



Chair's Opening Address – Ronald Sackville AO QC

Public hearing 21: The experience of people with disability engaging with Disability Employment Services

Virtual, 23 February 2022

I would like to welcome everyone who is or will be following this, the 21st Public hearing of the Royal Commission. The subject of Public hearing 21 is:

“The experience of people with disability engaging with Disability Employment Services.”

Acknowledgment of Country

We begin with an Acknowledgement of Country.

Arrangements

We had originally planned for Public hearing 21, to take place in Brisbane with witnesses, counsel, legal representatives and others appearing in person. In my opening statement for Public hearing 19 (Measures taken by employers and regulators to respond to the systemic barriers to open employment for people with disability), I expressed the hope that our first Public hearing in 2022 would mark a return to a public hearing in the fullest sense. Unfortunately, due to the intervention of the Omicron variant of COVID-19 in 2022, we have again had to take a cautious approach and conduct the hearing remotely.

Members of the public have not been able to attend public hearings in person since Public hearing 14, which was conducted at Adelaide in June 2021. We are planning, all being well, to conduct about twelve Public hearings in 2022, the last full year of the Royal Commission's life. The last of this series of hearings, which will be held in December 2022, will consider a “Vision for an inclusive Australia”. We remain optimistic that as the pandemic recedes and restrictions in movement are lifted, we will be able to hold Public

hearings in States and Territories that we have not yet visited, including Western Australia and the Northern Territory.

Public hearing 21 will be held with Commissioners in three locations. Commissioner Andrea Mason OAM is in the Brisbane hearing room. Commissioner Rhonda Galbally AC is participating in this hearing from Melbourne, and I am participating from the Sydney hearing room.

Senior Counsel Assisting the Royal Commission, Ms Kate Eastman AM SC, is also in the Sydney hearing room, together with Ms Cathy Dowsett and Ms Rebecca McMahon of Counsel.

The Royal Commission will hear from eight witnesses at this hearing. All but one will appear remotely. A number of parties have been given leave to appear. Their legal representatives will appear remotely and will announce their appearances shortly.

This hearing

This Public hearing follows two earlier hearings which heard evidence on the pathways and barriers to open employment for people with disability:

- Public hearing 9, held from 7 to 11 December 2020.
- Public hearing 19, held from 20 to 26 November 2021.

Public hearing 9 examined the experiences of people with disability in trying to obtain employment in the 'open' labour market, including the challenges and successes they experienced during recruitment processes and in the workplace.

Public hearing 19 concentrated on the measures taken by employers and regulators to respond to the systemic barriers to employment for people with disability.

Some evidence at Public hearing 9 addressed the experiences of people with disability who engage with Disability Employment Services (DES) providers.¹ While that hearing did not focus exclusively on DES providers, it became apparent that witnesses with disability had mixed views about the quality of services they provide.² Some witnesses

¹ Transcript of Kalena Bos, Public hearing 9, 7 December 2020, P-57 [10-27]; Exhibit 9-3, Statement of Kalena Bos, 20 November 2020 at [12-13]; Exhibit 9-20, Statement of Riley, 20 November 2020, at [22]; Transcript of Jess Mitchell, Public hearing 9, 9 December 2020, P-215 [4-14].

² Exhibit 9-28, Statement of Pamela Darling, 20 November 2020, at [12-31].

suggested that DES providers generally did not adopt a person-centred approach to training people with disability and securing worthwhile employment for them. The result, according to these witnesses, was that DES participants are seldom placed in meaningful work.³

This hearing will examine the DES system more closely. We will hear, as Ms Eastman will explain, from a witness with direct experience of the DES system, and the evidence will address aspects of the operations of a particular DES provider called AimBig Employment. We will also receive evidence from the Department of Social Services, the service provider and representatives of the Youth Disability Advocacy Service.

Senior Counsel Assisting the Royal Commission, Ms Eastman, will shortly provide the details about the DES system and the service provider whose activities will be the subject of evidence.

Before Ms Eastman makes her opening submissions, I will make some brief remarks about the DES program. The program is funded by the Australian Government Department of Social Services (**DSS**) to assist people with disability to prepare for, find and maintain open employment. DES providers train jobseekers in skills required in employment and to seek employment, as well as assisting jobseekers to find suitable employment. DES providers also assist people with disability who have been employed through the program with on-the-job training and support with adjustments such as Auslan interpreters. DES providers also have a role in advising employers how to provide support to employees with disability.

The evidence will indicate that different approaches have been taken to calculating the numbers of DES providers and participants. On one set of statistics that will be referred to in the evidence, in the financial year 2020-2021, 112 DES providers serviced 410,712 DES participants. According to this set of statistics, the number of DES participants increased by nearly a third from the 2018-2019 year, that is, two years before, (when the number of participants serviced was 312,358).

Although the number of DES participants appears to have increased this has not necessarily been matched by outcomes. According to the same set of statistics, in 2020-2021, of the 410,712 participants, 55,166 or (13.4%) had remained in open employment

³ Transcript of Dominic Hồng Đức Golding, Public hearing 9, 8 December 2020, P-154 [11-35].

for six months or longer (including those who received ongoing support from the DES provider). In 2018-2019 that is, two years before, almost the same number (55,502) had remained in employment for six months or more, but that figure represented 17.8% of DES participants serviced during that financial year.

The figures I have quoted may or may not be definitive. The point is that although the number of DES participants appears to have increased in recent times, the number of participants gaining and remaining in open employment does not seem to have materially increased. Of course there may be explanations for these trends which the evidence may address.

The evidence at this hearing, in addition to addressing the case study, will consider a number of broad themes:

1. First, whether DES providers adequately assist DES participants to transition into long-term, open employment.
2. Secondly, whether DES providers appropriately prioritise supports for participants over maximising the fees from DES Outcome.
3. Thirdly, whether DES providers offer a person-centred approach to DES participants and ensure that they have the best opportunity to take up meaningful employment.
4. Fourthly, whether the Department of Social Services effectively monitors 'DES Outcome Fee' arrangements.

Coinciding with the investigations conducted by this Royal Commission (which formally commenced in April 2019, nearly three years ago), other bodies have also been investigating matters within our terms of reference. That applies in the present case, as the DES program has been reviewed on more than one occasion.

For example, in 2020 the Boston Consulting Group completed a review of the DES program on behalf of the DSS. Following the review, the DSS committed to undertaking a public consultation on a new DES model to replace the current program when it expires on 30 June 2023.

The Senate Community Affairs References Committee published a report as recently as last Friday, entitled "*Purpose, intent and adequacy of the Disability Support Pension*". This Report was concerned, as the name implies, with the Disability Support Pension rather than specifically with the DES system. But the report did examine the relationship between eligibility criteria for the Pension and the operation of the DES program.

This Committee's report illustrates a very important point that we have emphasised throughout the course of this Royal Commission. Policy questions relating to violence, abuse, neglect and exploitation of people with disability cannot be neatly packaged into separate compartments. The policy issues are closely related to each other.

So it is with the DES program. People with disability seeking work often have to interact not only with the program itself, but a series of other programs. These include the social security system (particularly the Disability Support Pension), supported wage schemes, School Leaver Employment Supports, the NDIS and the various workers compensation schemes in force in the States and Territories, as well as at Commonwealth level.

Nothing in this realm is simple.

I will now take appearances.