doing random audits or audits of different areas we know are risky.

25 But if someone contacts us and they are after something other than information and they say, "I believe I have been underpaid", then there will be a discussion with our customer support officer and if it looks like there has been a breach or it sounds like that, then we will actually look into it, inquire into it. If there is an underpayment, then we will use an enforcement tool.

30

MS EASTMAN: But you only have 179 inspectors, so I think you have said in your statement that sometimes there will be limits on what can be done in terms of the resources that are available to the agency; is that right?

35 MS PARKER: Yes. So what we try to do in the first instance is to assist people to sort their matter out themselves. By that, we point them to our website and we give them tools to help them sort it out themselves. Most workers actually do want to sort it out themselves. Once they get the information they need and they are armed with that, most of them are comfortable raising it with the employer.

40

So it is often the case that when they come to us for a complaint, if you like, it's because they have tried to do all that, it hasn't happened, the employer is still underpaying or not listening. That's when we would get involved. But we would certainly not send them away, we would help them as far as we can.

45

MS EASTMAN: Would it be fair to say that what you seek to do, in terms of providing the information through the website or through the telephone service you

have, is that workers can get information that helps them resolve those issues themselves without feeling that every time they have to go to a lawyer or to incur some cost in enforcing their rights or knowing what their rights might be; is that right?

5

MS PARKER: Yes, that's right. As with most litigation --- as with most regulators, litigation is a last resort and we would always say that to any customer coming to us, any client as well, that any litigation should be a last resort.

10 MS EASTMAN: Coming back to Fair Work instruments, the other one you have identified is enterprise agreements. They are a little bit different from modern awards because the enterprise agreements are agreements entered into between the employer and the employees. It might be at a particular workplace or it might be that the employer's activities cover a number of workplaces, but the employer and  
15 employees work together to agree on what might be particular terms and conditions relevant to the employer's particular business; is that right? Again, I am putting that at a very high level.

MS PARKER: No, that's absolutely correct, and it is underpinned by the modern  
20 award, so it can't undercut the modern award.

MS EASTMAN: Yes. It might be features of a particular workplace. For example, many of the public sector agencies may have an enterprise agreement with their  
25 public sector workers?

25

MS PARKER: Yes.

MS EASTMAN: Part of the other functions you have include to inquire into and investigate any act or practice that might be contrary to the *Fair Work Act* or the  
30 instruments. That might involve the inspectors, as you say, doing random visits, or it might require the employers to produce documents that the inspectors can review, to look at whether or not there has been any act or practice contrary to the *Fair Work Act*; is that right?

35 MS PARKER: Yes.

MS EASTMAN: When you talk about acts or practices contrary to the *Fair Work Act*, there is quite a wide range of acts and practices that the *Fair Work Act* covers. But it could be things like matters in the Fair Work regulations that employers have  
40 to keep records in relation to their employees, they have to provide pay slips to their employees, they have to keep relevant records about the rates of pay. There are all sorts of different obligations that might be described as administrative in nature, as well as matters around how employees might be treated in the workplace?

45 MS PARKER: Yes.

MS EASTMAN: So, then, one of the functions is to commence proceedings in the

5 court or the Fair Work Commission to enforce the *Fair Work Act*. We have touched on this a little already. You can't commence court proceedings for everything, so you have a compliance and enforcement policy that identifies the priority areas for the Fair Work Ombudsman in terms of what matters might be the subject of proceedings in the Fair Work Commission or in the Federal Court; is that right?

MS PARKER: Yes, that's right.

10 MS EASTMAN: Then the final matter you identify is this function of representing employees who are or may become party to proceedings under the *Fair Work Act* or under a Fair Work instrument, if that will promote compliance with the *Fair Work Act* or the Fair Work instrument.

15 I want to ask you about this because one of the issues which has arisen during the course of this hearing is that for workers with disability, the thought of even commencing legal proceedings and the risk of costs --- we'll come to costs in a moment under the *Fair Work Act* --- of those proceedings, the time it might take and the uncertainty of the outcome can be a deterrent to workers seeking to exercise their rights.

20 A suggestion that has been made to the Royal Commission is that there should be somebody who can take those proceedings on behalf of workers. So this is a function that you can exercise under the *Fair Work Act*. Could I ask you to tell the Royal Commission a little bit about what happens if the Ombudsman decides to step in and represent employees, or to conduct the case on behalf of employees? What does that mean?

25 MS PARKER: Certainly, thank you. We have two functions that allow us to bring prosecutions. The first is under section 682(1)(d) of the *Fair Work Act*. That allows the Fair Work Ombudsman to bring proceedings in its own name to enforce the *Fair Work Act*, and that is the typical one that we use.

30 The second one you mentioned is under section 682(1)(f) and that is the FWO may represent employees or outworkers in a proceeding, if the Fair Work Ombudsman considers that representing them will promote compliance with the *Fair Work Act*.

35 As you said earlier, Ms Eastman, proceedings are commenced in accordance with our compliance enforcement policy and our legal services directions. There are a number of considerations we use. I will briefly say that we typically commence proceedings under the first part, as in we bring proceedings in our own name. That is because we can obtain benefits for employees, like back payments. Employees in those matters are not parties to the proceedings, so they don't have to run the matter and they don't have to bear the risk of any legal obligations. It also ensures that instructions don't conflict with positions taken in other FWO matters or other  
40 statutory obligations we have, for example the legal services directions or the *PGPA Act*.  
45

The second one you mentioned, where we can represent employees or outworkers, is not used routinely and I will explain why. It can only be used when we consider that representing employees or outworkers will promote compliance with the *Fair Work Act*. It is probably important to say we have taken the view since we were  
5 established that this requires representation of more than one employee with similar claims arising from the same or similar circumstances, so not an individual.

MS EASTMAN: So you look at those matters that have a systemic aspect to it; is that right?  
10

MS PARKER: That's right. I would also say it can have a negative outcome of costs orders going to an employee and that's the risk when an employee brings their own action.

15 We have used it twice. One matter is currently before the court. In both cases it involves multiple employees. They were both cases where the FWO had already investigated the employer's conduct and they were matters where at least one employee already had proceedings before a court.

20 Could I briefly give you one example of where we can represent groups of workers when we bring our own proceedings?

MS EASTMAN: Pausing there, when you bring proceedings, it might be for one person, but it might be that there are a large number of employees or even a  
25 relatively small number of employees with the same employer with the same problem, and that might be, say, underpayment or not complying with regulations about pay slips, and the like?

MS PARKER: Yes.  
30

MS EASTMAN: You can make that decision when you are representing employees; it's not just one, it could be a number of employees with a common problem; is that right?

35 MS PARKER: Indeed, that's correct.

MS EASTMAN: An example?

MS PARKER: The example I will briefly give you with the first one where we bring  
40 proceedings in our own name, in the FWO's name, is we have a matter before the court at the moment which is Woolworths and in that matter we are alleging underpayment of \$1.2 million for 70 employees. But we are seeking the court's agreement --- we are seeking application across the entire workforce of that particular worker we are looking at, which is salaried managers. So we are actually  
45 taking, if you like, a sample of 70 but we are asking for the penalties to be applied, assuming we get penalties, for 19,000 workers.

MS EASTMAN: To explain, if we can, penalties and recovery of wages, in terms of what might be the outcome of any proceeding that the Ombudsman commences, one of the outcomes can be recovery of wages, if, for example, there has been an underpayment.

5

But one feature of the *Fair Work Act* is there are some provisions of the *Fair Work Act* that can result in what is called a civil penalty being imposed on an employer. So it is not a criminal law but it is a penalty for the failure to comply, and those penalties can be made for the employer if it's a corporate employer, but in some cases it can also extend to directors and senior officers of companies, because they might be accessories, so they have allowed the noncompliance to occur.

10

The civil penalty, though, has to be an order of the court, is that right, it's not something you can decide?

15

MS PARKER: No. We can seek penalties but the court makes the decision, that's correct.

MS EASTMAN: You say in your statement that last year the Ombudsman recovered over \$148 million for workers and you also obtained court-ordered civil penalties in the order of \$2.9 million for contraventions of the *Fair Work Act*. That is through the process of litigation; is that right?

20

MS PARKER: Yes, that's correct.

25

MS EASTMAN: If a penalty is ordered, generally the penalty is a matter that goes into the Commonwealth consolidated revenue, but the penalty can also be allocated to the worker as well in some cases; is that right?

30

MS PARKER: Yes, and it can also include other more unusual requirements. We have sought and obtained in the past agreement for employers to do certain things; address their payroll systems or take other actions.

MS EASTMAN: So corrective actions to avoid the systemic issues repeating?

35

MS PARKER: Yes.

MS EASTMAN: Litigation, as you said, is a last resort. The Ombudsman can also negotiate with the employers and you have a tool that allows you to achieve what is sometimes called an enforceable undertaking. How does that work, in practice, with employers?

40

MS PARKER: An enforceable undertaking is quite a desirable outcome, from our perspective. What it allows --- it avoids the long, long process of litigation and the costs and time involved in those. They can usually be at least 12 months, often longer, and a lot longer once they get into the court.

45

But they also allow us, the Fair Work Ombudsman, to negotiate some unusual terms. Often, typically, we use enforceable undertakings quite frequently. We have been particularly using them in matters for corporate sector underpayments where they self-disclose, cooperate with us and agree to do a whole lot of things to fix the  
5 problem. Our view is we would probably not necessarily get a large penalty in a court and we can get a good outcome from an enforceable undertaking.

The advantage of an enforceable undertaking is also that we get to scrutinise the company for a few years. So we require them to do annual audits of their payroll,  
10 provide the results of those audits to the Fair Work Ombudsman, and we review and check those. We also typically require them to address their payroll system issues and prove that to us, if you like, to train their human resources staff, and to apologise to the workers they have underpaid.

15 Often with corporates, for example, we require them to put notices in media, in newspapers or social media, to say they have done the wrong thing and that they have rectified it and how. There is an enforcement component to that --- sorry, a deterrence component in that.

20 We also regularly include a contrition payment. A contrition payment is a payment offered by the company to the regulator that recognises they have done the wrong thing and they are sorry. But it is also a recognition that significant taxpayer dollars have gone into the regulator providing assurance to the community that the payments have been properly assessed, rectified and they won't happen again.

25 We have used those regularly. The money goes into consolidated revenue to be re-used by the taxpayer.

30 MS EASTMAN: This is a regime where there is significant power for your agency and there are also significant penalties for employers who fail to meet the standards. If you take that regime together with the work you are doing around education and also this ability to monitor enforceable undertakings, do you have a view as to whether this is effective in changing workplace cultures?

35 MS PARKER: I hope so. I certainly believe we are making a difference. I think it's fair to say we have had significant results. We are recovering five times the amount of recoveries for workers that we got five years ago, four years ago. We are getting a lot more media attention. It's not that regulators necessarily seek that but it helps. I believe we are better known in the community.

40 Certainly, the fact that we take --- we have really increased our enforcement effort, and certainly I have done that deliberately since taking up the position. I have shifted us from less than 10 per cent of our matters being managed through enforcement to around, I believe, 23 or 25 per cent.

45 We have large companies in court. At the moment we have around 130 matters in court. That is the highest we have had in the history of the agency, so I think we are

making a difference. There is a lot more we could do and we will do our best to do that. We'll just keep trying to improve.

5 MS EASTMAN: For this financial year, you have particular priorities which are to continue to support workplaces as they recover from the impacts of COVID-19, the main focus being on fast food, cafes and the restaurant sector, the horticulture sector, contract cleaning sector, sham contracting, the large corporate underpayments, and franchise arrangements.

10 This fits in with the commitment to prioritise small business employers and employees and what I described as vulnerable workers. In that class of vulnerable workers, you specifically identify migrant workers, young workers and the low paid; is that right?

15 MS PARKER: Yes, that's right.

MS EASTMAN: Looking at that description, would you accept it is likely there will be employees who identify as people with disability who are working in fast food, cafes, restaurants, horticulture, cleaning, perhaps even for large corporates, and they  
20 may be the types of workers who can be described as vulnerable workers; is that right?

MS PARKER: Yes.

25 MS EASTMAN: Is the Royal Commission correct to understand, with respect to the whole *Fair Work Act* and how the *Fair Work Act* applies, that all those rights and protections in the *Fair Work Act* apply to workers with disability; is that right?

MS PARKER: Yes.

30 MS EASTMAN: So the protections, for example, in relation to National Employment Standards apply to people with disability?

MS PARKER: Yes.

35 MS EASTMAN: With some exceptions in terms of supported wages, the minimum wage protections also apply to people with disabilities?

MS PARKER: Yes.

40 MS EASTMAN: The right to ensure that your employer keeps records, provides you with pay slips, and pays you the right amount of money, that applies to workers with disabilities?

45 MS PARKER: Yes, all workers with disabilities.

MS EASTMAN: The protections in the *Fair Work Act* against unfair dismissal, that

applies to workers with disabilities?

MS PARKER: Yes.

5 MS EASTMAN: This is outside your particular function but there are functions in the *Fair Work Act* that give the Fair Work Commission a power to make 'stop bullying' orders. So that applies to workers with disabilities; is that right?

MS PARKER: Yes.

10

MS EASTMAN: In terms of the approach we take in protection of workers' rights and the obligations on employees in the *Fair Work Act*, the starting point is that they have general application to workers with disabilities; is that right?

15 MS PARKER: Yes, they do.

MS EASTMAN: But there are also some quite specific provisions that touch upon rights of people with disability as workers that are specific to workers with disabilities? There's not many but there are some; is that right?

20

MS PARKER: That's right.

MS EASTMAN: I want to ask you about an area in the *Fair Work Act* which is called "General Protections". I will come to that in a moment, but before I do that, is the Royal Commission right to understand that your office does not have any specific function in relation to the operation of the *Disability Discrimination Act*?

25

MS PARKER: No, we do not.

30 MS EASTMAN: You don't take and handle complaints alleging disability discrimination; that is for the Australian Human Rights Commission; is that right?

MS PARKER: Yes, that's correct. We have a role, as you say, but it is quite a specific one.

35

MS EASTMAN: You don't, for example, have any power to commence prosecutions for breaches of the *Disability Discrimination Act*?

MS PARKER: No, we don't.

40

MS EASTMAN: To the extent there might be an inquiry that comes specifically to you that raises the types of issues that might be better addressed by the *Disability Discrimination Act*, it's likely there might be a referral to the Australian Human Rights Commission for assistance in relation to disability discrimination; is that right?

45

MS PARKER: That's right, or to the Fair Work Commission if it relates to

potentially unfair dismissal, or we may, and sometimes do, refer to State and Territory human rights bodies as well, depending on the matter.

5 MS EASTMAN: There are some specific provisions dealing with workers with disability in terms of supported wage schemes. That is not a topic I want to address today.

10 I want to look at the matters you identify in paragraph 35 of your statement. In particular, you made reference to one provision in the *Fair Work Act*, section 351. I don't want this to turn into a law lecture about how section 351 operates, but this is a provision that has the heading "Discrimination" in it and it's a provision that says:

15 *An employer must not take adverse action against a person who is an employee or prospective employee of the employer because of the person's .....*

20 Then there is a range of characteristics and, relevantly, the characteristic of physical or mental disability appears there. This is described as a civil penalty provision. So if you breach this provision, it could give rise to not only remedies for the employee concerned, but it also might result in the employer facing a civil penalty being imposed; is that right?

MS PARKER: Yes.

25 MS EASTMAN: I want to unpack what this actually means. The first thing is, the *Fair Work Act* in addressing disability, tends to look at disability as physical or mental disability. That seems to be a definition that appears in a number of places in the *Fair Work Act*.

30 Now, I don't expect you have looked at all of the drafting history, and the drafting history with respect to these particular provisions, but would you agree with me it is a little bit of an anomaly that the *Fair Work Act* refers only to physical or mental disability, whereas the *Disability Discrimination Act* and the way in which disability is described in other legislation is not confined to particular types of disability? Is that something you are aware of?

35 MS PARKER: Yes, it's an inconsistency and it's not the only inconsistency.

40 MS EASTMAN: That's true. In terms of this being a protection for workers with disability, you have to squeeze yourself, don't you, into being a person with physical or mental disability. That might exclude people with disability such as intellectual or cognitive disability?

MS PARKER: Yes. The lack of definition does make it more difficult.

45 MS EASTMAN: Assuming a person with a disability that meets the description here is covered, this says an employer must not take adverse action. I want to deal with what does "adverse action" mean.

Are we right in understanding that the way the *Fair Work Act* operates is "adverse action" is this: if a person has a workplace right or has exercised a workplace right, then because of that, the employer cannot take adverse action? Adverse action might  
5 be dismissing the person, not giving the person their legal entitlements, changing their job to their disadvantage, treating them differently to other people in the workplace, refusing to employ them, or offering them different or unfair terms and conditions. So can I broadly pick up those concepts of adverse action?

10 MS PARKER: Yes, that's good, thank you.

MS EASTMAN: Coming back to section 351, in effect, an employer must not dismiss a person, deny a person their legal entitlements, change their job to their disadvantage, treat them differently, refuse to employ them, or offer them different  
15 terms and conditions because the employee or prospective employee has a physical or mental disability?

MS PARKER: That's right, and the other 14 attributes but, yes, that's correct.

20 MS EASTMAN: And the other attributes?

MS PARKER: Yes.

MS EASTMAN: On its face, this looks like quite a helpful provision for someone  
25 with a disability, if they say "Well, I have experienced adverse action, I might be able to do something about this". Is this something a person with disability could come to your office and ask you about?

MS PARKER: Yes, they could.  
30

MS EASTMAN: They don't have to go to your office. They might say, "We want to take legal action about this", and that is open to the employee themselves to commence some sort of complaint or legal action; is that right?

35 MS PARKER: That's right, or they might decide to go to the Human Rights Commission or the Fair Work Commission for dismissal matters or a State or Territory, as we have said, yes.

MS EASTMAN: We heard earlier this week from some of the lawyers who work at  
40 the frontline, so to speak, in community legal centres or Legal Aid commissions, that sometimes it is really difficult to work out where do you go and which Act should you follow and what might be the consequences of this.

45 Just looking at the *Fair Work Act*, this seems to be one provision that looks like it would protect workers with disability, but only some disability. There is a little bit of a catch to this provision, isn't there, that starts to make it very complex. The catch is that the adverse action does not cover taking action because someone can't perform

the inherent requirements of the particular position. That's one.

The other is a particular exemption in relation to a staff member of a faith-based institution. So that's there.

5

But the other one which is particularly complex is if there is a State or Federal anti-discrimination law and that law does not make the type of conduct that would be adverse action unlawful, then, in effect, this provision in section 351 has very limited work to do; is that right? This is a very complex provision, so I don't want to oversimplify it, but just get a sense for the Commissioners about how helpful this section might be, in practice.

10

MS PARKER: That's right. It doesn't apply to action that is deemed unlawful under any anti-discrimination law that is in force where the action was taken. So it's a double negative, but that is correct.

15

MS EASTMAN: It does not apply to action that is not unlawful.

MS PARKER: Correct.

20

MS EASTMAN: In effect, that means if the conduct might be permissible under a State or Federal anti-discrimination law, that, in effect, knocks out this provision.

MS PARKER: That's right.

25

MS EASTMAN: But it has also been interpreted that if the relevant area is not covered by one of those State or Territory laws, that also knocks it out. So would it be fair to say that this provision, on its face, looks quite attractive but, in practice, can be really tricky to navigate?

30

MS PARKER: Yes, and the definitional part makes it difficult as well, as we have said.

MS EASTMAN: If, for example, I overcome all those hurdles, I think I probably have a case that could be brought under this provision in the *Fair Work Act*, there are some important features, aren't there? The first feature is, as the employee, I don't bear the onus of proof. All I have to do is point to an allegation about being treated differently or not being given my legal entitlements, and I have to demonstrate I am a person with a physical or mental disability. But from that point onwards, the *Fair Work Act* reverses the onus of proof, doesn't it?

40

MS PARKER: Yes, it does.

MS EASTMAN: The employer then is, sort of, deemed to have done the adverse action and the employer then has to disprove the employer didn't act for the prohibited reason; is that right?

45

MS PARKER: That's right, although matters of evidence still have to be taken into account, of course. It's not an absolute but it is definitely an advantage from the employee's perspective.

5 MS EASTMAN: That reverse onus, if I can loosely describe the operation of sections 361 and 360 in that way, applies to many of these civil penalty provisions but particularly in the General Protections area, the employer has that reverse onus; is that right?

10 MS PARKER: That's right.

MS EASTMAN: From a practical perspective, what does this actually mean when it comes to taking court action, because the reverse onus applies in court actions that the Ombudsman commences as well. What do you see as the sort of practical effect  
15 of the reverse onus?

MS PARKER: I suppose it certainly makes our job easier as a regulator. But as I said before, it's not an absolute and people can still provide evidence that a court needs to consider. But, yes, the practical impact is it assists.  
20

MS EASTMAN: The other feature is that the *Fair Work Act* has a particular regime around legal costs and the exposure to costs. We heard earlier this week that one of the barriers for people seeking to exercise their legal rights is the cost of bringing legal proceedings.  
25

Under the *Fair Work Act*, the starting point is that both sides bear their own legal costs, but a court can make an order for costs if there are particular circumstances. But it is fair to say, in practice, it is pretty unusual for the court to make a finding of costs against an unsuccessful employee, unless something really has gone wrong in  
30 the way in which the case has run. Is that a fair way of dealing with section 570?

MS PARKER: Yes.

MS EASTMAN: In terms of your experience, there have not been a lot of  
35 prosecutions that the Ombudsman has brought in relation to section 351; is that right?

MS PARKER: That's right.

40 MS EASTMAN: Is the reason for that that when issues of discrimination arise, sometimes it can be very difficult in terms of identifying all of the evidence about why people engaged in the adverse action? Is that one of the reasons, an evidentiary reason?

45 MS PARKER: Yes, it is, when it gets to that. With your indulgence, we get very few complaints, and I have been looking into the reasons why, about allegations of discrimination. I would also say that the majority of matters that do come before us

are referred to the Human Rights Commission or Fair Work Commission or State and Territory human rights agencies. Stop me if I'm going down a path ---

5 MS EASTMAN: No, I think it would be helpful because I think from where you sit, and your particular statutory functions, it would assist the Commissioners to understand your perspective on this, having heard the perspective from the lawyers who are trying to work out what paths do we take. Do we go down this route, do we go down that route, what might be the costs, what are the time frames? It all sounded very complex when the lawyers at the frontline were telling us about the options.

10 So from a regulator's perspective, I think it is helpful to understand what you are seeing and what you think the reasons might be.

15 MS PARKER: Thank you. In my statement at paragraph 35 we say that in 2021 only one of 18,696 disputes involved disability discrimination. Of course, I have looked into that in some depth since seeing that number and it is an interesting --- yes, there is some really interesting analysis that hopefully will be of assistance.

20 The majority of matters we get come to us through our information lines, our call centres, through what we call My Account. People can set up an account and get information and be alerted to their previous inquiries, et cetera. We also have anonymous reports that come in each year. We get quite a lot of complaints, for example, through the call centre, 376,000 last year.

25 When they come in to the Fair Work Ombudsman they are assessed by our frontline staff. If they involve a discrimination issue, they can be flagged in our system. As I mentioned, there are 15 attributes in the Act that we look for that are required in relation to adverse action. But the majority of the calls that come in to our staff or  
30 that are received through our online services are referred to the Human Rights Commission or the Fair Work Commission.

In explaining that, it is our experience that those agencies are highly skilled in resolving disputes, and they take a dispute resolution approach to matters. Based on  
35 our experience with all workers, including those with disability, that is much more conducive to preserving the goodwill which underpins most employment relationships or that we hope to foster. Our agency's experience is that is the overwhelmingly preferred approach of most employees who contact us for advice and assistance.

40 I would also say, and you have already said this, General Protections litigation is much more uncertain and it is adversarial. It obviously has its place but it is generally reserved for when other mechanisms have failed or when we see systemic or egregious breaches.

45 What staff in the Fair Work Ombudsman are looking for are those matters, egregious or systemic, and if they see it as a flag, they mark it in our system, if you like, putting

it in simple terms. It will then be provided to our compliance and enforcement teams for review and a decision about whether it needs to be formally investigated and progressed to compliance and enforcement.

5 I have mentioned before, of course, the length of time it takes to get a matter into court and, also, that we have to be a model litigant, et cetera.

I have spoken to a lot of people while this Commission has been running and I continue to believe that referral to those agencies is the most effective and desirable  
10 approach in the majority of matters.

MS EASTMAN: Just on that, the other agencies have no capacity to commence proceedings and represent employees in the way you have?

15 MS PARKER: No.

MS EASTMAN: Those other regimes don't have civil penalties attached to them?

MS PARKER: Correct.  
20

MS EASTMAN: The other regimes are cost jurisdictions and the other regimes, with variations here and there, essentially put the onus of proof on the employee with disability.

25 Looking at the structure of the scheme in the *Fair Work Act* and the structure of the scheme in some of the other provisions, is there a risk that the type of success you have achieved on recovery of wages and civil penalties, but also on bringing public attention to what are rights and what are responsibilities, is there a risk with workers with disability, if they are gently moved into the other areas, that we miss out those  
30 opportunities of having some high profile penalties/costs managed? We miss out on those aspects, don't we.

MS PARKER: Yes, we do. In thinking this through and discussing it with people, I think what is missing in the approach we have at the moment is what I might call a  
35 return referral mechanism. Sometimes we need to get it to the Fair Work Commission if it's dismissal because, as you would know, there is a 21-day time frame.

40 What I mean by a "return referral mechanism" is I would like to explore that where alternative dispute resolution has not worked, where it has failed, or where the Human Rights Commission or the Fair Work Commission or the other bodies have determined it is not appropriate and they have seen other flags or other information has come out through alternative dispute resolution, which is highly likely, I would like to see us explore a return whereby it comes back to us. We would commit to  
45 reviewing every one of those with a lens of: does it meet, potentially, the adverse action test, discrimination, and is it appropriate. Obviously with the permission of the person, it has to be very much their call, that it goes forward for possible

compliance and enforcement, because I agree with you that deterrence is important, sending a message is important and I think we could get some much stronger cases this way.

5 MS EASTMAN: That might mean some statutory amendments, off the top of my head, in the areas of section 726 and following of the *Fair Work Act*, which are the provisions that you can't have both a discrimination claim and a Fair Work claim at the same time. Would it need some statutory amendments to be absolutely clear about the preservation of rights between the two systems?

10 MS PARKER: That's a very good question. We would certainly need to look at that. Our first assessment was that it could happen without legislative change, and that would be ideal, obviously, and we couldn't do it automatically. Obviously there will be privacy and other issues, so we would need to have the agreement of the person and so on. We wouldn't want to set up expectations that every person --- yes. So we would still want to do our own assessment.

15 But that is a very good question and I will certainly want to explore it. If this is something we think would be more effective, then, yes, we would want to explore all those things.

20 MS EASTMAN: If it assists you, and I don't know whether your attention has been drawn to a submission made by the Australian Government in response to Counsel Assisting's submissions from Public Hearing 9, and I think you refer in your statement to having read the systemic barriers identified in Public Hearing 9.

MS PARKER: Yes.

30 MS EASTMAN: But the Commonwealth submissions of 19 March specifically refer to the General Protections provision in the *Fair Work Act* to protect employees with disability from adverse action. Then also a reference at paragraph 141 to there being a number of avenues available to an employee who believes they have been subject to General Protections contraventions. It makes specific reference to your office investigating alleged contraventions and the like.

35 Were you consulted by the Australian Government when they were preparing this or at the time they made this submission to the Royal Commission in March?

40 MS PARKER: I believe so. Yes, I think we were.

MS EASTMAN: So you are aware, in terms of addressing one of the systemic barriers, which was systemic barrier 26, that the Australian Government had identified a role for the Fair Work Ombudsman; is that right?

45 MS PARKER: Yes, that's right.

MS EASTMAN: The matters we have just been discussing arise really, is it right,

from thinking about the matters we identified from our Public Hearing 9 work and matters you have turned your mind to in preparation for giving evidence today; is that right?

5 MS PARKER: Yes.

MS EASTMAN: There is a lot more in your statement I would like to address, and it may be that we may need to talk to you again on the work you have done in relation to enforceable undertakings concerning an Australian disability enterprise and some  
10 of the work you have done in terms of workers with disability and underpayments. The Commission will hold a hearing next year, looking at the DES system and AED. So I might need to come back to you, albeit very briefly, on those topics at a future point in time.

15 It may be that the Commissioners now have some questions for you.

CHAIR: Commissioner Ryan, do you have any questions?

COMMISSIONER RYAN: I did have, but Counsel Assisting suggests I should not  
20 ask the question, so I won't.

CHAIR: Thank you. Commissioners Galbally?

## 25 **QUESTIONS BY THE COMMISSION**

COMMISSIONER GALBALLY: I have a question but I am not sure whether it is  
30 for you. An enterprise agreement, do you know of any that include reasonable adjustments as part of the agreement?

MS PARKER: I am very happy to check that for you, Commissioner. I don't know.

COMMISSIONER GALBALLY: That would be great if you can do that, thank you.  
35

CHAIR: We might ask you, as with other matters, to provide the answer to that question in writing. That will no doubt be organised by the respective legal representatives.

40 This has been a very interesting seminar conducted by Professor Eastman. I am not intimately familiar with the *Fair Work Act* but it looks to me, piecing together the various provisions, that your jurisdiction to take action is almost, not quite, coextensive with the provisions of the *Disability Discrimination Act*, in the sense that  
45 adverse action on the ground of physical or mental disability, seems to cover most --- it may not deal with reasonable adjustments. I am not familiar with the jurisprudence, so I am not sure how physical or mental disability has been interpreted, but it could be interpreted in a way that is more or less coextensive with

the *Disability Discrimination Act*.

5 It, therefore, may be --- this is something, of course, that follows from Ms Eastman's questioning --- that there is power already for direct enforcement of most conduct that would constitute discrimination under the *Disability Discrimination Act* and, indeed, under State law, because the definition of "employer" is dealt with in a way that covers the constitutional issue.

10 I suppose that is more of a comment, but why have you formed the view that if you were to get complaints about discrimination on the ground of disability, they are best referred in the first instance to other agencies and that even if you were to change course, you would see it by way of a referral back from an agency? Is it a question of resourcing?

15 MS PARKER: No, not really. Often people come to us with multiple issues and so it is often difficult to see --- we may know, obviously if the person discloses that they have a disability, they may have multiple issues. They often don't come and say, "I've been discriminated against", they say, "I have been underpaid", they might have had their hours reduced. There is a list of things.

20 In some cases, if it's about a termination, for example, there are strict time requirements, 21 days for them to make an application for unfair dismissal. That is the Fair Work Commission's role to manage, not my agency's, which means we want to get it to the Fair Work Commission quickly, so they can pursue that. They may then have other complaints and they may come back to us on other complaints that are not dismissal.

25 But our experience with workplace disputes is that nearly always the employee wants to preserve the employment relationship; they want to stay employed. It's very important for a whole range of reasons.

30 CHAIR: Yes.

35 MS PARKER: So part of what we try to do, and we have skilled staff to do this, is encourage them, as I said, in the first instance to try to help themselves, with our help. So we give them guidance material, we might give them an email to send to their boss, we might have them copy us in to that email if we think the boss is not really listening. We try to have them resolve it first and then we will come in and assist, because people really don't want to make trouble. Even though sometimes they should and they don't, that's usually where they come from. "I don't want to make trouble but I want to know what my rights are and what I might do about it."

40 The advantage of skilled --- we don't do alternative dispute resolution in my agency. So, sending people off when it's a potential discrimination matter, which is complicated --- it's never simple and often there is different evidence from the employer and so on. It's complicated and it's often emotional.

ADR works well, it's effective. We know about 300 matters are going to the Human Rights Commission alone each year. What I am saying is if it can be resolved in that way and it doesn't initially, on its face, look egregious or systemic as an issue in that workplace, then that can often be a way of resolving the matter and the employee most often is happy with that and wants it that way.

Those bodies, with their expertise --- and we do work with them and we think they are doing a wonderful job --- they are in a position to get more information out of the person through the way they operate. Alternative dispute resolution, as you probably know, is highly effective.

Then if issues are identified, it can come back to us. I think it will put us in a better position then to have the trust of the person, the employee, and to take the matter and to get it right and, if needed, go to court or have an enforceable undertaking. It's much more likely to be successful.

CHAIR: I understand that. Thank you. The definition of "adverse action" is not limited to action against a current employee. It includes, for example, discrimination by a prospective employer against a prospective employee in the terms or conditions on which the prospective employer offers to employ the prospective employee. So, presumably, that form of adverse action could include a failure to provide or offer to provide the reasonable adjustments that are required for a person with disability to perform the role for which he or she may be amply qualified.

So there would be, would there not --- and I understand resources issues and expertise, but there would be room for the --- is it the Fair Work Commission or your office to bring proceedings on behalf of numbers of people affected by that approach, if a particular prospective employer was doing that?

MS PARKER: Ours usually goes to refusing to employ a prospective employee. As we have said, we don't have reasonable adjustment in the *Fair Work Act* framework. It's not part of our remit, unlike the *Disability Discrimination Act*.

Where we can take that into account, though, is in something like an enforceable undertaking because in an enforceable undertaking, we can put in there whatever we want, really, in terms of negotiating the terms of an enforceable undertaking.

So in the James Hardie matter that's in paragraph 55, I believe, of my statement, it was that type of matter where we entered into an enforceable undertaking with James Hardie and that involved reasonable adjustment. That was via a request for assistance from a worker and we were able to include reasonable adjustment in there, and that was the issue, because it was an enforceable undertaking, so it gave us more flexibility as a regulator.

CHAIR: Thank you very much. We won't engage in a discussion about the legal issues, but one of the things we might explore, and Professor Eastman may know the answer immediately, is whether the concept of adverse action includes the failure to

provide or offer to provide reasonable adjustments. I suspect it probably does, but that may be wrong.

5 Thank you very much. That has been a very interesting period of time. We have gone over, so I am sorry for the extra time we have taken. Thank you for your assistance and for the evidence you have given today, including your statement. There are some very interesting aspects of your evidence that we will be interested in pursuing. Thank you.

10 MS PARKER: Thank you.

### **THE WITNESS WITHDREW**

15 MS EASTMAN: Thank you, Ms Parker. Commissioners, there is just the tenders. I have given you a note in relation to the tender of Ms Parker's evidence and also some of the amendments that Ms Banks identified when she gave evidence on Monday.

20 CHAIR: I have the relevant document. I will initial the relevant document, date it with today's date and the documents that are referred to in the document that is headed PH19 Day 5, they will be admitted into evidence with the markings recorded in the document.

25 MS EASTMAN: We have gone over time but it may be that people will appreciate a break of 15 minutes.

CHAIR: I think so. It's now nearly 11.40. We will resume at 11.55, thank you.

30 **ADJOURNED** **[11.37 AM]**

35 **RESUMED** **[11.56 AM]**

CHAIR: Yes, Ms Eastman.

40 MS EASTMAN: Thank you, Commissioners. This is the final session for this public hearing and we have two witnesses. On reflection, I think it probably is easier to take each of their evidence and the issues they wish to speak about separately.

45 You will see on the screen that Mr Luke Mansfield has joined us and also Ms Gerrie Mitra has joined us.

### **MS GERRIE MITRA, CALLED**

**MR LUKE MANSFIELD, CALLED**

5

**EXAMINATION BY MS EASTMAN**

10 MS EASTMAN: With our witnesses indulgence, Ms Mitra, I thought I might deal with the issues raised in your statement and the particular features of the NDIS Participant Employment Strategy and cover that part with you.

15 Mr Mansfield, could I ask for your indulgence to cover those issues on the NDIA and NDIS and then I will come to you on the broader Australia-wide strategy. I won't ask you to comment on each other's areas and that way I think I might be able to make up a little bit of time but also not hold you beyond necessary.

Commissioners, are you happy with that approach?

20 CHAIR: We are, I am sure.

MS EASTMAN: Ms Mitra, can I start with you. You provided a statement to the Royal Commission. Commissioners, you will have a copy in Tender Bundle A behind Tab 47. There are some amendments set out in a small corrigendum on Tab  
25 49B.

Ms Mitra, you are the General Manager, Provider and Markets, with the National Disability Insurance Agency; is that right?

30 MS MITRA: That's right, yes.

MS EASTMAN: You have prepared a statement with the correction for the Royal Commission?

35 MS MITRA: Yes, that's correct.

MS EASTMAN: Do you have a copy of your statement dated 16 July this year?

40 MS MITRA: I do.

MS EASTMAN: Subject to the amendments provided to us on 10 November, are there any other corrections you wish to make to the statement?

45 MS MITRA: No, there are not.

MS EASTMAN: Are its contents true and correct?

MS MITRA: Yes.

MS EASTMAN: Can I start by asking you about your current role as General  
5 Manager, Provider and Markets. It's an interesting title but what does it actually  
involve? What are your functions and responsibilities at the NDIA?

MS MITRA: Thank you. My role and responsibilities are to oversee the providers  
and the market. With regards to providers, that involves supporting providers as they  
10 engage with the agency. Then with regards to the market, it is that oversight and  
ensuring the market is working as we would like it to. So the two, kind of, go  
hand-in-hand together. The employment branch sits within my division.

MS EASTMAN: The evidence you will talk about today is the Participant  
Employment Strategy that has been developed by the NDIA. Do you have direct  
15 responsibility for that strategy?

MS MITRA: Yes, the strategy does sit within my division.

MS EASTMAN: The Participant Employment Strategy was released on 7 November  
20 2019; is that right?

MS MITRA: That's right.

MS EASTMAN: So it has been in operation for a couple of years now?  
25

MS MITRA: That's correct.

MS EASTMAN: You have provided with the material accompanying your statement  
a copy of the strategy. Commissioners, you will see that in the material behind Tab  
30 48 in the bundle. We'll come to that in a moment.

I want to ask you how the strategy came about. For participants in the NDIS, the  
Royal Commission has heard about the way in which the NDIS operates and what it  
35 means to be a participant. How is it that an employment strategy was developed in  
the context of the day-to-day operations of the NDIS?

MS MITRA: Thank you, Counsel. You'll see in my statement that back in late  
2018, the Minister at the time set up a joint task force between DSS and NDIA to do  
40 some work together. One of the outcomes of that task force was to develop a  
Disability Employment Strategy specifically focused on things the NDIA could do to  
support the growth of employment outcomes for participants.

MS EASTMAN: Was it partly based on the fact that, looking back at June 2019 and  
45 considering NDIS participants, only 24 per cent of NDIS participants of working age  
were in paid work? Was that part of the reason?

MS MITRA: I think, Counsel, the key reason was that always, as part of the

introduction of the NDIS, the intention obviously and one of the objects of the Act is to encourage and support economic participation by NDIS participants. At that point we were getting to the point where a large number of people were coming into the scheme, so it was the right time to pull together a more focused strategy on how to support people to participate economically.

So I think the driver for it was partly to do with the timing of the scheme and the maturing of the scheme. It is only in the last few months that we have got most people into the scheme who were previously participants of State and Territory services. I think it's just part of that evolution and the maturing and development of the scheme.

MS EASTMAN: But the purpose of this strategy is not to ensure that every NDIS participant has to consider and find paid work; that's not the objective of the strategy, is it?

MS MITRA: No. Under the Act, one of the objectives of the scheme is to improve social, community and economic participation. It's certainly not the expectation that every person who is a participant of the scheme will even want to find employment. So, very clearly, the first part of when people engage with us is about talking to them about the opportunities for economic participation.

What we are finding is that increasingly, as time goes on and people are in the scheme for longer and their skills and capacities build, people are choosing to have a goal around economic participation. Once that happens, we can put supports in their plan to enable them to achieve that goal.

MS EASTMAN: If the Commissioners look at the NDIS Participant Employment Task Force, that's the group that was established to think about a range of strategies leading to the Participant Employment Strategy, the terms of reference for the task force were to improve employment outcomes for NDIS participants by connecting them to supports, to seek and maintain employment in a setting of their choice through open employment and/or supported employment. Just so we are clear, when we are talking about the Participant Employment Strategy and the work undertaken by the NDIA to develop that strategy, it has to focus on both open and supported employment?

MS MITRA: That's correct.

MS EASTMAN: At this hearing we are focusing on open employment. A hearing we hope to conduct early next year will have a focus on supported employment, but specifically segregated employment in the ADEs. Can we focus today on the open employment aspect of that, and please tell me if any of the matters I touch on are straying into the other area.

Looking at the objectives of the task force, I note that one of the principles that will guide the task force work is adherence to the United Nations *Convention on the*

*Rights of Persons With Disabilities*, by particular reference to Article 27. That is one of a range of matters that had to be taken into account in terms of guiding principles.

5 But do you know how the CRPD Article 27 influenced the work of the task force and, related to that, how it influenced the development of the strategy?

10 MS MITRA: So, Counsel, I wasn't myself personally involved in the development at that time with the task force, but my understanding, from looking at the records of the agency and in particular at the strategy itself, is there was a very clear focus in the *Convention on the Rights of Persons with Disabilities*, particularly focusing on the ability to work on an equal basis with others. That certainly comes through in the strategy document itself where it talks about that as being one of the principles.

15 MS EASTMAN: So it's one thing --- and Mr Mansfield is aware of this because we had this discussion a couple of weeks ago. It is one thing to refer to the Convention, but it's another thing to understand the particular scope and content of the rights in the Convention, and then a further step of taking those rights and implementing it into an Australian legal setting.

20 If you are not familiar with it and you don't know, please say so. But it is helping the Commissioners understand how you move from just referring to the Convention to actually using the Convention and the rights in developing the strategy. Is that something that you know about?

25 MS MITRA: I think it's probably best not to comment on it, simply because I wasn't there. Certainly a strong focus in the strategy is about the individual right to choose and to develop their own goals and their own choice about the kind of economic participation they want to be involved in. That comes across strongly in the strategy and in the actions we have taken to implement the strategy. So I think that certainly  
30 appears to very much complement the intention of the Convention, but I appreciate that might probably be the best way for me to respond to that question.

35 MS EASTMAN: To the extent the *CRPD* was relevant to this work, do you know whether the agency had any engagement with Mr Mansfield's department as the focal point on the *CRPD*?

MS MITRA: The task force was a joint task force between the two agencies and, therefore, I think there would have been strong engagement at that point in time.

40 MS EASTMAN: But it is not something you have direct knowledge of because you weren't there?

MS MITRA: That's right.

45 MS EASTMAN: I now want to turn to the strategy, the strategy which is the NDIS Participant Employment Strategy 2019-2022. You have provided it to the Royal Commission and if people following this hearing are interested in seeing it, it is on

the NDIS website as well.

5 It might be helpful if we bring up on the screen page 12 of the strategy, because I think it perhaps give us a helpful summary of the key features of the strategy. Can you see that, Ms Mitra?

MS MITRA: It would be good if you could zoom in a bit, although I do have the document as well.

10 MS EASTMAN: Let's start at the top of the page, "Our vision", "Our goal" and "Our plan". We have touched on "Our vision" but I want to look at "Our goal". This sets a target of 30 per cent of participants of working age to be in paid work by 30 June 2023. That's a target; is that right?

15 MS MITRA: That's correct.

MS EASTMAN: How was this target developed?

20 MS MITRA: As I understand it, at the time it was a stretched target, with a view that we would be able to achieve incremental steps to getting to that target. It was also recognising our experience, which has continued to develop, which is that the longer people are in the scheme and have supports to build their capacity, then the ability for them to engage in economic participation increases. So, recognising the longer the scheme and the supports from the scheme were available to people, their ability  
25 to achieve their goals in employment were more likely to occur.

MS EASTMAN: But that, sort of, is your vision about the expectation of the target. My question is how was that target developed. So what was the basis for the development of that target? How did you choose 30 per cent, not 35 or not 28?  
30

MS MITRA: Sorry, Counsel, all I can tell you is that was a decision made at the time coming out of the task force and the work that was done, and it was endorsed at that time, obviously, by the board of the ---

35 MS EASTMAN: But you don't know how the 30 per cent was arrived at? Because the starting point in June 2019, as we've mentioned earlier, was 24 per cent of NDIS participants of working age were in paid employment, so this is to reach 30 per cent. You've described that as a "stretch target", and we've heard that expression a few times during the course of the week. A stretch target is something that goes beyond  
40 what you would actually expect to achieve; is that right?

MS MITRA: Yes, I guess you could put it that way, I like ---

45 MS EASTMAN: What do you mean by a "stretch target"? Is it something different from a target or does it just sound better with the adjective "stretch" in front of it?

MS MITRA: When we set the target, and we do believe that it's

achievable --- I think there --- obviously the environment has changed slightly in the last little while, but it's certainly something we would like to achieve, we think we can achieve and we're working hard to achieve.

5 MS EASTMAN: I'll be a bit more specific. Were there particular employers who were involved in the preparation of the strategy who identified a target that employers felt that they could meet with respect to NDIS participants? Is that the basis of the target?

10 MS MITRA: I am not aware of that being the basis of the target.

MS EASTMAN: Was it that there was consultation with the disability representative organisations, and the advocates for people with disability said the target should be at 30 per cent? Was that the reason for the target?

15

MS MITRA: I think we did a lot of consultation at that time with both participants of the scheme and disability representative organisations and advocates, so certainly I'm sure their views would have been taken into account, but I can't tell you whether they were specifically advocating for that number.

20

MS EASTMAN: When you say their views were taken into account, what does that mean, that they --- did they have a decision-making role at all, or was it that the consultation was to seek their views and that then went into the mix, so to speak, of a range of views?

25

MS MITRA: That's right, and we've tendered as part of the evidence the consultation report that was done as part of the development of the strategy by the Nous Group, and that document outlines the kind of engagement that we went through at the time to develop --- as input into developing.

30

MS EASTMAN: So the Commissioners have a copy of the Phase 1 Consultation Roundtable Summary Report from 15 May 2019, and the appendices set out the roundtable design and Appendix B sets out the roundtable participation. When you're talking about participants, are you talking about the organisations identified as participating in the roundtables?

35

MS MITRA: A mix of those, that's right. So --- you'll see in Appendix B organisations who are represented and in attendance, a range of service providers to the NDIA and some disability representative organisations as well.

40

MS EASTMAN: Again, if you don't know, please tell me, but looking at the organisations who attended the roundtables, I can't see there any of the employers, other than service providers who would employ people in the context of ADEs, so there is no, for example, Accenture, Woolworths, Coles, Medibank, Telstra --- I can't see any of the sort of large corporate employers participating in the roundtables. So is it the case that the organisations who participated were not focused on open employment but had a focus more on the supported employment?

45

MS MITRA: I'm not able to answer that question because this was part of the input into the development of this strategy which occurred over the following year. So I can't tell you whether there were others engaged in different ways.

5

MS EASTMAN: If there was consultation in open employment, so large corporations or the smaller-medium corporations, would there be a document recording the consultation with such entities?

10 MS MITRA: I'm not aware of one.

MS EASTMAN: You're not aware of one. It's not something that you looked for when you were preparing for this hearing?

15 MS MITRA: No, I did not find another document in preparation for this. This is the primary consultations.

MS EASTMAN: Let's come back to page 12, and if we scroll down to the second part of the page, there is a strategy time frame outlining the steps over a three-year period. Are we right in understanding that there was a very deliberate and conscious decision to have a strategy with a very tight time frame?

20

MS MITRA: Yes, the strategy is for three years, so, yes, there was a time frame on it.

25

MS EASTMAN: Then, if we go down to the next part, there is five focus areas. So that is a summary of what follows in the strategy, which is a more, sort of, detailed overview of each of the five areas; is that right?

30 MS MITRA: That's correct.

MS EASTMAN: Are we right in understanding that the identification of the five focus areas came from the work of the task force and that broader consultation that was undertaken?

35

MS MITRA: That's right.

MS EASTMAN: Now, the task that your organisation has undertaken has been to review progress in relation to each of the focus areas; is that right?

40

MS MITRA: That's correct, yes.

MS EASTMAN: How have you gone about that task of ascertaining progress for each of the five focus areas?

45

MS MITRA: So we've given you, I think, as well in one of the attachments an update --- actually, it was in the statement --- an update on the activities that we've

achieved and the things that we've done. It's at the ---

MS EASTMAN: Is this attachment Annexure B to your statement?

5 MS MITRA: That's correct, yes.

MS EASTMAN: Annexure B sets out in a table form each of the action items that reflect each of the five areas, and the table sets out completion date of particular activities and what progress has been undertaken; is that right?

10

MS MITRA: That's correct.

MS EASTMAN: One of the areas I wanted to ask you about was area number 4, which is the confidence of employers to employ NDIS participants. I want to ask you about that, because one of the issues that the Royal Commission has heard from Public Hearing 9 last year, but also in the course of this hearing, is that one of the fears that employers hold is will they be able to accommodate a worker with a disability, or are they going to be able to work with the worker with a disability?

15

20 So it came up in some evidence that Comcare gave in relation to some research on something called the Employer Mobilisation Project as part of the Collaborative Partnership. Are you aware of that?

MS MITRA: I'm not specifically aware of that initiative, but we are a member of the Comcare Collaborative Partnership, so we have people who are attending those meetings and attending that.

25

MS EASTMAN: The research coming out of the Employer Mobilisation Project which the Royal Commission has heard about earlier this week identified that fear or uncertainty about employing people with disability. Is this research that you've used to assess focus area 4, and to take into consideration in measuring whether you're making any achievements in focus area 4?

30

MS MITRA: So I think --- I'm not sure about the timing of that from when we reviewed --- I'm not sure about the timing of that research and when that research came out, how recent ---

35

MS EASTMAN: That research came out in 2018 so before the work started for this strategy.

40

MS MITRA: Okay, good, thank you. Sorry, could you just ask the question again.

MS EASTMAN: Looking at focus area 4, which is the confidence of employers to employ NDIS participants, if NDIA is part of the Collaborative Partnership, step 1; secondly, we assume that as a member of the Partnership you're aware of the research that has been undertaken, step 2; step 3 is how has that research informed the way in which, for example, you might measure progress on area number 4? Let

45

me put it simply. How do you measure increasing confidence of employers to employ NDIS participants?

5 MS MITRA: We're not specifically measuring those at the moment. I think it is something that will continue to develop. This is a three-year strategy. The front end of the strategy has very much been about building capacity of the agency to support participants, so that's kind of this --- the first half of the work has been about supporting participants in terms of building the confidence for themselves to set economic participation and economic goals, and so therefore at this point those are  
10 the things that we are measuring much more concretely, for example ---

CHAIR: I'm sorry to interrupt, but --- Ms Mitra, you were frozen on the screen there for a while, I think you've now come back. I'm sorry I interrupted just as you came back.

15 Please go ahead, Ms Eastman.

MS MITRA: Thank you, did you miss much?

20 MS EASTMAN: I think you said the focus has been on building confidence in the participants.

MS MITRA: That's right, and so we've done a lot of work to measure how ---

25 MS EASTMAN: I think we're having the same audio issues again.

CHAIR: Both audio and visual, more visual. We might adjourn for a couple of minutes to see if this can be fixed. I'm sorry to interrupt, Ms Mitra and Mr Mansfield, but we'll adjourn for a couple of minutes to see if we can get this  
30 sorted out. Thank you.

**ADJOURNED** [12.22 PM]

35 **RESUMED** [12.27 PM]

CHAIR: Yes, Ms Eastman. We'll have to see how we go with our technical problems. At the moment we don't seem to have Ms Mitra on screen. Let's see if we can actually hear Ms Mitra.

OPERATOR: This is the operator from Law In Order. Ms Mitra should be with us in a few seconds' time.

45 CHAIR: Thank you.

Yes, thank you, Ms Mitra, we can see you and I hope we will be able to hear you a little more clearly. I'll ask Ms Eastman to resume the questioning to you.

5 MS EASTMAN: I think I may have referred to you as "Me-tra", and I apologise if I've mispronounced your surname.

MS MITRA: Yeah, that's all right, it's "Mi-tra", but that's fine.

10 MS EASTMAN: In the interests of preserving your connection, I might make these questions quite quick, if that's okay. I was looking at focus area 4 which is confidence of employers.

MS MITRA: Yes.

15 MS EASTMAN: I think before we had the technical problems, you were saying the focus has been on the first three areas of increasing confidence and developing the plans to support the participants; is that right?

20 MS MITRA: That's correct. The first half of the strategy has been very much weighted towards that, and we've done a lot of work on being able to capture the right information so that tells us that participants' confidence is increasing, and more people are putting economic goals into their plans, and then we can follow that up with supports and their plans.

25 From our point of view, the ability and the levers that we have under the Act to work directly with employers to build their confidence are largely, I think, around ensuring that employers understand the supports NDIS participants may have to bring with them into the workplace, and so that kind of program logic, if you like, will be and continues to be something we will need to continue to work on, about explaining  
30 when a participant is in employment, the kind of extra support beyond what might normally be expected is available to them.

MS EASTMAN: On that front, in terms of supports, what percentage of the NDIS  
35 participants are receiving funding for customised supports to participate in employment?

MS MITRA: So we fund several different types of supports. The core supports are supports in employment, which at the moment is largely aligned to ADEs and I really don't want to talk about those yet, but there's about, I think it's something like 16,000  
40 participants who are in ADEs who are receiving supports in employment.

MS EASTMAN: But my question is about the percentage of participants receiving funding for customised employment supports. You might have that figure overall or you might be able to break that figure down between open employment and  
45 supported employment. Have you got that data?

MS MITRA: I don't have that with me. It's something that we can make available,

because the second type of employment is capacity building supports, and they are very much --- there's a whole range of things we could do. It could be things like extra support for transport, it could be support to find a different job if they are already in one job, it might be vocational assessment and training and so on. So  
5 there are a range of activities and types of supports that we can give somebody. Some of them look like direct employment supports to help them find or do something different or build their capability in a different way, and some of them are more generally about their participation and their activities of daily living.

10 MS EASTMAN: Coming back to focus area 4, when we look at the six areas, there are two that are ongoing. The majority --- there are three yet to be commenced, but one has been completed, and it's described as "run the next ILC economic communication participation program round". That was completed in February this year. What is that?

15 MS MITRA: So that's the ILC grant rounds which has now transferred the accountability --- or the delivering of those has been transferred to DSS, and so Mr Mansfield may be able to provide further information on the detail of that, but that is effectively a round of grants to employers focused particularly on economic  
20 opportunities.

MS EASTMAN: Do you know, in terms of that work being completed, the identity of the employers who have received grants and, if so, can you tell us how many by percentage or otherwise are employers in open employment?  
25

MS MITRA: That is one I'll refer to Mr Mansfield again, because the responsibility for that whole piece of work, those grants, was moved from the NDIA to DSS.

MS EASTMAN: I can hear the sound is getting a little bouncy again, so the final  
30 questions I want to ask you about are concerning the profile of participants, and Annexure A to your statement sets out some information about the profile of participants by reference to gender, age group, indigenous status and culturally and linguistically diverse status.

35 This is data collected by the NDIA about the profile of participants; is that correct?

MS MITRA: That's correct.

MS EASTMAN: Without taking you through the table in detail, can I assume you're  
40 familiar with the contents of the table?

MS MITRA: Yes, you can.

MS EASTMAN: Are we right in understanding that in terms of men and women  
45 participants, that there are far fewer women participants in this strategy compared to the men; would you agree with that?

MS MITRA: There are more males than females. That would also represent --- in the scheme itself there are more males than females.

5 MS EASTMAN: Has there been any specific aspect of the strategy that has focused on the women participants and particular issues concerning women entering the labour force in paid employment?

10 MS MITRA: Counsel, not to my knowledge at the moment, but as we progress with the strategy, those are the kinds of things we will use this data for, to target particular areas, so there are some focus areas that are starting to arise as we examine the data.

15 MS EASTMAN: The other area I wanted to ask you about was age. Are we right in understanding that there is a fairly strong focus on younger NDIS participants through this strategy in having younger participants into paid work; is that right?

20 MS MITRA: That's correct in the sense that we also have a specific support that we provide to young people if they are looking for work, School Leaver Employment Support program. It's not really a program, it's a support, and that and the fact that we have many younger people now coming into the scheme and so working with them to support their desire for an economic participation is a clear target for us that we're doing a lot of work on at the moment, yes.

25 MS EASTMAN: At the previous hearing the Royal Commission heard about one person whose father described his experience in trying to get employment as "living in a cul-de-sac of neglect", and for many years he sought employment and it had been unsuccessful. There seemed to be additional barriers as people with disability got older and may not have had workplace opportunities. What, if anything, in this strategy addresses the impact of older NDIS participants who may have been in long-term unemployment? What does the strategy do to assist that cohort?

30 MS MITRA: I think in some ways it's similar. We are --- once somebody chooses to put an economic goal into their plan, the opportunity for them to receive supports is quite broad. Those supports are individualised to those needs. It may be about vocational counselling and working through what the pathway is for them to achieve the things they are looking for. Again depending on how long the person has been in the scheme there is an opportunity to invest in their supports for capacity build, building their confidence and all the kinds of things they would need to do in order to begin to actively engage in looking for work.

40 MS EASTMAN: Has any part of this strategy sought to bring in the Australian Public Service Commissioner and his office to either seek advice or alternatively to work with his office in looking at employment opportunities?

45 MS MITRA: I'm not directly aware of that, Counsel. It is possible that some of my staff have been engaging directly with the Commission, but I'm not aware of that myself.

MS EASTMAN: Has this strategy been used by the NDIA in its own recruitment practices?

5 MS MITRA: Part of the strategy is very much about being a leader in this space and being able to demonstrate the way we operate, so in that context I think it is very much part of the way we think about and the way we operate in the agency.

10 MS EASTMAN: Just finally, how is this strategy going to be evaluated and if the Royal Commission wanted to know in a year's time what are the likely outcomes of this strategy, what would the Royal Commission be asking for?

15 MS MITRA: So we have --- a couple of things. We are doing a lot more work on the data available, the outcomes data, and have recently published more information about the kinds of employment outcomes we're seeing and the different behaviours and the different kinds of options and outcomes we're achieving. So I think that there will continue to be more data made available, because we have a whole range of data available to us about different cohorts and how they are faring in the employment market, and things that we can see, so I think that would be available.

20 We also have our own research and evaluation branch which is starting to do work specifically on different cohorts. We recently released early information we're looking at in terms of working with participants with autism, intellectual disability and psychosocial disability. So I think over the next 18 months of the strategy I think we'll continue to evaluate and look at the data that we're capturing and  
25 consider that in the broader research context.

MS EASTMAN: The sound is not great, so if the Commissioners have any questions for Ms Mitra then --

30 CHAIR: You'll then come to Mr Mansfield.

MS EASTMAN: Then we'll allow Ms Mitra to be excused, and I'll come to Mr Mansfield.

35 CHAIR: Very well.

Commissioner Galbally, do you have any questions of Ms Mitra?

40 COMMISSIONER GALBALLY: No, thank you.

CHAIR: Commissioner Ryan?

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

COMMISSIONER RYAN: Just one small detail.

You said the responsibility for the ILC economic participation program round rests with DSS. Did the NDIS have anything to do with the allocation of those funds?

5 MS MITRA: Because the responsibility for running those rounds moved across to DSS, I'm not sure if any of our staff were involved --- in fact, I think they possibly were. It would be a good follow-up for Mr Mansfield as to whether any of our staff were involved in the evaluation process. I think it's quite possible they would have been.

10

COMMISSIONER RYAN: I'm just wanting to make sure we ask the right questions to the right person. Essentially, the hierarchical responsibility for the ultimate allocation of those grants rests with DSS and not the NDIA.

15 MS MITRA: It used to sit with the NDIA and it's now moved across to DSS. That's where the process of allocating the grants and the funding for those grants now sits over at DSS.

20 CHAIR: The question I'm about to ask may be answered in your statement and I apologise if it is. How many NDIS participants are employed by the NDIA?

MS MITRA: By the agency itself or participants who are employed out in employment?

25 CHAIR: No, employed by the agency itself.

MS MITRA: I don't actually have that directly with me, I know the percentage I think is around 17 to 18 per cent. Possibly it was provided ---

30 CHAIR: Not people with disability. Participants in the NDIS.

MS MITRA: How many participants of the scheme who are employed by the agency?

35 CHAIR: Yes.

MS MITRA: Sorry. I don't have that.

40 CHAIR: You don't know. All right. Thank you.

MS MITRA: I don't have that information available to me, in front of me right now.

45 COMMISSIONER GALBALLY: Excuse me, Chair, could I ask a question, I just found my mic?

CHAIR: By all means.

5 COMMISSIONER GALBALLY: I wanted to ask about the service providers who came to the roundtable, and whether the NDIA requires of service providers that they employ people with disabilities in open employment in their own structures, whether there is any procurement requirement of those service providers to provide jobs for open employment as part of their --- including at all levels, including senior levels.

10 MS MITRA: Yes, we do have for our partners in the community we do have targets in their contracts for procurement and we are continuing to monitor those to see how they go against those, but it certainly a part of our procurement process is to request both information about how many people with disability are employed and to monitor that so, yes, that is a practice that we have.

15 COMMISSIONER GALBALLY: I would appreciate having a look at that data, if that could be on notice?

20 CHAIR: Yes. Thank you. I think there will be a number of matters taken on notice that can be incorporated in arrangements between the legal representatives. Thank you very much, Ms Mitra, for giving evidence and we'll allow you to go, and then Mr Mansfield, thank you for waiting so patiently. I will now ask Ms Eastman to put some questions to you.

**MS MITRA WITHDREW**

25 MS EASTMAN: Mr Mansfield, you are the Acting Deputy Secretary, Disability and Carers, in the Department of Social Services?

30 MR MANSFIELD: That's correct.

MS EASTMAN: I think you told us a couple of weeks ago that's a role that you've held since August this year.

35 MR MANSFIELD: Yes.

MS EASTMAN: You prepared a statement for the Royal Commission dated 26 October?

40 MR MANSFIELD: Yes.

MS EASTMAN: Are there any corrections to that statement?

45 MR MANSFIELD: Ms Eastman, if I may, paragraph 60 of my witness statement for this hearing details 53 projects funded under the information linkages and capacity building ILC program with a focus on employment of people with disability. There are two further grants which would bring the total number from 53 to 55 and I can arrange for information about those two grants to be provided to the Royal

Commission.

5 MS EASTMAN: Perhaps, conveniently, that paragraph and that part of your statement deal with the questions that we've just addressed with Ms Mitra in relation to DSS assuming this responsibility in relation to grants.

MR MANSFIELD: That's right.

10 MS EASTMAN: That might be a convenient way of saying you've addressed that in your statement. Are there any other corrections or any other additions?

MR MANSFIELD: No other corrections or additions, thanks, Ms Eastman.

15 MS EASTMAN: The content of the statement is true and correct?

MR MANSFIELD: Yes.

20 MS EASTMAN: Now, Ms Catherine Rule, who was the former Deputy Secretary, prepared some material including a statement for the Royal Commission on 14 July, and do we understand it that you also adopt and rely on that statement as part of your evidence?

25 MR MANSFIELD: My statement covers similar areas, or the same broad areas as Ms Rule's statement, and I just familiarised myself with the information ahead of providing the witness statement that I've given.

MS EASTMAN: Are you comfortable that any questions I ask refer to your statement rather than to Ms Rule's statement?

30 MR MANSFIELD: Yes.

MS EASTMAN: But if there's anything in Ms Rule's statement that you want to draw to the Royal Commission's attention, can you let us know?

35 MR MANSFIELD: Yes, yes.

MS EASTMAN: I hope that's a little easier than trying to jump between multiple documents.

40 MR MANSFIELD: Yes. Thank you.

45 MS EASTMAN: As our final witness for this hearing, we thought it might be helpful to step back and to try to understand an overarching strategy from the Australian Government on increasing the opportunities and the employment for people with disability in Australia. While we're focused on a number of quite specific areas, we thought stepping back and having a more global view of the strategy would be helpful. The starting point in that respect is the submission

provided to the Royal Commission on 19 March, which was a submission in response to Counsel Assisting's submissions in Public Hearing 9.

5 At the time, we raised some concern that there was a lot of information and evidence, including in this submission, that would need to be dealt with at a later hearing, which is now. So can I ask you, have you had a chance to read the 19 March submission?

10 MR MANSFIELD: Yes, I have. I have.

MS EASTMAN: Were you involved in any part of the drafting or providing instructions for that submission?

15 MR MANSFIELD: No, not to my knowledge. I don't believe I was involved in any way in that particular submission.

MS EASTMAN: Are you authorised to talk about any aspect of the submission or to make any comment on the submission?

20 MR MANSFIELD: I'm happy for you to put questions to me and if I'm able to assist, I will.

25 MS EASTMAN: Well, let's see how we go, and if it's not something you can answer, please let me know. So at Public Hearing 9 we identified a number of barriers, and we divided them into four broad areas --- attitudinal, physical, organisational and structural barriers. The submission provided by the Australian Government takes each of those barriers and provides information about whether it is a matter for the Commonwealth, or whether is it a matter for states or territories or employers themselves and then the Commonwealth provides some examples of  
30 where the Commonwealth has responded.

So am I right in understanding that's the approach taken in the submission?

35 MR MANSFIELD: That's my understanding.

MS EASTMAN: With respect to attitudinal barriers, the submission suggests that attitudinal barriers are largely matters for individual employers, and the Australian Government is currently developing a National Disability Employment Strategy to outline priority areas to increase employment outcomes for people with disability  
40 which will address some of these issues. It is said that one of the key priority areas will be changing community attitudes. So that's paragraph 9 of the submission.

45 My question on this response is: why should attitudinal barriers be viewed as largely matters for individual employers rather than a broader interest of the community?

MR MANSFIELD: So I think that attitudinal barriers that relate to the particular work setting of an individual employer, an employer is responsible for setting the

culture within their own organisation, and so to that extent barriers to employment of people with disability that relate to the culture of the organisation are matters for employers.

5 In terms of the broader community, the National Disability Strategy recognises that the entire community, including all governments, contribute to the overall vision that people with disability can engage in all aspects of Australian society on an equal basis.

10 MS EASTMAN: I'm not sure I understand that answer. Are you saying that the question of attitudes in the context of employment rests primarily with employers themselves to address?

15 MR MANSFIELD: I'm saying that there is a role for employers to examine their own culture and systems and strategies for providing an accessible and inclusive workplace for people with disability. As it is, their obligation to set the culture for the environment for all people who are in their employ or who they may seek to employ, the Australian Government and all governments have a role to play in helping to shape overall community attitudes in relation to people with disability, and  
20 certainly the new Disability Employment Strategy does have a proposed priority area, which is referred to in my statement around lifting employer engagement capability and demand, providing employers with the tools and abilities to competently hire, support and develop more people with disability.

25 MS EASTMAN: There is much of this submission that seems to suggest these are --- these barriers are issues for the employers. I want to understand is it the Commonwealth's response that the starting point is the employers and the Commonwealth sort of sits behind in some way? Let me give you another example.

30 On the question of physical and environmental barriers, paragraph 17 says:

The Australian Government acknowledges the importance of accessibility to public buildings and workplaces for people with disability. While access to a particular employer's workplace is primarily a matter for those individual employers, the  
35 Australian Government notes the Disability Access to Premises Standards ....

And makes a reference to the requirements of the standards. That seems like another example where the government is saying this is a matter for individual employers. They've got to comply with the standards.

40 There are numerous examples, so if you're not familiar with this, tell me. I get a very strong sense from working through this submission that the approach taken by the Commonwealth is to push back and to say, "These are matters for the employers." Is that the intent of this submission?

45 MR MANSFIELD: I wouldn't agree that that is the intent of the submission. I think that the submission articulates those things that are within the direct purview of an

individual employer to control or influence and the Australian Government and, indeed, in some of these spaces that you're referring to, state and territory governments, create the regulatory environment and also influence through their policies and strategies and educate employers through their policies and strategies on how they can provide more accessible and inclusive workplaces.

MS EASTMAN: We asked you question 2, to provide an overview of the Australian Government's roles, responsibilities and powers in relation to the employment of people with disability, and you've addressed this at paragraph 10 and following on page 2 of your statement.

MR MANSFIELD: Yes.

MS EASTMAN: So it would assist the Royal Commission to understand what the Australian Government sees as its responsibilities separate from what seems to be the tenor of the submissions that it's the employer's responsibility. Can I ask you about what you've said in response to question 2?

MR MANSFIELD: Yes.

MS EASTMAN: So what are the Australian Government's roles, responsibilities and powers in relation to the employment of people with disability?

MR MANSFIELD: So as set out in my statement, there are a range of services that the Commonwealth Government, the Australian Government, deliver to help all Australians including people with disability to find suitable employment in the open labour market, and there are three key agencies involved in doing that, including Department of Education, Skills and Employment, National Indigenous Australians Agency and the Department of Social Services. And in relation to the Department of Social Services, in my statement I set out the specific responsibilities of the department, including in relation to the Disability Strategy 2010 to 2020 and the development of the new strategy, the development of the new Disability Employment Strategy, JobAccess Gateway services, the Continuity of Support Program, Disability Employment Services and the Information Linkages and Capacity Building program that was referred to earlier.

MS EASTMAN: Are we right in understanding that when we're looking at roles, responsibilities and powers, that the focus is on delivery of services and the promulgation of a range of different policies and strategies; is that right?

MR MANSFIELD: That's right in relation to the question asked, I think that's a fair summation.

MS EASTMAN: Would you agree with me that that is a form of soft regulation as opposed to a harder form of regulation that might arise by imposing mandatory requirements through law or otherwise?

MR MANSFIELD: I'd agree that it is --- well, I'd agree that it is not regulating a specific requirement on employers to do particular things, although I note that the Disability Discrimination Acts do require people to do particular things.

5 MS EASTMAN: A Disability Discrimination Act requires an employer not to discriminate against a prospective employee or an actual employee, but it's not a law that requires anybody to employ a person with disability.

MR MANSFIELD: No.

10

MS EASTMAN: It's only if you're going to do it, don't do it in a discriminatory way. So that's not a law that requires a person with disability to be employed; do you agree with that?

15 MR MANSFIELD: I agree with that.

MS EASTMAN: We asked you in question 3 about the percentage of people with disability in the labour force being stubbornly at numbers of around 53 to 54 per cent. In fact, in 2009, the numbers of people - or the percentage of people with disability in the labour force in Australia, these are people with disability of working age - was 58.4 per cent and then we've seen a decrease, albeit by a small percentage point through to 2018. We asked you to give us an overview of the reasons why there has not been an increase but, rather, a decrease in the percentage of people with disability in the labour force.

25

Now, looking at your answer there, you've referred us to a number of reports, the Willing to Work report, the Building Employer Demand Report and some reports from the Australian Institute of Health and Welfare, but, Mr Mansfield, can you help me, where have you actually answered the question that we asked and could you tell us in the Australian Government's view why has the percentage decreased rather than increased?

30

MR MANSFIELD: So I believe that I have outlined in my statement reasons why --- some reasons why there may not have been --- or why there has not been an increase in the percentage of people with disability in the labour force and indicated that there are a variety of complex factors that go to why people with disability are not in employment, including community attitudes, physical and environmental barriers, organisational barriers and structural barriers, and then ---

35

40 MS EASTMAN: Pausing there, is that intended to be a reference to the 26 barriers that the Royal Commission identified following Public Hearing 9, or something different?

45

MR MANSFIELD: It is aligned to those matters.

MS EASTMAN: Has the Commonwealth itself done any research in the Department of Social Services or those departments responsible for employment to undertake any

analysis from the Commonwealth's perspective as to why the numbers have remained the same or decreased, albeit by a very small percentage point?

5 MR MANSFIELD: So in my statement at 64(b), it refers to the building employer demand literature review and research report. That was commissioned by the department to try and understand and focus on the key drivers of employment barriers and the barriers that may deter employers from employing people with disability.

10 MS EASTMAN: Yes, we've got that report. You've provided it to us. So is that the government's research?

15 MR MANSFIELD: The government commissioned that research, yes, the Department of Social Services.

MS EASTMAN: Are you familiar with that report? You've got that in your material that you provided to us. Is that a report that you've looked at?

20 MR MANSFIELD: Yes, I have, at a high level.

MS EASTMAN: Can you tell us what findings of that report, if it's anything in addition to what you've set out on page 13, actually identifies as the reason for the numbers of people with disability participating in the labour force not increasing? I'm not sure that I see that in the report, so I'd be grateful if you could draw my  
25 attention to what are the reasons.

MR MANSFIELD: Well, there's nothing to add beyond what I've included at paragraph (b)(ii)(A) to (D). However, in terms of the participation rates or employment outcomes of people with disability, one of the features as to whether  
30 there are employment outcomes or not goes to employers and the capabilities and confidence of employers to hire people with disability and to create inclusive and accessible workplaces.

35 So to the extent that this report seeks to understand that aspect of the issue better, it does go to understanding why those employment rates have not increased.

MS EASTMAN: One of the findings of that report, was it not, about what motivates open employers to hire people with disability was described as the "moral imperative", and that there is a significance of morality and emotion motivating  
40 employers to employ people with disability. That's squarely raising the issue around attitudes, is it not?

MR MANSFIELD: It does go to perceptions of employers as well as the benefits for employers in employing people with disability.

45 MS EASTMAN: Has that research factored into the development of the National Disability Strategy and then specifically the National Disability Employment

Strategy?

5 MR MANSFIELD: Yes. So it was one of the reports that was considered during the development of the National Disability Employment Strategy and during the public  
consultation processes which were quite extensive in relation to the next disability  
strategy, which is due to be launched at the end of next week, certainly employment  
issues arose as a significant area of focus for people with disability and has been  
included as one of the areas for targeted action under the new strategy and, of course,  
10 is also part of the reason that the National Disability Employment Strategy, which is  
also expected to be launched next week, has been developed.

MS EASTMAN: In terms of the matters taken into account, when you've referred to  
the report, you've included in your evidence --- this is behind Tab 24 --- a  
15 two-page list of research. Have you got that?

MR MANSFIELD: Yes, I do.

MS EASTMAN: That sets out a range of documents which might be broadly  
described as information sheets at one end of the scale to fairly detailed job  
20 evaluation material, for example, the Colmar Brunton Report; are you aware of that  
report?

MR MANSFIELD: I am aware, but I'm not personally familiar with the contents of  
25 that report.

MS EASTMAN: Do you know how this list was compiled? That might be unfair to  
you, Mr Mansfield, because I know you've only been in this role for a short time. Do  
you know how this list of the material that was taken into account was compiled?

30 MR MANSFIELD: I wasn't directly involved in the compiling of the list. I am  
aware that there is a team within the Department of Social Services that was charged  
with developing the Disability Employment Strategy, and as part of the process of  
doing that, there were a range of consultations, but there was also an effort to  
examine some of the key known reports that related to disability employment to gain  
35 a greater appreciation of some of the issues that stakeholders had raised and this  
research list reflects that activity and, of course, there were a range of internal  
discussions as part of the process of developing the Disability Employment Strategy  
around what reports or information sources may be useful to better understand the  
issues.

40 MS EASTMAN: There is a reference to the *International Covenant on Economic,  
Social and Cultural Rights* and a reference to the *Convention on the Rights of  
Persons With Disabilities*. Do you know how both those conventions were used in  
the research or the background to the National Disability Employment Strategy?  
45

MR MANSFIELD: It's not within my direct knowledge, but my understanding  
would be that it would have been the team seeking to familiarise themselves in the

context of developing the strategy those parts of those conventions that go to employment and consideration of the links between those aspects that relate to employment and the approach taken to the strategy development and the content of the strategy.

5

MS EASTMAN: Is this something that would fit into the matters that we addressed in a previous hearing around the role of DSS as the Focal Point? Is it related to that work, or is it different?

10 MR MANSFIELD: It's related to that work to the extent that the same part of the department that's responsible as part of the Focal Point is in the same broad stream, but certainly the disability and carers stream there's an area that is a coordination point in relation to, for example, providing input to the Attorney-General's Department in preparation for hearings of the UN Committee, but there's quite  
15 extensive activities within that part of the Department that go to trying to draw out the links between the *Convention on the Rights of Persons with Disability* and our activities within the department.

MS EASTMAN: Can I put this to you? It's somewhat surprising that there's no  
20 reference to the concluding observations made by the CRPD Committee or the committee charged with monitoring *the International Covenant on Economic, Social and Cultural Rights* as to the concerns that the committee might express in concluding observations about Australia's compliance with these conventions. There's no reference to that material in this list. Can we take it no one has turned  
25 their mind to those matters?

MR MANSFIELD: Sorry, Ms Eastman, for interrupting, Ms Eastman. No, that's not an accurate reflection. I'm aware that the concluding observation in relation to --- the concluding observations were taken into account in terms of the development of the  
30 disability strategy which is the overarching strategy, and they have certainly been taken into account in the development of that strategy.

MS EASTMAN: Commissioner, I'm just mindful of the time. We've run over a little bit today. It's almost quarter past 1. I have probably another half an hour or so  
35 to go with Mr Mansfield. Subject to the witness's convenience, I don't know whether it might be appropriate to have a break.

CHAIR: I think in that case.

40 MS EASTMAN: Or would you like me to press on? I see people are a little weary.

CHAIR: We had better have the lunch break now. I don't think it is best for people who are working to continue. We have had a pretty long session this morning as it is.  
45

I'm sorry, Mr Mansfield, that will mean you need to come back. It is now nearly 1.15pm. I suggest we resume at 2.00pm. Ms Eastman says she has about another

half hour of questioning for you and that will conclude, I think, the evidence at the hearing, subject to the tender of any documents.

5 MS EASTMAN: Commissioners, so you are aware of what remains, I want to turn to the particular strategies identified in Mr Mansfield's statement with respect to the National Disability Employment Strategy and then some questions, albeit brief, on JobAccess, the Employment Assistance Fund and a little about the government's response to the Willing to Work Report. I hope I will be able to get through those topics in half an hour.

10 CHAIR: We share your hope.

15 **ADJOURNED** [1.13 PM]

**RESUMED** [2.00 PM]

20 CHAIR: Mr Mansfield, can you hear us?

MR MANSFIELD: Yes, I can, thank you, Chair. Can you hear me?

25 CHAIR: Yes, I can. I will ask Ms Eastman to resume her questioning.

MS EASTMAN: Mr Mansfield, at paragraph 15 of the statement you set out a range of strategies and policies. I want to examine a few of those policies with you now. Can we start with the National Disability Strategy 2010-2020. Are we right in understanding that a new policy will be released next week?

30 MR MANSFIELD: That's right, Ms Eastman.

MS EASTMAN: Will that be a new 10-year policy?

35 MR MANSFIELD: Yes, it will.

MS EASTMAN: Are you able to tell us at this stage how that policy will measure progress? For example, the publication of progress reports, will that be a part of the new policy?

40 MR MANSFIELD: What I can tell you is that during the consultation process there was ---

45 MS EASTMAN: Sorry to interrupt you, Mr Mansfield. I am sure you want to minimise the amount of time you appear in the Royal Commission, so could I ask you to direct your answer to the question I asked. I haven't asked you about consultation.

MR MANSFIELD: Yes. What I was going to say is there was a particular discussion paper that set out the features that all governments were intending to put in place as part of the new disability strategy. Those features included, for example, the targeted action plan, an outcomes framework with clear indicators around system performance and annual reporting on various indicators and population outcome, and an intention to have a data improvement plan to collect more data around people with disability over time. So ---

10 MS EASTMAN: You have not mentioned in that list a progress report and that's what I was asking about.

MR MANSFIELD: Annual reporting will be included as part of the new disability strategy.

15 MS EASTMAN: Thank you. Notwithstanding that the new strategy --- Mr Hodge is on the screen. I'm not sure, Mr Hodge, if you have something you wish to say?

MR HODGE: I'm sure you will ask about this, but I think one of the issues you might have, in terms of the questions you are now going to ask, will be what Mr Mansfield is able to talk about that is public information and what it is that's information that is subject to Cabinet-in-Confidence.

MS EASTMAN: I'm sure Mr Mansfield will be able to answer the question and I have no interest in asking him any further questions about a policy that we do not know anything about and probably will not know about until next week. Does that give you a degree of comfort, Mr Hodge?

MR HODGE: Yes. I was just trying to help you, Ms Eastman.

30 MS EASTMAN: Thank you, Mr Hodge.

Mr Mansfield, can I go back to the previous policy. The previous strategy notionally ended in 2020 but it has had an ongoing life, has it not, pending the new strategy being released?

MR MANSFIELD: That's correct.

MS EASTMAN: One of the areas of focus in the previous strategy was on economic participation, and it was described as economic security in the old strategy; is that right?

MR MANSFIELD: Yes.

45 MS EASTMAN: The previous strategy identified, if you have a copy, at page 46 --- Commissioners, you will find this behind tab 28. It identified areas for future action. This takes us back to 2010; is that right?

MR MANSFIELD: Can I check the page number you referenced?

5 MS EASTMAN: Page 46. If you are using the Royal Commission coding, it is CTD.5000.002.2982 in the top right-hand corner.

MR MANSFIELD: Thank you, Ms Eastman.

10 MS EASTMAN: In 2010, there were eight areas for future action in relation to economic security; do you agree?

MR MANSFIELD: Yes.

15 MS EASTMAN: The first four concern employment; is that right?

MR MANSFIELD: Yes.

20 MS EASTMAN: The first item was to improve employer awareness of the benefits of employing people with disability, and then that is followed by such matters as reducing barriers and disincentives; is that right?

MR MANSFIELD: Yes.

25 MS EASTMAN: In terms of the way in which this strategy operated, there were implementation plans; is that right?

MR MANSFIELD: That's correct.

30 MS EASTMAN: So there was a more detailed planning in relation to these identified areas?

MR MANSFIELD: Yes.

35 MS EASTMAN: I think you have provided to us a number of the implementation plans as part of your evidence; is that right?

MR MANSFIELD: That's right.

40 MS EASTMAN: The other aspect of this strategy was the publication of progress reports, and it is right, isn't it, that the most recent progress report is 2016?

MR MANSFIELD: Yes.

45 MS EASTMAN: In your statement you have said at paragraph 96 that monitoring and reporting progress is vital to ensure improving the life of people with disability. I am paraphrasing what you have said in paragraph 96 but, essentially, you recognise that monitoring and reporting progress was an important tool; is that right?

MR MANSFIELD: Yes, I did.

5 MS EASTMAN: Can you tell the Royal Commission, with respect to the National Disability Strategy covering the period 2010 to 2020, why there are no reports following 2016?

10 MR MANSFIELD: So in relation to the reporting periods, a decision was taken in 2019 to combine those two reports and to provide a final report covering those periods after the conclusion of the strategy. There are a number of factors that I understand went to that decision-making process, although I wasn't here at that time. One of those factors went to the timing of data availability, so the (indistinct), which is one of the key data sources for a number of matters related to disability. It occurred in 2018, data was available in 2019 and then there was obviously, following 15 2019, in early 2020 the pandemic occurred.

20 But in terms of the intention, the intention is to still provide a report in relation to those periods, but there has been a focus over that time to develop the new strategy, including to address the feedback in relation to those reports from the original strategy, one of which was that there was a view that there was reporting on activity, but not sufficient reporting that went to outcome. That's why the new strategy seeks to have an outcomes framework with ambitious measures or indicators as part of that framework. That was subject to extensive consultation ---

25 MS EASTMAN: Can I bring you back to my question.

MR MANSFIELD: Yes.

30 MS EASTMAN: Which was simply why there had been no reports in 2016. Do I take from your answer ---

CHAIR: You mean since.

35 MS EASTMAN: Since 2016. Do I take from your answer that it is a combination of data, COVID and a decision made somewhere in government not to produce any reports since 2016; is that right?

40 MR MANSFIELD: Yes. So the 2016 report was published, to my understanding, in 2019. Then a decision was taken for reasons relating to data, the sequencing of actions under the implementation plans, which often crossed the reporting periods leading to duplication, the focus in relation to the development of the new disability strategy, to ensure that was going to achieve the goals it set out to achieve, as well as COVID. To my understanding, those are the key reasons for the decision to not report on those periods until after the existing strategy is completed.

45 MS EASTMAN: Will there be a report?

MR MANSFIELD: That's the intention, as per my statement, that there will be a final report.

5 MS EASTMAN: Will that report be publicly available before the new strategy commences?

MR MANSFIELD: Not before the new strategy commences, which is commencing next week. It will be after that period.

10 MS EASTMAN: Has the report been prepared yet?

MR MANSFIELD: It has not been concluded, the preparation has not been concluded, and it's intended that it would be prepared during the course of --- finalisation of the preparation would occur during the course of next year.

15

MS EASTMAN: In the absence of any reports on progress, how can you be confident that the new disability strategy --- we don't know what's in it --- will be a strategy that the community can have confidence in if it does not know how the government has sought to evaluate the previous strategy through, for example, the publication of progress reports?

20

MR MANSFIELD: So one of the --- I mentioned that one of the limitations on the existing strategy, in terms of the reporting that was used, is it was reporting on activities and not always reporting on outcomes. The reason I think people with disability can have confidence in the new strategy is it has been developed very, very closely with people with disability.

25

They expressed through two very detailed consultation processes what they expect to see in the strategy, including in relation to stronger reporting, stronger accountability of all governments, and targeted action plans which include the five areas of employment, safety, early childhood, community attitudes and emergency management. They want to see an advisory council that would hold governments to account. They want to see clear information about the roles and responsibilities of each level of government as part of the process.

30  
35

All those features have been built into the design of the new strategy and that is why I am confident it will be well received and will focus in the areas that people with disability care about.

40 MS EASTMAN: Would you accept this proposition: reporting on activity and reporting on outcomes are not mutually exclusive, and there is still a value in reporting on what activities have been undertaken?

MR MANSFIELD: I agree they are not mutually exclusive and I agree there is value in reporting on those activities, and I have indicated that will occur during the course of next year; it is the intention.

45

MS EASTMAN: Can I move to the next strategy, which is a National Disability Employment Strategy. You touched on this in paragraph 24 of your statement and then picked it up in more detail in paragraph 150.

5 MR MANSFIELD: Yes.

MS EASTMAN: Are we right in understanding that the Department of Social Services is developing a National Disability Employment Strategy?

10 MR MANSFIELD: Yes, that's right.

MS EASTMAN: This is different to the National Disability Strategy that will be released next week?

15 MR MANSFIELD: That's right. It's described as an associated plan. So the National Disability Strategy is the highest level. It will actually be called the Australian Disability Strategy 2021-2031 and it's the national strategy that has been agreed by all governments at the highest level. It will guide overall action and effort across all governments in relation to disability. It will have a vision that is consistent  
20 with the vision within the current strategy.

The National Disability Employment Strategy is an associated plan. The best way I would describe it is it seeks to put more granular effort around employment, because of how important it is to people with disability. It, too, will be a 10-year  
25 strategy and it will have --- proposed priority areas within that strategy go to lifting employer engagement, building employment skills and confidence of young people, improving service systems and changing community attitudes.

MS EASTMAN: You have described in your statement the process for drafting the  
30 National Disability Employment Strategy.

MR MANSFIELD: Yes.

MS EASTMAN: And some of the matters touching on the consultation and design.  
35

MR MANSFIELD: Yes.

MS EASTMAN: Can I ask you this: has the National Disability Employment  
40 Strategy been finalised?

MR MANSFIELD: Yes, it has.

MS EASTMAN: When will it be released?

45 MR MANSFIELD: It's intended that it will be released, on my understanding, on the same day as the Australian Disability Strategy will be released, which is 3 December.

MS EASTMAN: This strategy will be released at the same time as the National Disability Strategy next Friday; is that right?

MR MANSFIELD: That's the intention.

5

MS EASTMAN: Are you able to tell us anything more about the content of the National Disability Employment Strategy beyond the contents of your statement?

MR MANSFIELD: I can talk to the consultation process and can talk about the next steps following the strategy at a high level, but not more in relation to content of the strategy, other than to indicate that it is consistent with what is already in my statement.

MS EASTMAN: On consultation, can you tell the Royal Commissioners whether there has been consultation with the Australian Public Service Commissioner and any of the State and Territory Public Sector Commissioners?

MR MANSFIELD: In relation to the development of this strategy, to my knowledge, no, not specifically ---

20

MS EASTMAN: Right, "no" to that. Has there been any direct consultation with the Australian Chamber of Commerce and Industry and/or the Business Council of Australia?

MR MANSFIELD: I will have to provide information to you, Ms Eastman. I'm aware there has been discussion with, for example, ACCI as part of this process, and there has certainly been engagement with some industry groups and large employers. I just don't have in my head exactly who, I'm afraid.

MS EASTMAN: Would any of those bodies who you think but not in your head have seen the draft strategy, the strategy in a draft form?

MR MANSFIELD: There has been a process to seek views from large employers whether they would be prepared to --- from a number of large employers whether they would be prepared to endorse the strategy. My understanding is that some employers came back indicating they would be prepared to endorse the strategy --- this is quite recently, is my understanding --- and that arrangements were being made to provide an embargoed copy of the strategy to them, although I'm not entirely certain whether that has occurred or not at this point. But certainly there were ---

40

MS EASTMAN: Has there been consultation with the ACTU?

MR MANSFIELD: I can't tell you the answer to that question. I will have to provide that information to you separately.

45

MS EASTMAN: Has there been consultation with the Fair Work Ombudsman?

MR MANSFIELD: No.

MS EASTMAN: Has there been consultation with Safe Work Australia?

5

MR MANSFIELD: To my knowledge, no.

MS EASTMAN: Has the strategy been provided to the Collaborative Partnership?

10 MR MANSFIELD: Not to the Collaborative Partnership but ---

MS EASTMAN: Thank you.

MR MANSFIELD: --- possibly some members of the Collaborative Partnership.

15 I would have to provide information about that.

MS EASTMAN: My question really is directed to that combined group described as the Collaborative Partnership, so the answer to that is "no"; is that right?

20 MR MANSFIELD: That is right.

MS EASTMAN: Are we right in understanding that what you can tell us is there will be annual reporting in relation to the National Disability Employment Strategy? Am I right in understanding that?

25

MR MANSFIELD: The National Disability Employment Strategy is an overarching strategy from which initiatives will be developed. Reporting around those initiatives is likely to be part of the reporting under the Australian Disability Strategy, which will have a targeted action plan in relation to employment.

30

MS EASTMAN: Can you tell us whether the National Disability Employment Strategy will include targets or quotas for both the private sector employers and the public sector employers to meet? Is that something you can tell us, or will we have to wait until next week?

35

MR MANSFIELD: The strategy doesn't specify particular initiatives or levers at the level I think you are describing, Ms Eastman. The intention is, following the launch of the strategy, that work will be done with employers, with industry groups and quite possibly with many of the organisations you have asked me about in terms of the development of the strategy, to develop particular initiatives that go to the priority areas. That's the intention in terms of next steps.

40

There was a Disability Employment Advisory Committee established explicitly for this process, which includes the Disability Discrimination Commissioner, a number of people with disability, disability representative organisations and some employers.

45

MS EASTMAN: Are you able to tell us whether the strategy will identify any

particular areas of law reform? For example, amendments to the *Disability Discrimination Act*, the *Australian Human Rights Commission Act* and/or the *Fair Work Act*?

5 MR MANSFIELD: I think, in reference to my previous answer, the strategy doesn't go down to that level of granularity around particular levers or initiatives or actions that will be taken in relation to this. It is an overarching strategy that gives an indication of the areas of effort and priority that will be applied by the Australian Government in relation to disability employment.

10 MS EASTMAN: Some of the other strategies you refer to in your statement include JobAccess and the Employment Assistance Fund. On the assumption that these strategies and initiatives will be ongoing, one issue which has arisen in the course of the hearing this week is the extent to which employers are aware of the Employment Assistance Fund. If we look at the employers from the private sector who participated in the hearing this week, only four out of the 12 private sector companies referenced the use of the Employment Assistance Fund to fund reasonable adjustments.

20 Do you think there is a need to raise awareness among the private sector employers in open employment to know about the Employment Assistance Fund?

MR MANSFIELD: There are already activities ongoing in that area, but I do think there is more that can be done and should be done to raise employer awareness in relation to the Employment Assistance Fund.

25 MS EASTMAN: Is there any proposal to act on the evaluation undertaken by Colmar Brunton in the evaluation of JobAccess, to the extent that touched on operation of the Employment Assistance Fund?

30 MR MANSFIELD: I just can't recall the detail in relation to that, Ms Eastman. I certainly know there is an intention, following the launch of the Disability Employment Strategy, to examine JobAccess, which includes the Employment Assistance Fund within it, and look at ongoing ways those services can be improved.

35 MS EASTMAN: Are you familiar with the Colmar Brunton review, the evaluation of JobAccess Service Report, commissioned by the department and published in July 2019?

40 MR MANSFIELD: I'm aware of its existence, not its content.

MS EASTMAN: I don't think that's included in any of the documents you provided to the Royal Commission and we haven't asked you to respond directly to it. But you have included the Willing to Work report as part of your evidence.

45 MR MANSFIELD: Yes.

MS EASTMAN: To what extent has or will the government consider recommendations from the Willing to Work report with respect to the Employment Assistance Fund? Is that something you can tell us about?

5 MR MANSFIELD: I can't tell you specifically about what decisions will be taken in relation to particular --- in relation to the Employment Assistance Fund. That would be a matter for government and government would be provided advice in relation to any changes to the Employment Assistance Fund, provided it is not within the existing scope of the services. So I can't provide you any detail on that today.

10 MS EASTMAN: Thank you. Another initiative is the National Disability Recruitment Coordinator, and you have addressed that initiative at paragraph 31 of your statement. You have provided information to the Royal Commission about the National Disability Recruitment Coordinator.

15 MR MANSFIELD: Yes.

MS EASTMAN: Is there any proposal for the government to expand the work of the National Disability Recruitment Coordinator to better open up opportunities in open employment in the private sector?

20 MR MANSFIELD: There is certainly an intention to, as part of implementation of the Disability Employment Strategy, an initiative underneath that to look at the National Disability Recruitment Coordinator. No decision has been taken in relation to any expansion or change to the services under that umbrella description, but certainly it is something that is being looked at.

25 MS EASTMAN: Another initiative is the Complaints Resolution and Referral Service and you have addressed this at paragraphs 36 and following of your statement.

30 MR MANSFIELD: Yes.

35 MS EASTMAN: Are we right in understanding that that is a form of dispute resolution service, but its application is limited to those working in Australian Disability Enterprises or people who are receiving services from Disability Employment Services, the DES providers; is that right?

40 MR MANSFIELD: Yes, and also advocacy services. But yes, those three categories of service, yes.

45 MS EASTMAN: The Royal Commission has heard over the course of this week that for some employees with disability, being able to resolve complaints or raise concerns with their employers can be very difficult. I think Ms Banks identified in her evidence that her research has identified that people with disability sometimes want to have dispute resolution assistance that doesn't require them going to the Australian Human Rights Commission or to another agency. Has there been any

consideration of expanding the complaints and resolutions service beyond the segregated employment settings into open employment?

MR MANSFIELD: I'm not aware of any consideration of that, personally.

5

MS EASTMAN: I am getting close to my final questions. One relates to the collection of data and the issue around disclosure of a person's disability in the workplace. I think you are aware, are you not, in terms of what HR records might record in terms of an employee with disability, it is not always the same, and invariably not the same, as when a census might be undertaken and a person can choose to disclose their disability on an anonymous basis. So we have data collection processes which don't really give us an accurate account of the number of people with disability in Australian workplaces.

10

15 One of the recommendations from Willing to Work was to expand the program that exists in relation to the collection of data of women in the workplace to include disability. That is Recommendation 26 from Willing to Work.

20

Are you able to tell the Royal Commission whether there has been any consideration in expanding the data collection and reporting processes that exist for gender equality through the Gender Equality Agency to the area of disability?

25

MR MANSFIELD: I'm not personally aware but I am happy to --- sorry. If it would assist, I can see whether there has been any consideration of that and can provide information to the Commission.

30

MS EASTMAN: Would you agree, if we reflect on the broad overarching policies on improving labour force participation of people with disability in Australia, that accurate data is critical to both assessing the effectiveness of these various strategies, but also to help the planning in the future as to what needs to be done to continue to increase and also retain people with disability in the workforce?

35

MR MANSFIELD: I agree that data generally is important and helpful in informing policy approaches, program design and services. If your question is directed specifically at the data you referred to in the previous question, I would not limit or constrain the data to that particular type of data.

40

MS EASTMAN: My final question is this: we have noticed there has recently been a publication called New Disability Employment Support Model, and submissions are due by 4 January 2022.

MR MANSFIELD: Yes.

45

MS EASTMAN: Can you tell the Royal Commission what the purpose is of a New Disability Employment Support Model --- and I know it's only a consultation paper at this stage --- and how does that fit into the two strategies, the National Disability Strategy and the National Disability Employment Strategy, that we will see next

Friday?

MR MANSFIELD: So that refers to --- there is currently a Disability Employment Service. The current arrangements for that conclude on 30 June 2023. The  
5 government announced that in 2021-22 it had an intention to effectively redesign that program, ahead of the existing contractual arrangements concluding. That's what that consultation paper refers to. It was also a recommendation that fell within the mid-term review of the DES program that was undertaken and completed, I believe, in August 2020.

10 In terms of how it sits within those strategies, one of the priority areas I mentioned within the Disability Employment Strategy is around improving the systems and services for job seekers and employers. In that context, this consultation process and the development of a New Disability Employment Support Model would seek to  
15 improve those systems and services for job seekers and employers.

MS EASTMAN: So this is not a consultation process relevant to open employment, but a matter that we might come back to you on when we hold a hearing early next year looking specifically at the DES system and employment services. Is it relevant  
20 to those issues rather than open employment?

MR MANSFIELD: No, it's relevant to open employment.

MS EASTMAN: As well?

25 MR MANSFIELD: The New Disability Employment Support Model relates to open employment.

MS EASTMAN: Thank you. Thank you, Commissioners.

30 CHAIR: Commissioner Galbally, do you have any questions of Mr Mansfield?

## 35 QUESTIONS BY THE COMMISSION

COMMISSIONER GALBALLY: Mr Mansfield, I would like to ask whether you have any conditions attached to grants of all kind that DSS makes available that  
40 people with disabilities must be employed to a certain number as part --- or even that there is an employment plan that is lodged with the grant application, including ILC grants. Do you require that of grant applicants and definitely of recipients?

MR MANSFIELD: I am not aware personally that we do. I know with, for example, Disability Employment Services there is a requirement consistent with the *Disability Services Act* to meet certain requirements around understanding how to support  
45 people with disability, but that doesn't extend to a requirement for actual employment of people with disability. But I will check that to see whether there are

any examples of that within, for example, ILC. I am just not personally aware.

COMMISSIONER GALBALLY: It is not specifically ILC I am asking. I would also like to know the dollar amount of all the grants you give out, too.

5

My second question is around our position on the OECD ladder of employment, where we perform fairly poorly. Have you gathered information from other jurisdictions, other countries, about their strategies to employ people with disabilities, to learn from those, for the strategy we will see next week? Have they been drawn upon?

10

MR MANSFIELD: I am aware, in the context of the new Disability Employment Support Model that is subject to a consultation paper at the moment. My understanding is there has been some preliminary work to look at the model in place in the UK, but I am not personally aware about other countries and an examination of their systems and processes and strategies and adoption, in terms of our thinking for the new disability strategy. That's not to say it hasn't occurred, I am just not personally aware of that.

15

COMMISSIONER GALBALLY: I would appreciate if you could check that, thank you.

20

MR MANSFIELD: Thank you.

CHAIR: Commissioner Ryan.

25

COMMISSIONER RYAN: One point of clarification, Mr Mansfield. You might remember earlier in your evidence, in paragraph 60 of your statement you refer to ILC grants, the grants program.

30

MR MANSFIELD: Yes.

COMMISSIONER RYAN: I think you corrected the number from 53 to 55. I wasn't sure whether you undertook to give the Royal Commission a list of who received those funds, so we could make an assessment as to which sectors of employment would be impacted by those. Will you provide a list of those grants, even if there is a request for confidentiality, if that's necessary? I think the Royal Commission would like to see the list.

35

MR MANSFIELD: Yes, I can undertake to provide that.

40

CHAIR: Thank you very much. Mr Hodge, do you have any questions of Mr Mansfield? This is not an invitation, it's just an inquiry.

MR HODGE: I don't, no. Thank you, Commissioner.

45

CHAIR: In that case, Mr Mansfield, thank you very much for your evidence and the statement that you've provided and we look forward to the publication next week of

the Australian Disability Strategy 2021-2030 and the National Disability Employment Strategy. Thank you very much.

5 **MR MANSFIELD WITHDREW**

CHAIR: Is there anything further that you need to have done now.

10 MS EASTMAN: I just need to tender some additional documents in relation to ---

CHAIR: Are they covered in the document that's just been handed to me ---

MS EASTMAN: It is.

15

CHAIR: --- which is headed "PH19 Day 5: Documents to be tendered at the conclusion of Overarching Government Strategy Panel".

MS EASTMAN: Yes.

20

CHAIR: If that's the case, I'll initial that document and date it with today's date. The documents that are identified in that document will be admitted into evidence with the exhibited numbers that are recorded therein.

25 MS EASTMAN: Thank you, Chair. I don't wish to say anything by way of closing. I think probably everyone has heard enough from me this week, but we have circulated some draft directions to the parties with leave and we have provided to you a copy of the proposed direction.

30 CHAIR: As far as you are aware, there are no issues relating to these proposed directions?

MS EASTMAN: As far as I'm aware, no, there's not.

35 CHAIR: All right. I'll go through the directions that are proposed and if at the end of what I have said anybody has any comment --- that is, any legal representative has any comment --- then they could make it at that point. I won't actually make the directions until I've given that opportunity.

40 MS EASTMAN: As I understand it, we have endeavoured to ensure that any comments from any of the legal representatives have been accommodated in the dates set out here.

45 CHAIR: Right. Even so, I'll read it and then we'll see if there is any issue, but on the basis of what you've said, I'd be very confident that there isn't.

## DRAFT DIRECTION

- 5           1. Any witness who took questions on notice during Public Hearing 19 should provide any answers in writing to the Office of the Solicitor Assisting the Royal Commission by 5 pm Australian Eastern Daylight Time on 3 December 2021. Those answers should be targeted and concise and not address additional or unnecessary matters.
- 10           2. Counsel Assisting the Royal Commission will consider any additional material produced and determine if any additional steps need to be taken, and by 5 pm Australian Eastern Daylight Time on 10 December 2021 Counsel Assisting will tender into evidence whatever additional material she considers appropriate.
- 15           3. Counsel Assisting the Royal Commission will prepare written submissions following this hearing by 5 pm Australian Eastern Daylight Time on 20 December 2021. These submissions will be provided on a confidential basis to parties with leave to appear.
- 20           4. Any responses to Counsel Assisting's submissions should be sent to the Office of the Solicitor Assisting by 5 pm Australian Eastern Daylight Time on 7 February 2022. Those responses should be concise and should not include any additional evidence. If any party seeks to participate in making oral
- 25           submissions, they should notify the Office of the Solicitor Assisting at the same time.
- 30           5. After receiving all of the written submissions, there will be a short hearing for oral submissions, which will be scheduled for 10 am Australian Eastern Daylight Time on 10 March 2022.

Just before I ask if there are any comments on that, I take it, Ms Eastman, that there will be coordination between the Office of Solicitor Assisting and Counsel to the extent necessary and the legal representatives of the party to settle upon those matters upon which further information is required.

35

MS EASTMAN: Yes, there certainly will. We've tried to do that during the course of the week, but we'll make sure that there is no confusion as to what's required, and we have indicated that if people have difficulty meeting those directions, to let us know and we'll try to address any concerns on a case-by-case basis.

40

CHAIR: Thank you very much. Is there any comment that any represented party wishes to make on the draft directions that I've read out? If not, then they are the directions that I make, and I understand that the parties have copies and they therefore will be aware of the time limits that have been expressed in the directions.

45

## CLOSING COMMENTS BY CHAIR

5 CHAIR: Can I just make some reasonably brief closing comments. First, I wish to  
thank all the witnesses who have provided statements or given oral evidence, or both.  
Like most of our five-day hearings, this public hearing has covered an enormous  
amount of ground. We have heard from a total of 41 witnesses. This is in addition to  
35 witnesses who gave evidence at Public Hearing 9, and a very large amount of  
documentation has been admitted into evidence.

10 We have heard from former or current Discrimination Commissioners, Mr Innes and  
Ms Banks, who explained the barriers to labour force participation of people with  
disability and offered some practical suggestions as to how those barriers might be  
broken down.

15 Ms Masella of the Aboriginal Employment Strategy addressed measures to improve  
the inclusion of First Nations people in the labour force.

20 Ms Ryan gave evidence today about her proposals for change, including, as she  
explained, discarding the traditional concept of merit for selecting staff.

We also heard today from the Fair Work Ombudsman, Ms Parker, about the  
Ombudsman's responsibilities for protecting workers with disability and the actions  
her office can take against employers by or on behalf of workers.

25 Yesterday we heard from Ms Howie and Ms Matthews who explained the functions  
of the Victorian Equal Opportunity and Human Rights Commission and the  
significance of a statutory stand-alone right to reasonable adjustments, particularly  
when performing their conciliation role under the *Equal Opportunity Act* of Victoria.

30 On Tuesday --- it seems quite a while ago --- we heard the perspective of peak union  
bodies, from Mr Connolly the Assistant Secretary of the ACTU and Ms Donnelly of  
the CPSU. They were followed by Ms Westacott's very helpful evidence on behalf  
of the Business Council of Australia. Among other issues Ms Westacott expressed  
35 the importance of collecting data and addressed the reasons why some employers are  
reluctant to record the disability status of their employees.

40 We then heard from numerous private and public sector employers. Evidence has  
been given by representatives from the National Australia Bank, McDonald's, Kmart,  
Woolworths, Accenture, IBM, Services Australia, the RMIT, Telstra, Medibank,  
Lendlease and Australia Post.

45 Public sector employees which have been represented and whose representatives  
have given evidence include the Australian Taxation Office, the National Disability  
Insurance Agency, and the Department of Social Services.

One of the panels comprising representatives from IBM, Telstra and Services

Australia gave evidence of programs introduced by some private sector employers actively to recruit neuro diverse people.

5 Another panel comprising witnesses from McDonald's, the NAB, Accenture and the RMIT gave evidence about the reasonable adjustments requirement from the perspective of private employers.

10 A third panel comprising the Australian Taxation Office, the NDIA and the Department of Social Services addressed the same issue from the perspective of public sector organisations.

15 This morning we heard from Ms Mitra about the strategy for increasing the proportion of NDIS participants in paid employment. We've just heard from Mr Mansfield about the National Disability Employment Strategy and the Australian Disability Strategy for 2021-2030. We've heard from the Australian Public Service Commissioner, the Victorian Public Sector Commissioner and the Northern Territory Office of Commissioner for Public Safety, all of whom explained the approach that has been taken in each of their jurisdictions to the collection of data, the recruitment and promotion of people with disability, and the effectiveness of complaint  
20 mechanisms.

25 A panel comprising representatives from Safe Work Australia, WorkSafe Victoria and Comcare discussed the relationship between work health and safety obligations and the right of people with disability to seek and retain employment.

I'm not going, of course, to attempt to summarise the very large body of evidence we have received. It is, however, quite clear that the employers whose representatives gave evidence, public and private employers, have committed themselves to ensuring that workplaces are accessible to people with disability; that people with disability  
30 receive the adjustments and supports to which they are entitled throughout the employment cycle; that workplaces should become more inclusive for people with disability; and that policies should be designed to increase labour force participation by people with disability and to provide people with disability with fair opportunities for advancement and promotion.  
35

It's equally clear from the evidence that some employers are much further advanced in this project than others. To use the colloquial expression, which got a fair run during this hearing, "Some walk the walk as well as talk the talk; others may just talk the talk."  
40

It's become apparent that the gap between data on employees with disability recorded in their HR systems and the data compiled as the result of anonymous surveys raises some important issues. We heard different explanations for the reluctance of people with disability to identify as such to their employers. The gap between  
45 self-identification by name and self-identification anonymously is a significant question and warrants careful consideration in the context of employers reporting on the success of their strategies and where targets are adopted, making progress

towards achieving those targets.

5 I expect, as Ms Eastman has indicated, that there will be an opportunity for the Royal Commission to seek updates from employers to determine whether they are indeed walking the walk. This will be done, at least in part, by the Royal Commission holding what we'll describe as wrap-up hearings in the early part of 2023, and some organisations that have given evidence at this hearing may be asked to return and tell us about progress in the intervening periods.

10 I wish also to take this opportunity to thank most sincerely everybody at the Royal Commission who has contributed to preparing and conducting this hearing, making the logistical arrangements, actually conducting the hearing, providing the IT and real-time transcript, and translating the evidence into AUSLAN, always a challenging undertaking.

15 One reason for my having referred to the nature and extent of the evidence at this hearing is to demonstrate, once again, just how much work goes into preparing and conducting a hearing such as this. Each one of the hearings we conduct presents a similar challenge to our staff and to Counsel Assisting.

20 The Commissioners owe a great debt to everyone who has been involved in preparing this Public Hearing 19. We are especially grateful to Counsel Assisting, Ms Eastman SC, Ms Bennett SC and Ms Dowsett. I am sure they would be the first to acknowledge that they could not have performed their role as they have done without the painstaking and thorough preparation by staff from the Office of Solicitor Assisting and by staff from other branches of the Royal Commission.

25 The next Public Hearing of this Royal Commission is Public Hearing 20. This will continue the Royal Commission's examination of the role and responsibility of disability service providers to prevent and respond to violence, abuse, neglect and exploitation of people with disability. That hearing, which is to commence on 30 7 December 2021, will focus on two case studies from group homes managed by Life Without Barriers. One of those homes is in northern New South Wales and one is in Melbourne.

35 The first hearing next year, Public Hearing 21, will continue the Royal Commission's examination of employment of people with disability. Public Hearing 21 will be heard from 21 to 25 February 2022. It will consider the experiences of people with disability engaging with Disability Employment Services, DES, and working in 40 Australian Disability Enterprises, ADE.

The Royal Commission will examine potential issues of exploitation and neglect within the DES system. We will also examine the operation of ADEs and the treatment of people with disability working in ADEs and whether this form of 45 employment may lead to neglect and exploitation of people with disability.

We will also be looking at the experiences of and potential increased risk of violence

and abuse towards people with disability in these settings and our inquiries will extend to how segregated employment has an impact on inclusion in other areas of life for people with disability.

- 5 Again, I thank everybody who has been involved in this hearing and particularly those responsible for preparation and conduct of the hearing. We will now adjourn and the next hearing, as I have indicated, will commence on 7 December 2021.

10 **HEARING CONCLUDED AT 2.54 PM**

## **Index of Witness Events**

MS CHRISTINA RYAN, CALLED	P-409
EXAMINATION BY MS BENNETT	P-409
QUESTIONS BY THE COMMISSION	P-421
THE WITNESS WITHDREW	P-423
MS SANDRA PARKER, CALLED	P-424
EXAMINATION BY MS EASTMAN	P-424
QUESTIONS BY THE COMMISSION	P-444
THE WITNESS WITHDREW	P-447
MS GERRIE MITRA, CALLED	P-447
MR LUKE MANSFIELD, CALLED	P-448
EXAMINATION BY MS EASTMAN	P-448
QUESTIONS BY THE COMMISSION	P-460
MS MITRA WITHDREW	P-462
QUESTIONS BY THE COMMISSION	P-482
MR MANSFIELD WITHDREW	P-484
DRAFT DIRECTION	P-485
CLOSING COMMENTS BY CHAIR	P-486

## **Index of Exhibits and MFIs**