



Our Mission: To promote, protect and defend, through advocacy, the fundamental needs, rights and lives of the most vulnerable people with disability in Queensland.

## SUBMISSION TO THE DISCUSSION PAPER

### “IMPROVING THE EMPLOYMENT PARTICIPATION OF PEOPLE WITH DISABILITY IN AUSTRALIA”

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

**Patron: Her Excellency, Ms Penelope Wensley, AC Governor of Queensland**

15<sup>th</sup> February, 2013

QAI is an independent, community-based, systems and legal advocacy organisation for vulnerable people with disability in Queensland. Our mission is to promote and protect the fundamental rights of these people, and we have pursued this mission vigorously for 25 years.

It is encouraging that the consultation processes that occurred in 2008 -2009 and the strategy that evolved from them are being succeeded with another opportunity to reflect and plan for improved opportunities for people with disability to engage in the workforce.

Before addressing the discussion points offered in the paper, we would like to preface our submission with the following observations that we would hope would be considered in addition to the discussion points.

### **The Value of an Employee with a Disability**

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

At QAI we are not opposed to incentives so much as to where those incentives are directed. We are concerned that employers may always expect a 'hand-out' in order to employ someone with a disability regardless of how well the individual performs in the job.

Employers generally enjoy a standard of living that is a world removed in the terms of quality from those enjoyed by people with a disability. Therefore we propose instead that **incentives be offered to workers with a disability to elevate their income** towards the minimum necessary levels to enjoy a reasonable standard of living.

We acknowledge the proactive approach the government has taken in providing employers with statistical information about the benefits of employing a person with a disability and would encourage that this be augmented with promotion of the quality of work that people with disability can perform. In light of the statistics that indicate that many workers with disability are rated with average or above average productivity; do not cost more for workplace modifications; have fewer absences and better retention rates; have fewer claims for worker's compensation and cost less in terms of safety and insurances; **why then are so many workers with disability employed only by concessional grants of government incentives and wage subsidies?**

### **Employment Participation**

The Discussion Paper refers to "Employment Participation" for people with disability and this is an opportunity to explore the meaning of "participation". Many people with cognitive or behavioural impairments do not wish to work within the Sheltered Workshop system (or Australian Disability Enterprises as they are now glossily referred to), or are in many cases excluded from their workplaces. Opportunities for employment participation should not be restricted to merely what place or service will accept a person. Real choices should mean that a person with a disability can choose what job to apply for or workplace in which to volunteer.

Volunteering or unpaid work will be addressed further, including the supports that some people require in order to do so.

In some examples people have been employed in open employment with full wages and benefits, and supported by paid support staff accessed via their day service programs (such as post school).

## **Statistical Data**

QAI questions the process of the statistics quoted in the Discussion Paper and asks the following:-

If 4 million people of working age in Australia are reported to have a disability, and yet one million working age people with disability were in paid employment (comprising 10% of the total Australian workforce) we fail to understand how these figures equate to 50% of working age people with disability. It would seem that only 25% of people with disability who were of working age were in employment and therefore the unemployment rate was more in the vicinity of 75%.

These statistics may be drawn from but do not clarify the Australian Bureau of Statistics data on "main disabling condition" which seems to merge data regarding people with health conditions that may have debilitating impact on the person.

It is a confusing issue to draw upon statistics that reflect a diverse group of people and homogenised with those who have conditions that would otherwise be referred to as medical conditions. **The statistics that would offer more useful information would indicate efforts and achievements of people with significant or severe disabilities and the services and employers who worked in collaboration to attain full open employment for those individuals.**

Similarly the statistics are skewed when one considers the amalgamation of people with disability who work in sheltered workshops (now referred to as Australian Disability Enterprises). We will discuss the issues with these employment situations further in this paper.

## **What are the main barriers faced by people with disability in employment?**

### **Education**

There still remain issues within the educational experiences for students with disability leaving school with literacy and numeracy inadequacies that the specialised education has not addressed. However, while many schools are now more equipped to focus on transition for students with disability, there is limited creativity in approach to work experience opportunities and an even more limited opportunities for post school learning for students needing further literacy and numeracy training. TAFE does not deliver programs tailored to individual need despite its glossy self-promotion.

### **Assessments**

Negotiating the system beyond school is further complicated by the introduction of an assessment maze. It would seem that for students without disability, the senior or leaving certificate would indicate the learning outcomes. This too should bear sufficient information to assist students with disability towards their next stage in earning or learning. Instead we have a variety of assessment tools to channel people to various other departments or services, and assessments of the people to determine funding for service providers.

It would seem appropriate that school assessments and associated guidance reports could inform students with disabilities, parents, Centrelink, regulators and government departments enough information to assist with choices for further education, post school services including disability employment services without subjecting people to another barrage of intrusive and diminishing assessments. It is acknowledged that assessments (or appraisals to use a more commonly used term) for determining how a person performs in the workplace or for job selection is appropriate. How people with disability withstand such an assault of tests and demeaning reporting from school leaving to employment is testament to their stoicism. From the Job Capacity Assessment (JCA) to Job Seeker Classification Instrument (JSCI) and then a choice of up to 30 wage assessment tools to be applied to a person is a formidable barrier to inspiration to being employed.

It demeans a person with disability to be constantly reviewed and assessed and having to prove their disability on one hand to access services and support, and then to have that used to diminish their opportunities to fair wages and conditions. *See Article 1 United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) – “The inherent dignity of persons with disability is promoted and respected”.*

This process is also a waste of time and resources that would be better utilised in job creation such as niche roles for people with disability.

### **Supported Wage System**

This system in itself is probably the single largest disincentive and defeating mechanism to employment for people with disability. The system has leant far beyond the offering of incentives to employers and become a prop for ‘sheltered workshops’ (Australian Disability Enterprises) and a potential port for some open employment situations not unlike the revolving door of trainees used as cheap subsidised labour who are promptly discarded at the end of the tenure. The difference for people with disability can be a lifetime of near slavery conditions.

Sheltered workshops (let’s call them what they are) once provided a training opportunity and resource for people with disability to gain skills and support to move into open employment. Now the most productive employees only are retained in order for these services to remain viable and competitive in the open market. These operatives are often in a position to undercut private enterprise competitors for tendered contracts and manage to deliver within the agreed contracted period at rates that create artificial costing and force down labour market prices. **QAI recommends that these workshops once are again compelled to find pathways to open employment for their workers as they become proficient within projected time frames.**

For people with cognitive or behavioural impairments who wish to work, the limited range of opportunities available to them usually means that the sheltered workshop is often the only choice. This indirect compulsion is similar to the lack of choice of living arrangements for people with disability. If people require supports and those supports are only found in congregated living arrangements then they have no choice but to live in the congregate model. Similarly with support to work being found only in sheltered and simulated situations, this can mean the only option to work in this exploitative and debasing model, in effect compelled to servitude with slave conditions and pay. (*Article 27 CRPD*)

QAI agree that some **appraisal** (rather than assessment) may be required to determine how well a person with a disability is able to perform their job and to determine a rate of pay. However, we

assert that any wage assessment tool that is applied in such a fashion as to reduce the wages of a person to a level of such diminished proportions that does not sustain affordable living is a breach of the UNCRPD Article 16 *“Freedom from exploitation violence and abuse”*. This exploitation seems to be prevailing mostly but not exclusively in sheltered workshop situations. Indeed the last point of the CRPD Article 27 Work and Employment - Human Rights Indicators states *“Persons with disability are not held in slavery or in servitude and are protected from forced or compulsory labour on an equal basis with others”*.

It is important to consider employment for people with a disability in the holistic context of life. From birth or the acquirement of a disability a person is subjected to a myriad of assessments and program regimes. They are constrained and often detained in life by the constant reviews and compliances and bureaucratic impositions on their life. Together assessments for eligibility for this or that service or support (JCA and JSCI) and any wages assessment tool application are stressful in themselves, but together are over and beyond what other citizens in Australia are required to face. Therefore we believe that these breach Article 4 of the CRPD Article 4 *“General Obligations”* indicator that *“all laws, regulations, customs and practices that constitute discrimination on the grounds of disability have been modified or abolished.”*

QAI maintains that these assessments together also breach Article 17 of the CRPD *“Protecting the integrity of the person i.e.: Persons with disability are not subject to interference with their mental integrity”*. The self-esteem of any person with disability is severely lowered when subjected to such harsh processes.

The recent cases of Nojin and Prior vs. Commonwealth of Australia found that the use of the Business Services Wage Assessment Tool (BSWAT) was discriminatory. In particular the judgement of the use of competency assessment for a person with an intellectual impairment was discriminatory and not reasonable and that... *“the tool was adjusted so that it would not produce a better result than a simple productivity measure. The only alternative was a worse result. The disparity between the two results has, on the evidence, simply grown over the years.”*

It is allowed that the use of competency assessments may well favour other workers with disability but there was *“powerful evidence”* that it was unfairly skewed against workers with intellectual impairment.

**QAI recommend that workers be given the opportunity to be assessed for rates of pay under whatever measure produces their best result.** We also commend those workplaces that prefer to pay reasonable rates of pay in accord to the effort and work performed by workers with disability. It is not unreasonable to assert that people who work x number of hours and who do their best efforts be paid accordingly. Non-disabled workers in Australia doing the same jobs have differing levels of productivity in the workplace. They are not paid according to their productivity but by the prevailing award rate.

It is only those workers who are paid *“piecemeal”* who are paid for higher productivity e.g.: highly productive fruit pickers will earn more than slower workers but they are all paid at the same rate.

The worker employed by Stawell Intertwine Services Inc (SIS) in the aforementioned case was predominantly employed to mow lawns. Most often customers pay \$x for a lawn a certain size to be mowed. We do not usually pay by the hour to mow lawns. So whether a person with a disability takes three times as long as a non-disabled worker to mow a lawn is irrelevant. The disabled worker is entitled to receive at least the same payment for the same work.

With all the factors already given regarding the reliability of workers with disability and their lower rates of absences, and fewer associated costs of insurance and workplace claims, it is critical to place additional value to the quality of the work a person can deliver. This should constitute a measure of contribution equal to or greater than the mere volume of output.

QAI contests the notion that a person with disability should for any reason be paid as little as 10% of the minimum wage or even the amount of the base level of \$76.00 per week. This could see workers slaving for over 40 hours per week on the lowest rate of pay. This is slavery and is clearly in breach of the CRPD Article 16 “Freedom from exploitation and abuse” and Article 27 Work and Employment “Persons with disability are not held in slavery or in servitude and are protected from forced or compulsory labour on an equal basis with others”.

While workers with disability may not be FORCED into this situation, it is clear that many people with disability want to work, to be productive and to contribute in whatever and however they can. They should not be penalised and degraded by such paltry pay conditions that are insulting and degrading.

In order to elevate the status and working and living conditions afforded to employed people with disability, **QAI recommends that the base level of pay be raised to a minimum of the equivalent hourly rate that could be calculated using DSP as the base minimum but subjected to incremental increases in accordance with those awarded to other non-disabled workers.** This would mean equating the value of the DSP into an hourly rate.

Another alternative to such miserable wages conditions that we suggest is for both open employment and sheltered workshop situations that are making profits from the endeavours of their workers with disability be obliged to **award percentages of those profits** back to their workers with disability.

### **Volunteering, Work Experience, Workplace Training**

**Funding incentives should be available for people with disability** who contribute to society through unpaid work. This could be done by funding their support requirements from an alternative source other than post school funding. Opportunities for unpaid work often require one-to-one support for people with higher support needs and this results in overtaxing the meagre amount of post-school funding available to them.

There is an incentive for employers to allow people with disability to undertake work experience/training as they gain skills, and the employer receives the benefit from the unpaid work. **Cross-government cooperation to promote this would mean more employers would afford these chances to people with disability. There is the prospect for both state and federal government to support this venture by providing funding for support for people with disabilities to do this unpaid work.** Eventually, many people will either be employed in the same workplace, or will gain skills to be employed elsewhere.

There is the risk that some employers will abuse volunteers or those who undertake work experience and workplace training on an ongoing basis. It is important to safeguard people with disability who contribute to a workplace in unpaid capacity from exploitation when and where they could and should be paid for their work.

**QAI recommend that those who undertake unpaid work in ongoing roles be paid for their work.**

### **Feedback from Families and Stakeholders**

1. It is reported that while statistical information is available to employers regarding the benefits of employing a person with a disability, it is not directly provided to them. They must go looking for it. **We recommend that DEEWR and the Australian Taxation office provide information to employers in mailed or emailed information at BAS and Tax time.**

2. a) It is still a reality that many DES 'cream' their client bases. People are often referred from service to service in an endless cycle as they are considered too difficult or not part of the targeted clientele because of a need to produce outcomes. The changes to the 'star rating' have not delivered any improvement to outcomes for people with disability. People with disability are often told to look for jobs on website and in the paper and often do not get any assistance from some of these services.

b) Often two years is not sufficient time for some people with higher support needs to attain or retain employment due to a range of issues often not associated with their ability to work. In many instances clients are exited from services, and have to reapply and submit paperwork to be restarted again into another program within the DES.

c) Many people with disability and their families report that they have been unsupported by a range of DES. Some have been offered menial jobs only despite the person having qualification for highly skilled work. Assurances have been offered to clients but rarely delivered. In many instances programs are driven by the service rather than by the client, and DES are often seen as 'unproductive, inflexible and without creativity'. There is a small number of DES who demonstrate good practice, but people with disability cannot expect the same quality of service dependant on their geography and access to such a service.

**a) QAI recommend that those DES who demonstrate fidelity to a client base with the most significant disabilities and work to further their employment aspirations deserve recognition and support with heavier weighting for the star ratings.**

**b) In order for those services to deliver optimal service response to the clients with higher support needs to deliver training to the worker and to develop good relationships with employers and other co-workers DES that have demonstrated commitment to such a clientele should be afforded extra resources and time to enable good outcomes.**

**c) People with disability should expect to get the same quality of service delivery no matter where they live. DES should be compelled to operate with best practice measures and move beyond the standard generic employment service response.**

3. What has happened to the roles of Special Employment Placement Officers and how can they be replicated and improved upon?

4. There is no pathway for a person who moves from a state funded Post School service program to access a DES in an attempt at open employment. A person may well have experienced some volunteering roles or workplace training, and be encouraged to make that next

step by accessing the assistance from a DES and find themselves employed yet unable to cope for a variety of reasons.

A person who attempts award wage open employment should not be at risk of losing the support from a DES and the DSP should a job be lost and neither should a person moving from post school support be at risk of losing that re-entry to that support system should their attempt at employment fail them.

**QAI recommends that be established cross government collaboration with a seamless re-entry process for those who attempt work and need to return to their former supports.**

5. a) There is a lack of roles for people with disability in the workplace. There is still a reluctance of employers to employ people with a disability including governments at all levels.

b) There lacks opportunities by services to support people with disability to engage in work experience/workplace training/volunteering, and a reluctance of employers to accept such offers.

**a) QAI welcomes the notion of ‘affirmative action and quotas’ within larger businesses and recommends the adoption of such measures as soon as possible. We recommend that smaller businesses be encouraged to review the work of other employees and determine if niche roles could be created for someone with a disability. Governments should be setting the example for all employers and lead the way in employing people with disability and by applying affirmative action.**

**b) QAI recommends that both post school services and DES be compelled to develop programs that support and nurture relationships with employers for opportunities for workplace training/experiences/volunteering roles for workers with disability.**

Since the advent of the two year period of grace allowing for a person to attempt work and not to exit from receipt of DSP, this would allay some fears. However, there is still grave concern regarding the garnishing of DSP when a person either works more than the allowed 30 hours or earns more than the allocated meagre amount of \$76.00 per week. For many people this would not equate to their costs incurred in getting to their workplace.

**QAI recommends that the garnishment of DSP only be applied once a person earns more than they would if they did not work at all ie: the equivalent of the DSP, using the lowest tax rate of 9.7% as per individual income tax rates for residents.** Company tax is only charged at 30% and it is outrageous to garnish the pension support for people with disability who attempt to supplement meagre pensions with wages. There is little point in working only to have the rewards of income removed or diminished by the garnishment of support pension.

### **Acknowledged Improvements**

The removal of the capping of Disability Employment Services finally allows access to people who require them.

DES no longer required to provide service to referees for ‘skills employability programs’ and allows them to focus on their core client base.

JCA does not now prompt a review of the Disability Support Pension (DSP). Students can now directly register with DES for support rather than via Centrelink.

People with disability may now work up to 30 hours without prompting a review of the DSP.

All people with disability who are receiving DSP are eligible for New Apprenticeship Wage Support Schemes.

QAI will welcome changes to legislation and practices that support fair work and pay conditions for people with disabilities and that reflect Australia's move towards full implementation of the Convention of the Rights for People with Disability.