



Queensland Advocacy Incorporated

Our mission is to promote, protect and defend, through advocacy, the fundamental needs, rights, and lives of the most vulnerable people with disability in Queensland.

Systems and Individual Advocacy for vulnerable People with Disability

National Disability Employment Strategy

**Submission by
Queensland Advocacy Incorporated**

Department of Social Services

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Ph: (07) 3844 4200 or 1300 130 582 **Fax:** (07) 3844 4220 **Email:** qai@qai.org.au **Website:** www.qai.org.au

2nd Floor, South Central, 43 Peel Street, STH BRISBANE QLD 4101

QAI endorses the objectives, and promotes the principles, of the Convention on the Rights of Persons with Disabilities.

Patron: His Excellency The Honorable Paul de Jersey AC

About Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (**QAI**) is an independent, community-based advocacy organisation and community legal service that provides individual and systems advocacy for people with disability. Our mission is to promote, protect and defend the fundamental needs and rights of the most vulnerable people with disability in Queensland. QAI's board is comprised of a majority of persons with disability, whose wisdom and lived experience of disability is our foundation and guide.

QAI has been engaged in systems advocacy for over thirty years, advocating for change through campaigns directed at attitudinal, law and policy reform. QAI has also supported the development of a range of advocacy initiatives in this state. For over a decade, QAI has provided highly in-demand individual advocacy services: the Human Rights Legal Service, the Mental Health Legal Service and Justice Support Program and more recently, the National Disability Insurance Scheme Appeals Support Program, Decision Support Pilot Program, Disability Royal Commission Advocacy Program, Education Advocacy Service and Social Work Service. Our individual advocacy experience informs our understanding and prioritisation of systemic advocacy issues.

QAI's recommendations

QAI recommends:

- In order to provide a meaningful pathway to employment for people with disability, there needs to be an ideological shift in how people with disability are perceived by the community at large, including by policy-makers.
- QAI disagrees with the Strategy's purported intention to retain segregated employment for people with disability by continuing to explore opportunities within the Australian Disability Enterprise (ADE) model. QAI considers the existence of ADEs and productivity-based wage assessment tools as continued barriers to the participation of people with disability in the open workforce.
- Supported and targeted transitions into paid employment from voluntary positions should be encouraged, measured and incorporated into the new Strategy.
- The adequacy of social security payments must be reviewed alongside the development of the new Strategy. The sufficiency of payments must be analysed through a human rights lens with a view to achieving long-term outcomes. This must extend to considering the recommendations of the 'Willing to Work' inquiry which proposed that the Australian government, among other things, extend the period of eligibility to concession cards for people who obtain work after being in receipt of an income support payment.
- The interface between reasonable adjustments as provided by employers and disability-related employment supports as funded under the National Disability Insurance Scheme, requires further consideration and clarification under the new Strategy.
- Issues of intersectional disadvantage require further exploration and incorporation into the new Strategy. This must also extend to examining the particular barriers faced by people with certain



disability types, such as people living with intellectual impairment or psychosocial disability.

- Discriminatory attitudes borne of ableism are learned at a very young age. If we are to achieve the attitudinal change required to create an inclusive Australian society, we need to ensure disability is normalised in early childhood experiences. The removal of segregated education is therefore a related yet necessary component of any policy framework aiming to improve the employment outcomes of people with disability.
- QAI supports the introduction of further measures that will address continued discriminatory practices by employers that prevent people with disability accessing the workforce. For example, the development of Disability Employment Standards as a form of subordinate legislation under the *Disability Discrimination Act 1992* (Cth).
- As recommended by the Willing to Work inquiry, QAI supports the development of a strategy that includes 'targets, actions, performance indicators and timeframes', against which progress is publicly reported on annually.

Introduction

The numerous benefits of employment for overall health and wellbeing are well-established. The underrepresentation of people with disability in employment is similarly well-known. People with disability face significant barriers to employment including discrimination both in access to and within the workplace¹ The barriers to employing people with disability as reported by employers are also familiar, such as poor awareness of legal obligations, low confidence in supporting employees with disability, limited resources and difficulty providing appropriate accommodations for employees with disability.² Despite the plethora of benefits associated with employing people with disability, including higher productivity levels, better retention rates, increased diversity in skills and attributes and fewer workplace injuries,³ this information is not well appreciated, with high rates of unemployment continuing to thwart the capacity of people with disability to meet their full potential. to meet their full potential.

With the underrepresentation of people with disability in employment persisting despite continued investment in employment initiatives designed to assist people with disability into the workforce, it is reasonable to draw the conclusion that these initiatives are not working. Moreover, evidence from the Disability Royal Commission has demonstrated that some initiatives, such as models of segregated employment, put people with disability at increased risk of experiencing abuse,

¹ Australian Human Rights Commission, 'Barriers to employment', Australian Human Rights Commission (Webpage) <https://humanrights.gov.au/our-work/9-barriers-employment>.

² Ibid



neglect and exploitation.⁴ A new approach is therefore required. People with disability must be supported to realise their right to work in a way that respects their dignity, skills and human rights, whilst ensuring the judicious use of government resources. The development of the new National Disability Employment Strategy (the Strategy) alongside the Disability Royal Commission presents a unique opportunity to learn from previous mistakes and to rewrite the overarching policy framework that will support people with disability to obtain and retain meaningful work.

This submission builds upon QAI's previous contributions to the development of the new National Disability Strategy.⁵ It suggests that in order to provide a meaningful pathway to employment for people with disability, there needs to be an ideological shift in how people with disability are perceived by the community at large, including by policy-makers.

Do you have any feedback on the proposed vision or priority areas?

QAI agrees with the Strategy's proposed focus on improving community attitudes. Paternalistic, degrading and patronising attitudes created by ableism must be eradicated if people with disability are to be viewed as citizens, peers, colleagues, consumers and friends.⁶ According to Fisher and Purcel, attitudinal change is required at the personal, organisational and government level, with success dependent upon various factors, including multi-pronged and long-term information and awareness campaigns, direct contact with people with disability, education and training and anti-discrimination legislation that is enforceable with appropriate sanctions for non-compliance.⁷ Essentially, critical to changing attitudes is ensuring greater visibility of people with disability in our community. Society must understand that disability is a normal and valuable part of humanity. It must cease practices that pathologize disability and instead focus upon the unique worth and individual strengths of people with disability, just as members of the community without disability hope to be perceived.

Accordingly, QAI disagrees with the Strategy's purported intention to retain segregated employment for people with disability by continuing to 'explore opportunities within the Australian Disability Enterprise (ADE) model'.⁸ QAI considers the existence of ADEs and productivity-based wage assessment tools as continued barriers to the participation of people with disability in the open workforce. These archaic institutional approaches perpetuate low expectations of and for

⁴ Disability Royal Commission (March 2021) 'Overview of responses to the Employment Issues paper'.

⁵ Queensland Advocacy Incorporated (2020) 'National Disability Strategy'; <https://qai.org.au/2020/10/30/national-disability-strategy/>; Queensland Advocacy Incorporated (2020) ; NDS and NDIS Outcomes Framework; <https://qai.org.au/2020/12/14/nds-and-ndis-outcomes-frameworks/>

⁶ Denise Thompson et al. (February 2012) 'Community attitudes to people with disability: scoping project' (Occasional Paper No. 39, Social Policy Research Centre, Disability Studies and Research Centre, University of New South Wales)

⁷ Karen Fisher & Christiane Purcel (2017) *Policies to change attitudes to people with disabilities*, Scandinavian Journal of Disability Research, 19(2)

⁸ Department of Social Services (April 2021) 'National Disability Employment Strategy: Consultation Paper', p16



people with disability and ignores their capacity to positively contribute to the workplace. While ADEs may have had benevolent origins, in reality ADEs function as day centres for people with disability in areas where there are limited other supports or services. Theoretically, ADEs operate as training centres that move employees with disability into open employment. However, this theory is not reflected in reality.⁹ In some instances, ADEs are highly productive and compete on the open market against other businesses yet continue to pay inadequate wages to their employees with disabilities. Rather than incentivising people with disability into the workforce, ADEs and the supported wage system demean the contribution of employees with disability through grossly insufficient remuneration and the confinement of workers to a small and undervalued sector of the labour market.

QAI considers that the retention of segregated employment settings will sustain harmful stereotypes about people with disability and preconceived notions of their capabilities. Research consistently demonstrates that a lack of familiarity with people with disability causes prejudicial attitudes regarding their skills and abilities.¹⁰ Maintaining separate places of employment for people with and without disability will therefore hinder the success of efforts to improve community attitudes. The operation of ADEs and supported wage schemes also violates a person with disability's right to work on an equal basis with others, as enshrined under Article 27 of the Convention on the Rights of Persons with Disabilities (CRPD), a convention to which Australia is signatory. The psychological hurt inflicted on people with disability by schemes that openly discriminate and literally undervalue the contribution of people with disability through inferior remuneration must also be addressed.

A continued investment in segregated employment also contradicts the Strategy's earlier stated intention to 'explore new and innovative approaches'¹¹ to improving employment outcomes for people with disability and is particularly problematic given the commentary on ADEs at the Disability Royal Commission. The continued focus on ADEs also undermines the overarching vision of the Strategy which is to create 'an *inclusive* Australian society'.¹² Australia will never be truly inclusive if it continues to separate people with disability from non-disabled members of the community. The eradication of ADEs and the abolition of productivity-based wage assessment tools, together with the expansion of meaningful employment roles in open employment, must therefore be incorporated into the new Strategy.

Furthermore, many people with disability undertake volunteer roles in the community and yet their contribution is rarely measured or acknowledged in workforce statistics. Some people undertake this work with the assistance of support workers whilst others volunteer independently. Some people with disability have told us they would rather volunteer in open employment and

⁹ Australian Human Rights Commission (2016) 'Willing to Work: National Inquiry into Employment Discrimination against Older Australians and Australians with Disability', p242

¹⁰ Kantar Public (February 2017) 'Building Employer Demand: Literature Review'

¹¹ Ibid, p3

¹² Ibid, p6



community settings than work in ADEs. Unfortunately, opportunities for paid employment are rarely forthcoming in such circumstances and prolonged volunteer roles can lead to the exploitation of people with disability.¹³ Supported and targeted transitions into paid employment from voluntary positions should therefore also be encouraged, measured and incorporated into the new Strategy.

Are there barriers for jobseekers with disability not covered in this consultation paper?

Achieving economic security through adequate income, access to employment opportunities and suitable living arrangements is fundamental to a person's human rights. All people, regardless of their disability status, have a right to a basic standard of living. This includes being able to earn a minimum wage or for those who cannot work due to their disability, being able to rely upon income security measures that are equivalent to a minimum wage. Australia's social security system must not be responsible for putting people with disability into poverty, yet many people with disability have no choice but to rely upon social security payments and consequently experience significant financial hardship. Increasingly onerous mutual obligation requirements, a narrowing of eligibility criteria for the (marginally) higher payments and a refusal by government to increase the modest payment amounts all further entrench people with disability into poverty. People with inadequate income support are forced to make impossible choices, such as choosing between food, medicines, clothing, transport or accommodation, all of which are necessary to maintain a minimum standard of living and successfully participate in employment, yet some of which have to be sacrificed when a person is reliant upon insufficient welfare support. The adequacy of social security payments must therefore be reviewed alongside the development of the new Strategy. The sufficiency of payments must be analysed through a human rights lens with a view to achieving long-term outcomes as opposed to a purely economic analysis that considers current expenditure alongside Treasury's competing fiscal commitments. This must extend to considering the recommendations of the 'Willing to Work' inquiry which proposed that the Australian government, among other things, extend the period of eligibility to concession cards for people who obtain work after being in receipt of an income support payment.¹⁴

QAI further considers that the role and efficacy of National Disability Insurance Scheme (NDIS) disability-related employment supports needs to be considered when developing the new Strategy. QAI is aware of bureaucratic processes within the NDIS that delay or even prevent NDIS participants from accessing supports that would enable them to accept an offer of employment and perform their duties on an equal basis with others. This could be addressed by ensuring plans include sufficient funding for employment-related supports, by making

¹³ Disability Royal Commission (March 2021) 'Overview of responses to the Employment Issues paper', p3

¹⁴ Australian Human Rights Commission (2016) 'Willing to Work: National Inquiry into Employment Discrimination against Older Australians and Australians with Disability', p238



employment-related supports flexible in a participant's budget and by removing unreasonable caps on transport funding that prevent people with disability accessing the community and subsequently participating in the open labour market.

Case study

Shannon is a 39-year-old barista and qualified baker who has won awards and appeared on television for his talents. With the support of a Disability Employment Service provider, Shannon secured part-time employment at a coffee shop located 50 minutes away from Shannon's home. In recognition of his abilities, Shannon's employer has offered him full-time employment. However, Shannon cannot accept these hours as the employment-related supports in his NDIS plan are insufficient. Due to Shannon's impairments, Shannon requires funded support to travel to work and requires a support worker to assist him whilst he is at work. This has been demonstrated by various allied health assessments and is required despite extensive reasonable adjustments provided by Shannon's employer. Shannon is currently appealing the level of funding in his NDIS plan, however the outcome is uncertain and process times for NDIS appeals are extremely lengthy. Shannon is therefore deeply concerned that his employer (operating in a free market) will offer the additional hours to someone else who is able to start immediately. Shannon is also concerned that he will lose his part-time hours due to the inadequacy of his current level of funding, which is forcing him to rely upon his elderly parents to transport him to and from work, an arrangement that is not sustainable. Shannon has already experienced significant discrimination when trying to obtain employment. Shannon was inappropriately asked during the internal review process why he had not considered getting a job closer to his home. Shannon stated that "a lot of people as soon as they saw my disability, said they did not want to take the risk" and wants everyone to understand that "people with disability cannot get jobs, just like that".

There are several implications from Shannon's case study. Firstly, it demonstrates the need for the Applied Principles and Tables of Support (APTOS) - aimed at clarifying the responsibilities of the NDIA and other mainstream services - to be clarified and updated. Ambiguity regarding who is responsible for funding Shannon's disability-related employment supports has created confusion for Shannon, his employer, and his disability support workers and has left Shannon unable to accept an offer of full-time employment until an administrative decision regarding funding responsibilities is made. Secondly, arbitrary classifications of transport assistance in NDIS operational guidelines are likely to have contributed to a short fall in Shannon's required transport funding. This is despite the decision of the Federal Court in *McGarrigle v National Disability Insurance Agency* (2017) which found that supports which are deemed to be reasonable and necessary should be fully funded.¹⁵ Thirdly, the expectation on employers to

¹⁵ McGarrigle v National Disability Insurance Agency [2017] FCA 308



report on reasonable adjustments can become extremely burdensome. In Shannon's case, the NDIA required multiple reports from Shannon's employer that demonstrated the extent to which the employer was providing reasonable adjustments (four reports that totalled over 16 pages). This can create report fatigue and lead to unhealthy power dynamics in employee/employer relationships. The Strategy could explore opportunities to remunerate employers for reporting on reasonable adjustments when this requirement exists for people seeking disability-related employment supports under the NDIS.

Whilst the consultation paper acknowledges that some people with disability face additional barriers to employment due their culture, gender, sexuality, age or socio-economic status, and that there is a lack of clear, easily accessible and culturally appropriate information for people with disability trying to navigate the employment and welfare systems, issues of intersectional disadvantage require further exploration and incorporation into the new Strategy. This must also extend to examining the particular barriers faced by people with certain disability types, such as people living with intellectual impairment or psychosocial disability, whose endeavours to enter the workforce are likely to encounter different barriers to those experienced by people living with other disability types.

Which actions or initiatives would best create positive change for people with disability and employers?

Discriminatory attitudes borne of ableism are learned at a very young age. If we are to achieve the attitudinal change required to create an inclusive Australian society, we need to ensure disability is normalised in early childhood experiences. Education is the first formal introduction a child has to a society that either embraces diversity and welcomes people with disability through models of inclusion or marginalises people with disability and differentiates people based upon their diagnosis. Inclusive education benefits students with disability by fostering their full development, sense of dignity and self-worth, whilst benefiting non-disabled students as future colleagues and employers by teaching them the value of diversity. The removal of segregated education is therefore a related yet necessary component of any policy framework aiming to improve the employment outcomes of people with disability. It will also facilitate more young people with disability accessing transition to work activities and career support, typically found in mainstream educational institutions, identified as a goal under the Strategy's proposed focus on building the employment skills, experience and confidence of young people with disability.

QAI also supports the introduction of further measures that will address continued discriminatory practices by employers that prevent people with disability accessing the workforce. For example, the development of Disability Employment Standards as a form of subordinate legislation under the *Disability Discrimination Act 1992* (Cth). Disability Employment Standards could set minimum, legally enforceable standards of practice expected of employers that ensure they uphold their obligations to provide reasonable adjustments that facilitate the employment of people with disability. They would also help to remove the confusion reportedly held by some



employers regarding their legal obligations under the *Disability Discrimination Act 1992* (Cth). QAI submits that there is a need for greater awareness-raising activities and industry support to promote compliance with the legislation and standards made under it, as well as robust review and audit processes to measure effectiveness, as detailed further below. QAI also supports the introduction of positive obligations on employer organisations, to ensure they proactively adopt measures to eliminate unlawful discrimination and harassment and advance equality.

Learnings from altered working practices that have occurred as a result of the Covid-19 pandemic must also be incorporated into the new Strategy. Resistance to flexible working arrangements that has previously characterised the attitudes of some employers must now be re-examined in light of the efficiencies demonstrated by many employees who have successfully balanced work and home life commitments whilst working from home during the pandemic. Flexible work arrangements, including the increased use of technology for remotely held meetings, have opened up employment opportunities for some people with disability that were previously closed. Such flexibility can enable a person with disability to successfully fulfill their employment responsibilities in a way that suits their support needs and best utilises their support arrangements. QAI supports the right contained in the *Fair Work Act 2009* (Cth) for employees with disability to request flexible working arrangements, requests which must not be refused except on reasonable business grounds.¹⁶ However, we note the limits of this provision, which only applies to persons already in employment (and the exclusions applicable to short-term casual employees and those with less than 12 months of service) and we also note the potential for this right to create a division between those who require flexible working arrangements to work, as compared with those who do not. Employers who offer flexible working arrangements should become the norm, rather than the exception. QAI therefore considers that employers should have an obligation to consider and accommodate requests for flexible working arrangements from all employees, not only those specifically identified in the legislation. This would assist the entire workforce to have a greater work-life balance, with the associated benefits of increased productivity, whilst removing any stigma attached to requests for flexible work arrangements that may have historically hindered the provision of reasonable adjustments to employees with disability before the pandemic.

Finally, QAI considers that positive change for people with disability and employers can be achieved through greater implementation of the recommendations of the 2016 'Willing to Work' inquiry.¹⁷ The Australian Human Rights Commission (AHRC) conducted a thorough examination of the barriers facing older Australians and Australian's with disability seeking to obtain or maintain employment. The proffered solutions are varied and many. They include short, medium and long-term interrelated solutions that must be implemented as a whole in order to allow the desired and anticipated social change to occur.

¹⁶ *Fair Work Act 2009* (Cth), s 65.

¹⁷ Australian Human Rights Commission (2016) 'Willing to Work: National Inquiry into Employment Discrimination against Older Australians and Australians with Disability'



How do we measure success of the Employment Strategy?

Whilst success under an Employment Strategy lends itself well to being quantified, for example by measuring and comparing employment rates of people with disability with each passing year, the autonomy and dignity of people with disability must not be lost amid efforts to calculate progress. In other words, caution must be exercised by policy-makers to ensure that the employment status of a person with disability does not become an arbitrary measure that then determines access to other supports, services or entitlements. For example, it must not be imposed into the plan of an NDIS participant who does not identify engaging in the workforce as one of their goals.

Nonetheless, in addition to increasing numbers of people with disability in the workforce, success under the new Employment Strategy could also be measured by the following:

- Reduced number of discrimination complaints brought before State/Territory and Commonwealth Human Rights Commissions relating to employment;
- Compliance levels with newly enacted Disability Employment Standards as subordinate legislation under the *Disability Discrimination Act 1992* (Cth);
- Australian's standing in comparison to other OECD nations with respect to labour force participation of people with disability;
- Impact of quotas and other affirmative actions that impose positive obligations on employers to provide reasonable adjustments and actively employ people with disability;
- Qualitative data that ascertains the perceptions and experiences of people with disability with regards to changing community attitudes;
- The closure of ADEs and segregated employment settings.
- The number of people with disability in the workforce who experience intersectional disadvantage, such as people with disability who identify as First Nations, female, LGBTIQ+ or from Culturally and Linguistically Diverse (CALD) backgrounds.

As recommended by the Willing to Work inquiry, QAI supports the development of a strategy that includes 'targets, actions, performance indicators and timeframes', against which progress is publicly reported on annually.¹⁸

¹⁸ Australian Human Rights Commission (2016) 'Willing to Work: National Inquiry into Employment Discrimination against Older Australians and Australians with Disability', p233



Conclusion

There are multiple factors impacting upon the ability of people with disability to obtain employment in the open labour market. Policy responses designed to support people with disability to gain employment must be seen within the wider structural context. That is, within a society where discriminatory attitudes towards people with disability are commonly held by employers who fail to see the benefits of employing people with disability. Policy responses must therefore continue to be proportionate and not impose unrealistic expectations or burdens upon people with disability to remove deeply ingrained attitudes of ableism that continue to shape their interactions with the wider community.

