



## Ensuring a Strong Future for Supported Employment

### Submission by Queensland Advocacy Incorporated

#### Department of Social Services

**March 2018**

"When you have a disability, knowing that you are not defined by it is the sweetest feeling."  
*Anne Wafula Strike*

"Work feeds us – physically, socially and emotionally – and being without work is a disaster for many who cannot find it."  
*Barbara Pocock*

"Deprived of meaningful work, men and women lose their reason for existence"  
*Fyodor Dostoyevsky*

"Disabilities are not liabilities but true test of abilities."  
*Emmanuel Ayeni*

## About Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (QAI) is an independent, community-based systems and individual advocacy organisation and a community legal service for people with disability. Our mission is to promote, protect and defend, through systems and individual advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

QAI has an exemplary track record of effective systems advocacy, with thirty years' experience advocating for systems change, through campaigns directed to attitudinal, law and policy reform and by supporting the development of a range of advocacy initiatives in this state. We have provided, for almost a decade, highly in-demand individual advocacy through our individual advocacy services – the Human Rights Legal Service, the Mental Health Legal Service and the Justice Support Program and more recently the National Disability Insurance Scheme Appeals Support Program.

We have been involved in a number of reviews of proposed employment and welfare reforms impacting on people with disability including, in recent times, the Willing to Work Inquiry by the Australian Human Rights Commission, the review of the National Disability Employment Framework by the Department of Social Services, the New Disability Employment Services from 2018 inquiry by the Department of Social Services, the Welfare Reform Inquiry by the Commonwealth Government and the Inquiry into the Better Management of the Social Welfare System initiative by the Senate Community Affairs References Committee. We have also engaged in extensive systemic advocacy over many years around the Business Services Wage Assessment Tool and Australian Disability Enterprises.

QAI situates the consideration of issues relating to work and employment for people with disability within a human rights framework. This is because the right to work freely, in an area of the person's choice, is a fundamental human right. Work is critical to the enjoyment of other key human rights too – it provides people with a source of identity, valued status, belonging and community, with the ability to associate with others within their chosen field of work and with a source of income – thus protecting against other vulnerabilities, such as inadequate health care and homelessness.

## Summary of QAI's recommendations:

1. All employment measures pertaining to people with disability must be developed within a strong human rights framework that respects and protects core human rights including the right to work and the right to equality and non-discrimination. These core human rights necessitate that people with disability have the opportunity to work in a role freely chosen by them, in fair working conditions, with appropriate remuneration.
2. Supported working environments – Australian Disability Enterprises (ADEs) – are not appropriate working environments for people with disability. Rather than focusing on reform of ADEs, the focus should be on the replacement of ADEs with an expanded range of meaningful and valued employment roles in open employment for people with disabilities.
3. Similarly, the foundational principles should prioritise cessation of any productivity-based wage assessment tools.
4. The foundational principles should incorporate specific outcomes monitoring to ensure quality of supports, services and employment agreements with employees.
5. A systemic approach to addressing the multiple disadvantages experienced by the majority of people with disability is needed to reduce barriers to work for people with disability.
6. There has not been sufficient work done to promote and support people with disability in open employment, beginning with role creation, progressive and incremental working hours, on the job training and the provision of appropriate supports, particularly for people with high or complex support needs. This is compounded by the fact that employees of ADEs are usually engaged for work that does not build skills transferable to open employment.
7. Many employers will more likely respond to financial incentives to employ a person with a disability, yet such incentives can devalue the work of a person with disability.
8. DES should work with employers to assist them to design roles that may suit a person with disability and relieve other workers from these tasks.
9. Rather than a need to 'attract' NDIS participants to employment opportunities, there is instead a need to dismantle barriers that will preclude them from obtaining work.
10. The 'demand driven' nature of the NDIS market could pave the way for services which can work with employers to tailor roles to suit employees with disability.
11. New market entrants and start-ups offering genuine and equitable employment opportunities for people with disabilities, or developed by or with people with disability, should be well supported by the Government.
12. Specific positive measures are required to promote the benefits of inclusive employment and workplace diversity.
13. All workers, including workers with disability, should be paid at a rate equal or greater to the minimum award wage for the particular industry in which the worker is engaged.
14. The introduction of the NDIS offers an opportunity to develop innovative and effective ways of supporting people with disability eligible for the NDIS. Strategies must be actually effective, from the perspective of the people with disability who are receiving the NDIS

employment supports, and the employment support needs of those not eligible for the NDIS must be met.

15. School leavers could be better supported by more on-the-job supported training and education, particularly people with high and complex support needs.
16. Advocates can play a significant role in linking NDIS participants with appropriate employment opportunities (LACs will not have the capacity to do this).
17. The role of NDIA market stewardship should focus on diversification of the roles of providers of different supports and services, to ensure people have genuine choice and control and are not subjected to whole of life control by a single service provider.
18. A strict separation of support and employment must be established. All employees must be made explicitly aware that they have the option of choosing who they receive supports and services from. The NDIA needs to align closely with and listen to people with disability first and foremost and create greater distance from service providers.

## Background

QAI agrees with the statements by the Hon. Christian Porter MP, Minister for Social Services, and the Hon. Jane Prentice MP, Assistant Minister for Social Services and Disability Services, about the benefits of employing people with disability, both for the workers and for the Australian economy. However, we strongly *disagree* that this employment should be through supported employment such as Australian Disability Enterprises (ADEs).

The right to participate in the workforce is a fundamental human right that is the foundation of many other rights and liberties. The human rights to equality and non-discrimination in the workplace are well recognised, including in the Convention on the Rights of Persons with Disabilities (CRPD) – see Art 27 CRPD. The right to an adequate standard of living and social protection, expressed in Article 28 of the CRPD, builds upon the right to work, as a prerequisite to the achievement of an adequate standard of living and social protection is an adequate income, gained from appropriate workforce participation.<sup>1</sup>

The federal *Disability Discrimination Act 1992* (Cth), and its state counterparts (relevantly in Queensland, the *Anti-Discrimination Act 1991* (Qld)) provide the legislative basis for the prohibition of discrimination. In the absence of a Queensland or Commonwealth Human Rights Act or Charter, the anti-discrimination legislative regime remains the most powerful tool for the prohibition of discriminatory treatment against people with disability in the workplace. The DDA aims to eliminate, as far as possible, discrimination against persons on the ground of disability in areas including work; to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

---

<sup>1</sup> See also: *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* (1993), to which the Australian Commonwealth and state governments are signatory.

The right to work in a role that is freely chosen by a person, in fair working conditions and to be appropriately remunerated are therefore fundamental human rights that are recognised as such, most forcefully in the International Bill of Rights and the CRPD, but to a lesser extent statutorily in Queensland and the Commonwealth of Australia.

Most people, including people with disability, want to work, both for the economic security and rewards that work brings and for the sense of meaning, purpose, self-definition and status that work offers. For most Australians, their work is seen as part of a continuum in terms of their career development and ongoing financial security. To be a worker is to be included within a specific community and has many social benefits.

It is widely acknowledged, including by the Federal Government, that the workforce participation rates of people with disability are too low from any point of analysis, whether compared against the relative rates of employment of people without disability or against international benchmarks.<sup>2</sup> Further, we note that the already dismal statistics on the employment participation rates of people with disability are positively skewed when one considers the amalgamation of people with disability who work in sheltered workshops, or Australian Disability Enterprises (ADEs). Therefore, the already dismal rates of employment actually disguise the significantly lower rates of appropriate and meaningful employment for people with disability.

What explains the lower rates of participation in the workforce by people with disability is not a reduced desire to work but the increased difficulties they face in obtaining employment as a direct result of their disability. The work they may be offered is often not commensurate with their level of ability and potential and they are significantly more likely to be on a lower income and to experience long-term unemployment and poverty, as well as isolation from society and the community.

There are a range of benefits that flow from employing people with disability, not only for the individual but also for the business, including creating a competitive advantage through innovation and by having an employee profile that may better reflect the diversity of the business' customer or client base, securing a future workforce, being an employer of choice and building employee loyalty. Many people with disability, and many carers of people with disability, have significant untapped potential that could be readily utilised within the labour market.

The International Labor Organisation (ILO) has based its economic and social reform program around the concept of 'decent work',<sup>3</sup> developing a normative ideal of 'decent work' to which all members states are encouraged to adhere. This model is built around the core notions of freedom, equality and security and takes a multi-disciplinary perspective (encompassing the jurisdictions of taxation, social security, education, labour law, industrial

---

<sup>2</sup> In the Discussion Paper, it is noted that in 2015, only 53.4% of Australians with disability were in the workforce, compared to 83.2% of people with no disability, with only 25% of people with a profound or severe core activity limitation active labour market participants. Similarly, in the National Disability Employment Framework – Issues Paper, it was noted that in 2012, only 52.9% of Australians with disability of working age were in the workforce or actively seeking work, as compared with 82.5% of the same demographic group without disability. This is concerning because the trend is stable and the rate of employment of people with disability is low by international standards.

<sup>3</sup> International Labour Organisation (ILO), *Report of the Director General: Decent Work* (ILO, 1999); Owens, Riley and Murray, above n 35, 311.

regulation and economics).<sup>4</sup> QAI considers that the decent work platform is an ideal standard to aspire to in the context of employment for people with disability.

QAI submits that any reforms to pathways to employment that target people with mental health conditions or a physical or intellectual disability must be required to support the individual's right to self-determination without limitation. QAI takes the position that people with disability have the same right to make decisions about their own lives as other people and that people who require support to do this should have access to this support. There is an important distinction between initiatives designed to assist a person with a disability that are purported to be in the best interests of that person but are really didactic initiatives; and those that support a person by explaining and helping the person to understand and communicate their decision, whilst ensuring ownership of the decision remains with the person. QAI endorses the latter approach and considers this particularly important in the realm of employment, as this is fundamental to self-definition and independence. In this regard, QAI notes the potential positive value of mentors, but considers that anyone involved in employment-related decision-making processes must only be so involved where desired by the person with the disability. It must be open to the person to draw upon support from other, informal support networks as desired.

## **QAI's response to key issues of inquiry:**

### **1. Are there other principles which should guide the Government's policy direction for supported employment?**

QAI submits that the foundational principles identified in the Discussion Paper should not include 'reform' of Australian Disability Enterprises (ADEs) but should instead specifically focus on the abolition of all ADEs and their replacement with an expanded range of meaningful and valued employment roles in open employment for people with disabilities (we discuss ADEs in detail below).

Similarly, the foundational principles should expressly prioritise cessation of any productivity-based wage assessment tools.

QAI submits that the foundational principles should incorporate specific outcomes monitoring to ensure quality of supports, services and employment agreements with employees.

A systemic approach to addressing the multiple disadvantages experienced by the majority of people with disability is needed to reduce barriers to work for people with disability.

### **2. What is a 'good' participation outcome for a supported employee and how can good outcomes be measured?**

QAI submits that 'good' participation outcomes for supported employees are never going to be equal to 'good' outcomes for employees in open employment. We must move towards good outcomes for all employees in open employment as our primary goal.

In order to elevate the status and working and living conditions afforded to employed people with disability, QAI recommends that all people with disability currently working in sheltered workshops be progressively paid at least minimum award rates rather than the current productivity rates of pay. When people with disability work the hours to their best ability it

---

<sup>4</sup> Rosemary Owens and Joellen Riley, *The Law of Work* (Oxford University Press, 2007), 311.

should be sufficient for the people to receive the same pay as anyone else. Any shortfalls that employers cannot meet should be met by government support. Another alternative is for both open employment and sheltered workshop situations that are making profits from the endeavours of their workers with disability to be obliged to award percentages of those profits back to their workers with disability.

### **3. What do supported employees most value about working in an ADE?**

As noted above, ADEs can function as day services for people with disability living in areas where there are scant other supports and services available.

### **4. Why do most supported employees transition back to supported employment from open employment**

QAI submits that there has not been sufficient work done to promote and support people with disability in open employment, beginning with role creation, progressive and incremental working hours, on the job training and the provision of appropriate supports, particularly for people with high or complex support needs. This is compounded by the fact that employees of ADEs are usually engaged for work that does not build their skills or capacity.

The payment of a financial incentive to an employer is usually a band aid solution, with the unsatisfactory result that the employment of the person with disability can cease upon cessation of the incentive payment.

QAI is not opposed to incentives, but considers that it is important to ensure incentives are appropriately directed. We assert that incentives should be directed to the workers to elevate their income towards the minimum necessary to enjoy a reasonable standard of living rather than to employers who already enjoy a reasonable standard of living and find those incentives adding cream to a life that is already a world removed in the terms of quality from those of many people with disability.

While it is agreed that employers will more likely respond to incentives to employ a person with a disability, it is our belief that the status of a person with disability in the workforce can be eroded by the 'discounted' rates of pay and incentives. The implication that flows from this is that a worker who has a disability is somehow 'less' valued than someone without a disability.

### **5. How can more supported employees be provided the opportunity to choose open employment?**

There is a strong consensus amongst people with disability and their supporters and advocates that the advent of Australian Disability Enterprises (ADEs) has not been a success story. QAI submits that ADE's should never have been allowed to disintegrate to the segregated and closed systems with unjustifiably poor working conditions that they presently are. ADEs were once training centres that were required to progress people into open employment. However, over time, most became day centres for people who likely never had the opportunity or support to articulate their interests or goals for further education and/or work.

These operatives are often in a position to undercut private enterprise competitors for tendered contracts and manage to deliver within the agreed contracted period at rates that

create artificial costing and force down labour market prices. This financial incentive can undermine any motivation an ADE may have to help to move people into open employment. QAI recommends that these workshops be compelled to find pathways to open employment for their workers as they become proficient within projected time frames.

The Discussion Paper notes that supported employees generally immediately commence in a job role following placement in an ADE. In our submission, this indicates that the employee could ably be trained to work in open employment instead.

The 2015 budget brought some long-overdue improvement in this area, introducing changes to DES funding rules whereby people employed in ADEs or sheltered workshops are now able to access support to achieve employment in the open labour market. This amendment to the rules has meant that people with disability who are employed by an ADE are permitted to job-see in the general labour market, without their access to DES funding being blocked. However, while welcome, this improvement only touched on the surface of the significant changes needed in this area.

QAI submits that it is imperative that all workers, including workers with disability, are remunerated at a rate that is equal or greater to the minimum award wage for the particular industry in which the worker is engaged. We consider that the supported wage system, and Australian Disability Enterprises, functions as a significant disincentive to employment for people with disability and can have the effect of demeaning and undervaluing the contribution made by people with disability to the labour market, in terms of the grossly insufficient remuneration provided and the concentration and confinement of workers to a small and undervalued sector of the labour market.

The experience of ADEs has been that people are indirectly compelled into sheltered workshops because that is their only choice. If they want to work they must work under the circumstances that are available for them. This does not amount to choice by any analysis and is an exploitative and debasing model, in contravention of Art 27 of CRPD.

The abolition of ADEs is the most effective means of removing the disjunct between ADEs and open employment. As noted above, ADEs represent a failed experiment that have as their cost the dignity of the people with disability who have been sheltered within them. They are effectively a dead end; the irony of ADEs is that while on one hand they fail to equip some people with disability with skills for more appropriate engagement in the labour market, on the other hand they retain highly productive workers to maintain the viability of the service rather than supporting them to move to open employment. The stated vision of ADEs has not translated into any positive outcomes for people with disability.

## **6. Why is participant access to concurrent DES and ADE support services so low?**

QAI submits that the low rates of participant access to concurrent DES and ADE support services may be attributable to the perceived value of these services in terms of their role in authentically responding to and supporting the needs of people with disability.

QAI submits that DES should be working with employers to assist them to design roles that may suit a person with disability and relieve other workers from these tasks.

## **7. What is the role a supported employer can play in building employee capacity for transition to open employment?**

For the reasons noted above, QAI does not support the continuation of ADEs. While we consider that there were some positive elements associated with the vision of ADEs, these have not been translated to any extent.

#### **8. What will attract NDIS participants to employment opportunities in the future?**

Most people with disability want to engage in the labour market and would prefer to do so with at least minimal industrial conditions, in a working role chosen by them. This is not an unrealistic expectation, but is a recognised human right (see art 27 of the CRPD). QAI does not consider that there is a need to 'attract' NDIS participants to employment opportunities, but rather a need to dismantle barriers that will preclude them from doing so.

#### **9. How are ADEs marketing their services to an expanded market of potential NDIS participants?**

QAI notes that the 'demand driven' nature of the NDIS market, which will require ADEs and other organisations to market themselves as providers of employment for all NDIS participants with a component in their package to purchase employment supports, could pave the way for other services like JobSupport, which can work with employers to tailor roles to suit employees with disability. This should be promoted to prospective providers.

#### **10. What is the range of NDIS supports that ADEs currently offer?**

QAI does not wish to comment on this question.

#### **11. What costs would be involved for ADEs that choose to:**

- (a) Reform to more open employment models?**
- (b) Redevelop as service providers offering other NDIS supports?**
- (c) Specialise in the provision of employment support as a non-employer?**

QAI notes that a chief reason ADEs have continued to operate is because they are a highly successful business model that achieves significant profit by paying below minimum wages to a productive workforce.

There would undoubtedly be costs for ADEs that change this model – increased respect for individual human rights and high corporate profit are not always compatible objectives. QAI notes that the ways in which many ADEs presently operate is more consistent with a Service Provider role and that there is scope for some ADEs to transition accordingly. We emphasise that transparency and accountability are important principles, so each business entity should be named and branded in accordance with the function it is actually performing.

#### **12. Should the Government have a role in supporting new market entrants and start-ups in the short-term?**

QAI submits that new market entrants and start-ups offering genuine and equitable employment opportunities for people with disabilities, or developed by or with people with disability, should be well supported by the Government.

QAI welcomes the notion of 'affirmative action and quotas' within larger businesses and recommends the adoption of such measures as soon as possible. We recommend that smaller businesses be encouraged to review the work of other employees and determine if niche roles could be created for someone with a disability. Governments should be leading the way and setting the example for all employers by significantly increasing the rates at which they employ people with disability and by applying affirmative action. Small business can play an integral role in drawing upon the unique strengths of people within communities to create opportunities. Many people with disability, particularly those with an intellectual or cognitive disability or a mental health condition, have strengths that may translate more effectively within the environment offered by a small business. It is highly likely that niche roles developed for employees with disability can be mutually beneficial. When people with disability are supported to work in niche roles in their local community and in particular where one small business does not have sufficient work to support an employee with a disability, there is potential for the worker to have more than one job with more than one employer in their local area. However, it is important not to make assumptions and generalisations about what might suit all or any people with disability best.

### **13. What investment, or industry adjustment will promote viable expansion in the employer/provider market?**

QAI notes the potential for the development of inclusive strategies designed to raise awareness about the benefits of workplace diversity and to encourage outreach activities within corporate culture. QAI considers that specific positive measures are required to overcome concerns based on stereotypes that lack any substance and are barriers to entry to the labour market for people with disabilities.

It is important for workplaces to embrace the opportunities for diverse and flexible working arrangements that accommodate the varying needs of people with disability. At present, negative employer attitudes to people with disability is a significant obstacle to greater labour market participation by people with disability. The existence of this attitudinal barrier is particularly concerning given that people with disability are predominantly proven to be highly productive, loyal and flexible workers if given the opportunity. We consider that dismantling negative mindsets towards people with disability in the employment context is particularly paramount given the considerable obstacles faced by people with disability in their childhood and youth, well before labour market participation becomes an issue. In particular, we note the significant impediments people with disability encounter in the educational system<sup>5</sup> and by virtue of the imposition of onerous assessment and appraisal requirements not applicable to people without disability.<sup>6</sup> In some instances, responses from employers are not necessarily negative but rather reflect an inability to conceive how to include or support a person with disability within the workforce, a scant understanding of the supports available and/or the benefits of inclusivity, or a lack of innovation regarding the potential for niche role creation.

### **14. How could employer/providers share learnings of their success and failures within a competitive market?**

---

<sup>5</sup> For example, many students leave school with literacy and numeracy inadequacies that have not been fully addressed by specialist educational assistance.

<sup>6</sup> For example, Job Capacity Assessments (JCAs), Job Seeker Classification Instruments (JSCIs) and wage assessment tools.

QAI submits that government should take proactive steps to raise employer awareness of the benefits of employing people with disability. In the face of negative employer attitudes to employing people with disability, founded upon incorrect assumptions and stereotypes, positive action is required. It is reported that while statistical information is available to employers regarding the benefits of employing a person with a disability, it is not directly provided to them – they must go looking for it. We propose that DEEWR and the Australian Taxation office provide information to employers at BAS and Tax time on the benefits of employing persons with disability.

### **15. How can wage supplementation be better targeted?**

It is important to realise and understand that some disabilities do affect an individual's ability to perform work. It is therefore vital to measure contribution in other ways than only in units produced per hour. It is important that we encourage more weight to be placed upon the quality of work a person is able to deliver. The value of appropriate support in increasing a person's ability is also important to recognise.

Wage subsidies have the effect of decreasing the status of a person with disability in the workforce, creating the perspective that a worker with a disability is of lesser value than an equivalent worker without the disability. Instead, we submit that there should be greater supports for people with disability to be included in the workplace and that employment agencies should work with employers to create niche roles for employees with disabilities.

All workers, including workers with disability, should be paid at a rate equal or greater to the minimum award wage for the particular industry in which the worker is engaged. The supported wage system functions as a significant disincentive to employment for people with disability and can have the effect of demeaning and undervaluing the contribution made by people with disability to the labour market, in terms of the grossly insufficient remuneration provided and the concentration and confinement of workers to a small and undervalued sector of the labour market. While some employers have demonstrated that they are more likely respond to incentives to employ a person with a disability and will not independently do this, reduced wages are not the answer. The imposition of mandatory quotas is far more appropriate.

QAI agrees that some form of appraisal may be required to determine how well a person with disability is able to perform their job and to determine an appropriate rate of pay. However, we assert that any wage assessment tool that, when applied, reduces the wages of a person to a level of such diminished proportions that it does not sustain affordable living is a breach of Article 16 of the CRPD, which assures freedom from exploitation, violence and abuse, and Article 17, which protects the mental integrity of the person. The self-esteem of any person with disability is gravely diminished when they are subjected to such harsh processes. This exploitation seems to be prevailing mostly but not exclusively in sheltered workshop situations.

It is important to consider employment for people with a disability in the holistic context of life. From birth or the acquirement of a disability, a person with disability is subjected to a myriad of assessments and program regimes. They are constrained and often detained in life by the constant reviews and compliances and bureaucratic impositions on their life. Assessments for eligibility for different services or supports and any wages assessment tool applications are independently stressful, but together are over and beyond what other citizens in Australia are required to face.

In *Nojin and Prior v Commonwealth of Australia*,<sup>7</sup> the Full Federal Court found that the use of the Business Services Wage Assessment Tool (BSWAT) was discriminatory. In particular, it found that the use of competency assessment for a person with an intellectual impairment was discriminatory and not reasonable and that '*...the tool was adjusted so that it would not produce a better result than a simple productivity measure. The only alternative was a worse result. The disparity between the two results has, on the evidence, simply grown over the years.*' The Court allowed that the use of competency assessments may well favour other workers with disability but there was 'powerful evidence' that it was unfairly skewed against workers with intellectual impairment.

QAI recommends that workers be given the opportunity to be assessed for rates of pay under whatever measure produces the best result. We also commend those workplaces that prefer to pay reasonable rates of pay in accordance with the effort and work performed by workers with disability. It is not unreasonable to assert that people who work a certain number of hours and who do their best efforts be paid accordingly. Workers without disability in Australia doing the same jobs have differing levels of productivity in the workplace. They are not paid according to their productivity but by the prevailing award rate. It is only those workers who are paid 'piecemeal' who are paid for higher productivity and this is recognised as an insecure form of employment.

#### **16. How can the NDIS enable an employment first approach in planning?**

The mandate of the NDIS includes flexibility of employment supports. Therefore the introduction of the NDIS offers an opportunity to develop innovative and effective ways of supporting people with disability eligible for the NDIS. We emphasise two important points in this regard. Firstly, the strategies must be actually effective, from the perspective of the people with disability who are receiving the NDIS employment supports. Second, there are many people who will not be eligible for the NDIS whose need for employment support will remain critical.

With appropriate support and opportunity, many people with disability have significant, untapped potential to contribute to the labour market. What is required is a shift in mindset that flips the perspective from a system that devalues people and focuses on their disability to one that values people and focuses on their ability. Rather than categorising people as 'unable to work', which is in any event an inaccurate descriptor for a significant majority of those classified as such, a strong focus should be placed on considering the type and level of support required to remove barriers to work for people with disability. Discussions on work and disability should be framed within a rights discourse – we must first acknowledge the basic human right to work, outlined above, and then consider ways to ensure this right is protected and not violated.

#### **17. How do current assessment processes drive the inclusion of employment supports in an NDIS participant's plan?**

##### **(a) Are existing employment assessment processes appropriate for NDIS participants?**

---

<sup>7</sup> (2012) FCAFC 192.

Current employment assessments do not appear to give opportunity for aspirations of work or planning pathways to work. QAI submits that there is a need for significant improvement in this regard.

**18. Are there different approaches to planning that could be explored for different groups of supported employees (eg younger workers, established workers, retirement transition)?**

**(a) How could SLES better support school leavers to build skills and confidence in order to move from school to employment?**

QAI submits that school leavers could be better supported by more on-the-job supported training and education, particularly for people with high and complex support needs.

There are significant issues within the educational experiences of students with disability, many of whom leave school with literacy and numeracy inadequacies that specialised education has not addressed, and which a lack of inclusive teaching and learning opportunities in mainstream schools has perpetuated. While many schools are now more equipped to focus on transition for students with disability, there is limited creativity in approaches to work experience opportunities and even more limited opportunities for post-school learning for students needing further literacy and numeracy education. The TAFE system has been undermined and underfunded and does not deliver programs tailored to individual need despite its glossy self-promotion.

Negotiating the system beyond school is further complicated by the introduction of an assessment maze. For students without disability, the senior or leaving certificate is considered to indicate learning outcomes. This too should bear sufficient information to assist students with disability towards their next stage in earning or learning. Instead we have a variety of assessment tools to channel people to various other departments or services, and assessments to determine funding for service providers. It is acknowledged that assessments or appraisals for determining how a person performs in the workplace or for job selection are appropriate. However, forcing people with disability to submit to a multitude of tests and demeaning reporting from school leaving to employment is inappropriate and can be a formidable barrier to employment.<sup>8</sup>

It demeans a person with disability to be constantly reviewed and assessed and to have to prove their disability on one hand to access services and support, and then to have that used to diminish their opportunities to fair wages and conditions. This is not consistent with Article 1 of the CRPD, in its protection of the inherent dignity of persons with disability. Such processes are also a waste of time and resources that could be better utilised.

**19. What role could or should an NDIA Local Area Coordinator or planner have in linking participants to an employment opportunity?**

The role of NDIA LACs has been significantly distorted from the initial model. As we noted in our recent submission to the Joint Standing Committee on the NDIS's inquiry into the implementation of the NDIS, a significant majority of the LACs working time is subsumed by NDIS case reviews and appeals.

---

<sup>8</sup> The usual assessment protocol includes a Job Capacity Assessment (JCA), Job Seeker Classification Instrument (JSCI) and then a choice of up to 30 wage assessment tools to be applied to a person.

Given that the workload of the LACs is already significant, with most LACs stretched well beyond their capacity and resources, it is unreasonable to expect that they will be able to increase their role in this way. QAI notes that advocates can play a significant role in linking NDIS participants with appropriate employment opportunities, and calls on the Government to increase its support for independent advocacy.

**20. What role could or should NDIS market stewardship have in developing a market with a range of employment, other support, or participation options for existing supported employees?**

The role of NDIA market stewardship should focus on diversification of the roles of providers of different supports and services, to ensure people have genuine choice and control and are not subjected to whole of life control by a single service provider. Service providers should not be enabled to engage in support coordination or pre-planning. A strict separation of support and employment must be established. All employees must be made explicitly aware that they have the option of choosing who they receive supports and services from. The NDIA needs to align closely with and listen to people with disability first and foremost and create greater distance from service providers.

## **Conclusion**

QAI thanks the Department for the opportunity to make a submission to this important inquiry. We would welcome the opportunity to have further input into these issues as the inquiry progresses.