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Subject: AM2014/286 - Statement of Agreed Facts & Witness Statement

Dear Associate to Vice-President Hatcher

We refer to matter AM2014/286.

We can confirm that the parties to the matter have been able to reach the following position:

- 1) The employee and the employer parties have been able to agree a statement of facts;
- 2) The Commonwealth has indicated that they have no objection to the tendering of certain documents from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, nor do they disagree with certain facts.

Please find **attached**, for filing:

- 1) Statement of Agreed Facts between the employee and employer parties;
- 2) Witness statement of Sunil Kemppi, attaching documents from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability and going to associated matters.

The other parties are copied into this email, by way of service.

On the basis of filing these documents, and the understanding that the employer parties and Commonwealth agree and/or do not object to their tendering or the matters set out therein, AED can advise that it no longer seeks to press its application for a witness summons.

Kind regards

Phillip Zlatkovic

Human Rights Advocate

On behalf of

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**IN THE MATTER OF A REVIEW OF THE SUPPORTED EMPLOYMENT
SERVICES AWARD 2010**

Fair Work Act 2009 s 156 – 4 yearly review of modern awards

STATEMENT OF AGREED FACTS (ACTU AND ABI AND ORS)

Preliminary

1. The Australian Council of Trade Unions (**ACTU**), AED Legal Centre (**AED**), United Workers' Union (**UWU**), Australian Business Industrial (**ABI**), the NSW Business Chamber Ltd (**NSWBC**) and National Disability Services (**NDS**) agree the following facts for the purpose of matter AM2014/286 (*Supported Employment Services Award 2010*) before the Fair Work Commission.

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

2. On or about 4 April 2019, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**Disability Royal Commission**) was established by letters patent.

Kerrie Langford

3. Kerrie Langford (**Langford**) holds the position of “Head of Employment” with National Disability Services.
4. Langford gave evidence in the Disability Royal Commission. An extract of the relevant transcript containing the evidence given orally by Langford is attached to this document as “**Annexure 1**” (**Tendered Langford Transcript**).
5. The Tendered Langford Transcript forms part of the transcript published by the Disability Royal Commission on its web-site for day 3 (13 April 2022) of its inquiry on the subject of “the experience of people with disability working in Australian Disability Enterprises.”¹

¹ <https://disability.royalcommission.gov.au/system/files/2022-04/Transcript%20Day%203%20-%20Public%20Hearing%2022%2C%20Virtual.pdf>

6. The Tendered Langford Transcript contains sworn evidence given by Langford to the Disability Royal Commission on 13 April 2022.

Tender

7. The parties referred to in paragraph 1 herein consent to the tender of this statement and its annexure to the Fair Work Commission for the purposes of this review (AM2014/286) of the Supported Employment Services Award.

Thursday, 4 August 2022



TRANSCRIPT OF PROCEEDINGS

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

<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.

5

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.

10

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.

15

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.

20

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."

25

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?

30

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 --

35

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.

5 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.

10 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.

15 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?

20 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.

25 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?

30 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.

35 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.

5

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?

40

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?

15

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.

20

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.

30

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

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

35

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?

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 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 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 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?
40

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.

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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?

20 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 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.

25 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?

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 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 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.

40 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 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 --

COMMISSIONER GALBALLY: Yes.

25 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 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.

30 COMMISSIONER GALBALLY: Yes. But are you - is your position that you're encouraging your 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.

35 MS LANGFORD: We want wage parity, absolutely.

40 COMMISSIONER GALBALLY: Right. Okay. Thank you.

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?

45

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.

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? 40

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.

**IN THE MATTER OF A REVIEW OF THE SUPPORTED EMPLOYMENT
SERVICES AWARD 2010**

Fair Work Act 2009 s 156 – 4 yearly review of modern awards

WITNESS STATEMENT OF SUNIL KEMPPI

I, Sunil Kemppe of 4/365 Queen Street, Melbourne, Victoria (3000), Senior Legal and Industrial Officer, state as follows:

Introduction

1. I make this statement of my own knowledge and beliefs, except where stated otherwise. Where I depose to matters on the basis of information provided to me, I believe that information to be true.
2. I am a senior legal and industrial officer for the Australian Council of Trade Unions (ACTU).
3. The ACTU is a party in matter AM2014/286, a review of *the Supported Employment Services Award 2010*. I am authorised to make this statement on behalf of the ACTU.

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

4. On or about 4 April 2019, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**Disability Royal Commission**) was established by letters patent.
5. A website has been established for the Disability Royal Commission (**Website**). The uniform resource locator (or URL or web address) of the Website's front page is <https://disability.royalcommission.gov.au/>.
6. On the Website is a menu option titled "Document Library". Selecting this option takes the user to a list of documents which are relevant to the Disability Royal Commission. The documents include research reports, addresses, transcripts and exhibits.
7. The documents I refer to in this statement were all accessed on the Website by myself on or about 4 August 2022 between about 10:45 and 10:55.

Debbie Mitchell

8. Debbie Mitchell is the Deputy Secretary, Disability and Carers at the DSS.
9. A scenarios document was prepared by the DSS and provided to the Disability Royal Commission by Ms Mitchell on 12 May 2022 (**Scenarios Document**).
10. I accessed the Scenarios Document via the Website (where it is labelled: “EXHIBIT 22-012.01 - CTD.9999.0052.0008 - Annexure A - Disability Support Pension Scenarios”) at the following url:
<https://disability.royalcommission.gov.au/system/files/exhibit/CTD.9999.0052.0008.pdf>.

Now produced and shown to me and marked “**SK-1**” is a true and correct copy of the Scenarios Document.

11. The Scenarios Document contains hypothetical scenarios prepared by the DSS of overall employee income from hypothesised wage rates, taking into account the effect of those rates on the level of Disability Support Pension retained by an eligible supported employee.

Gerrie Mitra

12. Gerrie Mitra is the General Manager, Provider and Markets Division at the National Disability Insurance Agency (**NDIA**).
13. The NDIA is the Commonwealth agency that administers the Commonwealth scheme known as the “National Disability Insurance Scheme” under the *National Disability Insurance Scheme Act 2013* (Cth).
14. Ms Mitra gave evidence in the Disability Royal Commission.

Now produced and shown to me and marked “**SK-2**” is an extract of the relevant transcript containing the evidence given orally by Mitra (**Tendered Mitra Transcript**).

15. The Tendered Mitra Transcript forms part of the transcript published by the Disability Royal Commission on its Website for day 3 (13 April 2022) of its inquiry on the subject of “the experience of people with disability working in Australian Disability Enterprises.”, which is available here:
<https://disability.royalcommission.gov.au/system/files/2022-04/Transcript%20Day%203%20-%20Public%20Hearing%202022%2C%20Virtual.pdf>.

16. The sworn evidence of Ms Mitra to the Disability Royal Commission included (in addition to the Tendered Mitra Transcript) the following documents:
- a. The witness statement of Ms Mitra dated 1 April 2022 (**Mitra Statement**);
 - b. The supplementary statement of Ms Mitra dated 6 April 2022 (**Mitra Supplementary Statement**);
 - c. Ms Mitra's responses to questions on notice dated 13 May 2022 (**Mitra Response**).
17. I accessed The Mitra Statement via the Website (where it is labelled: "EXHIBIT 19-037 - STAT.0408.0001.0001 - Statement of Gerrie Mitra PSM, General Manager - Provider and Markets") at the following url:
<https://disability.royalcommission.gov.au/system/files/exhibit/STAT.0523.0001.0001.pdf>.
- Now produced and shown to me and marked "**SK-3**" is a true and correct copy of the Mitra Statement.
18. I accessed the Mitra Supplementary Statement via the Website (where it is labelled: "EXHIBIT 22-010 - STAT.0523.0002.0001 - Supplementary statement of Gerrie Mitra, General Manager - Provider and Markets") at the following url:
<https://disability.royalcommission.gov.au/system/files/exhibit/STAT.0523.0002.0001.pdf>.
- Now produced and shown to me and marked "**SK-4**" is a true and correct copy of the Mitra Supplementary Statement.
19. I accessed the Mitra Response via the Website (where it is labelled: "EXHIBIT 22-016 - CTD.9999.0053.0015 - Gerrie Mitra's responses to questions on notice") at the following url:
<https://disability.royalcommission.gov.au/system/files/exhibit/CTD.9999.0053.0015.pdf>.
- Now produced and shown to me and marked "**SK-5**" is a true and correct copy of the Mitra Response.

Witness Summons

20. The AED Legal Centre has made an application for orders that persons including Ms Mitra appear before the FWC in relation to matter AM2014/286 (*Supported Employment Services Award 2010*) (**Summons Application**).
21. I have held discussions with representative of the Commonwealth in relation to the facts set out in this statement and the documents annexed hereto. I have had similar discussions with the employer representatives.
22. From these discussions, it is my understanding that:
 - a. The Commonwealth and the employer parties do not object to the tendering of the documents annexed to this statement;
 - b. The Commonwealth and the employer parties do not disagree with the matters I have set out in this statement.
23. I am aware that the AED Legal Centre no longer presses the Summons Application in relation to Ms Mitra on the basis of the above understanding,

Sunil Kemppi

Thursday, 4 August 2022

The scenarios provided are hypothetical and indicative in nature. They are provided for general guidance only. They are not intended to:

- **describe the position of any actual person;**
- **capture all possible variables relating to income and eligibility for other non-income entitlements;**
- **be determinative of all possible outcomes, as outcomes for individuals will vary depending on a range of circumstances; or**
- **provide a financial view of tax amounts in either future or past financial years.**

Note – DSP full rate includes the pension supplement (\$72.70 per fortnight) and the energy supplement (\$14.10). Calculations do not take into account additional income that may come from investments or other sources, nor tax deductions that may be applied to taxable income.

SCENARIO ONE: Single, 21 years or older, working part-time (42 hours per fortnight), earning \$9.77 per hour.¹

Working 21 hours per week

- A supported employee working part time (21 hours per week), at \$9.77 per hour, would be \$295.17 better off per fortnight than if receiving Disability Support Pension income alone.

Workings

Average wage outcome in the ARTD trial (\$9.77 per hour)

- DSP full rate: \$987.60
- Wage income: \$410.34 (42 hrs x \$9.77 per hour)
- Income tax on wages² – nil (income is within tax free threshold i.e. under \$18,200 annually).
- Income affected by the taper rate: \$410.34 (wage income) - \$180 (income test free threshold) = \$230.34 (will be reduced by \$0.50 for every \$1.00)
- DSP reduction: \$230.34 (wage income affected by taper rate) ÷ 2 (50 cents per dollar taper rate) = \$115.17
- Tax = \$0 (income under the tax free threshold)
- Total income: \$987.60 (DSP income) + \$410.34 (wage income) - \$115.17 (DSP reduction) = \$1,282.77

¹ In the Fair Work Commission New wage Assessment Structure Trial Evaluation Report, \$9.77 was the average wage outcome for supported employees.

² DSP income is not taxable for those under Age Pension age

SCENARIO TWO: Single, 21 years or older, working full-time (70 hours per fortnight), earning \$9.77 per hour.³

Working 35 hours per week

- A supported employee working full time (35 hours per week), at \$9.77 per hour, would be \$431.95 better off per fortnight than if receiving DSP income alone.

Workings

Average wage outcome in the ARTD trial (\$9.77 per hour)

- DSP full rate: \$987.60
- Wage income: \$683.90 (70 hrs x \$9.77 per hour)
- Income tax on wages – nil (income is within tax free threshold i.e. under \$18,200 annually).
- Income affected by the taper rate: \$683.90 (wage income) - \$180 (income test free threshold) = \$503.90 (will be reduced by \$0.50 for every \$1.00)
- DSP reduction: \$503.90 (wage income affected by taper rate) ÷ 2 (50 cents per dollar taper rate) = \$251.95
- Tax = \$0 (income under the tax free threshold)
- Total income: \$987.60 (DSP income) + \$683.90 (wage income) – 251.95 (DSP reduction) = \$1,419.55

SCENARIO THREE: Single, 21 years or older, working part-time (42 hours per fortnight), earning \$22.06 per hour.⁴

Working 21 hours per week

A supported employee working part time (21 hours per week), at \$22.06 per hour, would be \$550.49 better off per fortnight than if receiving DSP income alone.

Workings

Highest wage outcome in the ARTD trial (\$22.06per hour)

- DSP full rate: \$987.60
- Wage income: \$926.52 (42 hrs x \$22.06 per hour)
- Income affected by the taper rate: \$926.52 (wage income) - \$180 (income test free threshold) = \$746.52 (will be reduced by \$0.50 for every \$1.00)
- DSP reduction: \$746.52 (wage income affected by taper rate) ÷ 2 (50 cents per dollar taper rate) = \$373.26
- Tax = \$0 (tax offsets reduce income tax to nil), Medicare Levy = \$2.77
- Total income: \$987.60 (DSP income) + \$923.75 (wage income of \$926.52 - \$2.77 Medicare levy) - \$373.26 (DSP reduction) = \$1,538.09

³ In the Fair Work Commission New wage Assessment Structure Trial Evaluation Report, \$9.77 was the average wage outcome for supported employees.

⁴ In the Fair Work Commission New wage Assessment Structure Trial Evaluation Report, \$22.06 was the highest wage outcome for supported employees

SCENARIO FOUR Single, 21 years or older, working full-time (70 hours per fortnight), earning \$22.06 per hour.

Working 35 hours per week

- A supported employee working full time (35 hours per week), at \$22.06 per hour, would be \$727.70 better off per fortnight than if receiving DSP income alone.

Workings

Average wage outcome in the ARTD trial (\$22.06 per hour)

- DSP full rate: \$987.60
- Wage income: \$1,544.20 (70 hrs x \$22.06 per hour)
- Income affected by the taper rate: \$1,544.20 (wage income) - \$180 (income test free threshold) = \$1,364.20 (will be reduced by \$0.50 for every \$1.00)
- DSP reduction: \$1,364.20 (wage income affected by taper rate) ÷ 2 (50 cents per dollar taper rate) = \$682.10
- Tax = \$103.52 (Income tax after tax offsets) + \$30.88 (Medicare Levy) = \$134.4
- Total income: \$987.60 (DSP income) + \$1,544.20 (wage income) – 682.10 (DSP reduction) - \$134.40 (Tax) = \$1,715.30

SCENARIO FIVE Single, 21 years or older, working part-time (42 hours per fortnight), earning \$2.54 per hour.⁵

Working 21 hours per week

- A supported employee working part time (21 hours per week), at \$2.54 per hour, would be \$106.68 better off per fortnight than if receiving DSP income alone.

Workings

Minimum current supported wage (\$2.54 per hour)

- DSP full rate: \$987.60
- Wage income: \$106.68 (42 hrs x \$2.54 per hour)
- Income affected by the taper rate: \$0.00 (does not earn over \$180.00)
- DSP reduction: \$0.00 (does not earn over \$180.00)
- Tax = \$0 (income under the tax free threshold)
- Total income: \$987.60 (DSP income) + \$106.68 (wage income) = \$1,094.28

SCENARIO SIX Single, 21 years or older, working full-time (70 hours per fortnight), earning \$2.54 per hour.

Working 35 hours per week

⁵ Minimum current wage for employers using the Supported Wage System under the *Supported Employment Service Award* (12.5 per cent of minimum wage).

- A supported employee working full time (35 hours per week), at \$2.54 per hour, would be \$177.80 better off per fortnight than if receiving DSP income alone.

Workings

Minimum current supported wage (\$2.54 per hour)

- DSP full rate: \$987.60
- Wage income: \$177.80 (70 hrs x \$2.54 per hour)
- Income affected by the taper rate: \$0.00 (does not earn over \$180.00)
- DSP reduction: \$0.00 (does not earn over \$180.00)
- Tax = \$0 (income under the tax free threshold)
- Total income: \$987.60 (DSP income) + \$177.80 (wage income) = \$1,165.40

SCENARIO SEVEN Single, 21 years or older, working part-time (42 hours per fortnight), earning \$20.33 per hour.⁶

Working 21 hours per week

- A person with disability working in the open labour market and in receipt of DSP working part time (21 hours per week), at \$20.33 per hour, would be \$516.93 better off per fortnight than if receiving DSP income alone.

Workings

Working for minimum wage (\$20.33 per hour) in open labour market

- DSP full rate: \$987.60
- Wage income: \$853.86 (42 hrs x \$20.33 per hour)
- Income affected by the taper rate: \$853.86 (wage income) - \$180 (income test free threshold) = \$673.86 (will be reduced by \$0.50 for every \$1.00)
- DSP reduction: \$673.86 (wage income affected by taper rate) ÷ 2 (50 cents per dollar taper rate) = \$336.93
- Tax = \$0 (tax offsets reduce income tax to nil)
- Total income: \$987.60 (DSP income) + \$853.86 (wage income) - \$336.93 (DSP reduction) = \$1,504.53

SCENARIO EIGHT Single, 21 years or older, working full-time (70 hours per fortnight), earning \$20.33 per hour.

Working 35 hours per week

- A person with disability working in the open labour market and in receipt of DSP working full time (35 hours per week), at \$20.33 per hour, would be \$322.54 better off per fortnight than if receiving DSP income alone.

Workings

⁶ Current Minimum Award Wage.

Working for minimum wage (\$20.33 per hour) in open labour market

- DSP full rate: \$987.60
- Wage income: \$1,423.10 (70 hrs x \$20.33 per hour)
- DSP reduction: \$987.60 (as the employee is working over 30 hours per week in the open labour market, their DSP will be suspended for up to two years)
- Tax reduction: \$84.50 (Income tax after tax offsets) + Medicare \$28.46 = \$112.96
- Total income: \$1,423.10 (wage income) - \$112.96 (Tax) = \$1,310.14

Note: As the employee is no longer in receipt of the DSP they will also be ineligible for other benefits like rent assistance.



TRANSCRIPT OF PROCEEDINGS

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

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

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<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.

40

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?

50

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?

50

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?

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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.

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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?

30

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.

35

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 transitioning to open employment."
20

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:
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"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.

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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.

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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.

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?

MS MITRA: Yep. Exactly. Very good question.

CHAIR: Thank you.

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.

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 --

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?

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.

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.

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

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

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?
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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.
30

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.

35 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.

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?

50 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.

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.

5

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.

40

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?

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?

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.

50 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?

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.

50 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 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.

5

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.

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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.

25

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**

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Witness Statement of Gerrie Mitra PSM

Name: Gerrie Mitra
Address: 50 Flinders Street, Adelaide, South Australia, 5000
Occupation: General Manager, Provider and Market Division
Date: 1 April 2022

1. This statement made by me accurately sets out the evidence that I am prepared to give to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**Royal Commission**).
2. This statement is true and correct to the best of my knowledge and belief.
3. I make this statement on behalf of the National Disability Insurance Agency (**NDIA**), and I am authorised to do so.
4. I currently hold the position of General Manager, Provider and Markets Division at the NDIA.
5. I provide this statement in response to a Notice to Give a Statement in Writing dated 18 March 2022 from the Royal Commission, numbered CTH-NTG-00203 (**Notice**).
6. I make this statement based on matters within my own knowledge, the books and records of the NDIA that I reviewed and having made inquiries of its officers and employees.
7. This statement has been prepared with the assistance of lawyers and officers of the NDIA in response to, and in compliance with, the Notice. It is produced to the Royal Commission on the basis that it and its enclosures will be tendered and received in evidence by the Royal Commission pursuant to the Notice and treated as a statement or disclosure for the purposes of section 6DD of the *Royal Commissions Act 1902* (Cth).
8. Terms referred to in this statement are as defined in the Notice, unless otherwise specified.

PART 1 - BACKGROUND**Current role and professional background**

9. I have previously provided a witness statement to the Royal Commission dated 11 June 2021, pursuant to Notice CTH-NTG-00159 for public hearing 19: Measures taken by employers and regulators to respond to the systemic barrier to open employment for people with disability. I outlined my employment with the NDIA and my professional background at paragraphs [8]-[10].

PART 2 – OVERVIEW AND DATA

Question 2

An overview of:

- (a) the role of the NDIA in relation to ADEs; and
- (b) definition of an ADE used by the NDIA and the source of that definition.

Introduction

10. The National Disability Insurance Scheme (**NDIS**) supports the economic participation of people with disability and enables them to exercise choice and control in the pursuit of their goals.

Role of the NDIA in relation to ADEs

11. The *National Disability Insurance Scheme (Supports for Participants) Rules 2013* provide that the NDIS will be responsible for the ‘frequent and ongoing supports that assist a person with disability to take part in work where the person has work capacity and is unlikely to be able to find or retain work in the open market, including with the assistance of employment services’.

12. The NDIA’s role in relation to ADEs is to:

- a) Transition eligible ADE employees to the NDIS;
- b) Set price limits for funding of ‘Supports in Employment’;
- c) Make payments to ADEs on behalf of participants for supports delivered;
- d) Encourage ADE providers to move to innovative and effective models of supported employment for NDIS participants; and
- e) Enable the move of participants from supported employment to open employment, where it is their desire to do so.

13. The NDIA’s role in relation to ADEs is guided and informed by:

- a) the objects of the *National Disability Insurance Scheme Act 2013* (**NDIS Act**);
- b) the NDIS Participant Employment Strategy 2019-22 (**Employment Strategy**) and NDIS Participant Employment Strategy Action Plan 2021/22 (**Action Plan**)¹; and
- c) Australia’s Disability Strategy 2021-2031.

14. Further information about the Employment Strategy is provided in my previous statement to the Royal Commission, dated 11 June 2021.

¹ The Action Plan is publicly available on the NDIS website at this link: <https://www.ndis.gov.au/about-us/strategies/participant-employment-strategy#employment>.

Definition of an ADE used by the NDIA and the source of that definition

15. The term ADE was transitioned as part of the move of eligible employees from the Disability Employment Assistance (**DEA**) program funded through the Australian Government Department of Social Services (**DSS**) to the NDIS.
16. The NDIA and the wider disability sector is moving away from the ongoing use of the term ADE, in light of the transitioning ADE business model to closer align with other social enterprises offering broader NDIS funded supports to NDIS participants.
17. The NDIS is supporting this transition through transformation of how supports in employment are funded, particularly the ability to use this support in any setting, not just with an ADE.

Question 3

As at 30 June 2021:

- (a) the number of NDIS participants who have an employment goal in their participant plan;
- (b) the number of NDIS participants who receive funding for employment support in their participant plan;
- (c) the number of NDIS participants who work in ADEs;
- (d) the number of NDIS participants who work in open employment;
- (e) the number of ADE providers registered as NDIS providers; and
- (f) the total monetary value of all employment supports provided to NDIS participants who work in ADEs.

18. The relevant data in response to Question 3 (a)-(d) and (f) will be provided in a later response, in accordance with correspondence between Gilbert + Tobin and the Royal Commission on 24 March 2022.
19. In response to Question 3(e), the NDIA understands that all ADEs previously funded through the DEA program are now registered NDIS providers, regulated by the NDIS Quality and Safeguards Commission (**NDIS Commission**). There are currently 161 ADEs registered as NDIS providers, however, they are a small component of the larger cohort of providers that are registered to deliver on-the-job and employment related supports.

Question 4

For the 2020/2021 financial year the number of NDIS participants:

- (a) Who received SLES funding and went on to work in an ADE;
- (b) Who transitioned to an ADE from a school (having left before completing Year 12);
- (c) Who transitioned to an ADE from a school (having left after completing Year 12);
- (d) who transitioned to an ADE from TAFE or further study;
- (e) who transitioned to an ADE from open employment; and
- (f) who transitioned to an ADE from a day program.

20. The relevant data in response to this question will be provided in a later response, in accordance with correspondence between Gilbert + Tobin and the Royal Commission on 24 March 2022.

Question 5

An overview of whether and how the NDIA monitors how many employees transition from ADEs to open employment.

- 21. As part of the Employment Strategy, the NDIA is encouraging ADEs to provide supports for participants in a range of employment settings, and to support participants to transition to other employment and/or self-employment.
- 22. The NDIA both monitors and publishes the number of participants that transition from ADEs to open employment.
- 23. The NDIA publishes data on employment outcomes and transitions through its 'Employment Outcomes for NDIS Participants' report (**Outcomes Report**).² This report utilises self-reported data from the short-form and long-form participant questionnaires to examine longitudinal outcomes and trends, including data on employment status transitions.
- 24. The Outcomes Report looks at longitudinal change in employment outcomes for people who entered the NDIS from 1 July 2016 to 31 December 2019 and have been in the Scheme for at least one year, including comparisons with longitudinal population benchmarks.
- 25. The Report identifies that the transitions rates (within one year) for participants aged 15 to 24 and 25 and over are 4 per cent and 1 per cent respectively as at 31 December 2019. The Report also

² The Outcomes Report is publicly available on the NDIS website at this link: <https://data.ndis.gov.au/reports-and-analyses/outcomes-and-goals/employment-outcomes-participants-their-families-and-carers#employment-outcomes-for-ndis-participants-as-at-31-december-2020>.

identifies that, of participants working in an ADE, 36 per cent of participants aged 15 to 24, and 25 per cent of participants aged 25 and over, could see a pathway to open employment.

26. The NDIA provides reasonable and necessary funding to support participants engaged in any workplace. By virtue of affording choice and control for these supports in a participant's core budget, the NDIA has limited visibility in respect of how and who the participant engages to provide employment supports, other than as is self-reported and captured in the Outcomes Report referred to in paragraph 22.

Question 6

To the extent data is available, the total number of supported employees working in ADEs who transitioned to open employment in the 2020/2021 financial year. If data is not available or collected, the reasons why.

27. In the financial year 2020/21, 295 NDIS participants self-reported as transitioning from an ADE to open employment. This data is collected through participant responses to the Outcomes Questionnaire when a participant enters the Scheme, and as part of the conversations that take place with participants and their support network in the planning and plan review processes.

PART 3 - FUNDING

Question 7

An overview of the transition of funding for ADE providers from DSS to funding for NDIS participants working in ADEs under the NDIS.

Question 8

An overview of the range of supports which can be provided to NDIS participants working in ADEs to achieve their employment goals.

Question 9

An overview of the process by which a supported employee can move their employment supports between workplaces.

An overview of the transition of funding for ADE providers from DSS to funding for NDIS participants working in ADEs under the NDIS

28. Prior to the rollout of the NDIS, the DEA program was the Australian Government's supported employment program, funded through the DSS.

29. The DEA program ceased on 31 March 2021, with eligible employees being transitioned into the NDIS. Those not eligible for the NDIS continue to be supported by DSS under the NDIS Disability Employment 'Continuity of Support' program.
30. As set out in the NDIS transition arrangements,³ responsibility for funding supports for NDIS participants who require day-to-day intensive and ongoing support in the workplace to maintain their employment transferred from the DEA program, funded by DSS, to the NDIA as ADE employees gained access to the NDIS. In line with the rollout of the Scheme, transition commenced in July 2013 and concluded in June 2021.
31. Those individuals who were also funded by a state or territory for one of their programs, such as Supported Independent Living, transitioned into NDIS in accordance with the bilateral agreement with the relevant state. Others who only received DSS funding for attendance at an ADE transitioned after completion of the state rollout.
32. To maintain continuity of services during transition to the NDIS, participants received funding in their NDIS plan for their employment supports by an ADE at the same rate as the DSS contracted prices.
33. Under the previous funding structure, there were limited opportunities for a participant to explore the transition from an ADE into open employment. In October 2019, the NDIA announced a new pricing structure⁴ for NDIS participants who receive support on the job. Transition to this new pricing regime was implemented from 1 July 2020 and completed on 31 December 2021.
34. The change in funding was a first step in opening up employment opportunities for participants who require ongoing and more intensive support on the job than is available through other programs or is the responsibility of an employer for reasonable adjustment for an employee.
35. To support the new pricing structure, the NDIA released the 'Supported employment under the NDIS Industry Information and Consultation Paper' (the **Paper**) in November 2019. The Paper provided information to providers about how to interpret and apply the pricing framework. It also sought advice from the sector about how best to implement the framework.
36. The Paper outlined the timeline for implementing the new pricing framework, recognising that it was a significant change and that some ADEs may have required extended time to make adjustments to their business and support models. A copy of the Paper is attached to this statement at **Annexure GM2-1 [CTD.8000.0036.2740]**.
37. The release of the Paper followed extensive consultation with the sector and advocacy groups, with the NDIA facilitating over 100 sessions across Australia both prior to and following the commencement of the new pricing arrangements. ADE providers, support coordinators and plan

³ Intergovernmental Agreement for the NDIS Launch and the Implementation Plan for the transitional arrangements for Commonwealth funded programs.

⁴ The NDIS Pricing Arrangements and Price Limits for 2021-22 are publicly available on the NDIS website at this link: <https://www.ndis.gov.au/providers/pricing-arrangements>.

managers were strongly encouraged to attend these information and problem-solving sessions conducted by NDIA staff. The NDIA also released a further supporting document to provide guidance to the sector, containing frequently asked questions stemming from feedback and discussion at these sessions. A copy of this supporting document is attached to this statement at **Annexure GM2-2 [CTD.8000.0036.2730]**.

38. Under the new pricing framework, it is expected that ADE providers support their employees to explore opportunities in open employment. Previously, ADEs perceived that they could not support a former employee to transition to another workplace. The NDIS pricing framework not only makes this possible but actively encourages participants to consider and take up new employment opportunities.
39. ADE providers were given 18 months to transition to the new pricing framework for provision of employment supports (1 July 2020 to 31 December 2021). From 1 January 2022, providers were required to claim from the new supports in employment pricing framework with the legacy Disability Maintenance Instrument (DMI) line items being decommissioned.

An overview of the range of supports which can be provided to NDIS participants working in ADEs to achieve their employment goals.

40. The NDIA's vision, as outlined in the Employment Strategy, is that people with disability are supported to reach their employment goals and have the same confidence, skills and opportunities to work as all Australians.
41. The NDIA does this through asking participants about their employment-related goals at each planning meeting and providing funding for a range of supports to assist NDIS participants to achieve their employment goals.
42. This includes funding for 'Supports in Employment'⁵, which is a category of supports greater than what may be reasonably provided by an employer or with the support of Disability Employment Services (DES). Supports in employment are primarily delivered in ADEs.
43. Supports in employment may be provided one-to-one or within a group-based setting, complementing existing or expected employer supports, and claimed according to the intensity and frequency of supports required for each individual participant to achieve their employment goals.
44. Employment supports can include but are not limited to:
- a) on-the-job assessments related to the impact of a person's disability on their ability to work;
 - b) job customisation;

⁵ Further information about Supports in Employment may be seen in the Supports in Employment Provider Handbook, which is publicly available on the NDIS website at this link: <https://www.ndis.gov.au/understanding/supports-funded-ndis/supports-employment>.

- c) supports to transition from an ADE to open employment;
 - d) assistance to develop a career plan;
 - e) building essential foundational skills for work;
 - f) on-the-job training and intermittent support with daily work tasks;
 - g) direct supervision and/or group-based support to enable meaningful participation at work;
 - h) physical assistance and personal care delivered in the workplace;
 - i) supports to manage disability-related behaviour or complex needs at work; and
 - j) non-face-to-face activities that are directly related to supporting a participant's employment.
45. NDIA Planners and Local Area Coordinators (**LACs**) play a critical role in increasing and improving the engagement of NDIS participants with identifying an employment goal and enacting their supports.
46. Through the Employment Strategy and Action Plan, released in early 2021, the NDIA has renewed its focus on planning for employment, with meaningful discussions taking place as part of the planning process where a participant is encouraged to consider a goal to work and how this can be best explored and enacted.
47. To support employment-related discussions with participants, in February 2019, the NDIA published the participant resource 'Let's talk about work'⁶ to help participants plan for employment, explore employment goals, connect with employment-related providers through the planning process and find meaningful work. The booklet prompts and encourages participants and their support network to think about their employment goals and pathway prior to the planning meeting to ensure effective discussions around the inclusion of reasonable and necessary employment supports in their plan.
48. Additionally, the NDIA has developed a range of resources which are available on the NDIS website to further explain and encourage participants to pursue and access supports in employment as a part of their NDIS plan. These include the aforementioned "Let's talk about work" booklet, as well as several videos on finding and keeping a job. The NDIA continues to conduct sessions for teachers, families and participants to ensure that employment remains a focus of planning conversations for NDIS participants with employment goals.
49. The NDIA has also developed and implemented additional training resources for planners and LACs to better support meaningful discussions in employment for NDIS participants. This includes tailored training courses on employment supports for all planners to assist in effecting discussions with participants around their goals for and supports needed to engage in employment.

⁶ This booklet is publicly available on the NDIS website at this link: <https://www.ndis.gov.au/participants/finding-keeping-and-changing-jobs/lets-talk-about-work>.

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50. The effectiveness of supports in employment is heavily reliant on the knowledge and capabilities of stakeholders across the participant employment journey. The NDIA continues to work with the sector to build greater knowledge and capabilities across all touchpoints along the participant pathway, from participants, carers, support coordinators, planners, LACs and providers.
51. As an example, the NDIA is working to lift sector and employer engagement, capability and demand by providing employers with the tools and abilities to confidently hire, support and develop more people with disability. The Supports in Employment Provider Handbook (the Handbook) is part of the NDIA's engagement with the provider market with a specific focus on shifting the characterisation of employment supports as only being delivered by a provider who is also the employer, as is historically the case in an ADE setting. Specific focus within the Handbook is afforded to ADEs and ADE employees to streamline their transition to the new pricing framework for supports in employment as well as support conversations about pathways for participant growth in employment outcomes.
52. Support coordination also plays an important role in helping NDIS participants to make the most of their NDIS plans and to pursue their goals. The NDIA has been investing in building the capability of support coordinators through initiatives such as conducting live information sessions and training, to assist support coordinators to better understand and engage with the employment pathway, as well as to assist participants navigate new opportunities and their NDIS funded supports.
53. Initial engagement has commenced with employers and employer bodies to encourage and better understand how NDIS can, through its funding and educational resources, overcome barriers to employment for NDIS participants. This work is at an early stage but will gain momentum now that the funding transition for ADE employees is largely completed.

An overview of the process by which a supported employee can move their employment supports between workplaces.

54. The new pricing for supports in employment gives participants greater choice and control over where and how they work, and who provides their supports. Participants may choose to purchase a range of supports in a range of employment settings. Further information about the new pricing for supports is provided in my previous statement to the Royal Commission, dated 11 June 2021, at paragraph 40.
55. As a result of this change, the nexus between the role of a provider of employment supports and an employer, as is the case in the ADE setting, was severed. More effectively separating these roles creates new opportunities for participants who may have significant support needs to explore work outside the ADE setting.
56. The flexibility of funding in the core budget allows the participant to change their employment setting without the need to wait for plan review to be completed.

57. Where a participant changes or wishes to change their employment setting and additional support is required, they may advise the NDIA of their change of circumstances, thereby triggering a review of the funding in their plan. Where appropriate, a participant's support coordinator or LAC can assist them to initiate these discussions or the plan review process.
58. The change to NDIS funding was designed to facilitate and promote opportunities for participants to have greater choice of employment, enabling them to use their supports in employment funding in any employment setting.
59. The NDIA is working collaboratively with the peak body National Disability Services (**NDS**) to encourage development of pathways for current ADE employees to pursue alternative employment options.
60. This is largely being progressed through a sector led Communities of Practice convened by the NDS on a monthly basis.
61. The intent is to facilitate change in the employment provider market by sharing good practice, research findings and innovation.
62. The first Community of Practice was held on 29 September 2021, with monthly webinars thereafter to explore the means of operationalising the NDS initiative Industry Vision for Supported Employment and the NDIS Employment Action Plan.
63. Subjects covered in the webinars in 2021 were:
 - a. Making the Vision a Reality – setting the scene for the Communities of Practice and sharing provider experiences in transitioning to the new NDIS Supports in Employment pricing model;
 - b. Social Scaffolding Introductory Presentation – a session to explore 'How to investigate and implement new business opportunities'; and
 - c. Employment pathways for people with a disability – examining how providers of NDIS funded Supports in Employment can support their employees to consider mainstream employment opportunities.
64. Attendance is currently focused on ADEs, with other employment providers and mainstream employers to be included at a later date.
65. Through the Community of Practice, the NDIA will support reform and innovation of ADEs as capability develops throughout the sector on how NDIS providers can enhance possibilities for participants to engage in alternative employment and what resources need to be available to transition to open employment.

PART 4 – OVERSIGHT AND REGULATION

Question 10

An overview of any oversight and compliance mechanisms in place to monitor the following in relation to NDIS participants working in ADEs:

- (a) choice and control of employees with respect to their employment (including opportunities for skill development, career progression and transition to open employment);
- (b) conditions of work; and
- (c) payment of wages (including use of wage assessment tools and the conduct of wage assessments).

Question 11

An overview of complaints mechanisms available to NDIS participants who are employed in ADEs, for employment related complaints.

Choice and control

66. The principles of choice and control are enshrined in the NDIS Act and guide all actions and initiatives outlined in the Employment Strategy and Action Plan.
67. Participants are able to exercise choice and control over who provides their NDIS supports and how they are provided.
68. The NDIS Code of Conduct requires workers and providers who deliver NDIS supports to act with respect for individual rights to freedom of expression, self-determination, and decision-making in accordance with relevant laws and conventions.
69. The *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* (the **Practice Standards**) set out the rights of participants and the responsibilities of providers that deliver supports and services to them, including that each participant accesses supports that promote, uphold and respect their legal and human rights, and is enabled to exercise informed choice and control. The provision of supports promotes, upholds and respects individual rights to freedom of expression, self-determination and decision-making.
70. In implementing their plan, participants are encouraged by their NDIA planner or LAC to discuss their employment support needs with their provider, including skills development or desire for job changes. Noting that supports in employment for on-the-job assistance have transitioned to a participant's core budget, funding can now be used flexibly to assist participants with managing changes and re-skilling to take on different employment opportunities.

71. In addition, where a participant identifies they have a goal to work in open employment and requires assistance to do this, additional supports as described in paragraphs 53 and 54 can be provided in their plan.
72. The NDIS Commission has responsibility for overseeing compliance of NDIS providers and workers with the Code of Conduct. As an independent regulator, the NDIS Commission is empowered to commence investigations, collect information and take a range of sanctions or remedial actions if NDIS providers or workers are found to have breached the Code of Conduct and the Practice Standards.

Conditions of work, payment of wages, and complaints mechanisms

73. Most supported employees working in ADEs are employed under the *Supported Employment Services Award 2020* (the **Award**). Under the Award, supported employees can be paid a wage as calculated by a number of wage assessment tools. The NDIA is not a party to, responsible for, nor privy to conditions of work or payment of wages by an ADE.
74. The NDIA understands that the award is currently under review by the Fair Work Commission, Fair Work Ombudsman and various Safe Work authorities.
75. Under the NDIS Rules, the NDIS is not responsible for the funding or provision of employment services and programs to provide advice and support to employers to encourage and assist them to hire and be inclusive of people with disability in the workplace, including incentives for hiring people with disability (e.g. wage subsidies).
76. The NDIA encourages participants to raise any concerns about the services they are receiving with the providers directly. If the matter cannot be resolved, participants are encouraged to raise the issue with the NDIS Commission, which was established to help uphold the integrity of the NDIS by ensuring participants receive safe and quality services. The NDIS Commission responds to concerns, complaints and reportable incidents, including the abuse and neglect of NDIS participants.
77. There are a number of other parties that may be better placed to address an NDIS participant's complaint, noting the NDIA is not responsible for the administration of employment, conditions of work, or wages and employment conditions within an ADE. These parties include:
- a) the Fair Work Ombudsman;
 - b) the Australian Human Rights Commission; and
 - c) Safe Work Australia.
78. Where a participant has a complaint about the type or level of funding in their NDIS plan, the NDIA will engage directly with the participant and their support network to discuss the implementation of their plan and/or where appropriate and requested, facilitate a plan review.

-
79. Under the Practice Standards the NDIS Commission has the power to determine the suitability of a provider, and its staff, to provide supports or services to people with a disability. This assessment of suitability must be met at the point of registration.⁷ Providers are also subject to ongoing audits by the NDIS Commission.
80. The Practice Standards further provide the following rights for participants and impose responsibilities for providers:
- a. Each participant can access supports that promote, uphold and respect their legal and human rights;
 - b. Each participant is enabled to exercise informed choice and control;
 - c. The provision of supports promotes, upholds and respects individual rights to freedom of expression, self-determination and decision-making;⁸
 - d. Each participant is supported by the provider to make informed choices, exercise control and maximise their independence in relation to the supports provided;⁹
 - e. Each participant can access supports free from violence, abuse, neglect, exploitation or discrimination;¹⁰ and
 - f. Each participant can access supports in a safe environment that is appropriate to their needs.¹¹
81. The NDIS Code of Conduct, set out in the *National Disability Insurance Scheme (Code of Conduct) Rules 2018*, promotes safe and ethical service delivery by setting out expectations for the conduct of both NDIS providers and workers. The Code of Conduct applies to registered and unregistered providers, as well as providers delivering Commonwealth Continuity of Support Programme services for people over the age of 65 (including ADEs). It promotes the health, safety and wellbeing of persons with disability, by setting out acceptable, appropriate and ethical conduct for NDIS providers and workers delivering supports or services in the NDIS sector. The obligations in the Code are fundamental to the rights of people with disability as set out in the *UN Convention on the Rights of Persons with Disabilities*.
82. Obligations under the Code of Conduct are intended to ensure safe and quality service delivery to support positive outcomes for people with disability. The Code of Conduct applies the following positive obligations on providers to:

⁷ *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*, s 9.

⁸ *Ibid* Schedule 1, Part 2, s 3.

⁹ *Ibid* Schedule 1, Part 2, s 6.

¹⁰ *Ibid* Schedule 1, Part 2, s 7.

¹¹ *Ibid* Schedule 1, Part 5, s 24.

- a. act with respect for individual rights to freedom of expression, self-determination and decision-making in accordance with applicable laws and conventions;
- b. provide supports and services in a safe and competent manner, with care and skill; and
- c. promptly take steps to raise and act on concerns about matters that may impact the quality and safety of supports and services provided to people with disability.¹²

83. As noted above, the NDIS Commission has responsibility for overseeing compliance of NDIS providers and workers with the Code of Conduct and the Practice Standards. As an independent regulator, the NDIS Commission is empowered to commence investigations, collect information and take a range of sanctions or remedial actions if NDIS providers or workers are found to have breached the Code of Conduct.

PART 5 - OTHER

Question 12

If data or information is sought in relation to each question above, and that data or information is not collected or held, provide the reasons why such data or information is not collected or held.


84. Nil response.

Question 13

The statement should attach copies of all documents referred to, and their annexures, that are not publicly available.

85. Please see enclosures.

Signature 
 Name Gerrie Mitra
 Date 1 April 2022

Witness 
 Name Angus Judd
 Date 1 April 2022

¹² NDIS Code of Conduct Section 6(a) 6(c) and 6(e).

Witness Statement of Gerrie Mitra PSM

Name: Gerrie Mitra
Address: 50 Flinders Street, Adelaide, South Australia, 5000
Occupation: General Manager, Provider and Market Development Division
Date: 6 April 2022

1. This supplementary statement made by me accurately sets out the evidence that I am prepared to give to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**Royal Commission**).
2. This statement is true and correct to the best of my knowledge and belief.
3. I make this supplementary statement on behalf of the National Disability Insurance Agency (**NDIA**), and I am authorised to do so.
4. I currently hold the position of General Manager, Provider and Market Development Division at the NDIA.
5. On 1 April 2022, I provided a statement to the Royal Commission (**1 April Statement**) in response to a Notice to Give a Statement in Writing dated 18 March 2022 from the Royal Commission, numbered CTH-NTG-00203 (**Notice**).
6. In paragraphs 18 and 20 of my 1 April Statement, I stated that the relevant data in response to Questions 3(a)-(d) and (f), and Question 4 of the Notice, respectively, would be provided in a later response, in accordance with correspondence between Gilbert + Tobin and the Royal Commission on 24 March 2022. I now provide this supplementary statement in response to Questions 3(a)-(d) and (f), and Question 4 of the Notice.
7. I also wish, by this statement, to make a correction to paragraph 71 of my 1 April Statement. Due to an error, that paragraph cross-refers to paragraphs 53 and 54 of my 1 April Statement. Those cross-references ought to have been cross-references to paragraphs 43 and 44 respectively.
8. I wish to make a further correction to paragraph 26 of my 1 April Statement. Due to an error, that paragraph cross-refers to paragraph 22, when that cross-reference ought to have been paragraph 23.
9. I make this statement based on matters within my own knowledge, the books and records of the NDIA that I reviewed and having made inquiries of its officers and employees.
10. This statement has been prepared with the assistance of lawyers and officers of the NDIA in response to, and in compliance with, the Notice. It is produced to the Royal Commission on the basis that it and its enclosures will be tendered and received in evidence by the Royal

Commission pursuant to the Notice and treated as a statement or disclosure for the purposes of section 6DD of the *Royal Commissions Act 1902* (Cth).

11. Terms referred to in this statement are as defined in the Notice, unless otherwise specified.

Question 3

As at 30 June 2021:

- (a) the number of NDIS participants who have an employment goal in their participant plan;
- (b) the number of NDIS participants who receive funding for employment support in their participant plan;
- (c) the number of NDIS participants who work in ADEs;
- (d) the number of NDIS participants who work in open employment;
- (e) the number of ADE providers registered as NDIS providers; and
- (f) the total monetary value of all employment supports provided to NDIS participants who work in ADEs.

12. The NDIA collects employment-related data for participants of working age (15 years or over) through the 'Outcomes Framework Questionnaires', which are surveys designed to measure the progress of participants and their families and carers, across different life domains, including employment.
13. The short-form questionnaire is completed by all participants, or a family member or carer. It contains questions useful for planning, as well as key indicators to monitor and benchmark over time.
14. The long-form questionnaire is completed by a subset of participants, or a family member or carer. It includes some additional questions allowing more detailed collection of information about participant and family or carer experience, for monitoring and benchmarking.
15. The questionnaires enable the NDIA to monitor both baseline experience, which is measured when a participant first enters the NDIS, and longitudinal experience, which is measured by tracking participants' responses to the questionnaires at baseline and each subsequent plan review.
16. The information gathered through the questionnaires is based on voluntary disclosure from the participant or their support network.
17. The responses to Questions 3 and 4 are based on information collected through the questionnaires, and are therefore indicative, cover the financial year rather than point in time data, and are subject to the caveats set out in each response.

18. The responses to Questions 3(c), (d) and (f) are based on participant responses to the short-form questionnaire, and capture all approved plans active during the 2020/2021 financial year where the participant is aged 15 years or over.

19. For the 2020/2021 financial year:

(a) the number of NDIS participants who have an employment goal in their participant plan	88,762* (35%)
(b) the number of NDIS participants who receive funding for employment support in their participant plan	35,768* (14%)
(c) the number of NDIS participants who work in ADEs	17,232** (7%)
(d) the number of NDIS participants who work in open employment	34,111** (14%)
(f) the total monetary value of all employment supports provided to NDIS participants who work in ADEs	\$295,615,902 (average of \$17,155 per participant in an ADE)

* Out of the 250,534 participants entering the NDIS from 1 July 2016, who had an approved plan in the 2020/2021 financial year where they were aged 15 years or over.

** Out of the 244,938 participants entering the NDIS from 1 July 2016, who had an approved plan in the 2020/2021 financial year where they were aged 15 years or over and responded to the short-form employment questions.

20. I provided a response to Question 3(e) in my 1 April Statement.

Question 4

For the 2020/2021 financial year the number of NDIS participants:

- (a) who received SLES funding and went on to work in an ADE;
- (b) who transitioned to an ADE from a school (having left before completing Year 12);
- (c) who transitioned to an ADE from a school (having left after completing Year 12);
- (d) who transitioned to an ADE from TAFE or further study;
- (e) who transitioned to an ADE from open employment; and
- (f) who transitioned to an ADE from a day program.

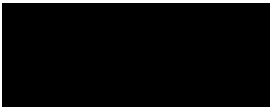

21. For the 2020/2021 financial year, the number of NDIS participants:

(a) who received SLES funding and went on to work in an ADE	207*
(b) who transitioned to an ADE from a school (having left before completing Year 12)	75
(c) who transitioned to an ADE from a school (having left after completing Year 12)	252
(d) who transitioned to an ADE from TAFE or further study	126
(e) who transitioned to an ADE from open employment	411
(f) who transitioned to an ADE from a day program	The NDIA is not able to identify this from the data it collects.

* This data point is calculated based on the number of participants that received SLES funding in the previous plan, and were working in an ADE based on a plan in the 2020/2021 financial year. Some participants were receiving SLES funding while also working in an ADE or open employment.

22. The above data captures all approved plans active during the 2020/2021 financial year where the participant is aged 15 years or over. Data related to type of employment and educational activities for the purpose of the above table is based on participant responses to the short-form questionnaire.

23. The NDIA is not able to identify from the data it collects the number of people who transitioned to an ADE from a day program during the 2020/2021 financial year.

Signature		Witness	
Name	Gerrie Mitra	Name	Angus Judd
Date	6 April 2022	Date	6 April 2022

Partner Andrew Floro
Contact David Baddeley

Our ref AAF:1040673

13 May 2022

By email:

Mr Andras Markus
Solicitor Assisting
Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability
Level 33, 259 George Street
Sydney NSW 2000

Dear Mr Markus

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability – Public hearing 22: The experience of people with disability working in Australian Disability Enterprises – Response to questions on notice

- 1 We refer to:
 - (a) the witness statements of Ms Gerrie Mitra, General Manager, Provider and Market Development Division at the National Disability Insurance Agency (NDIA) dated 1 April 2022 (**Ms Mitra's First Statement**) and 6 April 2022 (**Ms Mitra's Second Statement**);
 - (b) the oral evidence given by Ms Mitra to the Royal Commission at Public hearing 22 on 13 April 2022; and
 - (c) the email from Ms Kitty Radojev, Office of the Solicitor Assisting the Royal Commission, dated 19 April 2022, regarding questions on notice.
- 2 This letter provides the NDIA's responses to the questions referred to in Ms Radojev's email, and further information in relation to some other issues which were the subject of questions put to Ms Mitra by Counsel Assisting, which the NDIA hopes will be of assistance to the Royal Commission.

Question on Notice 1¹

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.

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.

¹ Transcript, Public hearing 22, 13 April 2022, P-220 [26] – P-221 [26].



MS MITRA: That's correct, yes.

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.

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.

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.

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 core.

MS DOWSETT: But you said it is still available.

MS MITRA: The TTP is, yes.

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

MS MITRA: It's currently on a reducing schedule, we are 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.

Specialised Supported Employment

- 3 The 2021-22 NDIS Pricing Arrangements and Limits (**Pricing Arrangements**) is structured by support category, with sections on Core, Capital and Capacity Building supports. In the Capacity Building section of the Pricing Arrangements, page 95 indicates that the Specialised Supported Employment support items in the Capacity Building support category 'are duplicates of the Specialised Supported Employment support on page 68', which relates to the Core support category, and 'are temporarily duplicated in this support category to facilitate access to the new arrangements'.
- 4 The duplicate support items on page 95 are included in the Capacity Building section of the Pricing Arrangements to ensure that participants, with plans that were created before the Specialised Supported Employment supports were transitioned to Core supports, could continue to use their Capacity Building budget for those supports.



- 5 The NDIA intends to decommission the Capacity Building support items in 2022, after all participants' plans have been reviewed and their Specialised Supported Employment supports have transitioned from Capacity Building to Core.

Temporary Transformation Payment (TTP)

- 6 The TTP was introduced on 1 July 2019 to help providers with the additional costs associated with transitioning to the NDIS. Further information about the TTP is available in Ms Mitra's witness statement dated 22 April 2022 in response to CTH-NTG-00212.
- 7 Providers of Specialised Supported Employment supports can make claims using support items that have the TTP loading if they are eligible for the TTP. The TTP loading was 4.5% in 2021-22. It will be reduced to 3.0% on 1 July 2022 and then to 1.5% on 1 July 2023. The TTP is expected to end from 1 July 2024.

Question on Notice 2(a)²

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.

MS MITRA: That's right.

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.

Question on Notice 2(b)³

MS DOWSETT: Is it mandatory training?

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

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

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

- 8 The training course referred to in paragraph 49 of Ms Mitra's First Statement, known as 'Planning Essentials for Employment', was rolled out in August 2021. It is mandatory training for all new planners and Local Area Coordinators (**LACs**). To date, more than 500 new planners and LACs have completed the training.
- 9 This training comprises both online learning as well as interactive sessions. It is based upon an earlier employment-related mandatory training module for all new planners and LACs, which was revised to reflect the extensive feedback the NDIA received through received through with participants, their families and carers, peak bodies and advocacy organisations around supports and employment as part of the Employment Strategy since February 2019. Further information

² Transcript, Public hearing 22, 13 April 2022, P-221 [28]-[41].

³ Transcript, Public hearing 22, 13 April 2022, P-222 [2]-[8].



about these consultations can be found at Annexure B in Ms Mitra's statement to the Royal Commission dated 16 July 2021, which was prepared in connection with Public Hearing 19.

Question on Notice 3⁴

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?

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.

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?

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?

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 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.

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.

- 10 The *Let's Talk About Work* booklet and Booklets 1, 2 and 3 (together, **Participant Booklets**), are available in digital copy (in standard and Easy Read formats and in languages other than English) on the NDIS website.⁵ The Participant Booklets are also available in printed copy at NDIS offices or on request through the NDIS Contact Centre.
- 11 When a participant meets access to the NDIS, they are sent a letter containing information about how to prepare for their first planning meeting, including links to the Participant Booklets.
- 12 Copies, including in printed form, of the Participant Booklets are made available to participants, their families, representatives and support coordinators at planning meetings and otherwise when requested.
- 13 The NDIA also makes printed copies of the *Let's Talk About Work* booklet available at community events, particularly those attended by participants for whom employment or work is relevant to their life stage, such as school leaver sessions and disability and employment expos.

⁴ Transcript, Public hearing 22, 13 April 2022, P-223 [27] – P-224 [6].

⁵ <https://www.ndis.gov.au/participants/finding-keeping-and-changing-jobs/lets-talk-about-work>.



Question on Notice 4⁶

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.

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?

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?

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

- 14 Of the 561 participants who identify as Aboriginal or Torres Strait Islander who are working in ADEs, 328 participants (58 per cent) have intellectual disability as their primary disability.

Question on Notice 5⁷

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 Nations people would see which has references and examples which would 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.

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.

MS MITRA: Thank you.

- 15 The NDIA has not yet engaged First Nations peoples in developing versions of the *Let's Talk About Work* booklet that are tailored for Aboriginal and Torres Strait Islander people, including those for whom English is a second language.

⁶ Transcript, Public hearing 22, 13 April 2022, P-232 [30]-[46].

⁷ Transcript, Public hearing 22, 13 April 2022, P-234 [5]-[20].



Question on Notice 6⁸

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.

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.

- 16 The NDIS starts from a presumption that all participants have the capacity to make decisions and exercise choice and control about how they would like to receive their supports and from whom.⁹
- 17 The NDIA understands that some participants may require supports and resources to build their capacity to make decisions and exercise choice and control. There are a range of formal and informal supports which a participant may access to help them make decisions, and which the NDIA will support a participant to access as part of the planning process. In the case of employment supports, a participant can engage both formal (support coordinator, guardian, advocate) or informal (family member, carer, friend) to help build their capacity for decision-making.
- 18 The NDIA is currently developing a new Support for Decision Making policy. From June 2021 to September 2021, the NDIA undertook a consultation inviting participants, nominees, families, carers, providers and stakeholders to provide feedback to inform the development of this new policy.
- 19 There are a range of formal and informal supports which a participant may access to help them make decisions, and which the NDIA will support a participant to access as part of the planning process.
- 20 The NDIA is currently developing a new Support for Decision Making policy. From June 2021 to September 2021, the NDIA undertook a consultation inviting participants, nominees, families, carers, providers and stakeholders to provide feedback to inform the development of this new policy.
- 21 In 2022, the NDIA commenced a co-design process to:
- (a) build on the feedback received through these consultations;
 - (b) build a strong and shared understanding of the challenges and barriers participants, nominees and providers experience in relation to Support for Decision Making; and
 - (c) design a new policy and implementation plan for Support for Decision Making.

⁸ Transcript, Public hearing 22, 13 April 2022, P-236 [44] – P-237 [6].

⁹ [Guardians and nominees explained | NDIS](#)



- 22 This co-designed policy will seek to maximise participants' ability to exercise choice and control when making decisions about their lives, including around support in employment.

Question 7¹⁰

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?

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?

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

- 23 The Employment Assistance Fund (**EAF**) website provides advice on who can help eligible people with disability to make an application.
- 24 The NDIS may fund assessments about workplace adaptations or equipment required for a participant to be productive at work, which could be used in a participant's EAF application. However, specific supports to assist a participant to make an EAF application would not typically be funded in a participant's plan. Rather, where a participant needs additional help to make an EAF application, this may be provided by their LAC or their informal supports or advocates.

Question on Notice 8¹¹

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.

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?

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 it would have looked like to them, whether it would have been visible in their plan or not. I would have to check that.

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

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

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.

¹⁰ Transcript, Public hearing 22, 13 April 2022, P-225 [32] – P-226 [3].

¹¹ Transcript, Public hearing 22, 13 April 2022, P-214 [42] – P-215 [20].



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 --

CHAIR: Yes. All right.

- 25 In 2014, when an ADE employee transitioned into the NDIS, their individualised plan was prepared to incorporate funding for their ADE support.
- 26 Any NDIS participants new to an ADE would receive funding for their ADE support at the Average Outlet Price in their individualised plan.
- 27 At this point in time, funding for supported employment services appeared in participants' plans as part of the Capacity Building budget, under the heading 'Finding and Keeping a Job'. Consistent with the principles of the NDIS, all funding in a participant's plan relates to their goals, as discussed and explored during the planning conversation, to determine reasonable and necessary supports.
- 28 An ADE would claim a weekly amount from a participant's plan for the supports they delivered in accordance with the DMI or Average Outlet Price weekly rate (whichever applied). Any other supports that the participant needed would be included in their plan, such as assistance with community participation when not working in the ADE, or assistive technology and personal assistance if needed.
- 29 This arrangement remained in place until 1 July 2020, when the NDIA introduced new pricing for Supports in Employment and commenced moving funding for these supports from participants' Capacity Building budget into their Core budget, to better reflect the regular, ongoing, day-to-day nature of support in the workplace. This transition occurred as participants received new or renewed plans. This new support now gives participants greater choice and control over where and how they work and who provides their supports and is creating new opportunities for providers.

Question 9¹²

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?

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.

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.

¹² Transcript, Public hearing 22, 13 April 2022, P-218 [28]-[43].



30 The NDIA can confirm, based on its most recent data (from 31 December 2021), that 53 per cent of participants in ADEs have funding for support coordination in their plans. This compares with 44 per cent of all NDIS participants.

Please contact us if you have any questions in relation to this letter or if we can otherwise be of assistance to the Royal Commission at this time.

Yours faithfully
Gilbert + Tobin

Andrew Floro
Partner

David Baddeley
Lawyer