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**TRANSCRIPT OF PROCEEDINGS**

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**THE HON RONALD SACKVILLE AO QC, Chair**  
**DR RHONDA GALBALLY AC, Commissioner**  
**MS ANDREA MASON OAM, Commissioner**

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

**PUBLIC HEARING 22**

**WEDNESDAY, 13 APRIL 2022 AT 10.05 AM (AEDT)**

**DAY 3**

**MS KATE EASTMAN SC, Senior Counsel Assisting**  
**MS CATHY DOWSETT Counsel Assisting**  
**MS REBECCA McMAHON, Counsel Assisting**  
**MR ANDREW FRASER, Counsel Assisting**

CHAIR: Good morning, everybody. Welcome to the third day of this Public hearing 22. Before we commence the proceedings today, I would like to acknowledge that today, 13 April, is National Auslan Day. Auslan Day marks the anniversary of the publication of the first Auslan dictionary in Australia in 1989, although, of course, the use of Auslan actually pre-dated the publication of that dictionary.

Anybody who has followed the work of the Royal Commission or the daily press conferences that so many of us became familiar with during the COVID-19 pandemic will have seen the work of Auslan interpreters who work so skillfully and tirelessly to keep up with the speech, often delivered at bewildering speed, as we have seen repeatedly in this Royal Commission, and they also have to cope with a very complex flow of information. Auslan, as I'm sure most people watching or following these proceedings know, or Australian sign language, is a distinct language with its own grammar, vocabulary, and nuances.

It is not just English conveyed through signs and visual expressions, and it is also a very important part of Deaf culture and extremely important to the Australian Deaf community. So on this Auslan Day, I would like to recognise the Australian Deaf community and the really important work of Auslan interpreters around Australia and also the significance of Auslan itself as a means of communicating for the Deaf community in Australia. Can I invite Commissioner Mason to make the Acknowledgment of Country.

COMMISSIONER MASON: Thank you, Chair. Werte (hello in Arrernte). I wish to pay my respects and acknowledge the First Nations people on the land on which the Royal Commission is sitting today. We acknowledge the Arrernte people - the traditional custodians, owners and family of Mparntwe, also known as Alice Springs. We recognise the Wurundjeri people of the Kulin Nation where the city of Melbourne is now situated. We recognise the Gadigal People of the Eora Nation, the traditional custodians of the land on which the city of Sydney is now located.

We also wish to acknowledge the traditional custodians of the various lands on which you all virtually attend from, any First Nations peoples who are participating in this session, and those First Nations peoples with disability, including those who are contributing to workplaces and communities across the country every day. Thank you.

CHAIR: Thank you very much, Commissioner Mason. Ms Eastman?

MS EASTMAN: Good morning, Commissioners and everybody following the Royal Commission today. I'm joined this morning by Anthony John Reid. Commissioners, he's travelled from Melbourne, and he also does work at VALiD - and you met Mr Tucker yesterday. And Mr Reid works with Mr Tucker and with VALiD, and they are training to be advocates to go into group homes. So Mr Reid is going to talk to us this morning about his work at his workplace.

**<ANTHONY JOHN REID, CALLED**

MS EASTMAN: And we are going to just take this one step at a time. Is that okay.

MR REID: Yes.

CHAIR: Just before we start, Mr Reid, can I thank you very much on behalf of the Commissioners for travelling up from Melbourne to give evidence today. We really  
5 appreciate your coming to the Royal Commission to give evidence, and we thank you very much. I would - I'm sure it has been explained, but I just want to make sure that you know where everybody is. We have today three Commissioners who are participating in the hearing.

10 We have Commissioner Galbally, who is in Melbourne. She will give a little wave. Commissioner Mason is in Alice Springs, and she will give a little wave. And I am in the Sydney hearing room, of course, with you, and I will even give a little wave. So Ms Eastman, of course, is right next to you, and I'm now going to ask Ms Eastman if she would, please, ask you some questions. If, Mr Reid, at any time you want to have a break, just let us know.  
15 Okay.

MR REID: Okay.

CHAIR: Thank you.  
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**<EXAMINATION BY MS EASTMAN SC**

MS EASTMAN: Mr Reid, we first spoke to you last year about COVID. Do you remember talking to us at the Royal Commission with Mr Tucker and with Ms MacNamara and  
25 Mr Kaplan about COVID?

MR REID: Yes.

MS EASTMAN: And you told us about what it was like during the lockdowns in Melbourne  
30 last year. Do you remember that?

MR REID: Yes.

MS EASTMAN: All right. So thank you for coming to talk to us again, and this morning I'm  
35 going to ask you some questions. Can I start with my questions about going to school? May I ask you about when you went to school?

MR REID: Yes.

40 MS EASTMAN: All right. Shall we start with primary school?

MR REID: Yes.

MS EASTMAN: Okay. So you did go to primary school and your sister was with you?  
45

MR REID: Yes.

MS EASTMAN: And what would you like to tell the Commissioners about what you remember at primary school?

5 MR REID: Well, you could say that from primary school, the school that was in (redacted) in, Melbourne, well, basically it was called (redacted) school, and it was the primary school my sister, which is (Redacted) well, basically, that's my older sister. She was in the same primary school, but she ended up in grade 6 and I ended up in grade 3 at that time until my mum realised that we had to move house from (redacted) to (redacted) because she was having my younger brother (Redacted).

10

MS EASTMAN: So you then had to go to a different school?

MR REID: Yes

15 MS EASTMAN: And you went to a new school.

MR REID: Yes.

MS EASTMAN: And what do you remember about the new school?

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MR REID: That was - I still remember - even though we're in this type of year now, I still remember a fair bit because one of the teacher is still working there

25 MS EASTMAN: One of the teachers is still working there. And you had lots of friends at school, didn't you?

MR REID: Yes. And they went to the same school, which that was (redacted) school, but because the full name (Redacted) school didn't fit under the school's signpost at the front of the school for their name, they had to take the word "special" out and just turn it into (Redacted) school. But it was a school for people with a disability like myself and all my school friends also. You could say that at (Redacted) school, it was like one side of the school, they have a primary school area, and the right-hand side at the back of the school was the secondary school area for the senior school students.

35 MS EASTMAN: So you finished at primary school there and then you finished the high school there at (redacted).

MR REID: Yes, the high school was (redacted) school and (redacted) was the primary school.

40 MS EASTMAN: The primary school. So can I ask - can you remember back to when you were finishing school, and when you were starting to finish school, you were starting to think what were you going to do next. And I think you told me you were in a home economics class one day and you were thinking "what will I do after school?"

45 MR REID: Yeah.

MS EASTMAN: What did you imagine for yourself when you finished school? What did you want to do?

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MR REID: I had a couple of options in my mind that day, when I did home economics.

MS EASTMAN: What was in your mind that day?

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MR REID: That day was that - that I wanted to talk to the school principal to make sure it was okay to start a basketball team up so my friends and I could play in competition in basketball on a Friday evening each week.

MS EASTMAN: And what else did you think about, just in terms of what you can tell me about working.

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MR REID: And he said if we were to start it, the team name had to start with the letter A because of the school's name

MS EASTMAN: So still connected to school even playing basketball.

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MR REID: Yeah

MS EASTMAN: Okay. What about working? I think you talked to me before about what you thought you might do as a job when you finished school.

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MR REID: Yeah, that was - that part of it was when I left school at the age of 18, then I decided that I might try and look at doing a bit of - a bit of work experience in a couple of different jobs to see what fit me the best.

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MS EASTMAN: And you did some work experience because one of your friends' fathers worked at a particular centre and he said, "Why don't you come and do some work experience at our place?" Is that what happened?

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MR REID: It was - his name was (Redacted), which was his son, and (Redacted) was our boss that time in (Redacted) which is now the ADE.

MS EASTMAN: So did you do the work experience there?

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MR REID: They asked me would I like to have a trial run with doing a couple of weeks work experience at the ADE.

MS EASTMAN: Well, that couple of weeks has turned into 25 years, hasn't it?

MR REID: Yes.

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MS EASTMAN: And you're going to celebrate 25 years of working --

MR REID: On the 16th.

MS EASTMAN: -- on 16 of April. Is that right?

MR REID: Yes.

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MS EASTMAN: So can I ask you about the work you've been doing for 25 years. When you first started, can you remember what type of work you were doing?

MR REID: We were doing a bit of a mixture, you could say, because they thrown me in group 1 in the factory, but the work in group 1 was doing was - they thought that I was getting through it too easily. See, they thought it was too easy for me so they decided to try and see if I could do the harder work, which was a bit more upmarket, and then that was to put the (Redacted) power points together for the (Redacted) company.

15 MS EASTMAN: So putting the power boards together, was that hard work?

MR REID: So you're talking about the actual, like, power boards like the one near the window there. We had to put the actual cords and connect the red to the red and put the circuit breaker and everything in.

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MS EASTMAN: I think you told me that was one of the hardest jobs you had to do.

MR REID: That was the most difficult one that I've done in the factory. Because if you made a mistake with the wire in the wrong place, you had to get a screwdriver, pop the lid off to put the cord in the correct place.

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MS EASTMAN: Right. And you've also done a lot of packaging of different products, haven't you, in your work?

30 MR REID: Yes

MS EASTMAN: And has your work been pretty much the same the whole time you have worked there over 25 years?

35 MR REID: Most of it has. But the (redacted) company ended up going bankrupt, so we didn't get any more of their work --

MS EASTMAN: That work.

40 MR REID: -- after they went bankrupt. Then - then around September, the (Redacted), their people asked the ADE to package its - like all the --

MS EASTMAN: They have the show bags.

45 MR REID: All the (redacted) bags.

MS EASTMAN: So you had to pack all the show bags and put the right things in the show bags.

MR REID: Yes, so, like, all the chocolates and toys into all the (redacted) bags.

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MS EASTMAN: Okay. How many days a week do you work?

MR REID: I used to start working - five days, I started. But they realised it was getting a bit stressful coming into the Christmas area when it was the busiest time and -- started happening in the factory now and then

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MS EASTMAN: Did you cut your days back to do fewer days?

MR REID: See, and then I decided that I will try to work four days, and then what happened after that is I got a phone call from VALiD's boss at the office of them asking would I like to work for VALiD.

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MS EASTMAN: So you got a new job working for VALiD.

MR REID: For one day a week on a Thursday.

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MS EASTMAN: One day a week. And you still are doing your job?

MR REID: And then I had to go to the HR manager at the ADE --

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MS EASTMAN: To say --

MR REID: -- to explain that I have to cut it back to three --

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MS EASTMAN: Three days.

MR REID: Which is 10.30 to 4.15 Monday, and Tuesday, 8.15 to 4.15, and the same as that on Friday. And then I've got a rest day on Wednesday, which is to rest up on - at our (Redacted) address at home, or go out for two hours with one of our staff like (Redacted) for a two-hour activity. So it may be go out for lunch or morning tea.

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MS EASTMAN: Like your day off.

MR REID: Something like that for two hours and then back to the house.

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MS EASTMAN: And when you we talked to you about COVID, you told us you were living in a group home.

MR REID: Yes, that's where we are.

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MS EASTMAN: And I think, you remember, you told me then when COVID was on you had to stay in your room when you were at the group home.

MR REID: Yes.

MS EASTMAN: And that was a bit boring.

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MR REID: Yeah, just listening to music

MS EASTMAN: And I think are you still living in the same place?

10 MR REID: Yeah.

MS EASTMAN: Okay. And when you go to work, how do you get to work? Do you catch the public transport or does somebody take you to work. What happens?

15 MR REID: The carers like (Redacted), they will - if it's not (Redacted), it will be one of our other carers at the house that's on that day of the week. One of the carers will drive me to the ADE in the morning and, unless it's raining or a doctor's appointment, they'll pick me up in the afternoon, but if it's a sunny day, I will get two public buses home. And --

20 MS EASTMAN: How long does it take to catch the buses home? Does it take a long time?

MR REID: It would be - like - I finish the ADE at 4.15 in the afternoon, and then the first bus turns up at 4.30, and then at 5, a - 5, the second bus will come, and then I will walk up our side streets to our group home and get there at 5.30 in the afternoon. I arrive to the home at 5.30 after the two buses.

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MS EASTMAN: The two buses. Now, I'm going to change the topic, because you've told me that where you work is a very nice place to work and it's very friendly and people are very respectful, and you wanted to tell the Royal Commission that this was a place that you really like working. So what would you like to tell the Commissioners about what you - why you like working in this particular place? Because that was a message you really wanted to share, wasn't it? I know that was an important thing --

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MR REID: Yes. It was.

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MS EASTMAN: -- for you to talk to the Commissioners about. So what's - why is it a very friendly place and a nice place to work and very respectful?

MR REID: Well, you could say - why I mentioned that is, is that the ADE is so friendly, is - and it's a nice place to work in, is even if people with a disability, like, in wheelchairs or with - even if they've got a cane and they are blind, or they've just got a walking stick, the factory at the front door near our reception, they've got a ramp for the wheelchairs to go up to come inside to the factory, and there's always friends or a lot of other employees in the factory that work there.

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Well, they don't just respect you, but, like, they will help people, like, find their way around the factory. If, like - if they're blind, they will get told by the supervisor to, "Would you mind



helping the employee that's blind -" in whichever group it might be "-at the start of work, can you help them down the ramp at the back of the factory to get to their workstation where their work desk is." So they can get ready to start working.

5 MS EASTMAN: And what - what about the supervisors at work. What can you tell the Royal Commission? Who are they and what do they do?

MR REID: The supervisors, they will ask for - to set the new job up or - and get the correct labels, like, there might be a new bar code for, say, a shipping box that we have got to pack  
10 the product into, which some - most of the time, it's the cosmetics products for the company of (Redacted) and (Redacted), which are the lipsticks and hand creams; that sort of thing. And you could say that if we don't know where, say - I didn't know where the - if I, say, didn't know where that pen had to be put in the end while I'm here, well, someone could always explain to me where things - like the product went in the box.

15 They could always give you a sample to copy and they - or they might train the person and teach them, say - at the moment, they're thinking of training me, as one of my goals, to learn how to use the pallet jack, which is one of my new goals at the moment for myself. And they've written it down so one of our group leaders in the group can - when they've  
20 got - it's not that busy, they can teach me how to use it properly.

MS EASTMAN: That's one of your goals is to --

MR REID: And see, like, if I - it will be okay to move the pallets around safely, or with the  
25 medical condition of mine, would it be a bit dangerous because I might have a seizure and the pallet jack, say, ends up taking off and someone trips over it

MS EASTMAN: Can I ask you about how much you get paid? Is that okay to ask you about  
30 that?

MR REID: Yeah.

MS EASTMAN: I think you've told me you get \$15 a week for superannuation.

35 MR REID: Yes, that's correct.

MS EASTMAN: And how much you might get per week will depend, doesn't it? So you think  
40 that your hourly rate of pay is somewhere between \$2 and \$5. Is that right? Can you remember how much you get paid per hour?

MR REID: It's roughly close to, I would say - close to \$3, roughly, per hour.

MS EASTMAN: And have you had a pay rise since you've worked there for 25 years?

45 MR REID: I've had - I've had one through the years, but what they did when they did that sort of thing was just done a trial run for the factory, and when they gave a pay rise, instead

of the money going into your bank account, well, they would write the amount of the money for your pay rise on a gift card, one of the Myer-Coles gift cards.

MS EASTMAN: So you got a gift card.

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MR REID: With the amount of work your pay rise was.

MS EASTMAN: How many times did you get a gift card?

10 MR REID: It might have been, say, a \$100 gift card or a 50 or whatever.

MS EASTMAN: How many gift cards have you got since you've worked there? Can you remember?

15 MR REID: I've had a couple, and then they decided to stop giving them out, and they would just - then because the pay used to go not into our bank, they used to do it in cash and put it with our payslip into one of the paper envelopes, like the Australia Post envelopes, they would put your actual cash of how much you earned in there with your payslip folded up.

20 MS EASTMAN: Does it now go in your bank account, though?

MR REID: And someone started raiding another employee's payslip at one stage in the factory, a couple of years back. So they decided because of that problem and the person not owning up to which person it was, they decided to make it a bit easier so only that person's name can - unless it's under, say, your name, only you can look at that amount through your payslip that the factory gives you, and then that can be basically, like, accessed by putting your password into the email address and then you can have a look at your payslip.

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MS EASTMAN: Your own payslip, yes.

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MR REID: But, basically, the money itself would go directly to your bank account.

MS EASTMAN: Bank account. Okay.

35 MR REID: Instead of someone being able to take it out of the thing and take it off.

MS EASTMAN: That's probably better, isn't it? Yes.

MR REID: That's why they decided to change the system.

40

MS EASTMAN: Now, you wanted to tell the Royal Commission that you wanted to celebrate working there for 25 years. Can I ask you, how long do you think you will keep working? And I'm going to ask you about what you would like to do in the future. So how long do you think you will keep working?

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MR REID: Some of - about two employees, two or three at that most, at the ADE, a couple have been working about 30 years in the factory since it first opened.

MS EASTMAN: 30 years.

5 MR REID: It's been open 30 years, the factory itself. And they've been working 30 years, about four employees there. And the rest are, like, 25, 20, 15 or 10 - maybe five, depending on the date they started for what year. So between five to 30 years, they've been working.

10 MS EASTMAN: So how long do you think you will keep working? Have you thought about that?

15 MR REID: I'm not too sure of if I'll continue there at the factory for I don't know how many more years now, but, like, if something does go wrong at the factory, well, what the normal process would be is that that employee - like, it might be, say, someone's, say, done a bit of violence on me, like hit me or kicked me or that sort of thing in the factory, well, if that's the case, well, what will happen is - would be - I would be allowed to go to let the supervisor in my group know first, to let her know which person did that to me.

20 And then she will try and solve the problem of that - how that - she will pull the person up and see if she can get the two of us to - get them to apologise to me, and the two of us make friends again. But if that can't happen, then what will happen is, is that if the supervisor can't - if the supervisor can't fix the problem up, she'll - the supervisor - they're mostly female - well, if they can't fix the problem of what's happened between the two employees, if it's someone hitting or kicking someone or, say it's --

25 MS EASTMAN: I think I forgot to tell you that. That's all right.

MR REID: What's --

30 CHAIR: That's okay. Don't worry. In fact, you've reminded me, I think I had better turn my phone off as well.

MS EASTMAN: That's all right. Okay. So you were just saying about the supervisor sorting out if you had violence what happens.

35 MR REID: Or if there's any teasing to or stirring or calling names to people, or if there's, say, teasing them about what football team they go for --

MS EASTMAN: Does that happen a lot?

40 MR REID: Now and then it does. But if some employees get stirred up about - or teased about that sort of thing, they can let the supervisor know. If they can't fix the problem, whatever it might be, well, then the next step would be to see our senior supervisor, which is one step up from our own, and if they can't, it would be to the HR managers. And if they can't, then it would be to the big bosses to sort it out.

45 Then they will basically give the person that's made the problem that's, say, might have hit the person or that sort of thing, they would get all that - to start from the big boss, they

would get a warning from the - their first warning from the boss, just for being sent home, and they won't be able to come to work for about two weeks.

MS EASTMAN: Right.

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MR REID: And then after the two weeks off work, they can return on the third week back. But if they kept doing it after their first warning --

MS EASTMAN: What would happen?

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MR REID: -- the second warning would be just to be, like - they would - besides send them home for a couple of more weeks, they would call their parents or carers to let them know what's happened and the problem. But, like, after the second one, when it gets to the third, the third one's that the boss can take your job off you. Then you'd lose your job, basically, on the third whack. And they would say that --

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MS EASTMAN: But that hasn't happened --

MR REID: Not yet, but a couple of employees, I guess, in the past and they've been just told that they're going to lose their job and they won't be able to come back to the factory any more.

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MS EASTMAN: To work. Do you think you will keep working at VALiD one day a week?

MR REID: I was hoping to talk to (Redacted) or someone a bit higher to see if I could work at least a couple more days than one, like maybe two days a week.

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MS EASTMAN: You get paid more working for VALiD than you do at the factory; is that right?

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MR REID: Yes.

MS EASTMAN: The last question I want to ask you is about the future, and you told me the other day that there was things you would like to do in the future, like travelling to Japan. What would you like to do in the future? Do you want to tell the Royal Commissioners about that?

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MR REID: That's - you could say that that's a trip that's coming up in October -- for this year, but, like, I'm just, at this sort of time, crossing my fingers to hope that it goes ahead and it doesn't get stopped again like it did last time.

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MS EASTMAN: What's going to be the trip that you're going to do? Where are you going?

MR REID: That was the one for going to Tokyo, which will be with the holiday group that looks after people with a disability at the disability holiday group which is called - there's two of them that do holidays for us like myself. And they would be Leisure Options and

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ClubMates which do different types of holidays around from all Victoria to interstate, to overseas, to boat cruises.

5 MS EASTMAN: So you are looking forward to doing the trip if it's going to still be on?

MR REID: Yes.

10 MS EASTMAN: Okay. Can I thank you very much for talking to us today, and I will look at the Commissioners - you can see each of them there. They might have some questions for you. We will just check in with them. Chair.

15 CHAIR: Thank you. Mr Reid, if you don't mind I will ask my colleagues whether they have any questions to ask you, and I will first ask Commissioner Galbally whether she has any questions she would like to ask you.

COMMISSIONER GALBALLY: I have no questions, but I wanted to thank you very much indeed for your evidence today. Thank you.

20 MR REID: That's okay.

CHAIR: I will now ask Commissioner Mason if she has any questions.

25 COMMISSIONER MASON: Thank you, Chair. Mr Reid, no, I don't have any questions but, again, thank you for coming in today and giving us your evidence. Thank you.

30 CHAIR: Mr Reid, thank you from me as well. We very much appreciate your coming to Sydney to the Sydney hearing room to give your evidence which has been very helpful to us, as it was when you gave evidence before the Royal Commission previously. So thank you very much. On behalf of all of us, we hope that you have a safe and comfortable trip back to Melbourne, and we hope that you get to go to Japan. It's a wonderful experience when you go there, so I hope that's something that you will be able to do shortly.

MR REID: Yes. Thank you.

35 CHAIR: Thank you very much.

**<THE WITNESS WITHDREW**

40 MS EASTMAN: Thank you, Commissioners. We will just have a short break to reconstitute the hearing room, and if you perhaps give us 10 minutes.

CHAIR: We will adjourn now and resume at 11 o'clock.

45 MS EASTMAN: Thank you.

**<ADJOURNED 10:53 AM**

**<RESUMED 11:03 AM**

CHAIR: Yes, Ms McMahon.

5 MS McMAHON: Thank you, Chair. The Commissioners will now hear from the National Disability Services, which is Australia's peak body for non-government disability services with a presence in every state and territory in Australia. NDS represents 1,150 service providers as their members. Today, we have Laurie Leigh, who is the CEO of that organisation, and Kerrie Langford, who holds the position of Head of Employment.

10 Commissioners, the description of Ms Leigh's background and qualifications is at paragraph 3 of their joint statement, and paragraph 4 for Ms Langford, and you can find that statement at volume A, tab 6. If I could just say, Ms Langford is not feeling well today but is pressing on, and Counsel Assisting certainly thank her for doing that today. And, Ms Langford, if you  
15 need any breaks during your evidence, please do let us know.

**<LAURIE LEIGH, CALLED**

**<KERRIE LANGFORD, CALLED**

20 CHAIR: Yes, thank you very much to both of you, Ms Langford and Ms Leigh, for coming to the Royal Commission to give evidence. Just before we proceed, I think there's an appearance to be announced.

25 MS TURNER: Yes, Commissioner. Emma Turner for the National Disability Services. Thank you.

CHAIR: Yes. Thank you, Ms Turner. Just to make sure you each know where everybody is, we have three Commissioners participating in this hearing. Commissioner Galbally is in  
30 Melbourne, Commissioner Mason is in Alice Springs, I am in the Sydney hearing room together with Ms McMahon, and she will now ask you some questions. And as she has said, if either of you need to have a break at any stage, then just let us know and we can accommodate that. Thank you very much.

35 **<EXAMINATION BY MS McMAHON**

MS McMAHON: Thank you, Chair. Ms Langford and Ms Leigh, you have prepared a joint statement dated 7 April 2022. May I confirm that that statement is true and correct from  
40 both of you, please?

MS LEIGH: Yes, that is correct.

MS LANGFORD: Yes, it's true.

45 MS McMAHON: Now, I just want to commence - ask you some very short questions about language. You've referred to "open employment" throughout your statement, and that, of course, refers to mainstream employment on regular wages. "Supported employment

services" you refer to as well, and by reference to section 7 of the *Disability Services Act*, you are referring there to ADEs. That's right, isn't it?

MS LANGFORD: That's correct.

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MS McMAHON: Thank you. And I understand that NDS does not use the language of "ADE" in its business, but are doing so for consistency in this hearing. Is that right?

MS LANGFORD: That's correct.

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MS McMAHON: And at paragraph 28, you state that you generally refer to ADEs as "social enterprises". Is that right?

MS LANGFORD: That's correct.

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MS McMAHON: Now, I understand that you heard and have accessed the evidence of Ms McAlpine from Monday of this hearing. Can I just confirm that that is the case?

MS LANGFORD: That's correct.

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MS McMAHON: Thank you. And she said in her evidence, and this is Monday's transcript at page 42, line 14, Commissioners, that:

"We believe the terminology - and here I'm referring to social enterprises - has been co-opted, because our understanding of social enterprise is that's where - a place where people are paid properly, so where people are paid at least the minimum wage."

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Do you have any response to that description of the term "social enterprise"? And why does NDS use the term "social enterprises" to describe ADEs?

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MS LANGFORD: So NDS uses the term "social enterprise" to describe ADEs as wanting to demonstrate, as we moved away from the old funding to participants being funded under the NDIS, the providers and our members wanted something that was reflective of their mission and what they were driving towards. We have adopted very much that New South Wales Government definition, that basically states, "a business that trades to intentionally drive social or environmental change. The primary purpose may be to tackle social problems, improve communities, provide access to employment or training or help the environment." This --

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MS McMAHON: May I just interrupt you - and I'm very sorry to do so, but if you could slow your pace down a little bit because we do have interpreters.

40

MS LANGFORD: My apologies. Do you need me to repeat that?

MS McMAHON: No, that's not necessary, but if you could please just slow down from here.

45

MS LANGFORD: Thank you very much. That definition I just described very much fits with the mission of many disability enterprises.

5 MS McMAHON: All right. Thank you for that explanation. Now, Ms Leigh, could you just - and just briefly, if you may, because there is information in your statement, but just explain the core functions of NDS?

10 MS LEIGH: So NDS is the peak representational body for non-government disability service providers and, as such, we have a number of different roles to represent and advocate for our members, but also to support the sector in general, in terms of resources, training, education, and to support our members in their practice.

15 MS McMAHON: And in what ways do you support your members? And, again, just briefly because you have dealt with this in your statement.

20 MS LEIGH: Thank you. So we have a number of resources that we are there - to support our members. We provide advice to our members as needed on various issues. We also provide updates and information about things that are happening within the sector. But a significant portion of what we do to support the sector around our training and development opportunities are webinars, Communities of Practice, and sharing of good practice.

25 MS McMAHON: Thank you, Ms Langford. And I might just remind you as well in terms of just slowing pace a little at this hearing. Now, you have - sorry, 137 of your members are - and I will use the term ADEs for consistency, if I may. Could you please just explain the criteria for membership, and here I draw your attention to paragraphs 11 and 12 of your statement in that regard.

30 MS LEIGH: Thank you. So NDS has two membership types. We have a not-for-profit members, who are organisational members, so full members under our constitution. And we are - also have associate members who are for-profit organisations.

MS McMAHON: And what proportion of your members are not-for-profit?

35 MS LEIGH: Around about 85 per cent of our members are not-for-profit.

MS McMAHON: And are you aware of the overall proportion of ADEs that are not-for-profit?

40 MS LEIGH: My understanding is the 137 members that we have are all not-for-profit enterprises.

MS McMAHON: I see. And what about ADEs that are not your members? Do you have information as to whether or not - sorry, what proportion are not-for-profit of those ADEs?

45 MS LEIGH: Kerrie, would you like to step in on this one?

MS LANGFORD: Yes, they are all not-for-profits as well.



MS McMAHON: Thank you. Now, in your statement - and I know the numbers are a bit different from DSS - but as at 2012, it's understood that there was about 20,000 supported employees, and your current estimates are about 16,000 supported employees nationally; is that right?

MS LEIGH: Yes, that's right.

MS McMAHON: All right. And NDS estimates that there's around 450 individual business sites operated by about 155 supported employment services nationally. Is that - is that your figures?

MS LEIGH: Yes, that's right. Those are our current estimates.

MS McMAHON: Ms Leigh, could you please just describe in terms of profiles of your members the difference between large, medium and small and the proportion of those sizes amongst your members?

MS LEIGH: Thank you. So we have, as you said, about 137 members. Of those, about 22 are what we class large members, and that means that they have over 200 supported employees. There are about the 98 medium-sized members, and those are members that have supported employees between the numbers of about 20 and 199. And we have 17 small members who have up to 20 supported employees. So there's a range across all of those sizes.

MS McMAHON: Yes, thank you. Now, I want to talk about your industry vision which features in your statement. Now, we will be - I will be asking you questions about specific aspects of the vision. But just by way of introduction, Ms Langford, without getting into the detail, can you please explain or provide a broad description of what the NDS' industry vision is and its purpose?

MS LANGFORD: Thank you, yes. So the industry vision was developed in conjunction with our membership, the board and broad consultation with a number of parents and carers and people with disability. Basically, the vision is five key principles that our sector has embraced and has been endorsed at the board to move the sector forward. So, basically, we're looking at there being a widespread provision of supported employment as a best practice work option, enabling a significant increased number of people with disability to participate in the economy.

We're looking at promoting and providing access to skill-building opportunities and career pathways for people with disability in a wide range of employment options and settings. We're looking to provide high-quality employment conditions that reflect community expectations and industrial relations legislation for people with disability, operate sustainable business producing high-quality products and services which harness technology for the benefit of the employees with disability, as well as having a comprehensive reporting strategy on the sector's social and economic impact that really will demonstrate this

contribution to building a more inclusive and equitable society. The aim is to achieve this by 2025.

5 MS McMAHON: Thank you for that explanation. And if I could just come back to the point about a wider range of employment settings. At paragraph 103 to 106 of your joint statement, you indicate that supporting supported employees to access a wider range of employment options is a fundamental principle of your industry vision and that's so, isn't it?

10 MS LANGFORD: That's absolutely correct.

MS McMAHON: And this includes, doesn't it, transition to open and self-employment?

MS LANGFORD: Absolutely.

15 MS McMAHON: And what are the values that underpin that aspect of the industry vision?

MS LANGFORD: So in terms of the values, basically, it's really trying to give the right for all people to have the opportunity to work in an environment that actually is of their choice and of their - their requirements.

20 MS McMAHON: But why, in particular - or what values of NDS particularly underpin supporting that transition to open employment?

25 MS LANGFORD: So let me just find that document. Sorry, I haven't got it open in front of me. So very much - and then why it's important is we know that people do want diverse and stronger work options. We need to actually have a look at how we can upskill the sector so that people are actually recognised and valued for what they can do. Basically, you know, a lot of the values that underpin the strategy are part of really recognising the goals from the *NDIS Participant Employment Strategy 2020 and 2022*. So, basically, it's around people  
30 having choice and control about where they work, how they work and under the conditions that they work.

MS McMAHON: Thank you. And what feedback are you receiving from your members about the impact of the NDIS support and employment pricing and what that's having on  
35 transitions occurring from ADEs to open employment?

MS LANGFORD: I will start with this and then I will hand over to Ms Leigh, but, basically, the feedback we are getting is that some organisations are transitioning quite successfully. Others are still on the pathway, and it's still early days transitioning to the new funding  
40 regime. So, Ms Leigh, I might hand over to you to -- that statement a little bit more.

MS LEIGH: Thank you. So, again, some of these are estimated figures as well as we can. But we understand that there has been a reduction over the last period of supported employees in, using your terminology, ADEs. From a top of around about 20,000 down to about 16,000.  
45 And, from our perspective, although it's difficult to know quite why that is - there hasn't been any formal research into that - we understand it is because this is an ageing group, that there is easier access to non-vocational options for people now under the NDIS, and

that our members are finding that the new pricing model around supports and employment is allowing them to provide a wider range of employment options for people already.

5 So, as Kerrie said, it is the beginning of this process, but already we have some strong anecdotal evidence from our members that they are using the new NDIS pricing model successfully to provide a wider range of employment options for people with disability.

10 MS McMAHON: But specifically with regards to ADEs, what are you hearing from those 137 members about whether or not the pricing is assisting them or not to move from ADEs to open employment? So potentially other employment settings other than their own?

15 MS LEIGH: As I mentioned, we have some very strong anecdotal evidence from a number of our members, some of which is in the evidence provided in terms of videos on our viability site, around the options that they are now finding available to them through the NDIS pricing. And, in particular, the ability to offer support in employment settings that are outside of traditional supported employment. Kerrie, is there something you would like to add on the stories we have heard from our members?

20 MS LANGFORD: Absolutely. So one of the things that --

CHAIR: Sorry, just before you continue, can I please remind you, if you don't mind, just to slow down, and just to make you feel better, I'm applying that to Ms McMahon as well.

25 MS McMAHON: Thank you, Chair.

CHAIR: Let me reassure you, this is not a novel problem for of the Royal Commission. We do have lots and lots of witnesses who like to go fast. So, if you don't mind, just consciously remember that we are trying to get this on real-time transcript. Thank you.

30 MS McMAHON: My apologies, Chair.

35 MS LANGFORD: Thank you, Chair. So one of the things that we have found that - through the Communities of Practice that we have been sharing some stories around how different - and I will say ADEs in this situation - how different ADEs have been working with participants to look at other streams of funding that they have through the NDIS. So some people are using their capacity-building funding to explore opportunities outside of working in the traditional business setting of an ADE.

40 There's an example I can give of a provider that basically is - has assisted somebody to explore and learn how to work in a coffee shop, who is now actually working full time in supported open employment in a setting outside of their traditional business setting. So people are starting to explore - organisations are starting to explore what are the opportunities they now have with their NDIS funding and how they can actually expand on where they've worked traditionally.

45

MS McMAHON: And what is NDS doing to capture this information more formally so that it can have a proper understanding of these stories and how it could guide their future training and guidance of members more generally?

5 MS LANGFORD: So there are a number of different ways that we are doing this. As I just referred to, we have our Communities of Practice. So we've been running the Communities of Practice now since - I think it was about October last year that we started to - to run these. They run on a monthly basis where we bring disability enterprises together to actually share their stories and their learnings. We have actually also have captured those  
10 webinars. They actually are available on our viability website so that we can share that best practice.

That's just the beginning. We are hoping through a benchmarking exercise that we did last year where we - we basically benchmarked where organisations were and how they were  
15 operating in August last year. And we're planning to re-run that benchmarking exercise again later this year, and the results from that will be shared amongst other disability enterprises to look at where people will - what people have actually achieved over the previous 12 months, and share how they actually got to that point.

20 MS McMAHON: Thank you. And can I just ask, with regards to the last community practice event, that is, bringing together disability enterprises or ADEs, what was the attendance like, in terms of your 137 members?

MS LANGFORD: So I didn't attend in person, but I spoke to my colleague who facilitated that afterwards, and my understanding is we had - we had 47 registrations.  
25

MS McMAHON: Thank you. Now, you were watching, I understand, the evidence of Mr Mann from Bedford yesterday - and this is at page 137 of the transcript, Chair and Commissioners - where he said:  
30

"Bedford has not traditionally been established, structured or funded with the primary or formal focus on transitioning to open employment."

He also agreed that Bedford does not have a specific policy, when asked by Senior Counsel, dealing with transitioning of supported employees to open employment. You recall that evidence of Mr Mann?  
35

MS LANGFORD: I do.

40 MS McMAHON: Is the absence of a policy to transition to open employment for any ADE inconsistent with NDS' industry vision in relation to transitioning to open employment and providing wider opportunities for supported employees?

MS LANGFORD: Our understanding is that that's not consistent. Ms Leigh, I might hand over  
45 to you, but that is not consistent. Okay.

MS LEIGH: Thank you, Ms Langford. As Ms Langford said earlier, we are an industry in transition at the moment, and there is a great deal of goodwill and wish from the - all of the ADEs which have participated in the development of the vision to get to the point where there is this range of employment opportunities for people. There is a great deal of engagement with those processes, and some organisations are further along the way towards that than others. But it is a process. It's a period of transition and change.

MS McMAHON: At your community practice meetings have you raised with your ADE members whether or not they have policy relating to transition to open employment?

MS LANGFORD: That has not been a subject that we have approached directly. People join the Communities of Practice because they have embraced the vision and are participating in that because they've embraced the vision.

MS LEIGH: And if I may add, there are a number of things that have been in the Communities of Practice which would go to that point, although not a formal suggestion around a requirement of policy, but, for example, in the latest one, we talked about career pathways and the importance and gave many examples of how providers can - had providers give many examples, because we didn't - of how they can support people upon that journey into supported open employment or into using their NDIS funding more flexibly in that way.

MS McMAHON: So you think it would be important within these meetings with your ADE members to know and ask that specific question about whether or not they have a policy dealing with transitioning people to open employment?

MS LANGFORD: One of the key drivers behind the Communities of Practice is actually looking at the continuum of different employment opportunities and, you know, the prime principles are of moving forward, and that's definitely something that we could strengthen our Communities of Practice. At the moment, we are all sharing best practice with - with the view of having that broader continuum of opportunities for people, open employment being one of those key components, if people choose that - that line.

MS McMAHON: Thank you. Now, in relation to Mr Bedford's evidence --

CHAIR: Mr Mann, I think.

MS McMAHON: My apologies. Mr Mann's evidence from Bedford, that Bedford did not have a policy, do you see that as an example of a wider problem that could exist among your ADE members?

MS LEIGH: So in our experience with working with ADE members, particularly through these Communities of Practice, this is an area where there is still development to be done. The other thing, I guess, which is really important to - to remember here, is that this is about the choices that people with disability are able to make. And so people with disability should also not be pushed towards choices that they may not feel comfortable or happy to take.

NDS' vision is very much about there being a range of options for people with disability to access around employment and that supported employment environments such as ADEs are as valid a choice for people to make as any other.

5 CHAIR: There is a great deal to be said for constructing a vision, and visions sometimes can sound terrific, but isn't the key to a vision to translate it into practice? And given that that is the case, isn't it something that your organisation should be actively pursuing in ways that I think Ms McMahon has either expressed or implied? When you look - let me give you a background that you may be familiar with. Mr Mann's statement indicates that in the year  
10 2020 to 2021, the number of supported employees who transitioned to open employment was four, that is, 0.35 per cent of the total.

And you have heard what Mr Mann's evidence was, so there is obviously a rather startling disconnect between the vision and at least Mr Mann's understanding of what the role of  
15 ADEs might be. So I am just wondering what plans you have actually to translate this vision into something practical.

MS LEIGH: Thank you, Chair. I might pass to you in a minute, Ms Langford, if that's okay. I absolutely take your point around the importance of a vision being implemented, and the things that we are doing I will let Ms Langford go through that in more detail. But I think it's  
20 important to also note NDS' role as a representative of our member organisations rather than one that is - that has an enforcing role towards our members.

So there is things that we can do, and Ms Langford will explain the processes that we are going to, in terms of implementing the vision, but in terms of enforcing a requirement  
25 around policy for our members, that is not NDS' role.

CHAIR: Yes, I don't think I suggested enforcing. There are many things that can be done to translate a vision into something practical without relying upon blunt enforcement  
30 mechanisms. So perhaps Ms Langford will tell us what those steps are.

MS LANGFORD: Thank you, Chair. And, Ms Leigh, I will take over from here. So as I stated earlier, we released the vision in April last year. We formally launched it in May. We have invited the Commonwealth Government to be a part of helping us operationalise the vision,  
35 because we absolutely recognise this is a mammoth task that we are doing. And that this is not just something that NDS can do alone, but we do need to harness the support of the Commonwealth, we need to harness the support of our members and harness the support of the broader community.

40 So in terms of us operationalising the vision, we did approach the Commonwealth Government last year to assist us in funding this. They basically articulated great support for the vision but, at that point of time, were not in - were not in a position to fund it. So at the moment we are, through our core funding, pushing this forward. So what we are doing - and the benchmarking exercise was the very first part of operationalising the vision.

45 We needed to have somewhere where we could measure where the sector was in - in August last year and look at what are the areas. So we identified some of the areas where

we really felt that we needed to concentrate on and provide some resources and some support and assistance. So once we had actually identified that, that's when we basically formed the Communities of Practice. The Communities of Practice are overseen by a reference group.

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Now, due to COVID, when we first set up the reference group, we didn't have the opportunity to fully convene a broader group. We have in recent months approached broader groups external to NDS because we believe that we need their information, support and advice to actually assist in us basically translating the vision into action. So --

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MS McMAHON: Ms Langford, sorry, if I could just bring you, perhaps, to speaking to the practical examples. Perhaps not every example. But practical examples of implementation of the vision, particularly as it relates to transition to open employment, as that's the topic that we are speaking to now.

15

MS LANGFORD: Brilliant. Thank you for that. So we are hosting, as I stated before, the Communities of Practice so that providers can actually share how they are actually assisting their employees to actually look at alternative opportunities. We are in the process of developing some resources, and that's where we do need additional funding from Commonwealth, to basically demonstrate this best practice. We are running some formal training, so in a couple of weeks' time we have a formal workshop which actually looks at further developing the capability and the capacity of supported employment providers so that they can offer a broader array of opportunities to assist people move forward.

20

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A number of organisations - and NDS has basically been a conduit between disability enterprises and training organisations - have adopted what is known as customised employment, which is a very targeted way of assisting people to move from a traditional business setting to actually trying and experiencing supported open employment, and we're noting now that a number of our providers have actually demonstrating and going forward and doing that. I do have providers who are prepared to share their case studies, if Counsel would so wish, after today's hearing.

30

MS McMAHON: In fact, I was going to suggest that. Indeed, please do share those, and perhaps that can be taken on notice so we can move through some other topics, if I may.

35

CHAIR: Sorry, can I just - I'm sorry to interrupt again, and I will promise to be a little quieter after this. Why do you need Commonwealth funding to start on this process?

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MS LANGFORD: Because NDS is a membership organisation, that we are - basically, our Australian Disability Enterprise members are a small component of our membership. We have a broad church and for NDS to be able to implement and run and facilitate a range of these workshops, training opportunities - because we are hosting them, at this point, free of charge to our members - that we actually need the funding to be able to develop and to actually roll them out so we are actually able to highlight good practice.

45

CHAIR: Wouldn't it be a good start just to ask each of your 137 members how many have - how many of the employees have transitioned from ADEs to open employment over the last 12 months? That wouldn't be very difficult, would it?

5 MS LANGFORD: That's actually part of our survey that we have undertaken with the benchmarking survey that we conducted in August last year.

CHAIR: And have the results been published?

10 MS LANGFORD: We have published them to our - the membership who - yes. And they actually are available in - in our statement at --

CHAIR: Yes.

15 MS LEIGH: Annexure 7.

MS LANGFORD: Yes.

CHAIR: Which paragraph?

20

MS McMAHON: Annexure 7, Chair.

MS LANGFORD: Annexure 7.

25 CHAIR: Annexure 7. Okay. Thank you. Yes, I will be quiet now for a while.

MS McMAHON: Thank you, Chair. So you would agree, though, that you do have a role in terms of assisting ADEs with their policy in regards to training?

30 MS LEIGH: We have a role in assisting our ADEs to understand best practice and to understand opportunities, to understand the changes that the NDIS funding and how that works will impact on them and their business. We wouldn't be developing policies for our members, no.

35 MS McMAHON: No, but it is - I understand that NDS has a National Committee on Supported Employment, and that's at paragraph 16 of your joint statement. And I understand that the purpose or part of, at least, the purpose of that committee is to provide policy advice to the board and overall objective of improving effectiveness and quality of supported employment services nationally. That's right, isn't it?

40

MS LEIGH: Yes, that's right. So that is overall policy advice for NDS and the board's position, for example, in developing the vision for supported employment, rather than policy advice for us to provide to our members.

45 MS McMAHON: I'm not suggesting that you develop policy for your members, but is there a role in identifying where members are falling short? In order to improve the effectiveness and quality of supported employment services nationally?



MS LEIGH: I think - sorry. Do you want to take this one, Kerrie, or me?

MS LANGFORD: I will let you go first and then I will add.

5

MS LEIGH: So I think what the benchmarking survey that Ms Langford has already mentioned does, is it gives us a baseline of data to be able to - to be able to see over time whether members are improving and coming along the pathway of the vision. With only one set of data, it's hard to get the trends coming from that. And our role, as the Chair and I spoke about earlier, is not really around enforcement, but around the development of good practice, showing good practice, being able to train, educate and provide resources for our members to develop that movement in their own practice.

10

MS McMAHON: But in relation to benchmarking, though, you're trying to work out gaps, aren't you, in terms of where training needs are?

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MS LEIGH: Yes, where providers are currently and to check and make sure that the vision is being implemented, with providers moving further down that pathway in coming years.

MS McMAHON: Thank you. I might move along, because I'm conscious of the time, to some other topics, but I will stick for a moment with some evidence that arose from Mr Mann yesterday. And you would have heard Senior Counsel asking Mr Mann about people who had been assessed as level 4 and 5, according to their tools, that is, people that were assessed as working at 100 per cent and 75 per cent of full grading. And that's at transcript page 136 of yesterday. And he agreed that those employees would have had the competency to work in open employment. Do you recall that evidence from yesterday?

25

MS LEIGH: Yes.

MS McMAHON: And Mr Mann at page 136, line 16 also said that:

30

"The majority of level 5s would be in landscape construction, manufacturing - potentially in manufacturing and potentially in timber processing."

Those jobs, of course, requiring a level of skill and training that would be an indicator that a person - maybe - have the capacity to work in open employment. Do you recall that evidence as well?

35

MS LEIGH: Yes.

40

MS LANGFORD: Yes.

MS McMAHON: Is it NDS' view that people who have the capacity to work in open employment should be in open employment?

45

MS LANGFORD: If people choose to work in open employment and they have the capacity, absolutely they should have the opportunity. May I give some stats just around people in open employment at this point of time that could be quite pertinent?

5 MS McMAHON: If you can do that briefly, please, because I would like to move to another topic shortly. But please do.

MS LANGFORD: Okay. Just in the current DES program, as of February 2021, there was 171,813 people with significant disability in what's called the employment support  
10 component of open employment. And there are two streams there. And one of the things that I think we need to demonstrate is that it's not just a simple basis of providing funding for somebody to move into open employment; there actually has to be the positions available and then the willingness and the capacity and the support available for the person to move into those roles.

15 Out of that 171,800, only 12,000 of those people actually achieved a 52 per cent - sorry, a 52-week outcome. That was 7.1 per cent. And so I think what I'm trying to demonstrate is, it's not a simple answer. Everybody has the right to actually - to attempt and choose to work in open employment. There is not always - and they are not always successful.

20 MS McMAHON: Thank you for that. I do have some questions later on barriers, but I might just park that for the moment. I would like to move on to your Zero Tolerance initiative, if I may. And I understand - at paragraph 65, you refer to this particular initiative. And you indicate in your statement that it's designed to assist organisations to understand actions  
25 they can take to prevent and respond to abuse, neglect, violence and people - for people with disability. How long has this initiative been running?

MS LEIGH: We might need to take that on notice, apologies, Counsel.

30 MS McMAHON: I think - I understand it is probably from about 2015. Does that sound right to you?

MS LEIGH: That sounds correct.

35 MS McMAHON: And who developed that program?

MS LEIGH: That's a program that was developed by our National Disability Services, NDS, in partnership with our members and I believe it was also the DSS.

40 MS McMAHON: All right. And did people with disability have any role in co-designing that particular initiative?

MS LEIGH: Yes, absolutely. So the initiative itself is an evidence-based framework which is really founded in a human rights approach. There are a number of resources throughout the  
45 whole of that initiative around understanding abuse, understanding what safeguards and practices providers can put in place, how to address the risk for specific groups, how to respond if there is an incident of abuse and --

MS McMAHON: Yes.

MS LEIGH: -- manage that. Sorry, I will get there.

5

MS McMAHON: No, if I could just - I just want to interrupt you for a moment just to indicate that that public document is available and the Commissioners do have a copy of that document, just for your benefit. But if you could please continue.

10 MS LEIGH: So --

CHAIR: And if you don't mind, please do remember to slow down a little. Thank you.

15 MS LEIGH: I'm very sorry. Sitting underneath that framework is around 140 resources that are - assist the implementation of that framework for our members. And many of those are really - I say fantastic - it wasn't me that developed them, but fantastic video scenarios about how to manage some of the issues in here. They were developed and the whole of this framework was developed in co-design with the people with disability, and particularly our disability network that we have within NDS. And so you will see, if you look at any of the  
20 videos that are available around this, they strongly feature people with disability and were developed hand-in-glove with them.

MS McMAHON: Thank you for that explanation. And - are the resources that sit underneath this initiative, are they delivered by NDS or are they modules and resources that will be  
25 delivered internally?

MS LEIGH: They are modules and resources and pieces of e-learning our members can access and then deliver internally. We do have resources that can follow up with that and provide additional support to our members on our Zero Tolerance if needed through our  
30 learning and development practice.

MS McMAHON: And do you have any data in relation to how many of your 137 members have taken up any of this training?

35 MS LEIGH: Apologies, Counsel, I will need to take that one on notice.

MS McMAHON: Does NDS have any information or data in relation to if ADE members - and as to whether or not they have policies relating to dealing with instances of violence, abuse neglect or exploitation?  
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MS LEIGH: As part of the framework under the NDIS Quality and Safeguarding Commission, all registered providers will be required to have policies around incidents and complaints and management of violence and abuse. And so - and those things are reviewed and audited and assessed for registered providers on a regular basis by the NDIS Safeguarding  
45 Commission.

MS McMAHON: And does NDS have any role in - perhaps not reviewing but at least supporting and guiding in relation to quality of those sorts of policies?

5 MS LEIGH: We do have - apart from the Zero Tolerance resources that we've already talked about, we do have resources available to our members around the sort of things that they should be looking at. We also have training and development around complaints and incident management which has been developed, I think, in partnership with the NDIS, Quality and Safeguarding Commission, recently that has been sent out to all of our members. And so, yes, there are other resources available to our members around the development of policies that sit under the Zero Tolerance.

15 MS McMAHON: Thank you. And I just wanted to draw your attention - I understand that it was drawn to your attention that this might be referred to in evidence, but I just want to go to the expanded table, Point 4, Responding to Abuse. Are you aware of that on page 2 - sorry, page 3 of the Framework document?

MS LEIGH: Yes.

20 MS McMAHON: I just note that in Responding to Abuse, in the second column, Supporting the Person, at dot point 4, one of the guidance - one guidance that's offered is: "Link to police specialist services, complaint bodies and advocacy."

MS LEIGH: Yes.

25 MS McMAHON: And I'm drawing your attention to the police - the linking to police there. In relation to the third column of Meeting Legal and Organisational Requirements, there's no specific reference to reporting to police in that column. I just wanted to ask what guidance that NDS - what guidance is given by NDS in your training under the Zero Tolerance initiative in relation to when instances of abuse or violence should be reported to police?

30 MS LEIGH: My apologies, Counsel, I haven't got the detail of that particular piece of training. But certainly the general advice that we would be providing is that if this is an area that is a criminal matter or meets mandatory reporting requirements, then we would be suggesting that people should call the police.

35 MS McMAHON: Would that be something you could take on notice in terms if there's any other specific guidance that's provided to members?

40 MS LEIGH: Yes. Certainly.

MS McMAHON: Thank you. Now, I just want to turn to, now, the breadth of industries. I won't spend too long on this, but you've been provided with a table that's been produced by Ms Debbie Mitchell from DSS. And, Commissioners, this table is at paragraph 30 of Debbie Mitchell's statement, volume C, tab 1. Do you have that table in front of you?

45 MS LEIGH: Very shortly

MS LANGFORD: I'm just opening it up now.

MS McMAHON: Thank you, both. Now, I just draw to your attention your own statement at 44 to 46 where you indicate that ADEs operate in - sorry, supported employment services  
5 operate in a wide variety of industries. Now, just looking at that particular table - and, of course, this refers to the number of DCOS funded ADEs by industry. That table indicates that there are 14 categories across 67 ADEs that form part of this survey.

10 And of the employees, if you accept my mathematics, that 198 of the employees out of the 223 are in the first seven industries, that is, warehousing, industrial, outdoor maintenance, cleaning and administration, retail, hospitality, waste and disposal, construction, hardware and manufacturing. Do you accept that?

MS LEIGH: Apologies, I can't find the table that was sent by email straightaway. What I  
15 might say on that one is that the data that NDS collects has got slightly different categories than the data that the DSS collected.

MS McMAHON: It does, but if you accept that, from this particular table, that 88 per cent of  
20 the employees are in those industries that I have just read out, my question to you is whether or not this table, from your experience and your data, reflects the breadth of industries where the highest proportion of employees are placed?

MS LANGFORD: Ms Leigh, would you like me to take that?

25 MS LEIGH: If you are happy with that, Ms Langford, that would be lovely.

MS LANGFORD: So if you actually have a look at our evidence at 46 - and then I'm just  
30 looking at the table there and looking at trying to look at where the industries are - they are - they reflect we've just used different terminology in terms of how we've reported against them and to how DSS has reported against them. That's my understanding, looking at the table. I do - please note, I hadn't seen the DSS table until earlier today.

MS McMAHON: Very well.

35 MS LEIGH: If I might say further than that, Ms Langford, that the highest categories of business activities that we have picked up within our survey are horticulture and arboriculture - apologies about the stumbling over that one - material handling, waste management, business and administration services and cleaning services. There are plenty of other categories, but those are the key ones that we have in our data.  
40

MS McMAHON: Thank you very much for that. I might just move on to CRPD. I just have  
45 some short questions here. It's the case at paragraph 59 of your statement where you indicate that NDS shares the Australian Government view that ADEs are not inconsistent with Article 27 on the Convention of the Rights of Persons With Disabilities. That's correct?

MS LEIGH: Yes, that's correct.

MS McMAHON: The Commissioners have heard this week from a number of people in ADEs - and, of course, it's in the evidence more widely - that sometimes people are getting paid 3 and 4 dollars per hour. Are we to understand that these pay rates from - in NDS' view, satisfy work on an equal basis?

5

MS LEIGH: The current pay rates are, I think it needs to be said, legitimate industrial relations awards processes which are decided by the Fair Work Commission. So, as such, they are certainly instruments that ADEs can use. What you will see within our vision is that NDS and the members that we represent would very much like to transition to a higher wages and better wage outcomes for people with disability. That is something that is quite complex to achieve and requires a range of social and policy settings, particularly, as we've heard, for example, around the interactions with the Disability Support Pension and the entitlements that come with that.

10

15 So our overall position is that we would very much like to see a movement towards a better wage condition for people with disability, but that that needs to be supported by social and political will and changes to some of the policy settings.

15

MS McMAHON: Thank you. I just have one more question and then I will ask, Chair, if I can please have a short break. But are we also to understand, just sticking on Article 27 just for one moment, that NDS consider ADEs to be an environment - in the language of Article 27 an environment that is open and inclusive?

20

MS LEIGH: NDS considers ADEs to be an environment that is supportive for people with disability and one that, as long as there is choice for people with disability, they have absolutely the right to choose the environment that they have.

25

MS McMAHON: Thank you. And, Chair, I have about 20 - perhaps 30 minutes more questions. May we please take a short break?

30

CHAIR: Yes, we can have a short break. Then we can work out how we are going to make up the time.

MS McMAHON: Perhaps morning tea, Chair, if that's convenient?

35

CHAIR: How long do you want the break to be? 15 minutes?

MS McMAHON: 15.

40

CHAIR: In that case, it is now 11.55 Sydney/Brisbane time. We will resume at 12.10.

MS McMAHON: Thank you, Chair.

**<ADJOURNED 11:56 AM**

45

**<RESUMED 12:11 PM**

CHAIR: Yes, Ms McMahon

5 MS McMAHON: Thank you, Chair. I just wanted to move now to some of the concerns that NDS have in relation to transition, and I draw Commissioners' attention to paragraph 38 of the joint statement where it says this:

10 "There is an intrinsic social and economic value of supported employment, and removal could result in large numbers of supported employees being marginalised from the workforce."  
15

May I just firstly ask, Ms Langford, or - in relation to what is the meaning of "intrinsic economic value"? I can't hear you, I'm sorry.

20 MS LANGFORD: My apologies, sorry. I had been coughing. I - so, basically, by people actually participating in supported employment, they are actually earning an income. And by earning an income they actually are a - basically do contribute to Australian society. Also that the cost to the taxpayer in terms of the person's health and social wellbeing, all the research demonstrates that people are both socially and mentally a lot healthier than people who aren't working. So it talks to all of those things.

MS McMAHON: Certainly. I was just specifically asking about the meaning of "intrinsic economic value" in that question.

25 MS LANGFORD: So the economic value is that by people actually working in supported employment, they are basically taxpayers. They are able to purchase; they are able to contribute to the Australian economy.

30 MS McMAHON: Thank you. Now, when you talk about removal leading to large numbers of employees being marginalised, are you expressing a concern about a fast and unplanned transition in that paragraph?

35 MS LANGFORD: Absolutely. I think one of our really big concerns is, is that we really want people to have choice and opportunity to a range of, you know, employment opportunities. And at the moment, we're very aware that there is a very low level of people transitioning, as we've spoken about, from supported employment into open employment. That there are still a large number of barriers for people trying to access open employment that we need to overcome.

40 And we would be really concerned to see, until we've actually addressed some of those - those broader issues, that people not having access or the choice to move in supported employment may end up either at home, not working, not actually having the opportunity to participate. And so we don't want to close one door without there being other opportunities and doors already for people to actually access.

45 MS McMAHON: Can I just ask, then, please, if you could share with the Commissioners the key practical things that need to be in place during the transition, from your point of view, to ensure that people are not marginalised?

MS LANGFORD: Look, I think at this point of time, we need to make sure that there are safety nets. So we are finding at the moment that some of our ADEs are putting in place safety nets. And when I say "safety nets", is not closing the door. So I was talking to one  
5 provider the other day, and the example that he gave in their particular business is that they ensure that the job remains available in the business service and allows a person to actually explore other opportunities.

So there needs to be support to be able to do that. So that's one way. We also need to  
10 ensure that there are the employment opportunities in - that will open the market for the individual to go to. So at the moment - we have moved a long way from where we were a number of years ago, in terms of broadening the knowledge of the broader community around the capacity and capability of people with disability. But we've still got a way to go. And --

15 MS McMAHON: Can I just interrupt on that point for a moment just to ask, does NDS have a role in expanding industry and expanding relationships with industries and businesses to create those opportunities?

20 MS LANGFORD: So in terms - are you talking about our role with open employment and what we do with employers?

MS McMAHON: Yes.

25 MS LANGFORD: So, look, we very much promote and we have some - through NDS, we actually have some initiatives that are actually around trying to break down those barriers. So we have got people with, basically, lived experience of disability providing disability awareness to broader communities, to employers, basically just to demonstrate to the  
30 broader community that just because you have a disability doesn't mean that you can't participate or have a really valued role, whether it's in supported employment or whether it's in open employment.

MS McMAHON: So am I to take it that NDS does accept that they have a role in that expansion, that barrier?  
35

MS LANGFORD: Absolutely. That's why we actually are running the programs that we do - or the projects we do within NDS.

40 MS McMAHON: Was there any other key issues that you wanted to speak to in terms of transition before I move on?

MS LANGFORD: Probably the only barrier - the thing I would talk about is that there are some barriers that we, as a society, really do still need to address to actually smooth that pathway so that people can experience a whole array of different employment  
45 opportunities, if they choose. So I think we need to be working with government and with - through social policy ensure that people actually have pathways and options.



So that could be things such as ensuring that employers are prepared, that they are confident, that we actually basically minimise that low expectation that the broader community and some employers actually have of people with disability. And there's still that underlying culture that does exist. I think that we need to just make sure that the broader  
5 community and businesses and employees are actually aware of the supports that are available, as well, for people with disability to actually choose and experience an array of different employment opportunities.

MS McMAHON: Thank you. Thank you, Ms Langford. I am going to move on. I have three  
10 more short topics just to cover before I conclude. But you're aware that Catherine McAlpine commented on your view, NDS' view that paying award wages would lead to most, if not all, of supported employee services ceasing operation. I just want to draw two of her comments to your attention for your response. The first one is this, that she says that this assumes that the income that the ADE receives is static. Has your view or modelling taken into account  
15 the ADE's capacity to increase the cost of goods and services?

CHAIR: You mean the price?

MS McMAHON: Sorry, the price. The price of goods and services?  
20

MS LANGFORD: So, Ms Leigh, I might hand to you and then I will come on behind if there's additional.

MS LEIGH: Thank you, Ms Langford. So, yes, NDS did commission KPMG to do some  
25 research specifically around what would occur if there were increases in wages and the possibilities of increasing prices. It's essential, I guess, to note that supported employment works in a competitive industry. So when they are selling goods and services, they are selling it into the competitive industry all other employers are.

30 And so that, by definition, brings a price cap in terms of the sale of the goods or services that they provide because otherwise, other purchasers would not - would not purchase those if they were not competitively priced. So that - I guess what I'm saying is that puts a really hard barrier on increasing the price of goods and services that they provide.

35 MS McMAHON: All right. And the second response, if I may, is Ms McAlpine said that government should pick up the difference to lift supported employees' wages to the full minimum award. Did you want to respond to that?

MS LEIGH: Yes, absolutely. NDS is strongly supportive and, in fact, has approached our  
40 government on a number of occasions around this to suggest that in order for us to move to a position where people are paid a living wage - whatever combination that might be in terms of Disability Support Pension and entitlements through that and a wage - that there is the requirement for government to step in and to subsidise the - I'm looking at Ms Langford here, because this is one of her favourite phrases, the productivity gap that is there for  
45 people with disability working.

MS McMAHON: Thank you.

MS LEIGH: I'm not sure if you need any more detail on that.

5 MS McMAHON: That's sufficient for the moment. Because I would like to talk now about the representation of people with disability in your service. You've indicated at paragraph 19 that 18 per cent of NDS staff have identified themselves as a person with disability: 10 per cent full-time and 55 per cent casual staff. That's correct, isn't it?

10 MS LEIGH: Yes, that's right.

MS LANGFORD: Yes.

15 MS McMAHON: And are people with disability represented on NDS' Supported Employment Committee?

MS LEIGH: The National Supported Employment Committee that we have is, by definition, made up of members of service providers. So I'm not sure, Kerrie, if any of our service providers have let us know that they are people with disability. But - sorry, the other - the other committee that we have, which is really the vision industry reference group, is one  
20 where we have a little more flexibility in terms of the Terms of Reference, and we have approached people with disability to be part of that.

MS McMAHON: Would it be a change that NDS might consider in relation to ensuring that people with disability are on that Supported Employment Committee?  
25

MS LEIGH: To be perfectly honest, we are in the process of looking and reviewing of our National Committee, so it's certainly something we can take on advice with that.

30 MS McMAHON: Thank you. Now, I note at paragraph 20 of your statement in relation to your board, you've asked the board members as part of their skills matrix if they have a personal connection with disability.

MS LEIGH: Yes.

35 MS McMAHON: And that five out of your 11 of your directors said they did so.

MS LEIGH: Yes, that's right.

40 MS McMAHON: Are there people with disability - with lived experience of disability themselves represented on your board, as far as you know?

MS LEIGH: As far as I know, none of our current board members have disclosed that they have a disability themselves.

45 MS McMAHON: Do you consider that ensuring that NDS has people with disability on your board is an important way to make sure that people with disability are involved in considering and making decisions about which affect their lives?

MS LEIGH: So until December - our AGM in December last year, December 2021, the NDS constitution was written to the point at which the directors are either representatives of each of the state and territory divisional committees, and so, by definition, our members,  
5 our CEOs of our members, or elected directly from our membership. So until December last year, all of our board members were, by requirement of our constitution, CEOs of service providers.

We have made - successfully made a constitutional change in December last year at our  
10 AGM which now, over this next - between now and 2024 will allow a transitional period for us to have three appointed directors. And those will be positions that can be appointed according to the skills matrix, to what our board may feel are missing skills on the board, and that could easily include, for the first time, somebody with a disability.

15 MS McMAHON: Thank you, Ms Leigh. I want to ask you some questions now about First Nations people. Does NDS have data on the representation of First Nations people among supported employees?

MS LEIGH: I think the answer to that one has got to be no. I'm just having a quick look at  
20 Ms Langford and her coughing fit.

MS McMAHON: You can certainly take this on notice if it's not to hand.

25 COMMISSIONER MASON: Ms McMahan, can I ask a question as well.

MS McMAHON: Yes, of course.

30 COMMISSIONER MASON: I'm just also interested, in the NDS, if there are members that are First Nation - whether they are not-for-profits, social enterprises.

MS LEIGH: We certainly have members - that isn't something that we collect that data on specifically, but I know of members who specifically work in First Nation remote areas, who have many staff at a senior level who are First Nations staff. But we don't have - specifically  
35 collect that data.

COMMISSIONER MASON: Yes, just interested in the numbers of organisations that are First Nations incorporated organisations. Thank you.

40 MS LEIGH: Yeah. Apologies. I can see if we can take that on notice and see if it's some data that we can find.

45 MS McMAHON: Thank you, Ms Leigh, that would be appreciated. Just two more questions on this topic. Has NDS or any other organisation that you're aware of undertaken any evaluation as to the availability and quality of cultural support provided to First Nations supported employees?

MS LANGFORD: Ms Leigh, I don't have an answer to that because I'm not aware of anything. I don't know whether you can respond to that.

MS LEIGH: No, my apologies. That's not something I'm aware of.

5

MS McMAHON: And just finally, does NDS facilitate cultural competence training for its members?

MS LEIGH: And, again, I might take that one on notice, I'm afraid. We certainly facilitate training in other diverse areas, particularly around disability, but I'm not 100 per cent sure about the First Nations cultural sensitivity.

MS McMAHON: Now, just before I give you the opportunity to talk about any reform or key reform issues, I just wanted to ask about the transition from school to work. If transition to open employment is a key feature of your industry vision, what is your view about offering work experience at ADEs to young people in - with disability in schools as to whether or not this might be counterproductive to that vision?

MS LEIGH: So until recently - again, the end of last year - NDS ran a program called Ticket to Work, which was specifically looking at supporting that transition into employment for young people coming towards the end of their schooling. And one of the things that that program found was that if people are really - if young people are really supported towards the end of their schooling with looking at, you know, being given very practical advice about where they could get work experience, looking at the different options available to them, being mentored and supported to trying those, they were much more successful at transitioning over into employment.

I think it's also important to note that NDS considers supported environments as being one of the options and a range of choices that people can make. So I guess two things on that: It's really important to support young school leavers to understand their employment options and to access those, and it's important to say that supported employment is one of the range of options we think is valid - a valid choice for people with disability.

MS McMAHON: But could it possibly have the effect of limiting choice?

35

MS LEIGH: I think if you - so one of the things we found through that ticket to Work program is that if you properly structure that transition period between the end - or before people finish school into employment, it really gives you the opportunity to explore with the person what the different options and availability is of the range of employment options for them. And there will be some people for whom the choice of supported employment is the right option.

MS McMAHON: Thank you. Now, just before the Commissioners ask you any questions, you've provided some evidence today - and I thank you - in terms of reform for transition. You've just touched on reform in relation to schools. Was there any other key area that you would like to mention in terms of reform proposal?

45

MS LEIGH: Yes, I might pitch in, Ms Langford, and then pass to you, if that's all right. So there are a number of things that we think are really important in terms of this reform. And I hope that what you've heard from our evidence there is a real will within the industry to work with the new options that we have through the NDIS pricing to provide a much wider  
5 range of employment options for people with disability. We feel quite strongly that that is something that needs to be supported, and it needs to be supported in a number of different ways.

We've already spoken about the wish to have some wage subsidy allowed in the system by  
10 government to improve the standards of living for people with disability through this process. We think it's really important that the sector itself be supported by government to make this transition, that it shouldn't be a sudden change of policy that puts an already stressed sector under increasing pressure, that it needs to be something that - some of the development work that NDS is doing is - is also supported to help that transition.

We need - we believe also that the intersection between welfare and welfare policy and  
15 benefits needs to be examined more carefully to make sure that the disincentives for people to work are removed, so that, you know, if you've got a tapering off the Disability Support Pension that that - that that isn't a disincentive to people with disability to seeking  
20 employment and going to employment. So that's a fairly complex piece of social policy that we - as well. Ms Langford, is there anything you would like to add to that one?

MS LANGFORD: Sorry, I was coughing. I missed - may have missed some of the things that  
25 you mentioned. Look, one of the things that we wanted to see was a greater investment by Commonwealth Government and greater encouragement around driving procurement opportunities - like, from government, encouraging government to look at how they can purchase from social enterprises going forward to actually boost the financial and viability of organisations.

So I think that if there was encouragement that, you know, government had to purchase X  
30 amount of goods and services from social enterprises - and particularly as they're going from and evolving, it's going to actually allow them greater capacity and capability to broaden their opportunities for - for their current employees. So - and there's some very good examples of that, where NDS actually did have a project that we ran for a number of  
35 years where we were working with State Governments to actually assist and provide business opportunities between government and social enterprises for business opportunities.

MS McMAHON: Ms Langford, I'm sorry to interrupt you, but I am just very conscious of the  
40 time. We do have further witnesses. I would invite you to - excuse me - perhaps put that example in writing, if you would, and provide that on notice.

MS LEIGH: And sorry, Counsel, there is just one other area, which is really around looking at  
45 rural and - well, remote and very remote provision and how to better improve the opportunities - employment opportunities for people with disability in those areas.

MS McMAHON: And, indeed, they are very important topics and I - if you are happy to take it on notice, if you could please put those in writing to us as well, because I'm sure the Commissioners want to hear that in full, but I'm just very conscious of the time.

5 MS LEIGH: Yes.

MS McMAHON: Chair.

10 CHAIR: Thank you. Commissioner Mason, do you have any questions to ask of our panelists, Ms Langford and Ms Leigh?

15 COMMISSIONER MASON: Thank you, Chair. Yes, I do have a question and actually on the tail of just that last comment there from Ms Leigh, around rural and remote and very remote communities and providing services there. Does the NDS or has the NDS at different times considered - along with welfare, as you've just mentioned - but the important area of cost of living for people in these areas as part of the picture around stressors on organisations and in terms of providing these services? And, of course, if you could provide that information, that would be - would be good. Thank you.

20 MS LEIGH: Thank you, Commissioner Mason. And, absolutely, that is something that we recognise both for individuals living in remote and very remote communities, that the cost of living for, you know, purchasing fresh food, for example, is significant. But also for providers working in that area and providing services into that area, there are really significant additional costs to housing, to transport, to recruitment and attract a workforce  
25 into those areas. So it is a really significant issue.

CHAIR: Thank you, Commissioner Mason. Commissioner Galbally, do you have any questions?

30 COMMISSIONER GALBALLY: Thank you for your evidence. I would like to ask you in a bit more - a bit more about the - Ms McAlpine mentioned a \$9,000 per person gap. So 20,000 people, that would be \$180 million. How - if - so you broadly support this proposal? I just want to just make sure I understood. So you support that proposal?

35 MS LEIGH: So the figures that Ms McAlpine quoted aren't necessarily NDS' figures. What we do certainly support is the idea that, in order for people with disability to have improved wage outcomes, that there needs to be a level of subsidisation of the wages that they achieve, and whether that is through some combination of increasing or allowing the access to the DSP at higher levels, or whether that is a subsidised payment that can be then made  
40 through the employer to their wages. It's quite - it is fairly complex but we absolutely support the idea that there needs to be wage subsidisation.

45 COMMISSIONER GALBALLY: And Ms McAlpine's proposal was specifically about a national minimum wage, so taking that. So how long would you think that subsidy should go for? Have you estimated that and done some modelling on that question?

5 MS LEIGH: I think that question goes to the length of time that it would take the industry to transition to a point at which the wages that they are able to pay people, because of the industries they work in, would be at a sufficient level in order to be able to not require subsidisation any more. And the estimates that we've made about that are between five and 10 years.

COMMISSIONER GALBALLY: Right.

10 MS LEIGH: Probably the 10-year mark.

COMMISSIONER GALBALLY: And in paragraph 33, where you talk about the new pricing model provided by the NDIA and that that allows sort of more diversity and offerings, you give an example which is about supported employee placements in the workplace of a supported employer's commercial customers. Would that - would you be envisaging that 15 they be paid the national minimum wage in those positions, or are you suggesting a supported wage? I was confused about that.

MS LEIGH: That would be you, Ms Langford?

20 MS LANGFORD: Thank you very much. So there - what is actually happening at the moment is some people are using - and if I've got the question wrong, please forgive me, but some people are using funding that they have received from the NDIS to actually move from --

25 COMMISSIONER GALBALLY: Yes.

MS LANGFORD: -- a business service into - and I will just use for an example maybe, like, a large supermarket or whatever. It would depend on whether the person was being employed under the SES award or whether they were being employed under the actual industry award for that particular business. Within each award, every modern award, there 30 is what's known as model clause that does allow that, for the Supported Wage System, that if somebody isn't able to basically produce as much as a coworker, there is the capacity -- for eligible people. So it would depend.

COMMISSIONER GALBALLY: Yes. But are you - is your position that you're encouraging your 35 members to, you know, negotiate and push towards the national minimum wage for people in open employment, as well as in - I mean, that's your position, as I understand your previous comment.

40 MS LANGFORD: We want wage parity, absolutely.

COMMISSIONER GALBALLY: Right. Okay. Thank you.

45 CHAIR: I think the question was, are you pushing for that? Or is that your position? Are you actually doing something to bring that about?

MS LEIGH: I think that is the transition process that we are on at the moment and the support that we're providing to members to look at their business models, to develop, you know, more competitive options around that.

5 CHAIR: Yes. All right.

MS LEIGH: And the advocacy that we're doing for a wage subsidy and a smooth transition process across the next five to 10 years.

10 CHAIR: Commissioner Galbally, does that conclude your questions? Thank you.

COMMISSIONER GALBALLY: It does, thank you.

15 CHAIR: Thank you. Paragraph 23 of your statement refers to the constitutional change that you have mentioned that took place in December 2021.

MS LEIGH: Yes.

20 CHAIR: What prompted that?

MS LEIGH: I think what prompted that was a recognition by the board and our members that having such a constitution that is written in a way that it is basically elected members or members that are elected at a state and territory level does not give you the opportunity, if there are skills gaps, to be able to change those skill gaps. So, for example, at the moment, 25 our current board does not have somebody who is an accountant by background, for example. So they're all very savvy. They're all CEOs managing their own business. But it might be helpful to have an accountant on the board, but until December this year, we had no option for that.

30 CHAIR: What paragraph 23 says is that it provides a positive opportunity for stronger representation of people with lived experience of disability. Was that one of the motivating factors?

35 MS LEIGH: I'm afraid I can't say, Chair, because I have only just recently joined NDS. I'm not sure what the discussions were around that previously.

40 CHAIR: All right. And I take it from the evidence you've given that up-to-date, no - that power has not been exercised to appoint a person with lived experience of disability to the board?

MS LEIGH: No, we currently have a transition process between now and the end of 2024, because we are at the maximum numbers or close to the maximum numbers of directors at the moment.

45 CHAIR: All right. And in the interests of time, I would just like you to take this on notice. I have looked at Annexure 7 that was referred to. I can't see in Annexure 7 anything that provides empirical information on the numbers of supported employees transitioning into



open employment. Can I ask you to take that on notice and to inform us as to whether Annexure 7 does, in fact, address that issue. Thank you.

MS LEIGH: I can take it on notice.

5

CHAIR: Yes, Ms McMahon. Is there - does that conclude the evidence?

MS McMAHON: That concludes the evidence, Chair.

10 **<THE WITNESSES WITHDREW**

MS McMAHON: If we could please take the luncheon adjournment, and it is suggested that perhaps we return at 1.15, if that is suitable.

15 CHAIR: Yes. Thank you very much for giving evidence, Ms Langford and Ms Leigh. We appreciate the assistance you have provided and also the information you have given us in the written statement. Thank you for appearing before the Royal Commission. I think we will adjourn until 1.20, if you don't mind, so that we have a chance to improve our digestion. Thank you. We will resume at 1.20.

20

**<ADJOURNED 12:43 PM**

**<RESUMED 1:23 PM**

25 CHAIR: Yes, Ms Dowsett.

MS DOWSETT: Thank you, Chair. This afternoon, we have the final witnesses for this hearing and they are both returning witnesses. First, we have Ms Debbie Mitchell, Deputy Secretary Disability and Carers, from the Department of Social Services, and she appears on the panel with Ms Gerrie Mitra, PSM, General Manager, Provider and Market division, National Disability Insurance Agency.

30

**<DEBBIE MITCHELL, CALLED**

35 **<GERRIE MITRA, CALLED**

CHAIR: Thank you very much to both of you for coming to the Royal Commission to give evidence. As always, we appreciate your assistance. Just to let you know where everybody is, in case you are not aware, we have Commissioner Mason, who is in Alice Springs. We have Commissioner Galbally, who is participating in the hearing from Melbourne. I am in the Sydney hearing room, as is Ms Dowsett, and I shall now ask Ms Dowsett to ask you some questions.

40

**<EXAMINATION BY MS DOWSETT**

45

MS DOWSETT: Thank you. Can you both hear me okay?

MS MITCHELL: Yes.

MS DOWSETT: Thank you. So beginning with you, Ms Mitchell, you made a statement for this hearing dated 21 March 2022.

MS MITCHELL: That's correct.

5

MS DOWSETT: And, Commissioners, you will find that in Bundle C at tab 1. And in that statement, Ms Mitchell, you provide some details of your role and responsibility at paragraph 8, and you say you are.

10 "...responsible for policies and programs provided to - providing targeted supports and services to people with disability and carers."

And:

15 "This includes policy in relation to the National Disability Insurance Scheme."

MS MITCHELL: That's correct.

MS DOWSETT: And for the remainder of the afternoon, I am just going to refer to it as the NDIS and the NDIA. Is that okay with you?

20

MS MITCHELL: Yes.

MS DOWSETT: Thank you. Ms Mitra, you have provided two statements for the purpose of the hearing, one dated 1 April 2022 and one dated 6 April 2022.

25

MS MITRA: That's correct.

MS DOWSETT: Commissioners, you will find those in Bundle C at tabs 14 and 17 respectively. And, Ms Mitra, the description of your role and responsibility is in a statement you provided for Public hearing 19 at paragraph 8 of that statement?

30

MS MITRA: That's right.

MS DOWSETT: And is it an accurate, although brief, summary to say that your responsibilities, as the name of your position implies, is in relation to the providers, the provision of service through the NDIS?

35

MS MITRA: That is both providers and oversight of the market, and how the market is going.

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MS DOWSETT: Sorry, could we have the volume turned up a little. I'm finding it hard to hear the witnesses. Ms Mitra, can I just ask you to repeat that last answer?

MS MITRA: That's correct. It is the responsibility for oversight of the providers and the market.

45

MS DOWSETT: And when you say "the market" that's the market in which the providers operate?

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MS MITRA: No, it's - yeah, it's the market in which the providers operate. That's right. So it is about the overall state of the market and how it is operating.

5 MS DOWSETT: And the market, those are the people who are selling services to people with disability?

MS MITRA: That's right. They're providing services to people with disability who have funding in their plans.

10 MS DOWSETT: Right. I just want to begin by making sure we've got a clear understanding of some language that we're going to be using for the purposes of your evidence today. And I'm taking, first, the definition of "open market employment" or "open employment" from a report that's on the NDIS website called *Employment outcomes for NDIS participants as at 31 December 2020*. Firstly, are you, Ms Mitra, familiar with that report?

15 MS MITRA: Yes, I am.

MS DOWSETT: And are you - you have a copy of it there, do you? Is that what you're turning to.

20 MS MITRA: I do. It's what - I'm just turning to that, yes.

MS DOWSETT: So on page 5 of that report, open market employment is referred to as:

25 "Open market employment or open employment is in the open labour market which offers payment at the relevant minimum wage or above."

MS MITRA: That's correct.

30 MS DOWSETT: So, in summary, if you are in open employment, you are getting paid minimum wage?

MS MITRA: That's correct. That's the definition for this employment outcomes report that we've produced. Yes.

35 MS DOWSETT: And is that a definition that the NDIA applies generally?

MS MITRA: So particularly when we're looking at this data and these statistics, we talk about open employment at full wage rates or open employment at supported or subsidised wage rates. So, you will see that through the outcomes report. So we do differentiate between people who are working in the open market where they're being paid at least the minimum wage, as against the open market which is not necessarily as an ADE or anything like that, but it is - potentially it is where the employer is using the Supported Wage System and, therefore, the wage may be lower.

45 MS DOWSETT: Right. But for the purposes of today's hearing, and your evidence this afternoon we are - this hearing is about ADEs, Australian Disability Enterprises. So if we just confine ourselves for the moment to the distinction between open market employment and ADEs, the key distinction is the wages. Is that correct?

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5 MS MITRA: The key distinction may or may not be the wages, Counsel. So the reason for that is because somebody might be working in an open employment position, so it's not an ADE, which is - as you can see further down in that - on that same page, we have a definition of an ADE. And that is those sort of more traditional places where they mostly employ people with a disability. So sometimes we will refer to open employment as being somewhere where it is a job that may have no other person with - who has a disability, but they are operating and paying under the Supported Wage System.

10 MS DOWSETT: Now, the definition of "ADE" to which you just referred, the report says these are.

"...generally not-for-profit organisations that provide employment for people with moderate or severe disability who need significant support to work."

15 And then this provides some examples. That's correct?

MS MITRA: That's right, yes.

20 MS DOWSETT: So when you said just a moment ago that ADEs mostly employ people with disability, were you seeking to distinguish between the people with disability employed as supported workers and the people without disability employed to support them?

25 MS MITRA: Yeah, not really, though, Counsel. I think what I'm doing - because this report, which is our employment outcomes report, provides a lot of information about the different types of settings in which people work. And so we are moving away from describing organisations as ADEs, but I'm really - I think that here it describes those traditional, previously funded through DSS organisations, that were set up for the specific purpose of providing an employment workforce for people with disability, whereas there are other times when somebody is working in an open employment setting, but the employer may be using a Supported Wage System.

30 MS DOWSETT: Right. I've just been asked to ask if you could both sit a little closer to the microphone. I am told that people still can't hear clearly and it's from your end.

35 MS MITRA: I just moved the microphone a little closer to us. Is that better, Counsel?

MS DOWSETT: Yes, I'm getting a two thumbs up. Thank you very much.

40 MS MITRA: Thank you.

MS DOWSETT: Now, you did say in your statement, Ms Mitra, that - the point you were just making about moving the language away from ADEs, and you spoke about social enterprises.

45 MS MITRA: That's right.

50 MS DOWSETT: Would you accept as a definition that social enterprises are commercial businesses that are run with social values and with the intent to employ marginalised populations, including people with disability, and are generally - sorry, it may also be

referred to as social entrepreneurship or, in the UK and Europe, social firms?

5 MS MITRA: That's right. We would think of social enterprise as - they are organisations with a social purpose, and the majority of their income is coming from a commercial source, for example, trade. If they're a social enterprise with regards to disability employment, then their focus and their social purpose will be on providing employment for people with disability. There can, of course, be other social enterprises which may have another social purpose

10 MS DOWSETT: And in the context of social enterprise for people with disability, they are paid the full award wage?

MS MITRA: Sorry, Counsel, I missed the last part of that.

15 MS DOWSETT: People with disability who work in social enterprises are paid a full award wage?

20 MS MITRA: No, they may or may not be. Again, if the social enterprise is using the Supported Wage System to assess productivity, then they may not be paying a full wage.

MS DOWSETT: Now, turning to you briefly, Ms Mitchell, you have referred in your statement to the scheme that has been established to take up what used to be the Disability Employment Assistance Program, so - sorry, I will begin again. The Royal Commission has heard evidence of a transition from the Disability Employment Assistance Program to the NDIA. That's correct?

MS MITCHELL: That's correct.

30 MS DOWSETT: And there are some people who were receiving supports under the DEA as 31 March 2021 who are ineligible for the NDIS.

MS EASTMAN: That's correct.

35 MS DOWSETT: And for those people, they can receive support through a program called the Disability Employment Continuation of Service program.

MS MITCHELL: Continuity of Support Program, yes.

40 MS DOWSETT: Continuity, thank you.

MS MITCHELL: There are 246 employees in that category.

MS DOWSETT: Yes, you've told us 246, 225 of which are currently active?

45 MS MITCHELL: Yes, correct.

MS DOWSETT: And there are 67 employers providing support to those people?

50 MS MITCHELL: That's correct.

MS DOWSETT: And you've also told us that in the financial year 2020 to 2021, two people were reported by their ADEs as having transitioned out of that supported employment into open employment?

5 MS MITCHELL: That's correct. At paragraph 79 - table 14.

MS DOWSETT: Right. And that table 14 only deals with transition out to open employment.

10 MS MITCHELL: That's correct.

MS DOWSETT: Were there other transitions out of the DCOS scheme?

15 MS MITCHELL: So this is 2021 data from the ADEs rather than from - I will just confirm that that is from the DCOS program itself.

MS DOWSETT: Yes, but as I understand those figures --

20 MS MITCHELL: Yes.

MS DOWSETT: -- that is only people who transferred into open employment.

MS MITCHELL: That's correct.

25 MS DOWSETT: Were there people who transferred from the DCOS program to anything else, or just out of the program and to no support?

30 MS MITCHELL: I don't have those figures here, but the - of the people in the DCOS program, at the moment, over 90 per cent of them are over the age of 65, and 70 per cent of them are over the age of 70. So we will look at what supports will be required for those people as we move towards the reform of the disability employment system that will be stood up again in July 2023.

35 MS DOWSETT: And, Ms Mitra, you've told us that in that same financial year, 2020 to 2021, 295 NDIS participants self-reported to the NDIS that they had transitioned from supported employment into open employment.

MS MITRA: That's correct.

40 MS DOWSETT: And you make the point in --

CHAIR: Sorry, where do we see that?

45 MS DOWSETT: 27 of Ms Mitra's statement.

CHAIR: Thank you.

50 MS DOWSETT: You make the point that this information is provided by participants during their planning interviews and the like. That's correct?

MS MITRA: That's correct. Yes.

MS DOWSETT: Is it correct that the NDIS has the capacity to verify those self-reports, by, for example, looking to see where support in employment funding goes in the next plan?

5

MS MITRA: It would be quite difficult to verify that. At the moment we use self-reported data, because it would be quite difficult, I think, to verify - we would need to match which provider it was being paid to, which would be quite complex. So that's not how our scheme actuary has provided this data to me. And I'm not actually 100 per cent sure that we would be able to match to that - to do that level of verification, the way we capture data at the moment.

10

So we do use the short form outcomes questionnaire, and that is provided at each plan review. And that's where we get the data from, so it is self-reported. It's not reported from the ADE, though. It is reported from the participant.

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MS DOWSETT: Is there any reason why the ADE isn't required to report it as well?

MS MITRA: No particular reason, other than our relationship with the ADE is different to what was previously done, where they were block-funded. And so, effectively, the participants themselves are buying those services, the supports from the --

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MS DOWSETT: Yes, we will come to the changes in the funding. I just wanted to know - so it's because of the changed funding arrangement, you can't - you don't get that information from ADEs?

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MS MITRA: That's right. We don't have a direct lever to require them to provide that kind of information to us.

MS DOWSETT: And are we correct in understanding that the transmission of funding - the transitional arrangements are now complete and everyone, every ADE under the NDIS scheme now receives its funding through the new pricing framework?

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MS MITRA: So there is - so of the 161 ADEs in existence on the change of transition of funding, 160 of them have transitioned successfully to the new claiming system. One has asked for an extension of time.

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MS DOWSETT: Were they all supposed to be on by 1 January 2022?

MS MITRA: Yes, that's right. And so before that time, one of them asked for an additional period of time. We've given them an additional six months to make the changes that they need to make.

40

CHAIR: And in order to change, transition, what does the ADE have to do, the one who has asked for an extension has not yet been able to do?

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MS MITRA: So all of those - the participants who work with that ADE, they've had the appropriate amount of funding put into their plans. It's about the way we - they claim. So it's about the claiming system that sits behind the - and the scenes, and so that particular provider still uses the same DMI line funding that has been decommissioned. It sits in the

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background. So they are the only ones that can still use it.

CHAIR: Yes. Thank you.

5 MS DOWSETT: Within the NDIS - I want to now, Ms Mitra, to some very detailed questions about how the funding works and how planning works. Have you been following the evidence of this hearing?

10 MS MITRA: I've only been able to hear some of it, as I was in transit. So I don't have a detailed - detail on all of it. Some parts of it, I heard.

MS DOWSETT: I assume, though, it has been reported to you that there has been some lack of clarity about how the arrangements for the NDIS work?

15 MS MITRA: I've had some summary, yes, about some of the evidence that's been provided.

20 MS DOWSETT: Well, this is going to be - between you and I, we're going to try and provide that clarity and fill those gaps. So, please, bear with me and let's dig in. First of all, there are - there are three types of funding under the NDIS scheme. This is correct, isn't it? There's core, capital, and capacity-building.

MS MITRA: That's right.

25 MS DOWSETT: And funding allocated within each of those three categories, depending upon whether it's a stated support or not, can be used for different things within the category. So you can use core employment supports to fund daily living activities, but you can't use capacity-building employment supports to fund something in core.

30 MS MITRA: That's right. So, effectively, each of those three buckets are for different purposes. Core funding is for maintaining your existing supports and services that you need. It could be for employment; it could be for other access to the community, social participation. It could be a whole range of things that sit under that, that support you. It could be your living support, your activities of daily living.

35 MS DOWSETT: I'm going to stop there because I'm going to read them to you. The Royal Commission has heard evidence about the NDIS price book.

MS MITRA: Yes.

40 MS DOWSETT: Now, I took that to be a reference to the *Pricing Arrangements and Price Limits*, and there's a version for 2021-2022 valid from 1 March 2022, and it's version 1.5.

MS MITRA: Yep.

45 MS DOWSETT: Am I in the most recent - the current version?

MS MITRA: Yes, I think you are.

50 CHAIR: Do we have that?



MS DOWSETT: You do not. It is publicly available but it's not in evidence, Chair.

CHAIR: Good.

5

MS DOWSETT: But I will talk you through it.

CHAIR: Very good.

10 MS DOWSETT: Page 11, please, Ms Mitra.

MS MITRA: Yep.

15 MS DOWSETT: So, first of all, there are the three support purposes listed in the middle of that page that I spoke about.

MS MITRA: Yep.

20 MS DOWSETT: And then there's a heading called Supported Categories aligned to NDIS Outcome Framework. Do you see that.

MS MITRA: Yes. Yes, I can.

25 MS DOWSETT: And there are eight items there. That's what you were seeking to summarise?

30 MS MITRA: No, so - and I agree, it's actually the paragraph above that where it talks about core, capital and capacity-building. So core is about activities of daily living. Your - the group below are the eight outcomes, and you may well receive capacity-building funds for something like work under both core and capacity.

35 MS DOWSETT: Yes, we are getting there. I'm just - you were describing the kinds of things you can get funding for and I just want to list these off. You can get it for daily living, home, health and wellbeing, lifelong learning, work, social and community participation, relationships, and choice and control.

MS MITRA: Yes. So it may help, Counsel, to look at page 12 of that document. I appreciate - I'm not sure if everyone has --

40 CHAIR: No, we don't. I have to say, it's not easy to follow if we don't have the document. So while you are going, perhaps somebody could try and arrange for each of the Commissioners to get a copy, one way or another. Speaking for myself, I would really like to follow this from the document.

45 MS MITRA: Yes, and I do think page 12 of this document is useful. So it is available on our website, if that's the fastest way to get it, but otherwise I'm sure somebody will be getting it for you.

50 MS DOWSETT: Copies are being provided and perhaps we will - I will move to a different set of questions, and I will come back to that detail when the Commissioners have the

document.

MS MITRA: Thank you.

5 MS DOWSETT: We heard some evidence yesterday from Mr Mann who was a representative from an ADE, and he was answering some questions about a thing called Centre Capital Costs.

MS MITRA: Yes.

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MS DOWSETT: Did you hear that evidence, Ms Mitra?

MS MITRA: I didn't hear his evidence but I have had that reported to me about the questions around that. Yes.

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MS DOWSETT: Just to be clear, Centre Capital Costs, that's different than the capital category of the three types of supports we were talking about before.

MS MITRA: It is. That's right, yes.

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MS DOWSETT: And this is something that could form part of a core funding or part of a capacity-building funding?

MS MITRA: That's correct. Yes. Let me just go to that. Yes.

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MS DOWSETT: And it is an amount that goes to the cost of running and maintaining the centre through which support is provided?

MS MITRA: That's correct, yes.

30

MS DOWSETT: And so in the ADE context, it's about running and maintaining the premises from which the enterprise operates?

MS MITRA: So it's a - it isn't for the - necessarily for the whole use of any of their facilities. It is for the - if the specific – disability-specific additional capital requirements that may be required. So when you are running either a work activity or a social activity in a centre, the additional costs of establishing that centre and making sure that it has the capital supports needed to support somebody with a disability, it is an offset for that.

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40 So it isn't necessarily for all of the building, all of the costs of the building, but it is for the additional requirements that a centre-based facility might need to set up. It is just over \$2 an hour per participant for any participant who is receiving supports in that space. So a relatively small amount to offset the costs. The capital amount used to be built into the hourly rate, but in order to make it more transparent and clear about what we're funding, we've moved that out a couple of years ago, and so now it is a separate line item that can be claimed by the provider.

45

MS DOWSETT: But it comes out of the participant's funded amount.

50 MS MITRA: It is the - the participant is funded for their employment supports and they

are also funded for their capital - for any capital contribution that they may need. Yep.

5 MS DOWSETT: Would you agree that that amount, even acknowledging you have said it's a relatively small amount of \$2, it operates or could operate as a disincentive to ADE providers to insist - to assist employees to transition out of their employment setting?

10 MS MITRA: I don't think that that particular payment provides a disincentive, particularly. It is - it's a small amount for - to help cover the costs of setting up centre-based facilities. So I don't think it provides a disincentive.

MS DOWSETT: The more ADE - the more supported employees an ADE has, the bigger the collective bucket of this centre-capital cost they get.

15 MS MITRA: Yep. Yes, that's true.

MS DOWSETT: So there's an incentive for them to draw in employees and keep them there so they can keep the money.

20 MS MITRA: My view on that would be that there is an incentive for providers to provide something that's attractive. So participants can choose where they work and I think - you know, I don't think that it's particularly incentivising providers to try and attract more people in necessarily. I just don't think the amount is enough to provide that kind of incentive.

25 MS DOWSETT: And I take it, then, that you would - you wouldn't accept that there is - it's an inherent disincentive; it discourages ADEs from assisting their employees to transition out.

30 MS MITRA: No, I don't think it's enough to do that. Not - not - the way we've restructured the system is to encourage people to move people out, including providing additional funding to do that.

35 MS DOWSETT: And you say that in paragraph 38 of your statement, that the NDIS pricing framework actively encourages participants to consider and take up new employment opportunities. That's correct, you've said that?

MS MITRA: That's right, yes.

40 MS DOWSETT: Can you tell us briefly which part of the pricing framework does that?

45 MS MITRA: So if a participant decides or is seeking to choose to explore other employment options, then we can provide additional funding in the capacity-building bucket of money, and that is around finding and keeping a job. And so we do that through a couple of different areas, and I will just find - I'm just looking to the right page on that one. Make sure I've got the language right. But what that does - let me just find it again -- what we - so what we actually provide is two areas, employment-related assessment and counselling, where we actively can put money into a person's plan to allow them to do a vocational assessment and various assessments and tools to allow them to consider what kind of work they would be capable of doing.

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MS DOWSETT: How is that actively encouraging a participant to consider and take up a new opportunity?

5 MS MITRA: So we're funding them to have that conversation and to provide them with supports, both to get the assessment process - the employment-related assessment and counselling, and that is really about considering what kinds of work they might be suitable for. And then we also provide them with workplace assistance, which is, again, staffing and support to help them to explore what kind of work they might need to do to help them with job customisation for a different role, to support them specifically - and  
10 when you have this document, you can see it's specifically to support someone to transition from an ADE to open employment. So --

MS DOWSETT: Yes, well, we will come back to that. I just finish off on this point. In his evidence yesterday, Mr Mann was speaking about the NDIS funding and Bedford's  
15 transition to that funding. And I'm reading from transcript page 138. And Mr Mann says that his organisation:

"...has transitioned to the NDIS and there is no funding in the NDIS for training or  
20 transitioning to open employment."

Do you agree with that?

MS MITRA: No, I don't agree with that.

25 MS DOWSETT: Does it concern you that a provider has that view about the NDIS?

MS MITRA: It does concern me.

MS DOWSETT: And at page 152 of the transcript, Mr Mann said:

30 "I don't believe the NDIS speaks to open employment at all."

He goes on to say:

35 "I don't see any support from the NDIS in regards to transitioning employees from, let's say, an ADE to open employment. Because there's no NDIS support for capacity or capability development. There's no support for transitioning to open employment. I don't believe the NDIS addresses capacity development or open employment at all."

40 So you disagree with that assessment of the NDIS?

MS MITRA: I completely disagree with that assessment. We - we do fund participants for all of those things. We absolutely fund them if they are seeking to change their job and to move to a different job. It could be to a different ADE; it's more likely to be to open  
45 employment. We both fund supports for capacity-building, we fund people to support them to look for those options, and we fund employment-related assessment and counselling.

MS DOWSETT: Right.

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CHAIR: Can I just see if I've understood this correctly. And for some of us, at least, it helps to have concrete examples as to how this might work. If we have somebody who is an NDIS participant who has been, let us assume, working in an ADE for some time. As I understand it, as at the transition date, if I can put it that way, the block-funding is altered and the participant has, in that participant's plan, amounts of money that more or less are equivalent to what was provided in a different way before. Is that right?

MS MITRA: No, that's not quite correct. So at the point of transition, each of the participants were reassessed to --

CHAIR: That's right.

MS MITRA: -- to determine the supports that they would need. In many cases, the supports that they receive in the plan is higher than they were previously receiving - or than the ADE was receiving for the DMI. So what the - what we have done is make an assessment about the individual supports that they need to do the job that they are doing and that --

CHAIR: How would that work with somebody who has been in an - working in an ADE - and we've had some evidence from people at this hearing, as you probably know, who have been there for up to 25 years - what did that mean in practice for that - let us say someone has been there for 10 years.

MS MITRA: Yep.

CHAIR: What then happens? How - does that person then - is that person at that point encouraged to say, "look, I've been here for 10 years. I really want to be a forklift driver outside and this is my - this is what I would like to do and I would like supports"? Is that how it works or is it just some kind of attempt to provide the supports that more or less match what the person has been doing for 10 years?

MS MITRA: No, no, that's exactly how it works - the first - the first scenario that you painted there. So that's exactly how it's worked. And, in fact, we've done an enormous amount of training with our LACs and with our planners to make sure that that first employment conversation was really positive and productive.

CHAIR: Right.

MS MITRA: You would have seen --

CHAIR: So do you have data that tells us how many people who were in ADEs before the transition date then were able to get - then had plans that specifically provided for transition to open employment, whether by way of upskilling, whether by way of providing them with information or vocational assessments or whatever. How do we know - how do you know whether this assessment process actually assisted the transition process for those people who were already in ADEs?

MS MITRA: Commissioner, it is early in this transition, obviously, so a couple of ways that I think we are able to track to see if the transition is going well - and as you've said, this is - the first part of the transition was moving everybody into the new funding stream.

And we are absolutely still building on the understanding for participants about what's happened and what this looks like. They can see something different.

5 CHAIR: I think we understand that, because that's what everybody has told us. What I'm trying to find out is what has actually happened.

10 MS MITRA: How do we know - yeah. So then what would have happened in the planning conversation with the participant is a conversation about where are they working now, is that still where they want to work or would they want to work somewhere else. Those conversations have happened. An amount has been put into their plans for supports in employment, which supports them where they are now and is much more individualised.

15 And then there's also - was the opportunity to put in a separate amount for workplace assistance, if they wanted to start looking for something else, remembering that, for some of them, they would be able to - they may have had other supports in their life that could help them to start to explore other options. But one of the things that we've got in terms of data, which - a couple of things. We've got what we know is, in the last year, 295 have moved out into open employment as self-reported.

20 The other thing that we know is that the number of people who have a goal for employment has gone up significantly. And that went up from 34 per cent in 2020 to 41 per cent of all working-age participants in 2021. And so, again, that tells us that those conversations have been had. People are talking about having a goal around employment much more strongly than previously.

25 CHAIR: Does that mean employment in open employment or just employment?

MS MITRA: It could be either, but then what we've also got is that - and I appreciate - because, again, we are early in this process, I --

30 MS DOWSETT: Can I just interrupt you there. That's the second time you've said that. Just to be clear, the transition process, according to Ms Mitchell's statement, commenced on 1 July 2013. That's correct?

35 MS MITRA: It commenced, and it went for 18 months. So the last of the participants transitioned across at the end of last year.

40 MS DOWSETT: Yes, I appreciate that the transition ended - but for that one ADE you spoke about, it ended at the end of the last year. But it's almost 10 years you've been doing this. Is that correct?

45 MS MITRA: No, no. It's - sorry, the move from DSS to us is only 18 months. The transition for people to come into the scheme started from 2013. But the - at that point, the funding was done in the same way. It was still the DMI funding. So it was the transition to the new employment supports which is now separating the way that people are supported, that happened 18 months ago.

50 MS DOWSETT: That's the money side of it. But the planning conversations, if these people are coming into the NDIS from 1 July 2013, is that when you've started having these conversations?

MS MITRA: No, it started from when the new amounts have gone into the funding.

MS DOWSETT: Right. Thank you for that.

5

MS MITRA: So it is 18 months old. So we began by bringing everybody across into the scheme. They didn't just come, obviously, for employment supports. They often had other supports. We kept their employment supports the same until we were ready to make the transition and they'd all come in, and then they all came in. Those who only had employment supports in their plans all came in at the end, and then that was 18 months ago, and we began this process of transitioning.

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CHAIR: Can I, again, make sure that I understand because I have this odd feeling of the ground shifting as we move along. I'm sure it's accidental. You said that, from 2013, when the transition to the NDIS commenced, there was a period of time when people who would have been employed by ADEs and would have been the subject of block grants of one kind or another, they just came across in a uniform manner.

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MS MITRA: They did.

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CHAIR: Okay. Now I'm beginning to understand. And that uniform manner involved what, as far as their plan is concerned? Did something happen? Did they get a plan as the result of moving into the NDIS, but being given notionally the same sorts of supports as they previously had?

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MS MITRA: You're absolutely right - correct, Commissioner. Apologies if I haven't been clear enough.

CHAIR: No, no. That's all right. I'm just trying to understand it.

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MS MITRA: Yes. So they all came in - they all came in at various times.

CHAIR: Right.

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MS MITRA: And once they were all in, we made the move to the new employment. So the planning conversations that I've talked about were once we got to the new employment supports funding, and then it became much more visible for people to see how much they were getting. And for some participants, that surprised them, that they're getting a lot more. And they're starting to understand and have that kind of ability as a consumer to understand how much funding they get for the supports that they need --

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CHAIR: All right. Let's assume that I'm someone who has been in an ADE. I come into the NDIS in mid-2014, because that's when the NDIS is extended to the area I happen to live in.

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MS MITRA: Yes, that's right.

CHAIR: What, at that point, do I see? What do I get? What piece of paper do I get that tells me what my funding is or what I'm now entitled to?

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MS MITRA: Yes. So, at that point, the amount of funding would have been the same as the DMI. I would - I'm not 100 per cent sure what they - what it would have looked like to them, whether it would have been visible in their plan or not. I'd have to check that.

5 CHAIR: Right. Because, previously, they wouldn't have seen any of this money at all?

MS MITRA: Not at all, that's right.

10 CHAIR: So this time, what's happening in 2014, is the result of the NDIS - the person becoming a participant at NDIS is that now they are getting a bucket of money.

MS MITRA: That's right. So that's correct.

15 CHAIR: And then the ADE that they're working at is going to be billing them for certain services thereafter.

MS MITRA: Yeah. And apologies, Commissioner. I will need to double-check what the 2013 looked like from a participant point of view, because --

20 CHAIR: Yes. All right. So when, then, this new funding arrangement comes in, at that point, each person who has come on to the NDIS from previous bulk-funding arrangements then gets somehow notified, "Here's your chance to get a plan"; is that how it works?

25 MS MITRA: So at the point of their plan review or for those who had just come in for their first plan with us, that's when they had that more in-depth conversation about what were they looking to do, and that is what's 18 months old.

30 CHAIR: Right. And who initiates that conversation?

MS MITRA: So we do. At the point of the plan review, we have the conversation with them. We use the booklet that we've given - tendered as an Appendix *Let's Talk About Work*, and we've done a lot of work with training our LACs and our planners, making sure they use the booklet early. We share it with participants. We encourage families and others to look at it and use it as a tool so that when they come ready for their planning conversation, they're thinking about, "Would I like an employment goal? If I'm already working in an ADE would I like to move to something different?"

40 CHAIR: So this depends, if we are talking about someone who has an intellectual disability, on that person appreciating and understanding that this is their chance to seek funding in order to move from their employment in an ADE out into the open workforce working as a fork-lift driver, or whatever it happens to be.

45 MS MITRA: That's right. And it's not a one-off chance. Every time we have a plan review, we continue to have that conversation. If, in between their plan reviews, they decide they'd like to consider again a different option, they can contact us as and we can put more funds in the plan as well. So there is an opportunity in between plans if they decide they want to make a move to do that. So it's much more flexible, much more responsive to their individual needs.

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CHAIR: All right. And if I'm somebody who, despite being encouraged to think about what I might want to do in open employment, I decide that really I've been in an ADE for quite a long time, I like it there, I don't think I'm being paid enough but, nonetheless, this is what I want to continue, what happens?

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MS MITRA: Sorry, Commissioner, so that's if they want to stay in their current setting? Is that --

CHAIR: Yes, what happens, as far as their plan is concerned?

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MS MITRA: So, again, we would have a review. We ask the questions that are built into the short form outcomes questionnaire: How is that going for them? Have their needs changed? Are their support needs any different? And if they are, we can adjust the funding that they've got in the plan. But if their choice is to stay where they are, then we make sure that the funding continues on as it was. Sometimes they might change jobs within an ADE; that's not unusual, for people to try different jobs. And if the job itself requires a different level of support, we might put more supports in.

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CHAIR: All right. Thank you very much. My understanding - and I apologise for how long it's taken - is slowly improving. I will now leave it to Ms Dowsett to explore the further mystery.

20

MS MITRA: That's okay, Commissioner. And I do just perhaps want to comment that in the period before we started this, I would need to check what that looks like from the participant point of view, because it really was still block-funded through DSS. So we might just need to clarify that.

25

CHAIR: Yes, I understand. Thank you.

30

MS MITRA: Thank you.

MS DOWSETT: Now, I believe, Commissioners, you all now have a copy of the price book. Is that correct? And so I began by turning to page 11, and that's where you see those three types of support: Core, capital and capacity-building. And Ms Mitra was making the point that if you go to page 12, you can see how those three types break down into domains and then into support categories.

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MS MITRA: That's correct, yes. So that's an easier way of seeing the way they hold together, and the outcome domains are what we report on, so you can see the link from where we provide supports back to the outcome domain and back to those three buckets.

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MS DOWSETT: And we see work in both core and capacity-building?

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MS MITRA: That's correct, yes.

MS DOWSETT: In his evidence yesterday, Mr Mann referred to funding as having three components, and what he was describing was the direct support or face-to-face, the non-face-to-face or back office, and the capital component. Now, I appreciate that that's me paraphrasing his language. It's not NDIS policy or NDIS language. But is that an

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appropriate way to understand, within core funding, into a participant's plan, there will be money for those three items?

5 MS MITRA: That's correct. And I would also refer you - and I do appreciate the risk that this is complex - but on page 68 of this document, what it does is describe in more detail for you what supports in employment looks like. And supports in employment is when somebody is at work and they need more support than would be reasonable adjustment. So this is available both to ADEs and to other employers. And this part has the option to claim both for the support on the job - so, again, to try and kind of make that clear, if  
10 somebody needs prompting with the work that they are doing, if they need perhaps some personal care through the day. They may need personal care or support at lunchtime with meals, etcetera. So supports in employment is that.

15 But you will see on page 69, there is also the option for a provider to claim for non-face-to-face support provision. So perhaps through a day or through a period of time a participant is no longer getting on with their work colleagues, they want their job - things aren't working for them, you might spend quite a bit of time non-face-to-face reordering their support and their rosters or arranging for some changes in the way they're coming and participating in the work environment. You can claim for that separately.

20 Likewise, you can see there that there's provider travel, and further down on page 69 you can see centre capital costs is also there. So all of those things we put into a participant's plan in the core area, and a provider providing supports in employment could also claim for centre capital cost, for non-face-to-face support provision, but it is directly related to  
25 the individual participant and the non-face-to-face supports that they required in order to be able to continue on with their work. Quite a lot there. Quite separate to what we put in capacity-building, which is --

30 MS DOWSETT: Right. We are going to get there. Please don't leap ahead. This supports in employment, you said that it's for ADEs but it can be used in other employment settings.

MS MITRA: Yep. Exactly.

35 MS DOWSETT: If the Chair's fork-lift driver - is successful and he secures employment driving a fork-lift in - in an open employment -- --

MS MITRA: Yes.

40 MS DOWSETT: -- that participant is able to claim supports through their plan for that open employment. Is that correct?

45 MS MITRA: That's correct. So they would - if, in that case - and perhaps if I give you an example that I actually have that helps, perhaps, to understand how this sort of support can transition. So a recent example which came to our attention was where an ADE had been providing packaging for a medical supplies company. Had a very good relationship and a partnership with that company. The company was keen to explore having two of the participants who had been working in the ADE doing packaging to come and work in their location and in their site.

50 The ADE continued to provide the supports in employment but in a new location. And as

those two participants built their skills, the employer then said, "We will continue to have them employed here now on an open wage." And at that point, then, there's a choice about how much of supports employment does the person still need. It could be there is still somebody who comes to the workplace each morning to do various things to make sure they're set up and ready to participate in employment.

5

CHAIR: And how do you work out which is the employer's responsibility pursuant to the employer's obligation to provide reasonable adjustments as opposed to the supports provided through the NDIS?

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MS MITRA: Yep. Exactly. Very good question.

CHAIR: Thank you.

15

MS MITRA: So it is - each of those are those individual discussions with the participant about what their supports are and with the employer about what we think is reasonable adjustments. So they are quite tricky. There is - there are other programs that provide supports for employers to think about what reasonable adjustment would be. At this point in the transition, I would say we - particularly if somebody has been in supports and employment in an ADE, you know, they have significant need for support, and we would work very hard to make sure that all of that support was available, even though over time it may become less.

20

But we would - you know, it's a good outcome for people to have been moved. In this case, the example that I've shared, you know, that is now onto full open wages. The relationship was already there. They understood the work they were going to. So --

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CHAIR: And how would a prospective employer know that our hypothetical worker wishing to become a fork-lift driver carries with them these entitlements under the NDIS for supports in open employment?

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MS MITRA: Yep. So a lot will depend on how, I think, the person's got there. If we've funded workplace assistance, then there's been somebody who's been kind of making that introduction and talking to the employer and introducing the person. If the person - if our participant had not had any work at that point in time, they may be a DES participant, and they may be supported by DES.

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There's around 54 participants currently in ADEs have a support coordinator. And often it can be the support coordinator who is supporting and advocating for the participant and explaining to the new employer, "These are the supports that come with this person." And they're often a really important part of ensuring the new employer feels that there is support for the person on the job, beyond what would be reasonable adjustment. And they're often very individual supports.

40

MS DOWSETT: Does the participant pay for the support coordinator out of their plan?

45

MS MITRA: The participant is funded for the support coordinator under their plan, yes.

MS DOWSETT: Perhaps if we could go to page 93 in the price book. You were - you've mentioned capacity-building and finding a job. And so this is where we find that. And so

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we begin on page 93. These are the current arrangements for what a participant can get funding for in their plan in the capacity-building space. And, as you've said, its employment-related assessment and counselling.

5 MS MITRA: That's correct.

MS DOWSETT: And we might just bring up on the screen, if we can, the bottom of the page, Workplace Assistance. So, these - this capacity-building, it differs from core funding - so core funding is every day or day-to-day requirements to maintain you where  
10 you are. Capacity-building is to move to something new. Is that correct?

MS MITRA: Yes, can I just say I think on the screen it's page - that says page 93, but on mine it's the page before that, actually, that gives you more information on employment-related - that's it. That's the one. And - that's good. Yep.  
15

MS DOWSETT: Thank you very much. It's page - different pagination, but this is what I wanted to have up.

MS MITRA: That's it. Yep. Thank you.  
20

MS DOWSETT: Thank you. So, I wanted to just first stop at the first bullet point here, "explore what work would mean for them". Is this - is this a conversation? Is this facilitating work experience in different employment settings? Is that what this is about?  
25

MS MITRA: It could be any of those things. So, we would put this funding into somebody's plan if they are expressing a desire to do something different, to look for a different opportunity or a different position. So here indicating it would be quite valid for this support to be, first of all, exploring and better understanding what work would mean for them and then we would go on to look at some of those other things.  
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Again, this will be provided by one of our providers, an NDIS provider who is interested in doing this kind of work and you can see again - and here's what I think I referred to earlier, includes the opportunity to "support the transition from an ADE to open employment".  
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MS DOWSETT: And you just referred to an NDIS provider, but it's correct that you don't have to be registered with the NDIS to be a provider?

MS MITRA: You - even if you are a provider with the NDIS, whether you are registered or unregistered. So, there are two types of providers. Registered and unregistered. You can be unregistered as a provider, but you're still a provider.  
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MS DOWSETT: Okay. So, when you referred to "NDIS provider", you weren't seeking to make that distinction.  
45

MS MITRA: No, no.

MS DOWSETT: And can you explain briefly to the Royal Commission what the difference is, practically speaking, between someone who is registered as a provider and someone who is not registered?  
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5 MS MITRA: I - I can. So all providers are subject to the code of conduct under the Commission. A registered provider - and, again, there's sort of more detail in this and probably -- for the Commission at some point, but a registered provider has various practice standards that they will need to comply with, and that also includes a quality assurance process. Only some supports are required to be delivered by a registered provider.

10 So, again, this goes to - if - it comes back to what are the registration groups that - back on page 12, there are currently 36 registration groups, depending on what kind of support you are delivering depends on which registration group you will be in. So - but, generally speaking, for employment supports, many of them are currently registered providers. They could be unregistered providers. They could be either.

15 MS DOWSETT: In her evidence on Monday, Ms McAlpine from Inclusion Australia said to the Royal Commission it's difficult to get approval for a plan where you want to use an unregistered provider. Would you agree with that proposition? That it's harder if you're not using a registered provider?

20 MS MITRA: No, I wouldn't agree with that proposition.

MS DOWSETT: It should make no difference from NDIS' perspective?

25 MS MITRA: I don't think it makes any difference, no.

MS DOWSETT: Just while we are looking at this capacity-building part of the price book, if I could please ask you to turn over to the pages - it may be, in your version, page 94. There's a heading Supports in Employment - Specialised Supported Employment.

30 MS MITRA: That's right, yep.

MS DOWSETT: Right. And what the introductory paragraph here says is that this duplication on what we saw on page 68. I know that's probably going to be different in this version, yes, page 67. As I understand it, this is describing the transitional arrangement. So, when funding was first provided under the NDIS, it was done as capacity-building using the same kinds of things that we now see in core.

35 MS MITRA: That's correct, yes.

40 MS DOWSETT: These things are no longer available; is that - as capacity-building? Is that correct?

MS MITRA: We've moved our supports and employment into core. That's correct. Yes.

45 MS DOWSETT: So why is it still in the price book?

MS MITRA: Yeah. Well, again, I'm just looking at that. I think possibly it's because of the transitional payment, the Temporary Transformation Payment, which is a different thing altogether. But I might need to just check in on that one. It could potentially be - I think that probably is the answer, but I might come back to you on that one.

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MS DOWSETT: If you could take that on notice for us. And if it is the - if the Temporary Transformation Payment is a different thing and that's still available, if you could tell us that and for whom it is available.

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MS MITRA: Yes. The Temporary Transformation Payment definitely is available. I'm just thinking that might be why that's still sitting in this section. That was effectively a - an additional payment amount paid. It's been a reducing payment over time, and it's to allow providers to do the work to transition to become an efficient provider under our pricing model. So, kind of a different thing, which is why we will take on notice why we've still got there as well as in core.

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MS DOWSETT: But you said it is still available.

15 MS MITRA: The TTP is, yes --

MS DOWSETT: And when will that cease - when is that expected to cease to be available?

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MS MITRA: So it's currently on a reducing schedule. We're still having a look at that. So, I haven't got that off the top of my head. But, effectively, it's been going down from 6 per cent - it's been dropping by percentages, and that was about supporting providers to move to the efficient price under the pricing arrangements. So quite a different thing to - you will see TTP is available across the range of supports. If you're claiming that support, there were various things that you needed to do which is separate to the actual provision for the participants. So that is a pricing adjustment mechanism that we've had in the scheme.

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MS DOWSETT: Now, in answer to some questions from the Chair before, you spoke about the conversations that are had between planners and local area coordinators about goal setting. And you have described, Ms Mitra, in paragraph 49 of your statement, training resources that have been developed to support those planners and LACs to have meaningful discussions about employment with NDIS participants.

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MS MITRA: That's right.

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MS DOWSETT: Was that training co-designed with people with disability?

MS MITRA: I'm - I think it was. I wasn't directly involved at the time, so I can check that. But I'm - I would be very surprised if it wasn't. We did a lot of work at that time to make sure that we were - relevant to the kinds of conversations that would be affected for people.

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MS DOWSETT: And how is the training delivered? Is it online, in person?

MS MITRA: We've had a range of different ways that we've done that. Online, webinars. There's the self-directed, self-paced induction for new people. We've done - we've developed the resources that are available. We have a coaching-type approach in the workplace. And so very strong focus on having those employment conversations, and I think the increase in employment goals in participant plans is evidence that that was effective --

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MS DOWSETT: Is it mandatory training?

MS MITRA: I - I - actually, I can't tell you that. I think -

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MS DOWSETT: Will you take that one on notice too?

MS MITRA: I will take that one on notice, yep.

10 MS DOWSETT: And does it specifically cover supporting participants to develop their statement of goals and aspirations for their plan?

MS MITRA: Yes, it does. As per the - the - *Let's Talk About Work* booklet, that specifically talks about thinking about goals, thinking about their strengths, the things that they like to do, the things that they already do and how they may be, therefore, the kinds of things that they might like to consider in terms of an employment setting.

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CHAIR: Can you remind us where we find the *Let's Talk About Work* document?

20 MS DOWSETT: *Let's Talk About Work*, Ms Mitra, you have referred to it as being an annexure. It's not an annexure to your current statement?

MS MITRA: Okay, it is - I think I've referred to it --

25 MS DOWSETT: You have referred to it in your statement, but you didn't annexe it. I've just been passed a note, Chair, asking if we could have a short break at 2.30. It may be --

CHAIR: It may be very sensible for us to have copies of that. Because one of one of things I'm interested in, given that - I think you probably agree with me that this is a scheme that has a fair amount of complexity.

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MS MITRA: I would agree with that, yes, Commissioner.

CHAIR: And we are dealing here with the rights, entitlement, aspirations of many people with intellectual disability. And one of the objects, I assume, is to ensure, as far as humanly possible, that people able to make decisions to exercise choice and control - that's the phrase - in the way best suited to their own needs.

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MS MITRA: That's correct.

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CHAIR: So that means that all of this complexity has to be translated into concepts, information that can be understood by the people, the cohort, who - which the scheme is intended to support and, no doubt, those who support those people, such as family members. So, one of the things that we might think about over the break is how do people get the information they need in a form that enables them to navigate this rather complex system?

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MS MITRA: Yes, yes.

50 CHAIR: We might take a break now, and we will come back at 2.40 Sydney and Brisbane

time. And you will then be able to tell us how this can be navigated with ease and optimism.

MS MITRA: Thank you.

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**<ADJOURNED 2:27 PM**

**<RESUMED 2:43 PM**

10 CHAIR: Yes, Ms Dowsett.

MS DOWSETT: Thank you, Chair. Thank you for that brief adjournment, and we've used it to provide you and the Commissioners with copies of some documents. Ms Mitra and Ms Mitchell, just so you know, the Commissioners now have copies of the NDIS booklet *Let's Talk About Work* and copies of Booklets 1, 2 and 3 and a copy of the *Supports in Employment Provider Handbook*. And so, Ms Mitra, you were explaining to the Chair how we go about planning, I think was what we were talking about, and you were referring to this *Let's Talk About Work* booklet.

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MS MITRA: That's correct. Yes. That's right. That's one of our key documents that we use to work directly with participants, families, and others who they may engage to support them. We try and get the booklet sent out to them ahead of time. We have, you know, hard copies of them. They're online. And very much an opportunity for people to think before they come to the planning session and to start to have a conversation about what they might be interested in talking about.

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MS DOWSETT: Okay. If I can just pause you there. So you said you send out hard copies of the *Let's Talk About Work* booklet. Is that sent to every participant before their plan review?

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MS MITRA: As I understand it, it varies, depending on the communication that they've asked, but they're readily available, and we do send them out whenever we're asked - people are asking for them. And staff are keen, I think, to share with them and to get people well prepared when they come for their planning meeting. But as I also understand it, sometimes people will come to their LAC, have an initial conversation, take it away, come back again. So, you know, I think there's plenty of scope and opportunity for people to use this as a tool and a resource.

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MS DOWSETT: Yes, you just said, "We give it to them when they ask for it." Again, coming back to, do they have to ask for it or is provided to them?

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MS MITRA: I can't tell you if it's sent to everybody. I think it is one of the tools - one of the things that is made available to people as they prepared for their planning sessions.

MS DOWSETT: And when it is made available, is it also made available with Booklets 1, 2 and 3 that are referred to in it?

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MS MITRA: Again, I can't - I'd probably rather take that one on notice since the planning side is not normally my side. Although I did have - in preparing for this session, I have spoken directly to a couple of the state managers who've shared the way they use the

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tool, which, in particular, is that they see it as a - one of the things that they use to make sure that they're having guided conversations, and certainly it's part of the process in every conversation, including in review conversations.

5 MS DOWSETT: Right. Well, yes, if you could please take that on notice and let us know how this information makes its way to a plan participant. And you said that they may come into their meeting and have a conversation with their planner or their LAC and then go away and think about it some more and have another conversation. But we came to this document talking about the statement of participant goals and aspirations. Just to confirm, is it your evidence that the LAC or the planner is trained to take the information given by the participant and then help the participant to express - to articulate what their employment goal might be?

15 MS MITRA: That's correct. That's my understanding of how it's used. You will note on page 10 of the document, after they've gone through a series of questions about the person themselves - what do you do well, what do you love doing, how do you get around, etcetera - it comes to the question, "If you have an employment goal write it down, here. Do you have ideas about how we could help you achieve your goals, etcetera."

20 So, it's a guided conversation using this tool. Some people will come to the meeting with an LAC ready to talk about what they want to do; others might need a bit longer. It's not a once-only - it's an ongoing conversation.

25 MS DOWSETT: And if the participant doesn't have an idea about what the NDIS can do to help them achieve their goal, does the LAC or planner suggest things for them?

30 MS MITRA: I imagine that would vary. Certainly, for younger people, one of the options that we have is the SLES program, the School Leaver Employment Supports program, and that's another support that we are currently looking at how do we make sure it is effective. But that is a really useful opportunity and a support for young people to further consider and explore what they might like to do. So, there are different ways that we can think about funding the employment conversation.

35 For some people, they - if they are just expressing an interest in employment more broadly, they're not employed and they are on a DSP and have at least eight hours of work capability, then it may be that the LAC will support them to connect with a DES provider straightaway. So there's kind of a number of different options, depending what the person is looking for and asking for.

40 MS DOWSETT: And moving, then, to the booklets, Booklet 1 *Understanding the NDIS*, this is providing information to a participant.

45 MS MITRA: So, Counsel, I don't have that booklet in front of me, unfortunately.

MS DOWSETT: Are you not familiar with its content?

MS MITRA: I'm broadly familiar but not specifically with different pages.

50 MS DOWSETT: So, page 15 details - excuse me - page 15 of Booklet 1 is about

employment. I think we are just about to have it brought up on the screen.

MS MITRA: Thank you.

5 MS DOWSETT: So are we correct to understand that, insofar as employment is concerned, this is one of the ways in which the NDIS tells a participant what the NDIS can fund for them?

MS MITRA: This would be one of the ways, yes.

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MS DOWSETT: And you see there that the - there are a series of dot points under What the NDIS Funds?

MS MITRA: Yes, I do, yes.

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MS DOWSETT: And the - this includes things that might be core supports and things that might be capacity-building supports. Is that correct?

MS MITRA: That's correct, yes.

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MS DOWSETT: Right. And then Employer and Employment Services Fund, and then there's another series of dot point. Is this by way of explaining the NDIS doesn't fund this?

MS MITRA: It's also by way of explaining that one of the things the NDIS does is help to connect people to other mainstream services. So, it is effectively starting to describe the broader ecosystem for employment and you're correct, we don't - we don't fund the things underneath, although we may fund transport for work activities depending on what the work is and so on. So - but, generally, we - that's correct. We're not funding reasonable adjustments. We're not funding those particular employment service programs.

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MS DOWSETT: Could the funding provided by the NDIS, the supports that are funded, include somebody who's helping the employer apply for the Employment Assistance Fund for the participant?

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MS MITRA: Was that - whether they would be supporting the employer?

MS DOWSETT: Yes, sorry, supporting - if an employee needs an adjustment which falls within the Employment Assistance Fund, then, as I understand it, an application needs to be made to that fund for that assistance. Is that correct?

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MS MITRA: I'm not over the details for that fund. That's not one that I specifically have knowledge of.

45 MS DOWSETT: Ms Mitchell, are you across EAF?

MS MITCHELL: So, it's - the EAF is - as I understand, is available in Australian Government Employment Services program and in the Disability Employment Services program, but I would have to confirm that it's available in both.

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MS DOWSETT: And so, the question - and perhaps this can be taken on notice, is can it - is it included or potentially included in a participant's plan for a provider to assist in making that application? Do you understand the question?

5 MS MITCHELL: I do, yes.

MS DOWSETT: Thank you. Moving back to our booklets, Booklet 2 is about planning, and I take it that you don't have this one either, Ms Mitra?

10 MS MITRA: No, I don't.

MS DOWSETT: It's perhaps a more generalised document than the *Let's Talk About Work*. It's a series of questions, and people need to fill it in order, it would seem, to provide information for the development of their plan. If we could please bring up page 17 of the plan. Sorry, of the booklet. No, 17. Now, there's a lot of writing on that page, Ms Mitra, but what I wanted to draw attention to here and ask you some questions about are the differences between self-managed plans, plan-managed and NDIA managed. And I want to use this as the context of talking about how the money that is allocated in a plan gets spent. So, firstly, it's correct that the NDIS makes a plan with an individual?

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MS MITRA: That's correct.

MS DOWSETT: You agree with that?

25 MS MITRA: Yes.

MS DOWSETT: And the NDIS or the NDIA determines how much money is allocated in each component of the plan?

30 MS MITRA: That's correct, through the planning process. Yes.

MS DOWSETT: And then when an individual is seeking to use money from the plan, they engage with a provider?

35 MS MITRA: That's correct. Yes. They buy supports in the open market. Yes.

MS DOWSETT: Right. And depending upon whether they have a self-managed, plan-managed or NDIA-managed plan, the invoice for the services they are seeking may come to them for payment? That's self-managed; is that correct?

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MS MITRA: There are a number of ways that payments can be made and - so certainly NDIA-managed or agency-managed plans are, in effect, managed by the agency, and so you need to be a registered provider to be able to provide supports for agency-managed plan. A plan-managed plan can be partly plan-managed and partly self-managed. And then payments can be - one of the mechanisms is that somebody may make a payment themselves and claim reimbursement. Another mechanism is that they may put a claim in for somebody to be paid through our online systems. So, there are different mechanisms for making different payments.

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50 MS DOWSETT: In his evidence yesterday, Mr Mann described having to invoice the

supported employees in his ADE and then they arrange for payment. Does that sound correct?

5 MS MITRA: It sounds unusual for this kind of support, and it's - so I would probably want to understand that better. It's more likely that these participants are plan-managed or agency-managed. It is more likely that Mr Mann's organisation - given the size of it, and the number of invoices, it is more likely that they put a claim into the agency on behalf of the participant for the supports that they have provided. I don't know his organisation specifically, but it is of a size that it would be unusual that he - that they would be billing the participants directly.

15 MS DOWSETT: In a scenario where the participant is billed directly, who checks - or is the onus upon the participant to check that the supports they're receiving are consistent with their plan and that they, in fact, receive the supports they're being invoiced for?

MS MITRA: So that mostly happens at the point at which the participant chooses the provider that they want to use. At that point, there's often an agreement entered into between the provider and the participant about what the support is and how it will be provided.

20 MS DOWSETT: Can I just pause you there. That's what we've heard described as a service agreement?

25 MS MITRA: It may be a service agreement, although we don't require service agreements. That is an arrangement between the participant and the provider. It could be an agreement that's in writing. It could be an agreement that may be through a conversation with a participant and their nominee or their guardian. But there is - there needs to be an agreement between the participant and the provider about what's being provided, for what price, and - because they don't have to charge the prices.

30 Our pricing document is a price limits document, and so some providers will charge under the price limit. And then there needs to be clarity between the participant and the provider about what's being provided.

35 MS DOWSETT: If there isn't a written agreement, how is that clarity ensured?

40 MS MITRA: So, again, what we do is spend time working with participants to support them to think about how they can have that conversation. Many providers, particularly for more complex supports, do provide a written service agreement. So that's often the way that it's done. And then once there is a service agreement in place, that service agreement will also, therefore, then stand for, "This is how we will be claiming funds."

45 MS DOWSETT: So, a Program of Supports, Ms Mitra, is - it's an agreement for a maximum of 12 weeks about how the provider will provide support to the participant?

50 MS MITRA: That's right. So a Program of Supports is available not just in employment but for other areas as well. I just can't quite find that document at the moment but I'm - you've got it up on the screen. So a Program of Supports is designed to make it more flexible for both participants and more straightforward for the provider themselves. So instead of having to have a very rigid - you know, "We will support you for your meal care

between 1 and 2 in the afternoon every day", and those sorts of thing, what it allows the participant and the provider to do is to agree that this is the way we will provide your supports, but the timing on those may be flexible.

5 However, the provider can only bill for supports that they actually deliver. So, effectively, there's an agreement between the participant and the provider. The provider delivers the supports and then they bill for what they've delivered. A program of support is just a simple way of claiming more regularly for - particularly when a participant has more stable supports. But it's not as detailed as saying, you know, every hour of every day here  
10 is what we are going to deliver. It's a little bit more flexible in that sense.

MS DOWSETT: And as you can see there on the screen, they are - for a period of no longer than 12 weeks.

15 MS MITRA: If you use a Program of Support you do need to rediscuss it with the participant every 12 weeks. And so, again, this is a good way I think of the participant and the provider agreeing on the supports that are to be provided and making sure that they are still meeting the participant's needs.

20 MS DOWSETT: Would you agree that a situation where the service agreement provides that the program of support automatically rolls over every 12 weeks, is not consistent with that expectation you've just described?

25 MS MITRA: I don't think that would be consistent. I might also add that we do provide some description about this as well in the pricing arrangements and pricing limits document. So, again, you know, we give more information there. I'm just conscious of the fact that we've - you know, got information about this from a couple of different places.

30 MS DOWSETT: That's okay. We will find it there. I do need to move on, I'm conscious of the time. But just to be clear about your evidence, and automatically rolling over program of supports is not what the NDIS is expecting to see?

MS MITRA: No, it's not.

35 MS DOWSETT: Thank you. Ms Mitchell, I'm going to turn to you now. You may have felt like we had left you out of the conversation. But I wanted to ask you some questions about the NSDS determination, which is referred to in your statement. I'm looking in particular from paragraph 85 of your statement.

40 MS MITCHELL: Apologies, I - could you just tell me what page that's on? My - some reason my pages have mixed themselves up.

MS DOWSETT: Page 19.

45 MS MITCHELL: Thank you, yes.

MS DOWSETT: So you are talking here in these paragraphs - paragraphs 85 to 99 I'm looking at - you are talking about the department's - just excuse me -

50 CHAIR: Are talk we talking about the same - is this Ms Mitra's document?

MS DOWSETT: Ms Mitchell.

CHAIR: Ms Mitchell, sorry.

5

MS DOWSETT: My apologies. We are talking about the department's quality strategy for disability employment. You have that heading there, Ms Mitchell?

MS MITCHELL: Yes, I can see that.

10

MS DOWSETT: And the six principles that are referred to - sorry, through paragraph 88, you talk about the disability employment supported services scheme and then in 89 that NSDS determination 2014.

15 MS MITCHELL: Yes.

MS DOWSETT: And you say that it includes six principles that focus on human rights, promote respect and dignity and opportunity across all of the standards.

20 MS MITCHELL: That's correct.

MS DOWSETT: And then you set them out over the page. These are the same six principles that you referred to in paragraph 12 of the statement you provided in respect of the DES hearing; that's correct?

25

MS MITCHELL: That's correct. I believe so.

MS DOWSETT: And these principles are used in the - in the DCOS, so the remnant of the ADE that's still funded by DSS. Sorry, these principles are used in the external auditing of those providers. That's correct?

30

MS MITCHELL: Yes. All - all providers who are providing the DCOS system are NDIS providers and are - have responsibilities under the NDIS Act.

35 MS DOWSETT: But don't you also - aren't you also saying here they have this NSDS determination - they are assessed against these principles?

MS MITCHELL: Yes, that's correct, as part of our contractual arrangements.

40 MS DOWSETT: Yes. And the external auditor who undertakes the certification and surveillance orders - audits, that auditor is selected by the ADE from a list on the DSS website?

MS MITCHELL: I believe that was my evidence at the previous hearing.

45

MS DOWSETT: Well that was for DES. I'm just checking it's the same for ADEs?

MS MITCHELL: I don't have that in front of me, but I would - I think that that would be correct.

50

MS DOWSETT: And can you tell the Royal Commission how auditors get on the DSS list?

5 MS MITCHELL: I think that - well I would have to take this on notice to be very clear, but it's my understanding that we have a panel of auditors that can be chosen and there would be a selection process become an auditor on the panel of auditors.

10 MS DOWSETT: Yes, well, if you could take on notice what is that selection process, how does an auditor get on the DSS list. With the surveillance audits for ADEs, are you able to tell us whether they cover each of the six principles, or is it like the DES and they only cover four of the six?

15 MS MITCHELL: I - again, I would have to take that on notice, but I would understand, I think when we talked about covering the six principles that two of the principles were only reviewed every second year or every third year is my recollection of my previous evidence.

20 MS DOWSETT: Yes. That was your previous evidence, and, again, please do take it on notice, we would like to know whether it's a situation also for ADEs. Has the department done any analysis of the auditing of those principles against the principles that you identify in your paragraph 173 as representing the majority of complaints received?

MS MITCHELL: Sorry could you ask that question again. So are you asking me whether the majority of the complaints covered those four principles?

25 MS DOWSETT: So you identify in paragraph 173 that the majority of complaints relate to four of the six principles?

MS MITCHELL: That was - well, for the period between 2018 and 2021.

30 MS DOWSETT: Yes, in that period. And what my question is, is whether you have looked at the auditing regime in the surveillance audits - so assuming that it is like the DES system and only four of the six get audited every year, have you looked at how - how that audit pattern fits with this complaint pattern?

35 MS MITCHELL: I don't believe so. But I will correct if - if there's another answer.

MS DOWSETT: Do you think that it might be useful to do that analysis and see if perhaps a change needs to be made to the audit pattern?

40 MS MITCHELL: Yes, I - I would agree. Any - any new review of any process that we have is always valuable.

MS DOWSETT: I would like to take you now, please, to paragraph 124 of your statement.

45 MS MITCHELL: Yes.

MS DOWSETT: And you refer in here, you refer back to your paragraph 20 and to a departmental review of wage assessment tools used in ADEs in 2006 and 2007. Do you see that?

50

MS MITCHELL: Yes, I do.

MS DOWSETT: And the final sentence of that paragraph says that:

5 “Findings from the quality audits anecdotal information and wage data suggest that alternative tools are delivering fair wage outcomes.”

10 The alternative tool that you are referring to there - or alternative tools you are referring to there, those are the - the ones other than the Supported Wage Scheme that you've listed in 123. Is that correct?

15 MS MITCHELL: So for 2006 and 2007 I'm unaware of how many wage tools were around or agreed under the award. But, yes, it would be referring to the other wage tools other than the SWS.

MS DOWSETT: Right. So when you say "the alternative wage tools" there, you - you do agree that it's those listed in 123 but you think it might include some others?

20 MS MITCHELL: No, what I'm saying is that in 2021 if I was to make that statement the alternative tools would be the same as ones I've listed but I am unaware of exactly which tools were on that list in 2006 and 2007.

25 MS DOWSETT: Right. And the assessment that they are delivering a fair wage outcome, is that your opinion?

MS MITCHELL: So, the tools that are - they are all agreed tools from the Fair Work Commission under the award. So --

30 MS DOWSETT: Yes, that wasn't my question.

MS MITCHELL: So could you repeat your question, whether they are a fair work tool?

35 MS DOWSETT: Is it your opinion that those alternative tools are delivering fair wage outcomes? That how we read paragraph 124?

MS MITCHELL: Yes. Fair work outcomes as a measure of -

MS DOWSETT: They are wage outcomes.

40 CHAIR: Sorry, I think if you just let Ms Mitchell answer. Please complete the answer.

45 MS MITCHELL: Well, I was going to say as part of the assessment process they were deemed to be appropriate fair work outcomes as under the Australian award. And so my opinion is that we - we followed the award process and the determination of what was a wage outcome for each person.

50 MS DOWSETT: Thank you. Sorry, the reason for my interruption a moment ago was because you said "fair work outcomes." I just wanted to check if you meant "fair wage." But I didn't.



MS MITCHELL: Apologies. Yes, fair wage outcomes.

MS DOWSETT: Thank you.

5 MS MITCHELL: There have been subsequent reviews of all of those awards.

MS DOWSETT: Yes, I understand that, and I'm not asking you about the award process. I'm asking you just to confirm I've read that paragraph right. That is your opinion.

10 MS MITCHELL: That was - I can't - that sentence is referring to the 2006/2007 conduct of the Wage Assessment Tool, and I was not in my role in 2006 and 2007, so I don't have any evidence about what happened at that time.

MS DOWSETT: So it's not your. That -

15

CHAIR: Well, does it matter -

MS DOWSETT: Moving on, Ms Mitchell are you aware of any data that shows representation of First Nations people among the DCOS program participants?

20

MS MITCHELL: No, I unfortunately - yes, I am. I apologise. I think it's 4 per cent of indigenous persons are in the DCOS program and Ms Mitra actually has the data on indigenous persons in ADEs.

25 MS DOWSETT: We are coming to that. But just 4 per cent of the total participants in the DCOS system?

MS MITCHELL: Yes.

30 MS DOWSETT: Right. Thank you. Ms Mitra, you have the data for representation of NDIS participants who in ADEs?

MS MITRA: I do, thank you, in FY21, 561 participants who identify as Aboriginal or Torres Strait Islander worked in ADEs is. That is effectively 3 per cent of the ADE cohort and 4 per cent of participants of work age who had responded to the short form questionnaires. So that's the number around the percentage.

35

MS DOWSETT: And are you able to provide us with a breakdown of how many of those participants are people whose primary disability is an intellectual disability?

40

MS MITRA: I don't have that information with me today.

MS DOWSETT: Is that something that you could take on notice and interrogate out of your system?

45

MS MITRA: We will take it on notice to interrogate and see what we can provide.

MS DOWSETT: Thank you very much. Appreciate that. Are you aware, Ms Mitra or Ms Mitchell of any evaluation that's been done in relation to cultural supports that are

provided to First Nations people who work in ADEs, whether - irrespective of which program they are funded under?

5 MS MITCHELL: I'm not aware. We don't, as far as I know, review the training programs of ADEs but I'm not aware.

MS MITRA: And I also don't have any awareness of particular programs for cohort.

10 MS DOWSETT: Moving on, Ms Mitchell a couple of final questions from me in relation to Article 27 of the CRPD. Are you able to tell the Royal Commission how that article guides the department's day to day work in the development and implementation of policy concerning the employment of people with disability?

15 MS MITCHELL: Of course. So the article guides everything we do in developing policies for people with disabilities. So for example in - with the release of the Australia's disability strategy 2021 to 2031, which was just released in December last year, we were very detailed in working with people with disability in the development of that strategy. So we were working with the disability representative organisations, with the people with disability themselves, any number of stakeholders in the field and now that we are  
20 moving forward in administering or trying to deliver some of the outcomes we would like to see under the disability strategy, we have a disability advisory group reporting to myself and to a committee of others, which is entirely made up of people with disability. If in fact the Chair is Dr Ben Gauntlett who is the Human Rights Commissioner. So that's just one small indication how we ensure that we are very respectful and we include the  
25 rights of persons with disabilities and the development of any of our strategies or policies, and that's the type of mechanism that we use for development. It's the same type of mechanism that we are using to develop the new disability employment service that's currently under significant consultation.

30 MS DOWSETT: Thank you very much. And thank you both for your time this afternoon. Those are all of my questions but I will now hand you over to the Chair and the questions from the Commissioners.

35 CHAIR: Thank you very much. I will first ask Commissioner Mason whether she has any questions she would like to put to one or both of you.

40 COMMISSIONER MASON: Yes, thank you. Thank you very much for your evidence this afternoon. Ms Dowsett asked a question about cultural supports for First Nations people with disability in ADEs and you would note that NDIS has an Aboriginal and Torres Strait Islander engagement strategy. And from that as a basis of setting a foundation of working with First Nations people - and myself also having seen that document - an expectation rises that the NDIS is setting an expectation I would say of inclusion of cultural supports and safety within the NDIS program. I understand that you will go away and find out what those cultural supports are for First Nations people in ADEs. I would be really interested in  
45 knowing about that information.

MS MITCHELL: Commissioner Mason, can I - it's Debbie Mitchell here, can I just add that as the policy agency across the portfolio when we develop any policies, when we are  
50 working with NDIA or any - or with the Commissioner, we have a very close working relationship with the National Indigenous Australians Agency and they - they are part of

all of our consultation processes to ensure that our policies are very - are culturally competent and culturally safe. And we also, as an agency, have cultural competency as a core requirement, a mandatory requirement for all staff.

5 COMMISSIONER MASON: Thank you Ms Mitchell. I just - just as an example here we are looking at this document during your evidence this afternoon, let's Talk About Work. Is there a First Nations version of this document because the scenarios through it don't really reference anything to do with cultural or First Nations people. Is there a version that first First Nations people would see which has references and examples which would  
10 relate to culture and community and their experiences of interest of employment?

MS MITRA: I will need to take that on notice as well Commissioner Mason how we use that document, particularly in those kinds of settings if that's all right.

15 COMMISSIONER MASON: Yes I'm pretty interested no in those, particularly in English as a second language in Aboriginal and Torres Strait Islander communities. Particularly the Torres Strait. If there are particular versions for people in those North Queensland, the Torres Strait, through organisations there. Thank you.

20 MS MITRA: Thank you.

CHAIR: Yes, thank you Commissioner Mason. Commissioner Galbally.

25 COMMISSIONER GALBALLY: Yes, thank you for your evidence. Ms Mitchell, you would be aware of the CRPD review of Australia in 2019, of the committee review. I'm sure you would be aware of that?

MS MITCHELL: Yes, Commissioner, I am aware.

30 COMMISSIONER GALBALLY: And so you would be aware too that the committee recommended that Australia - and I'm quoting:

35 "Provide services to enable persons with disabilities to transition from sheltered employment into open inclusive and accessible employment, ensuring equal remuneration for work of equal value."

So you would be aware of that, I'm sure.

40 MS MITCHELL: I am.

COMMISSIONER GALBALLY: So I would like to ask you, what plans has the does the Australian Government have, particularly to transition to equal remuneration of work of equal value and does this include plans for a wage subsidy to bring supported wages up to the national minimum wage?

45 MS MITCHELL: So I think there's two components to my answer. The first components is that by moving choice and control from a ground blocked funding to the ADEs to now moving to the NDIS, that has provided individuals with the choice and control about whether they will seek support to go into open employment and receive open  
50 employment salaries. And I think that the evidence in both my statement and Ms Mitra's

statement that looks at - we were suggesting that two people moved from ADEs to open employment in our data, but from the NDIS data, 295 people have moved just in one year into open employment. So I think that's one of the big steps that the Australian Government has taken to support that process. The other process that we have  
5 undertaken - so you would be aware that - you may or may not be aware that the department, at the behest of the Fair Work Commission undertook a trial to test the impact of the proposed award changes for people in ADEs under the Supported Wage Scheme. They - findings were that the average wage was \$9.77, and that the Supported Wage Scheme tool, with modifications, is the preferred assessment.

10 And so the other outcomes from that trial are very much that they're looking at two new wage grades, setting a minimum wage in that particular area, and increasing the super contribution to 10 per cent or \$15 which is ever higher. I know - so that's what we have done in the last couple of years.

15 COMMISSIONER GALBALLY: You would have seen the witnesses who have appeared even today, with splendid agreement between Inclusion Australia and National Disability Insurance Agency, that both organisations told us that a \$9,000 per person equalling \$180 million would be a good amount, you know, to bring people up to the minimum wage  
20 with the DSP and NDS suggested a transition period of five to 10 years. So have you had a chance to have a - to reflect on that proposal and that unity from the two sides of the sector about this matter?

25 MS MITCHELL: So the government has put aside \$67 million to assist ADEs in transitioning to any wage increases that may be recommended by the Fair Work Commission, and that will be - that is being put aside to support them to look at financial training and support for themselves, to look at markets, to look at education. But we - that's not determined yet about how that money will be spent. So that is put aside  
30 pending any - any outcome from the Fair Work Commission deliberations.

35 But I have - I have heard all of those witnesses. I have been watching every day. And so I have in front of me, which you don't have, just a few scenarios of how any wage increases will affect the Disability Support Pension, because I heard from some of the lived witnesses that they were reluctant to increase their hours, for example, in their ADE work  
because they thought that they might lose access to their Disability Support Pension.

40 So if I was to - and these are just hypothetical and indicative only. They can't be - I must put caveats around them. It's not based on individuals. So if we moved to the average of \$9.77 per hour as outlined in the evaluation to the Fair Work Commission, with the - at 21 hours a week or 42 hours a fortnight, with the Disability Support Pension, including the income-free area and having an understanding of the taper rates, so a person who was working at \$9.77 for 21 hours a week would, with their pension and their wages, receive  
in their hand \$1,282.

45 So if - so then I was interested about people talking about if they increased their hours. So on 35 hours a week at the \$9.77 average - I will take that average, Commissioner, because that was what was in the evaluation. If we took that \$9.77 average, with the Disability Support Pension, with the income-free area and then the taper rates applied, at 35 hours  
50 a week, that person would take home \$1,419 a week, which is their wages plus the residual of their DSP.

5 So I was just trying to provide some information to allay people's fears about the loss of the Disability Support Pension. So just if we were then to go to, for example, the highest wage that was in the trial, which was \$20.06 a week, for somebody working - which is actually above the minimum wage, which is \$20.33. For somebody working 21 hours a week, you know, their Disability Support Pension is, you know, affected by the taper rates because they are earning additional hours - sorry, earning additional dollars or - still, they would still retain the Disability Support Pension, and with the reduced pension and their wage income they would be on \$1,540 a week.

10 So I know that's a very long-winded answer, but I was concerned when people with disability were reluctant to increase their working hours and their ability to learn and perhaps move into more open employment if they thought it was going to be prohibitive around their Disability Support Pension. So I just give that very broad scenarios with understanding that there are many more supports for people on Disability Support Pension that I haven't taken into account here, such as rent assistance and pharmaceutical allowance and the like, but I just thought that might of assistance to the Commission.

20 COMMISSIONER GALBALLY: Well, thank you. So we will see those, I'm sure.

MS MITCHELL: I'm happy to table them.

25 COMMISSIONER GALBALLY: Thank you. So where that's left is that you have got a fund of 600 - did you - 600 million? I'm just trying to --

MS MITCHELL: No, 67 million.

30 COMMISSIONER GALBALLY: 67 million.

MS MITCHELL: And that is a one-off payment. It is not an ongoing wage supplementation. And it's, in fact, not for wage supplementation.

35 COMMISSIONER GALBALLY: No.

MS MITCHELL: It is to - it's - you could couch it as a structural adjustment-type package for ADEs to move to new business models.

40 COMMISSIONER GALBALLY: So this would be an additional amount in a separate discussion?

MS MITCHELL: Any wage supplementation would be different.

45 COMMISSIONER GALBALLY: Yes. Look, my only other question was for Ms Mitra. That with the important questions that Counsel has asked and the Chair has asked, are you automatically utilising supported decision-making methods in the conversations about the packages, the options; all of the issues around employment? Because that's a really important conversation and series of conversations.

50 MS MITRA: Thanks, Commissioner. And it is - support for decision-making is one of

the - and supported decision-making is an area that we're currently doing some more work on, you're probably aware, in consultation with RAAC and others. So it's an important piece of work that we're continuing to develop. I might take that on notice, though, in the sense that I'm not directly in the planning side. And so I'd like just to get further information on how we do that, but just noting that we are doing a lot more work in that space at the moment.

COMMISSIONER GALBALLY: Okay. And my final question to you, Ms Mitra, is that with the critical role of - that support coordination can play, is it in every plan for a person who's working in an ADE so that it can facilitate transitions when - number 1. And number 2, is it independent completely of the ADE so there is no conflict of interest?

MS MITRA: So in answer to the first question, across the scheme, 41 per cent of participants have support coordination in their plan. For those working in ADE, the percentage is higher. It's 54 per cent. So it's not everybody. Again, some people, we would argue, don't need it, but, obviously, I think it's a good conversation to keep having about the kind of support people need. With regards to support coordination and whether or not it is separate, it's not required to be separate.

Traditionally, I don't think ADE organisations have been support coordinators. It is possible now that some of them are thinking of becoming one. It's another area that we continue to look closely at to better understand how do we balance the choice of some participants who do sometimes want to choose a support coordinator who's delivering other supports as against some of those challenges around conflict of interest. Noting that under the code of conduct for NDIS providers and for workers, there are requirements around management of conflict of interest. So all areas that we continue to look at, Commissioner.

COMMISSIONER GALBALLY: Okay. I will be pursuing that further in the future. Thank you very much.

CHAIR: This is by way of a comment, but I will end with an inflection to turn it into a question. My impression in hearing this evidence of the complexity of the arrangements where simplified explanations of how the system works run to something like 50 or 60 pages suggests that there is an enormous responsibility on planners and support coordinators. It's really the point that Commissioner Galbally has just made.

Everything must turn on them in most cases, mustn't it, because they are the translators, if you like, of this extraordinarily complicated and difficult scheme, the translators whose translation is necessary to communicate to the people who are being affected exactly what their entitlements may be and how they might go about claiming those entitlements. Is it fair to say that this is the key to the working of this - these transitional arrangements from ADEs to open employment?

MS MITRA: I think - thank you. I think it is fair to say that they are key to supporting participants in a process and a journey of building their capacity to manage their own funds. We are very strongly focused on the fact that when we put funds into a plan, it is for them to start to build that capacity to make choices for themselves. And I think you're right, our LACs, our planners and our support coordinators, we invest a lot of time and effort in making sure that they are there for supporting participants to build capacity over

time.

5 I do genuinely think we're at the beginning of a transition and a phase that will provide much better outcomes. I think a lot of the complexity is still on the claiming side and that's with providers having to navigate that. The key for participants is that they can have those conversations with confidence with their employer, and I have heard some of the lived experience witnesses in this last couple of days, and I think we need to keep working on supporting their confidence to speak up when they don't understand what is the agreement, what are my supports buying me. But the policy change and the system change has given people some power to be the consumer, and that is a significant change in the right direction.

15 CHAIR: Yes. It's the step from notionally having the power, to having the capacity to exercise the power, that is - would seem to be rather critical in this context. Just one more point. Is there any process or any system for evaluating the work of the groups that we have just been talking about? The planners, support coordinators, LACs and so forth?

20 MS MITRA: So we're continuing to build out the data and the evidence that's showing a change in what the outcomes that are being achieved. So that's why the move - employment is important. That would demonstrate that we're having effective conversations. The next piece is really building out our understanding of how the funds are flowing. We've done that to a greater degree in SLES where we can see that people who have received SLES in the past are getting better outcomes than effectively a like group who didn't access SLES. I think in the next little while, as we move into this next phase of capability-building, we will be monitoring outcomes to see if our work has been effective.

30 CHAIR: Thank you very much. I will just check whether the Senior Counsel for the Commonwealth has any questions to ask of either of you. Apparently not. In that case --

MR ANDERSON: No. I'm sorry, Chair. Thank you. I just had trouble unmuting. No. No questions. Thank you.

35 CHAIR: Yes. Thank you very much. In that case, thank you very much, Ms Mitchell and Ms Mitra, for your evidence and for the assistance you have provided to the Commission in order to give us a better understanding of how these systems for which you are responsible at least in part actually work. So thank you very much.

40 MS MITCHELL: Commissioner, it's Debbie Mitchell here. I just have one clarification, if there's time, or I can admit it later.

CHAIR: I'm sorry, I didn't hear that. Sorry.

45 MS MITCHELL: Sorry, I just have one clarification for a question I was asked earlier.

CHAIR: Yes, certainly. Yes, by all means.

50 MS MITCHELL: So I was asked about the auditing processes to standards of the DCOS ADEs, and at paragraph 96 of my statement, I had - I had forgotten. All 67 ADEs who continue to receive the DCOS funding are now also registered NDIS providers, and they

are audited under the NDIS Practice Standards Rules. So, accordingly, no ADE is subject to the DES SES scheme. So I half answered that when I was asked that by Counsel before. I just wanted to clarify that.

5 CHAIR: Thank you. Thank you very much.

MS MITCHELL: Thank you.

**<THE WITNESSES WITHDREW**

10

CHAIR: Ms Eastman, I think there is a tender to be addressed?

MS EASTMAN: Yes, Chair. Well, that concludes the evidence for this hearing. And there's some tenders that we need to make. We have provided that in a list format for you. So there's the tender of the documents from the evidence from Bedford yesterday. And there are a number of documents, but it will start with the statement of Mr Mann, which we would ask you to mark as **Exhibit 22-6**, and then the various annexures and documents and accompanying statement that would take you through to 22-6.27. And the list of all of those documents will be circulated to the parties as part of the tender. So that's the first one.

15

20

CHAIR: All right. Well, then, subject to any subsequent application by the parties - and I would expect there will be none - the statement of Mr Mann will become **Exhibit 22-6**, and the other documents that are specified in the document that is headed Bedford, which I will initial and date, those documents will have the exhibit numbers that are recorded in the document itself.

25

**<EXHIBIT 22-6 STATEMENT OF MYRON MANN**

30 **<EXHIBITS 22-6.1 TO 22-6.27 DOCUMENTS AS PER DOCUMENT HEADED BEDFORD**

MS EASTMAN: Thank you. The next is the statement of Ms Leigh and Ms Langford from National Disability Services. If you could mark the statement **Exhibit 22-7**. And then, again, the accompanying documents and annexures through to 22-7.10, and, again, we have provided you a table setting out the detail and description of those documents.

35

CHAIR: Yes, thank you. The statement will be given that exhibit number, that is, **Exhibit 22-7**. And the other documents will be given the exhibit numbers recorded in the document headed National Disability Services, which I have also initialled.

40

**<EXHIBIT 22-7 STATEMENT OF LAURIE LEIGH AND KERRIE LANGFORD**

**<EXHIBITS 22-7.1 TO 22-7.10 DOCUMENTS AS PER DOCUMENT HEADED NATIONAL DISABILITY SERVICES**

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MS EASTMAN: And next is the statement of Debbie Mitchell, the Deputy Secretary, Disability and Carers, who you have just heard evidence from. If you could mark her statement **Exhibit 22-8**. Then there's the accompanying material. If it could be marked 22-8.1 through to 22-8.14, and, again, we have set that out in a table with the description of the annexures and documents.

50



CHAIR: Yes, thank you. Ms Mitchell's statement will become **Exhibit 22-8** and the annexures will have the exhibit numbers recorded in the document which is headed Department of Social Services, that is, 22-8.1 through to 22-8.14. And I will initial that document as well.

**<EXHIBIT 22-8 STATEMENT OF DEBBIE MITCHELL**

**<EXHIBITS 22-8.1 TO 22-8.14 DOCUMENTS AS PER DOCUMENT HEADED DEPARTMENT OF SOCIAL SERVICES**

MS EASTMAN: Thank you. Then there are two statements that Ms Mitra has provided. The first statement is dated 1 April 2022. If that statement could be marked **exhibit 22-9**. There's two annexures. So they will be marked 22-9.1 and 22-9.2.

CHAIR: Yes, those statements of Ms Mitra can be admitted into evidence and given, respectively, the exhibit numbers 22-9 and 22-10. And the annexures to the first of those statements will be admitted and given the exhibit numbers 22-9.1 and 22-9.2.

**<EXHIBIT 22-9 STATEMENT OF GERRIE MITRA DATED 01/04/22**

**<EXHIBITS 22-9.1 TO 22-9.2 ANNEXURES TO STATEMENT OF GERRIE MITRA DATED 01/04/22**

**<EXHIBIT 22-10 STATEMENT OF GERRIE MITRA DATED 06/04/22**

MS EASTMAN: And then the second statement described as supplementary statement is dated 6 April 2022. If that could be marked as exhibit 22-10.

CHAIR: Yes, I - actually, I think I jumped the gun and did that already.

MS EASTMAN: Then, finally, you might recall I mentioned in my opening remarks on Monday that we had received a statement from Sandra Parker PSM, Fair Work Ombudsman. We didn't require Ms Parker to attend the hearing in person, but may I tender her statement and if you could mark the statement **Exhibit 22-11**.

CHAIR: Yes. So Ms Parker's statement would be admitted into evidence and given that exhibit number, that is, 22-11.

**<EXHIBIT 22-11 STATEMENT OF SANDRA PARKER PSM, FAIR WORK OMBUDSMAN**

MS EASTMAN: And, Chair, we have circulated to the parties, with leave, some draft directions. I think, through your associate, you now have a copy of the draft directions. I don't understand there to be any objections to them and we would invite you to make those directions.

CHAIR: All right. Well, what I will do is read out the draft directions that I have been provided with, and if there is no objection at the end, then those are the directions that will be made. These are the proposed directions:

1. Any witness who took questions on notice during this hearing should provide his or her answers in writing to the Office of the Solicitor Assisting the Royal Commission by 13 May 2022. The answers should be targeted and concise and should not address additional or unnecessary matters.

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2. Parties with leave to appear or parties who received a notification of evidence letter in relation to Public hearing 22 should advise the Officer of Solicitor Assisting by 13 May 2022 if they wish to suggest any additional documents for tendering by Counsel Assisting. At the same time, they should identify any parts of those documents that they consider need to be removed before the documents are made public.

10

3. By 1 July 2022, Counsel Assisting the Royal Commission will tender into evidence responses to questions on notice and any additional documents she considers appropriate in chambers. A list of tendered documents and copies of those documents will be made available on a confidential basis to the parties with leave to appear at this hearing.

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4. Counsel Assisting the Royal Commission will prepare written submissions following the hearing by 8 July 2022. These submissions will be provided on a confidential basis to parties with leave to appear.

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5. Any submissions to reply to Counsel Assisting's submissions should be sent to the Office of the Solicitor Assisting by 5 August 2022. Any written submissions in reply should be concise and should not include any additional evidence.

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I will pause and see if there is any comment on those proposed directions. In the absence of any comment, then those are the directions that I make. Thank you. Does that conclude the hearing, Ms Eastman?

30

MS EASTMAN: Yes, it does. Thank you, Chair. Thank you, Commissioners.

CHAIR: All right. Thank you very much. Let me just very briefly say a couple of words. This has been the fourth in the series of hearings on barriers confronting people with disability entering the labour force, and also these hearings have considered the various programs that are designed to, if not remove them, ameliorate those barriers. I think we have seen over the last three days that the issues are complex. The evidence of this hearing has explored some of the complexities.

35

The fact that the system is complex, I suppose, is symbolised by the 111-page document that was discussed in evidence this afternoon, the document that is headed *Pricing Arrangements and Price Limits*. But the hearings have also served, very importantly, to illuminate the policy issues. These are the matters that the Royal Commission is going to have to turn our attention to for the purposes of the final report.

40

As we have made clear throughout this Royal Commission, we seek to ensure that the experiences, the voices of people with disability are at the heart of our public hearings. This has been an example of that process and I, on behalf of the Commissioners, want to express particular appreciation to people with disability and in one case, at least, the supporters of people with disability who have given evidence: Phillip Shoolman, Mahdi, Gert, Kaite Mr Greg Tucker, Marc, Tay and we heard today from Mr Anthony Reid.

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5 I want to express our particular appreciation to those people who have given us the benefit of their experiences, and their understandings of the system in which they operate. We have greatly benefitted from that evidence. I also want to express appreciation to all the other witnesses who have given evidence over these past three days.

10 As always we have covered a very great amount of ground, and I express our gratitude and appreciation to Counsel Assisting the Royal Commission, to the officers of the Office of Solicitor Assisting, to the members of staff of the Policy Branch of the Royal Commission, to those who have provided counselling services and support to people who have given evidence at the hearing, and, of course, those who have been responsible for all of the administrative and organisational arrangements that are necessary to allow a hearing like this to be conducted.

15 As with so many of our hearings, the plans had to be altered at a relatively late stage, and it takes an enormous amount of effort and skill and determination to ensure the hearing can continue notwithstanding the obstacles that seem to be strewn in our path on a regular basis. We are very grateful to all those who have allowed this hearing to take place. So thank you very much to everybody once again. The next hearing of the Commission will be on - do we know - someone will tell me - let's give a hint, at least, as to the subject matter.

25 MS EASTMAN: The next public hearing will concern an examination of the practices of a particular service provider.

CHAIR: Yes.

30 MS EASTMAN: And it is in May, and I'm sorry that I can't -- give a precise date at this stage -

CHAIR: That's quite all right. It will be on the Royal Commission's website. But we will adjourn to whatever the relevant date is in May 2022. So thank you again, everyone.

35 **<ADJOURNED 3:51 PM**

| <b>Index of Witness Events</b>   | <b>Page References</b>           |
|--|----------------------------------|
| ANTHONY JOHN REID, CALLED<br>EXAMINATION BY MS EASTMAN SC<br>THE WITNESS WITHDREW                      | P-161<br>p-162<br>p-172          |
| LAURIE LEIGH, CALLED<br>KERRIE LANGFORD, CALLED<br>EXAMINATION BY MS McMAHON<br>THE WITNESSES WITHDREW | P-173<br>P-173<br>P-173<br>P-200 |
| DEBBIE MITCHELL, CALLED<br>GERRIE MITRA, CALLED<br>EXAMINATION BY MS DOWSETT<br>THE WITNESSES WITHDREW | P-200<br>P-200<br>P-200<br>P-239 |
|  |                                  |

| <b>Index of Exhibits and MFIs</b>  | <b>Page References</b> |
|--|------------------------|
| EXHIBIT 22-6 STATEMENT OF MYRON MANN   | P-239                  |
| EXHIBITS 22-6.1 TO 22-6.27 DOCUMENTS AS PER DOCUMENT<br>HEADED BEDFORD                       | P-239                  |
| EXHIBIT 22-7 STATEMENT OF LAURIE LEIGH AND KERRIE<br>LANGFORD                                | P-239                  |
| EXHIBITS 22-7.1 TO 22-7.10 DOCUMENTS AS PER DOCUMENT<br>HEADED NATIONAL DISABILITY SERVICES  | P-239                  |
| EXHIBIT 22-8 STATEMENT OF DEBBIE MITCHELL  | P-240                  |
| EXHIBITS 22-8.1 TO 22-8.14 DOCUMENTS AS PER DOCUMENT<br>HEADED DEPARTMENT OF SOCIAL SERVICES | P-240                  |
| EXHIBIT 22-9 STATEMENT OF GERRIE MITRA DATED 01/04/22  | P-240                  |
| EXHIBITS 22-9.1 TO 22-9.2 ANNEXURES TO STATEMENT OF<br>GERRIE MITRA DATED 01/04/22           | P-240                  |
| EXHIBIT 22-10 STATEMENT OF GERRIE MITRA DATED 06/04/22                                       | P-240                  |
| EXHIBIT 22-11 STATEMENT OF SANDRA PARKER PSM, FAIR<br>WORK OMBUDSMAN                         | P-240                  |