



**Disability Rights  
Advocacy Service Inc**

**Safeguarding and promoting the rights and interests  
of people with a disability, their families and carers.**

**‘THE WHOLE SYSTEM IS CRUEL AND INEFFECTIVE’  
– SUBMISSION INTO THE DISABILITY EMPLOYMENT  
SUPPORT MODEL**

## Contents

<b>Acknowledgement of Country</b> .....	3
<b>Background</b> .....	4
<b>Who should be able to access a specialist disability employment service?</b> .....	5
<b>How can we simplify entry to the disability employment support model?</b> .....	9
<b>What employment services and supports would most help people with disability?</b> ....	11
<b>What employment services and supports would most help young people?</b> .....	16
<b>What support do employers need to attract, employ and retain people with disability?</b> 17	
<b>How do we best tailor mutual obligation requirements to increase the likelihood of people with disability finding work in the future?</b> .....	19
<b>How can funding arrangements incentivise good work outcomes?</b> .....	24
<b>How do we drive high quality services and supports?</b> .....	25
<b>How do we measure success?</b> .....	27
<b>Recommendations</b> .....	28
<b>Disability Employment Services Model</b> .....	28
<b>Supports for employers</b> .....	30
<b>Disability Support Pension (DSP) and Centrelink</b> .....	30
<b>Other social services supports</b> .....	31

## Acknowledgement of Country



[Image Description: Aboriginal flag and Torres Strait Islander flag]

The Disability Rights Advocacy Service Inc acknowledges that this submission was completed on Kurna Land. We pay our respects to Elders past, present and emerging. We recognise the continuing relationship with the lands and seas and connection to culture.

## **Background**

Disability Rights Advocacy Service is part of a national network of disability advocacy organisations funded by the Australian Government Department of Social Services to provide individual advocacy, individual capacity-building and systemic advocacy for persons with disability. We service three areas in South Australia, representing people who reside within greater metropolitan Adelaide, the Adelaide Hills and Murray Bridge, the South-East and Coorong region, and the Riverland.

As part of our work our advocates frequently liaise with clients who are participating in the Disability Employment Service (DES) program.

In putting together this submission we have reviewed key research and interviewed advocates, DES participants, community organisations, DES providers and employers.

## **1. Who should be able to access a specialist disability employment service?**

- 1.1. It is our position that individuals whose disability meets the definition of 'disability' under section 4 of the *Disability Discrimination Act 1992* (Cth) (DDA)<sup>1</sup> and Article 1 of the *United Nations Convention on the Rights of Persons with Disabilities* (UNCRPD)<sup>2</sup> should have access to a specialist disability employment service.
- 1.2. We recommend that a Disability Employment Service (DES) program be available for all people with disability regardless of whether they qualify for Centrelink payments – including the Disability Support Pension (DSP) – or the National Disability Insurance Scheme (NDIS).
- 1.3. We note with concern that restricting Disability Employment Services solely to Centrelink recipients has left some people with disability, women in particular, vulnerable to exploitation by employed spouses whose income precludes Centrelink payments for their partner.
- 1.4. Furthermore, restricting access to DES providers solely to Centrelink recipients means that people with disability, who may not qualify for JobSeeker due to their partner's income, cannot meet the Program of Support requirements needed to qualify for the Disability Support Pension. This is particularly the case with the recent July 2021 rule change meaning that people with disability cannot voluntarily engage with a DES provider.

*“Anybody with a disability should be able to access a DES provider, even people on support pensions and not job-related payments.” – DES participant.*
- 1.5. The Consultation Paper queries whether DES providers should have the ability to recommend employment pathways such as casual and part-time employment, community engagement and short-term unpaid work experience.<sup>3</sup> We note with that any moves towards this must be done with the agreement of the person with disability who should have ownership over the decision-making process. While casual and part-time employment may provide some flexibility for individuals who seek it out, for others it can be a precarious and insecure working experience. The issues with the casualisation of the workforce have been highlighted by the COVID-19 pandemic, impacting on young people in particular. As noted by the Social and Global Studies Centre at RMIT University,

*“Such flexible work arrangements are claimed to offer workers freedom, control and choice, however, are often characterised by low and insecure income, reduced entitlements and poor job quality.”<sup>4</sup>*

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<sup>1</sup> *Disability Discrimination Act 1992* (Cth) s 4

<sup>2</sup> *United Nations Convention on the Rights of Persons with Disabilities* Article 1

<sup>3</sup> *Inclusive, Accessible, Diverse: Shaping your new disability employment support program*, Consultation Paper 2021, Department of Social Services p 8

<sup>4</sup> Patrick O’Keefe, Belinda Johnson and Kathryn Daley, *Continuing the precedent: Financially disadvantaging young people in “unprecedented” COVID-19 times*, 2021, *The Australian Journal of Social Issues* p 2

1.6. As noted in the Consultation Paper, people with disability want financial security.<sup>5</sup> Casual employment often does not provide financial security due to the impermanent nature of the work, which can be based on short-term contracts, infrequent or variable hours, labour hire, commission payments, or gig economy work. A casual employee often does not have the same rights as permanent employees, such as the ability to take paid leave, access to work benefits, or regular working hours. In some circumstances, casual employees, in particular independent contractors, cannot access superannuation benefits or join their relevant trade union.

1.7. As a result of this impermanent nature of work with no guarantee that a job will continue going forward, casual employment for many means that individuals cannot plan for the future, which includes access to housing, healthcare, finance for 'big ticket' items (such as reliable vehicles) and social connection. This can put a significant strain on the physical and mental health of any individual, let alone a person with a disability.<sup>6</sup>

*“The DES program should only include these new employment pathways with the individual goals of persons with disability as the primary motivator, and any conflict between participant goals and provider business interests should be carefully managed.” – Advocate.*

1.8. The Social and Global Studies Centre at RMIT University further notes that young people with disability face excessive disadvantage in a casualised system.

*“Some excessively disadvantaged young people, such as those with disability, especially if living in state care, faced insurmountable obstacles to employment and homeownership before the pandemic, and even before the decades of economic difficulties since shifted onto young people.”<sup>7</sup>*

1.9. Furthermore, as noted in the Consultation Paper, participation in community engagement, volunteering or short-term unpaid work can carry the risk of exploitation.<sup>8</sup> Any engagement in this kind of unpaid work must be adequately regulated to ensure it is fair and appropriate for the individuals involved.

*“Voluntary work can be a meaningful and mutually beneficial endeavour but there can be a risk of exploitation. This is especially true for people with a disability and those with mutual obligations. DES providers should be ensuring that exploitation isn't taking place which is where the choice and control of the participant needs to be the primary consideration.” – Advocate.*

*“A lot of volunteering is freight work, stock processing, etc – there are only so many organisations that have gone through the process of hosting job seekers for the purpose of volunteer equivalent hours. The Government process that are attached to*

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<sup>5</sup> n 3 p 4

<sup>6</sup> *Rebuilding jobs and our economy beyond the COVID-19 health crisis*, Report, 2020, Australian Council of Trade Unions p 2

<sup>7</sup> n 3 p 4

<sup>8</sup> n 3 p 7

*it, such as the paperwork, reporting time-sheets, means that a lot of charities don't have the capacity to take that on." – DES participant.*

1.10. A future disability employment program should be focused on meaningful partnership and collaboration with persons with disability. This means genuine engagement between a DES participant and their provider about their potential *and* their limitations.

1.11. DES participants have noted that the current Disability Employment Services program takes away the choice and control from persons with disability. While it may not be the intention of the program, the rules embedded in the system have the effect of making DES a punitive compliance mechanism – rather than a program that assists persons with disability to obtain work.

*"I didn't feel like I had any say at all – I was given a Job Plan to sign that I wasn't consulted about. They didn't take into account what my limitations or preferences were. I wasn't given any time to think about the Plan and was told I had to sign it before leaving the meeting or I would be in breach." – DES participant.*

1.12. We note with concern that the *2018 Disability Employment Services Performance Framework (Star Ratings)*<sup>9</sup> may drive a hypercompetitive environment for DES providers that can negatively impact on the experiences and outcomes of persons with disability.

1.13. The Consultation Paper queries what the role of the NDIS should be in engagement with DES.<sup>10</sup> We note that the [School Leaver Employment Supports](#) (SLES) program under the NDIS should be connected to a future disability employment support program. This can assist in wrap-around support for persons with disability. However, these programs must be quality-assured and should align with Career Development Association of Australia (CDA)<sup>11</sup> and Career Industry Council of Australia (CICA) principles and guidelines.<sup>12</sup>

1.14. Although many DES participants are not on the NDIS for a variety of reasons – they are unaware of the NDIS, they do not meet the access criteria, or they are in the process of fighting for access. DES providers should be trained in advising DES participants about the NDIS and be aware of the rules and regulations around access, planning and eligibility.

1.15. However, we emphasise our position that *all* persons with disability should have access to a DES program regardless of whether they meet the access criteria for the NDIS. We are significantly concerned at the

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<sup>9</sup> *Disability Employment Services 2018 Performance Framework*, 2018, Department of Social Services

<sup>10</sup> n 3

<sup>11</sup> *Member Standards and Ethics*, 2021, Career Development Association of Australia, accessed <[Member Standards and Ethics \(cdaa.org.au\)](http://cdaa.org.au)>

<sup>12</sup> *Professional Standards for Australian Career Development Practitioners*, 2019, Career Industry Council of Australia; *Code of Ethics for Australian Career Development Practitioners*, 2019, Career Industry Council of Australia

prospect of any person with a disability being prevented access to a DES program and strongly oppose any moves towards a more restricted model.



## **2. How can we simplify entry to the disability employment support model?**

- 2.1. It is our position that individuals should be assessed as soon as possible so they can receive targeted support and be directed to an appropriate DES provider.

*“We hear reports from people with a disability that they are immediately sent to a mainstream provider when they register for payments. Many people have been unaware that they may qualify for specialist DES assistance. In some cases, people with a disability have reported payment suspensions and strict obligations, before being referred for an assessment and entry to DES. There should be an early assessment that identifies people as having a disability or as needing extra support, and support helping people navigate the process.” – Advocate.*

- 2.2. While the model of Disability Employment Support may be based on ‘choice and control’, in our experience people with disability have a limited understanding in their rights to choose or change to a particular job provider and may not be aware of the process to do so.
- 2.3. We note the Department’s desire to move from a ‘deficit-based model’ to a ‘strength-based approach’ when assessing the job capacity of people with disability to work. We understand that it may be the case that some people with disability have full working capacity if provided with the adequate supports, and that others can work part-time, either permanently or temporarily.
- 2.4. However, it is our position that people with disability should not be forced to work beyond their capacity. Any moves towards a ‘strength-based approach’ must consider the autonomy and agency of the person with a disability. Decisions should not be made *for* the person with a disability, but *with* the person in genuine collaboration.
- 2.5. We are concerned that Job Capacity Assessments do not genuinely engage with the individual person with disability and are not a meaningful assessment of their circumstances.
- 2.6. Furthermore, we are concerned that the level of training and qualifications that Centrelink case workers receive is inadequate to give them competency in putting together an appropriate Job Capacity Assessment for a person with a disability. This training should undergo a review and more appropriate guidelines put in place for Centrelink workers to follow, including clarity and clearer defined terms.

*“Persons with disability should be treated as experts about themselves, as they know their own capacity, potential and the accommodations they need to engage in the workplace. They spend a lot of time developing ‘workarounds’ that can help them do things. Centrelink and DES case workers should listen rather than interrogate.” – Advocate.*

*“There should be less point-scoring and more focus on individual experiences, how a disability affects a person’s day-to-day as opposed to how it “should”. A non-competitive*

*approach to DES companies and programs I imagine would force a shift in internal focuses from reaching KPIs to quality service.”— DES participant.*

*“Job capacity assessments aren’t assessments – they are box-ticking exercises to identify what the maximum obligations are that can be imposed. It doesn’t matter what you say. If you think you should be on the DSP they don’t listen.” – DES participant.*

*“One of our clients with a physical impairment as their primary disability and mental health as their secondary disability was assessed by a mental health nurse who did not believe the client or their medical evidence regarding pain, endurance and physical limitation. He attempted suicide after reading his Job Capacity Assessment” – Advocate.*

- 2.7. DES participants are concerned that DES providers are not transparent about the kind of expertise or industry connections they have before participants can decide which DES provider to access.

*“DES providers are not actually required and generally don’t provide information on the types of employers they work with – the majority of employers my previous provider were working with were in the industrial, hospitality or retail industries and those are the exact areas I can’t do.” – DES participant.*

- 2.8. Lastly, it is our position that persons with disability should have access to voluntary support as they progress their career. This could take the form of optional check-in interviews with career development professionals.

### **3. What employment services and supports would most help people with disability?**

- 3.1. We note with concern that DES participants and advocates have reported that there is a deep lack of support in finding appropriate employment or a compassionate understanding of their circumstances from DES providers.
- 3.2. Under the *Managing and Monitoring Mutual Obligation Requirements Guidelines*, 'suitable work' is defined as 'any work that a Participant is capable of doing, not just work the Participant prefers to do or is specifically qualified for'.<sup>13</sup> However, employers will often not offer interviews to job-seekers who do not have the appropriate experience or qualifications, regardless of how 'capable' they may be of doing a job.
- 3.3. While there are safeguards in the guidelines in that work should not be recommended if it does not match the skills, experience or qualifications of a job-seeker, these safeguards are often not met in practice.

*"I basically had no support at all. Because I had attended university, the employment counsellors couldn't send me on training courses as I was overly-qualified, and they didn't know what to do with me. There was one period where I didn't hear from my DES provider for three months. The staff were swamped with too many clients and they couldn't do the individual work. They didn't put me forward for a single role when I was with them. I felt like I was a square peg trying to fit into a round hole." – DES participant.*

*"I was with DES for two years before I was kicked off recently. The DES service is virtually indistinguishable from regular job services. The only difference in treatment is you are often treated as less employable and deprioritised by the workers. They still often treated me with what I felt was a light contempt and pity. There is no requirement to do an activity for half the year like work for the dole which was helpful but I believe because of this the workers are less interested in helping you find an activity you actually want or need to do. And finally being forced to attend twice as many meetings on the DES is ludicrous!" – DES participant.*

*"The DES organisations (and Job Networks) were incapable of gaining me meaningful employment where I could actually use my strengths and abilities. They sent me to the wrong sort of job positions (which were mostly casual or part time), the very few jobs they sent me to were not jobs I could excel at and showed up my disabilities and weaknesses. They had no understanding of my barriers to employment. Zero." – DES participant.*

*"What is most important is training on disability, training on the effects of poverty and intergenerational neglect and an emphasis on the barriers that exist, why they exist and all of the multiple factors that impact on peoples' ability to find and hold*

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<sup>13</sup> *Managing and Monitoring Mutual Obligation Requirements Guidelines*, 2018, Department of Social Services p 18

*down work. It is more about the interventions that are disability-specific and having an awareness of the bigger social picture that will assist people.” – Advocate.*

- 3.4. It is our understanding that training for DES staff about the nature of disability varies across the industry and is dependent on individual DES providers. We note with concern that there is no mandatory training for DES staff on disability awareness, meaning that staff may not have the resources or skills they need to provide the best quality service for participants.

*“Some providers do put an emphasis on at least having some training in disability and mental health first aid, dealing with vulnerable people, and employment skills. It is definitely not across the board a requisite to have this training. There needs to be at least disability awareness training and that is not mandated at the moment. Some providers do it and some don’t.” – Advocate.*

*“From my experience DES providers are aimed at assisting people with intellectual disability. So it doesn’t suit everyone. I was trained as an enterprise architect and I can’t just go and work in a sheltered workshop.” – DES participant.*

*“We need the same improvements that need to be made to regular job seeker services - actual training required by the workers, a sympathetic if not just non-aggressive attitude 'requirement' from the workers. Potentially less bureaucracy on the government end so DES workers don't have problems (or can pretend to have problems) with funding training and being reimbursed. Less obligations on the individual and more obligations on the companies.” — DES participant.*

*“DES should have people on staff that are actually qualified and experienced and understanding of people with disabilities (I have a Certificate 3 in Disability and other Community Services Certificates), most of the staff were formerly admin or sales, none of them that I met had any training in community services like I do, I know this because I asked them and therefore they were not qualified to deal with disabled people. Neither do DES have much of a sense of duty of care or understanding of what it’s like to be unemployed.” – DES participant.*

- 3.5. We further note with concern that DES staff do not undergo mandatory training on career development strategies and support, meaning they may not always have sufficient education and training to support persons with disability to find and obtain employment in the current labour market.

*“The types of jobs that my DES provider were connected to were not appropriate for me – they were connected to employers in the industrial or hospitality industry, whereas I had experience as a senior IT professional and I can’t stand for too long before my back gives in. They didn’t have any jobs to recommend me for based on my experience.” – DES participant.*

*“After I got on the DSP from previously being on Newstart Allowance for a number of years, I voluntarily stayed a few extra months but even with additional knowledge about my disabilities available they still could not help me get a job. I had done nothing wrong and was a faithful attender of appointments, I did all the right things that were required. In the end shortly before I left, after I was on the DSP and still a client, my case worker asked me to leave, she said I made them (the DES agency) look bad. Presumably because they could not get me a job. That is an insult to me as a person.” – DES participant.*

*“As an employer, I have found the state of resumes appalling. Are their employment counsellors not helping them? Also, they are not prepared in job interviews – are they not being encouraged to research the business before meeting with employers?” – Employer*

*“People would benefit greatly from career development advice from trained career development professionals who have currency in workplace trends and practices.” – Advocate.*

*“Companies often have to be coerced to employ people with disabilities which I imagine the government addresses with payments made to companies that do... If they don't then they probably should – or make it broader. DES workers need to at least be made aware of these opportunities and relay them to the individuals "using" their service. And these services should focus on gainful employment not casual work to meet incentives. Ideally this would be a nationalised system!” – DES participant.*

- 3.6. The Centrelink online job vacancy system has been described as woefully inadequate.

*“Going on the website and looking I have found only one suitable job that I would be qualified to do in six months. I have applied for that job and never heard back.” – DES participant.*

*“Online is terrible – not everyone has computer skills or even access to computers, laptops or phones.” – DES participant.*

- 3.7. Persons with disability should be supported to address the entry barriers to employment such as education, health services or housing assistance.

*“There should be more funding for TAFE, more accessible TAFE courses and less expensive overall study. Any training options offered by employment services providers, DES or regular, are usually poor online courses. If online is the way we are going with society then TAFE should be funded to provide these services properly.” – DES participant.*

*“Education and training should be relevant to our skills and abilities, not courses that are irrelevant and time wasting. Educational places that are disability friendly and give people the support and time to succeed in education and training.” – DES participant.*

*“Proper, affordable if not free access to health services to aid and manage our disabilities first and foremost!” – DES participant.*

*“Actual housing should be a human right... but in the meantime access should indeed be made easier. From big and obvious things like having physical access to the house and its amenities (physical support) to less obvious things like adequate sizing of housing and privacy (mental support).” – DES participant.*

*“DES staff should be aware of health and housing barriers and should work with community and health agencies to provide wrap around support” – DES participant.*

- 3.8. There is also a lack of understanding for persons with disability that also exist across the intersection of class, race, gender, sexuality or other marginalised groups.

*“There is no allowance for the fact that if you are a part of a minority that experiences discrimination, or you show awareness of your rights, this counts heavily against you. There is no allowance for the fact that trans women with disabilities face discrimination because they are told that they don’t fit into the ‘corporate culture’” – DES participant.*

*“DES staff should treat all people with dignity and respect including people of Non-English speaking backgrounds, and there should be a holistic approach to client support” – DES participant.*

- 3.9. As noted in the *DES Mid-term* review by the Department of Social Services and Boston Consulting Group, 54% of DES participants are older than 45.<sup>14</sup>

- 3.10. We note that there can be significant barriers for mature age people with disability to successfully gain or transition into new employment or a new career.

*“Being taken seriously after the age of 50 is very difficult – retention is not the problem. The business sector should be educated so employers can understand that mature expertise and work ethic is valuable. We need to improve the understanding that many people over 50 decide to move sideways or follow passions if they have enough money. Often they are not believed.” – Advocate.*

- 3.11. We note that many of the mature-age clients we have seen face significant barriers to employment, as they may not have completed formal education, may have been engaged in laborious work, and have often pushed their bodies beyond breaking point. DES participants may have chronic back, neck, or upper or lower limb pain, however, may still not

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<sup>14</sup> *Mid-term Review of the Disability Employment Services (DES) Program*, August 2020, Department of Social Services and Boston Consulting Group p 23

qualify as having a 'disability' for the purposes of qualifying for the DSP under the current set of rules.

- 3.12. Furthermore, due to a lack of formal education or soft skills (such as computer skills), it may be difficult to re-train mature-age DES participants, particularly if they have been employed in laborious work for the majority of their lives, and their health conditions mean they can no longer engage in this kind of work.

#### **4. What employment services and supports would most help young people?**

- 4.1. DES participants have noted that there should be easier access to diagnoses and disabilities from childhood so there is an understanding of its impact at an early stage, by removing the financial and social barriers of getting a diagnosis.

*“Easier access to diagnoses of disabilities from childhood so helping the guardians in this regard is the first step, then early education for the person to understand their disability early in life. Schools should be encouraged to educate children on their peers’ disabilities if appropriate. Part-time employment options for people leaving school at any year should be implemented especially for those who have a more difficult time accessing employment like people with disabilities.” – DES participant.*

- 4.2. There is a concern that some in the education sector are reluctant to work with DES providers because they have not had a positive engagement with them in the past.

*“Some schools have become wary of working with DES providers because they have a history over-promising and under-delivering. Even a decade later, the memory lingers in the education sector.” – Advocate.*

- 4.3. A better engagement between university employment services and DES providers has been suggested.

*“Why don’t DES providers work with university employment services? What ends up happening is that DES only offer low level positions and graduates end up with jobs they aren’t qualified for e.g. Law graduate being sent to a courier job. Graduates are left to fend for themselves on the assumption that their qualifications mean they don’t need help. However, many graduates don’t know about Job Access as an example.” – DES participant.*

- 4.4. We note the emerging work of the [Uni Specialist Employment Partnerships](#) which connects the NDCO Program, participating universities and selected DES providers. This program should be further supported by the Australian Government and expanded to all universities.

- 4.5. For DES participants who also qualify for the NDIS, DES providers could work more closely with the SLES program to assist the transition from school to the workplace for young people with disability.



## **5. What support do employers need to attract, employ and retain people with disability?**

- 5.1. It is our position that employers should undergo meaningful disability awareness training that can be applied to their industry and workplace, tapping into the funding available from JobAccess.

*“Employers who can relate disability to their own situation are better able to understand issues around disability and create a work environment that encourages ongoing skills development and retention.” – Advocate.*

*“Any employer employing persons with disabilities and mental health conditions must have assistance and some education, meet up with staff so they can make a better work environment.” – DES participant.*

- 5.2. Employers need increased training and awareness in their responsibilities and funding options, including JobAccess, to provide reasonable adjustments to employees with disability.

*“I have osteoarthritis and so I need access to a good chair. In the last place I worked I had to buy an executive chair myself which had adequate padding and posture support rather than the cheap office chairs they had in the place. The HR person got an OT in to work with me on checking out which chairs would be okay, but the employer didn't pay for the chair.” – DES participant.*

*“I need allowances for the fact that I have ADHD which is an executive function disorder – one of the impacts is that I need intellectually stimulating work, work that is creative and not reactive.” – DES participant.*

*“I have sleep apnoea and so I need genuinely flexible working hours – sometimes I might need a midday start, other days I might not be able to come in one day, but will be fine the next day.” – DES participant.*

- 5.3. Another issue is that the access criteria for JobAccess has a high threshold, similar to the DSP and the NDIS, meaning that some persons with disability may not qualify for the program.

- 5.4. More accessible and widely promoted funding incentives through government subsidies could assist employers in hiring persons with disability.

*“Government subsidies, especially for smaller businesses who believe they take exponential risk hiring people with disabilities when compared to big corporations.” —DES participant.*

- 5.5. South Australia and New South Wales have recently legislated Disability Inclusion Acts that commit the jurisdictions to making communities more inclusive and accessible for people with disability. Public authorities are required to develop Disability Inclusion Action Plans so that persons with disability can

participate fully in the community including in employment.<sup>15</sup> Other State jurisdictions have legislated Disability Services Acts.

However, these statutes do not apply to private organisations. Consideration should be given to legislating for a wider inclusion plan for all public and private employers on a nation-wide level.

- 5.6. Employers will often not hire individuals who do not meet their hiring criteria including the necessary qualifications and experience. Employers should receive funding incentives from the Australian Government to provide on-the-job training for persons with disability. It is important to note that employment contracts should be heavily regulated to ensure that persons with disability are not exploited.
- 5.7. Advocates have noted that previous 'work-for-the-dole' programs have been subject to the exploitation of mainstream job-seekers, and this should not be repeated, particularly for job-seekers with disability.
- 5.8. The Australian Government could consider enacting legislation that enforces quotas for employers to set aside a certain percentage of job vacancies specifically for persons with disability. There is precedent for this in the Victorian Government's *Gender Equality Act 2020* established to improve workplace gender equality in the Victorian public sector, universities and local councils.<sup>16</sup>
- 5.9. Furthermore, capacity-building and employment in Australian Disability Enterprises (ADEs) leads to direct employment for persons with disability, whether that is in open employment, ADE-run businesses, or assisting people to develop their interests, including creating their own enterprises. The Australian Government could consider whether practices of ADEs could be adopted by DES providers in supporting persons with disability into direct employment.

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<sup>15</sup> *Disability Inclusion Act 2014* (NSW) s 12(3)(iv); *Disability Inclusion Act 2018* (SA) s 16(3)(iv)

<sup>16</sup> *Gender Equality Act 2020* (VIC)

## **6. How do we best tailor mutual obligation requirements to increase the likelihood of people with disability finding work in the future?**

- 6.1. While we understand the rationale of DES participants engaging with their providers in a compulsory way, we note that in practice ‘mutual obligations’ do not always provide a supportive environment for job seekers with disability or assist them in finding or obtaining employment.

*“I can see benefit in having a strong compulsion for people to engage with something, such as healthcare or support services - but the current system often leaves people feeling as though they have no choice or control. This can lead to people with a disability often beginning their employment journey, very fearful of their employment services provider due to the large power imbalance and risk of losing the small income they desperately rely on. We have heard that engagement with employment services can be a traumatic experience for people with a disability.” – Advocate.*

- 6.2. The *Job Plan and Scheduling Mutual Obligation Requirements Guidelines* outline that activities in the Job Plan must not place unreasonable demands on the Participant.<sup>17</sup> While the *Managing and Monitoring Mutual Obligation Requirements Guidelines* outline that Participants can be expected to apply for up to 20 jobs per month for a work capacity of up to 29 hours, and attend appointments with their case worker fortnightly,<sup>18</sup> DES providers do have some discretion when enforcing this. The guidelines explicitly state that the DES provider must consult with the Participant and reasonably consider their individual circumstances and capacity, education, experience, skills and age, the impact of any disability or illness on the ability to work, look for work, or participate in activities, the state of the labour market and the transport options, among other things.<sup>19</sup>

- 6.3. However, what is a ‘Reasonable Excuse’ in not meeting a mutual obligation is often decided by the DES provider without genuine consultation with the DES participant. In practice there is often a lack of flexibility for DES participants engaging with DES providers and this can lead to participants being breached and losing their Centrelink payments.

*“DES providers should be encouraged to look at the mutual obligations and say ‘okay well these are the maximum obligations – but what works for you, how can we address the barriers and put some things in place that help you achieve your goals.’” — Advocate.*

- 6.4. Breaching DES participants for not meeting mutual obligations leads to a disproportionate response wherein participants receive demerit points or lose access to their Centrelink payments, creating a hostile environment.

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<sup>17</sup> *Job Plan and Scheduling Mutual Obligation Requirements Guidelines*, 2018, Department of Social Services p 7

<sup>18</sup> *Managing and Monitoring Mutual Obligation Requirements Guidelines*, 2018, Department of Social Services p 5

<sup>19</sup> n 16 p 6-7; n 17 p 6-7

*“The immediate problem is that DES participants are often terrified because they think that if they put a foot out of line or do anything wrong their payments can be cut. We hear stories of people receiving an automated SMS stating that their payments are immediately on hold and a demerit is created. Often, this may be without the participant having any understanding of why. While the suspension can be reversed if incorrect, it can be a very traumatic experience for the participant.” – Advocate.*

*“The whole system is cruel and ineffective. I submitted the summary of my job applications but the DES provider had a power outage meaning they couldn’t put the data in. The DES staff put the data in the following day and Centrelink said it didn’t count for the relevant period so they gave me demerit points for not putting my job applications in on time. I complained about this but Centrelink have refused to reverse the demerit points.” – DES participant.*

*“I had one client who couldn’t attend their DES provider appointment because they were in hospital giving birth to their son. Their DES provider breached them because of this and put their Centrelink payments on hold. Things like the birth of a child can’t be rescheduled to meet a DES appointment and DES providers should have a more compassionate approach.” – Advocate.*

- 6.5. While DES providers have some discretion to manage mutual obligation requirements, advocates and DES participants have noted they do not have choice or control over the process.

*“At one point I was in a boarding arrangement and my landlord passed away, so I had to move out and basically evacuate immediately. This was compounded by the fact that my car broke down the day I was moving stuff. My DES provider said they would grant me an exemption from putting in job applications on a compassionate basis. But they didn’t enter it into the system, and I got breached. Thankfully I rang my DES provider and was able to get that reversed – but it was incredibly stressful during an already difficult time.” – DES participant.*

*“There should be less obligation on the individual and more obligation on the service provider. Less focus on compliance and more focus on qualitative and sympathetic work with individuals. Reasonable requests from individuals should be followed up by service providers and if they don't follow up, they should receive some punishment.” – DES participant.*

*“One of my clients went into labour and was at the hospital. Her DES provider called her for her phone appointment, and my client told the DES worker that she could not engage with the appointment because she was having a baby. Her payments got cut off after that because she had to miss her appointment.” – Advocate.*

- 6.6. We have often heard stories where DES participants are not simply not believed if they cannot meet their mutual obligation requirements. This often leads to payments being cut, putting our already vulnerable clients in more financially precarious situations.

*“A Pitjantjatjara woman who had to relocate to the city for regular dialysis due to kidney disease, attends the hospital for her treatment three times per week, for up to 6 hours. She has lodged her application for the Disability Support Pension but is on mutual obligation requirements currently due to being on JobSeeker. Her doctor has submitted medical certificates, however, she is still required to attend regular appointments at her DES provider to meet her obligations. Recently the client became very unwell and was admitted to hospital for more intensive medical treatment. She rang her DES provider to let them know she was unable to attend her regular meeting with them. The DES worker told our client that she did not believe she was in hospital and that they would be advising Centrelink she was in breach of her mutual obligations. Our client had her mutual obligations cut as a result. This led to her tenancy becoming at risk, as well as not having money for food and other bills. The DES provider refused to assist in restoring the Centrelink payments, despite having no evidence to back their assumption that the client was lying about being in hospital. We were able to get in touch with Centrelink who reversed the decision and provided our client with back-pay and ensured that her rent was paid on time. The Centrelink officer advised they were submitting a complaint about the DES provider and encouraged the client to do the same” – Advocate.*

- 6.7. We are deeply concerned that situations such as the above are not one-off occurrences. DES providers have the power to require unwell and highly vulnerable individuals to attend in-person meetings, which presents heightened risk particularly during the COVID-19 pandemic. Vulnerable persons with disability may not have the personal capacity or support required to appeal such decisions, which can lead to homelessness or risk personal safety.
- 6.8. In our experience DES participants often have incredibly complex individual circumstances and barriers to employment.

*“Many of the clients with disability I have dealt with this year exist across the intersections of disadvantage, including women with disability escaping domestic violence, refugees who have fled war zones and have significant trauma, labourers who have worked their bodies past breaking point, families facing eviction and homelessness, parents struggling to get the support they need for their child to get onto the NDIS, individuals who have lost their business as a result of COVID-19, single parents struggling under the weight of the paperwork they need to submit to get help, as some examples. Across all of this complexity, DES participants face the added stress of meeting their mutual obligation requirements, with the risk that if they cannot meet those, and their DES provider is not willing to accommodate for that, or they cannot get a medical*

*exemption, they will lose their only source of income.” – Advocate.*

- 6.9. Persons with psycho-social disability and invisible disability are reported to have a significant barrier to employment, experiencing socio-economic inequality and poor health outcomes, as well as higher unemployment rates. According to the Centre for Health Equity and Mental Health at the University of Melbourne, 19% of persons with psycho-social disability are unemployed.<sup>20</sup> The ‘New Public Management-inspired’ reforms in the disability employment sector are noted to conflict with the concept of choice and control, while ‘participants are subject to increasing compliance mechanisms including the threat of financial sanctions under ongoing Welfare-to-Work reforms’.<sup>21</sup>
- 6.10. However, there is little discretion for DES staff when reporting on whether a mutual obligation has been breached. While appointments should be booked in agreement with the participant, sometimes this does not occur. This means that participants can be breached for not attending appointments that are outside of their control.
- 6.11. Prior to the 2018 reforms to DES, there was less of an emphasis on mutual obligations in DES and much flexibility in service provision. Case workers had an additional option to mark ‘did not attend (discretionary)’, which worked well in considering the individual circumstances of the participant and managing workarounds.
- 6.12. Furthermore, DES providers should provide more assistance to persons with disability who may be eligible for the DSP, including helping participants understand the Program of Support requirements.

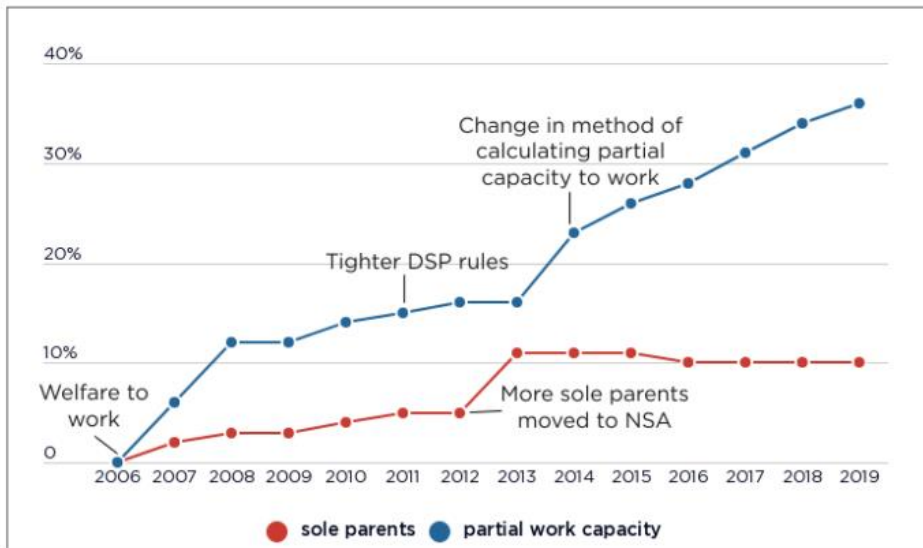
*“DES providers should be able to support people if they would like to be on the DSP – they should be funded and resourced to do that. At the moment if you tell your provider that you can’t work or volunteer, and you want to get onto the DSP, they can breach you for that. It should not be unreasonable for people to want to get out of a punitive situation.” – DES participant.*
- 6.13. It is our position that if a DES participant has submitted an application for the Disability Support Pension their mutual obligations should be suspended during this time period. This will lessen the significant strain that a person with disability experiences when having to engage in obligations that are outside of their choice and control. An application for the DSP can take up to several months to be processed and requires significant medical evidence from an individual’s treating doctors. This process has also been extended due to COVID-19 and shortfalls in our healthcare system.
- 6.14. This is particularly important considering the number of people with disability on JobSeeker (formerly NewStart) and Youth Allowance has

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<sup>20</sup> Alexandra Devine, Helen Dickinson, Lisa Brophy, Anne Kavanagh and Cathy Vaughan, ‘I don’t think they trust the choices I will make’ – Narrative analysis of choice and control for people with psychosocial disability within reform of the Australian Disability Employment Services program, 2021, Public Management Review, vol 23 no 1, 10-30 p 11

<sup>21</sup> Ibid

risen since the tightening of DSP restrictions in 2010, as outlined in the below graph showing persons with partial work capacity.



Source: Department of Social Services (various years), Statistical summary of social security payments; Department of Social Services (2019), DSS Demographics, September 2019 Available at <http://data.gov.au>

6.15. Lastly, there is some anecdotal evidence that charity organisations see engaging with job seekers as a burden.

*“We have heard from many volunteer and charity organisations that they don’t want job seekers on mutual obligation requirements because their job-seeking requirements make them unreliable.” – Advocate.*

## **7. How can funding arrangements incentivise good work outcomes?**

- 7.1. There is a concern from advocates that the current funding arrangements drive a hyper-competitive atmosphere that leads to significantly negative outcomes for DES participants, as well as staff wishing to support job-seekers with disability to find and obtain employment.

*“Any community service that is run for profit in a hypercompetitive environment is at risk of encouraging service delivery that does not put the interests of participant as a primary motivator.”– Advocate.*

*“The current model of incentive payments does not work. Sitting with an employer and working out what support would be needed – as well as how that could benefit the business as a whole – would be better, but the current workforce for the most part does not have the skills to do that.” – Advocate*

- 7.2. DES participants think little of the overall job provider system and the current funding arrangements.

*“The whole system is a scam – it is a means to funnel public money into private entities. If the Government did it all in-house it would be cheaper because they wouldn’t have to pay all the bonus payments.” – DES participant.*

*“Take their money away from them if they screw up. The competitive model forms bigger and bigger companies that have less and less competition over time. They can be more and more ruthless. And they do it all for money. So penalise their earnings.” – DES participant.*

- 7.3. The funding arrangements and Star Ratings measurements that DES providers must abide by do not adequately incentivise long-term and sustainable employment. There is a risk of system-gaming to improve the commercial interests of DES providers, by placing DES participants in shorter term employment contracts. This may impact on the quality of services received by DES participants, particularly individuals who want secure, long-term employment. Reforms introduced in 2018 went some way towards improving the risks presented by the funding arrangements, however we do not believe the unintended consequences have been fully addressed.



## **8. How do we drive high quality services and supports?**

- 8.1. The DES Star Ratings system has been raised by advocates as the biggest barrier to DES participants receiving quality services.
- 8.2. Currently under the *Disability Employment Services 2018 Performance Framework* (Star Ratings), DES Star Ratings are assessed against two of the Key Performance Indicators (KPIs): 'Efficiency' and 'effectiveness'.<sup>22</sup>
- 8.3. However, these KPIs have unintended consequences. The key aim of 'efficiency' is to minimise the average times taken by Providers to achieve employment outcomes for their Participants, while the key aim of 'effectiveness' is to maximise the numbers of outcomes achieved by Participants, as well as the number of Participants maintained in employment where assistance is required.<sup>23</sup>
- 8.4. The issue is that this often leads to a competitive system where DES providers are attempting to generate outcomes through as many participants as possible and recommending them for jobs that may not be suitable or desirable. Client satisfaction and quality outcomes are often ignored in favour of a DES provider seeking to meet their Star Ratings targets under a hyper-competitive system.

*"I think if they made sure that client satisfaction was recorded and valuable and they made sure that people working in the DES had more of an understanding of disability and made it less competitive those would be the most important things." – Advocate.*

- 8.5. We are concerned that to get a good star-rating, DES providers often negate their responsibility to assist DES participants that they see as harder to help obtain employment.

*"We have heard stories of people being asked by their provider to go and try a different DES service if they are not happy. Under a performance framework that prioritises "efficiency" and "effectiveness" and does not consider client satisfaction, there is a risk that participants who have additional barriers and cannot be placed into work "efficiently" will be encouraged to leave the service."—Advocate.*

*"You hear things working with DES participants about how they are treated, and I think making it so incredibly competitive is part of the reason why persons with disability are treated so badly." – Advocate.*

- 8.6. While DES providers must already be certified against the National Standards for Disability Services, advocates have noted that customer satisfaction ratings for DES providers should be recorded in a more transparent way and be publicly available.

*"One positive thing that would have massive improvements overnight would be to have customer satisfaction ratings hold*

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<sup>22</sup> *Disability Employment Services 2018 Performance Framework*, 2018, Department of Social Services p 3

<sup>23</sup> *Ibid*

*some weight because currently they are dismissed outright. DES providers and staff must already meet the National Standards for Disability Services and the QA standards and they can be investigated if people lodge serious complaints. What would have a massive benefit would be publicly-available customer satisfaction surveys and responses that hold weight.”*  
– Advocate.

- 8.7. Lifting workplace capability and retaining staff can also drive high quality services and supports.

*“DES providers need to find a way to retain good staff as there is often a massive amount of turn-over due to people burning out from having too much caseload. The Government could provide funding and incentives for staff to complete Certificate IV in Career Development or Certificate IV in Employment Services, which may lift skills, knowledge and capability of workforce. The Government should also be encouraging cooperation between providers rather than competition.”* – Advocate.

- 8.8. DES providers should try creative ways to engage with DES participants.

*“Slick marketing and ‘swag’, which is how it’s done now, is not best. Interpersonal connection helps people make better decisions regarding their provider. For example, when I was an NDCO I used to do ‘speed dating’ events for parents and teachers of year 12s to meet and ask real questions of a provider and I also developed a checklist of ten questions to ask of a DES provider before signing on.”* – Advocate.

## **9. How do we measure success?**

- 9.1. Under the [customised employment model](#), DES providers can tailor their assistance to participants and sure it is individualised, considers their potential and limitations, and life-long passions.
- 9.2. It is our position that success looks like persons with disability being supported to reach their potential, as well as their career goals, based on their needs and wants.

*“Success should be defined qualitatively and not quantitatively. And definitely not quantitatively when considering KPIs, or – worse yet – compliance measures! Getting individuals suitable employment should be the priority.” – DES participant.*

*“Success looks like employment in roles that are satisfying and well-matched to skills and interests – this benefits the person, the community and the employers. Persons with disability should be placed in employment that they draw satisfaction from and therefore stay in the role.” – Advocate.*

*“It is important that client satisfaction is taken into consideration in determining success. While individual workers may treat this as important, the system does not. The clients of our service have reported liking their individual employment counsellor, but feeling like a commodity.” – Advocate.*

- 9.3. As noted throughout our submission, success should be focused on client satisfaction and whether they have obtained their goals.

## Recommendations

### Disability Employment Services Model

1. The guidelines for the Disability Employment Services model should explicitly outline that *all* persons with disability qualify for DES programs in line with the DDA and the *UNCRPD*. All persons who meet the definition of 'disability' under s 4 of the *DDA*<sup>24</sup> and Article 1 of the *UNCRPD*<sup>25</sup> should have access to a DES program regardless of whether they meet the access criteria for the NDIS, DSP or other Centrelink income support. We strongly oppose any moves to restrict access to a DES program for persons with disability. We further strongly oppose any moves to merge *jobactiv* and DES programs.
2. A 'know your rights' resource should be provided for DES participants that is reader-friendly and includes:
  - a. The right to choose or change between DES providers
  - b. How to choose or change between DES providers
  - c. How to work with DES case workers to develop their job capacity assessment
  - d. How to negotiate job plans initially and throughout their engagement
  - e. How to negotiate mutual obligations and what is reasonable
  - f. How to make a complaint about unfair or unreasonable treatment by a DES case worker or provider
3. The Department should provide an induction program presentation for all DES participants which includes:
  - a. Information about the DES program overall
  - b. What the rights and obligations of DES participants are
  - c. What the rights and obligations of DES providers are
  - d. Information about individual DES providers
  - e. Information about how DES providers interact with the NDIS, Centrelink, the Department or other relevant agencies
  - f. The ability for DES participants to meet Department staff, DES staff, complaint-handling staff and other job-seekers
  - g. The opportunity to raise complaints, concerns or queries, including how to contact the Complaints Resolution and Referral Service
4. DES staff should undertake mandatory training on disability awareness, such as the [Certificate III in Individual Support \(Disability\)](#), or a nationally recognised skill set comprised of relevant disability VET units, including:
  - a. How types of disability link to particular needs, or can be connected to kinds of behaviour
  - b. What accommodations a person with disability may need when interacting with their DES provider and when seeking accessible employment
  - c. Developing a Job Plan or mutual obligations with a DES participant in genuine collaboration
  - d. Providing individualised support and following safe work practices
  - e. Working legally and ethically with diverse people including understanding mental health and well-being
  - f. Contributing to ongoing skills development using a strength-based approach
  - g. Facilitating the empowerment of people with disability
  - h. Supporting community participation and inclusion without exploitation

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<sup>24</sup> n 1

<sup>25</sup> n 2

5. DES staff should undertake mandatory training on career advice and development, such as the [Certificate IV in Career Development](#). This will ensure that all DES staff are trained to provide support services for persons with disability such as:
  - a. Resume and CV development
  - b. The interview process including obtaining a job interview, preparing for the interview, what to do on the day and post-interview etiquette
  - c. Networking and finding the 'hidden job market'
  - d. Rights at work
  - e. Negotiating with employers around reasonable adjustments
  - f. Obtaining further training and education
  - g. Computer and technical skills, particularly for older job-seekers
  - h. Capacity-building and the emerging [customised employment model](#)
6. DES staff should have a clear understanding of the supports available to persons with disability and have the necessary training to be able to:
  - a. Advise and support persons regarding access, planning and eligibility for the NDIS
  - b. Advise and support persons wishing to exit their DES provider and get onto the DSP
  - c. Advise and support persons wishing to transfer between DES providers
  - d. Advise and support persons wishing to apply for the Employment Assistance Fund (EAF) at their workplace
  - e. Working with the School Leaver Employment Support (SLES) program available to NDIS participants
  - f. Liaise with social workers and support people to ensure persons with disability get the assistance needed
  - g. Liaise with housing organisations
7. The *Disability Employment Services 2018 Performance Framework* (Star Ratings) guidelines should be reviewed including:
  - a. Removing the Key Performance Indicators of 'efficiency' and 'effectiveness' as these have proven to be an insufficient indicator of the success of DES providers assisting job-seekers with disability to find, obtain and maintain employment.
  - b. Prioritising the Key Performance Indicator of 'maximising the delivery of high quality, individualised Employment Services'.<sup>26</sup>
  - c. Adding a Key Performance Indicator outlining the customer satisfaction of the services received by a DES provider. This could include how satisfied a DES participant was with the services received, whether they were placed into a suitable job according to their needs and interests, and the type of employment obtained (full-time, part-time or casual).
8. The DES guidelines should be updated to:
  - a. More explicitly outline how Job Plans and Job Capacity Assessments must be undertaken in genuine collaboration and co-creation with the DES participant.
  - b. Outline that casual, voluntary or community engagement participation should only be recommended as an employment pathway with the full and genuine consent of the DES participant.
  - c. Potentially increase outcome fees to 18 months to incentivise DES providers to place participants in more long-term and stable employment, while scrapping outcome fees for DES providers who place employees in short-term contracts.
  - d. Financially penalise and remove the contracts of DES providers who are not performing based on client satisfaction and quality outcomes – rather than performance-based outcomes based on efficiency and effectiveness.

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<sup>26</sup> n 21

- e. Require that DES providers appoint a certain (to be determined) percentage of persons with disability on their board of directors.
9. Complaints from DES participants should be more transparently collected and recorded to identify systematic patterns of complaints, responses to the complaints, and whether systemic change needs to occur as a result of the complaints.

### Supports for employers

10. The Australian Government should legislate, resource and fund training, engagement and guidelines for employers including:
- a. Disability awareness training
  - b. The rights and obligations of employers when employing persons with disability
  - c. Ensuring an awareness of this program in the workplace
11. The Australian Government should provide increased funding, support and expansion for the Uni Specialist Employment Partnerships Program, the NDIS School Leaver Employment Program and the [Customised Employment program](#).
12. The Australian Government should review the Job Access program that provides the Employment Assistance Program (EAP) to expand the eligibility criteria so it includes *all* persons with disability as defined under the *DDA* and *UNCRPD* – rather than only persons with disability that will last for 2 years or more. Disabilities can be fluctuating and impermanent but can still be valid disabilities.
13. The Australian Government should increase funds allowable to each individual's employer for disability awareness training and induction support for the new employee.
14. The Australian Government should increase incentives to public and private organisations to hire persons with disability.
15. The Australian Government should consider the viability of enforcing a hiring quota system, in which employers must reserve a certain percentage of their workforce for persons with disability, depending on company size.

### Disability Support Pension (DSP) and Centrelink

16. All Centrelink income supports payments should be raised above the Henderson poverty line. Persons with disability currently struggle to afford their basic needs including food, housing, and clothing. There are also much more significant costs in healthcare and medication, particularly if not covered by the NDIS or the PBS.
17. The Australian Government should review the access criteria for the DSP. Current restrictive access requiring applicants to submit proof of their disability having at minimum a severe functional impact, as well as being fully diagnosed, treated, and stabilised, is incredibly onerous for applicants and their supporting medical professionals. The current framework forces many persons onto JobSeeker when they may qualify for the DSP.
18. If a DES participant submits an application for the DSP, their mutual obligations should be suspended during the period of having their application processed. Any engagement with their DES provider during this time should be voluntary.
19. The mutual obligations system as legislated under social security law should be reviewed by the Australian Government to consider whether these are best practice in assisting job-seekers to find and obtain employment and alternative measures should be considered.
20. Breaching a mutual obligation should not lead to the loss of Centrelink payments in any form due to the significant strain it places on the emotional, mental, physical and financial well-being of job-seekers, particularly job-seekers with disability.

21. All persons with disability and chronic health conditions should be able to engage with a DES provider voluntarily so they can meet the Program of Support requirements that are necessary to qualify for the DSP.

### Other social services supports

22. The Australian Government should review the financial and social barriers to gaining an appropriate and suitable diagnosis. Persons with disabilities often spend time on long public waiting lists attempting to get a diagnosis that they may not be able to afford in the private system. Not having a recognised diagnosis is a significant barrier to receiving support from the National Disability Insurance Scheme, the Disability Support Pension, Disability Employment Services, the Employment Assistance Fund (Job Access) and Specialist Disability Accommodation. Access to advice and social support should be available to assist persons with disability in obtaining a diagnosis so they are able to access social support services more efficiently, holistically and in an affordable way.
23. The Australian Government should subsidise assessments needed to obtain a diagnosis through Medicare.
24. The Australian Government should adequately fund the education sector through affordable higher education including TAFE and university so all Australians, particularly persons with disability, can receive the quality training and skills they need to obtain employment.
25. The Australian Government should work with State Governments to increase the stock of public housing, and expand Specialist Disability Accommodation, as stable and secure housing is pivotal to maintaining employment.
26. The Australian Government should increase funding for Medicare and the PBS to expand the number of medical procedures and medication that can be subsidised through Medicare. Universal access to healthcare is pivotal for maintaining employment and avoiding poverty for persons with disability.
27. The Australian Government should consider whether it is appropriate for mature-age persons with disability or chronic health conditions, who face significant barriers to employment and re-training, to be forced to remain on JobSeeker, or whether there should be an alternative income support option. This is particularly an issue because many mature-age people may not reach the high threshold to qualify for Disability Support Pension.