

Friday 8 March 2024

The Hon Amanda Rishworth MP
Minister for Families and Social Services
PO Box 6022
Parliament House
Canberra ACT 2600

RE: Disability Employment Services (DES) Reforms in the Light of Recent Reviews

Dear Minister

Thank you for the opportunity to provide a submission to your consultation on how the new DES program might take account of the recommendations made by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (DRC); the Independent Review into the National Disability Insurance Scheme (NDIS Review); and the House Select Committee on Workforce Australia Employment Services (HSCWAS). as solicited on the Department of Social Service's (DSS's) *Engage* website¹.

Skin in the game

Physical Disability Australia's (PDA's) principal stakeholders and our members are people with disability with physical impairments, and a key facet of their lived experience is that they have struggled to secure paid employment commensurate with their experience, skills and ambitions because employers have not recognised their attributes and were unwilling to invest in the 'reasonable adjustments' that would facilitated inclusion in their workplaces.

In their efforts to gain employment, some of our members have been DES participants and have related their frustrations with the processes they went through and their providers' failure to identify employment opportunities that matched their skills and aspirations. Most of these decided to leave their DES providers and enrol with Australia's 'mainstream' *Workforce Australia Services*.

This document, and the two previous submissions PDA made to the consultations on the *New Disability Employment Support Model*² and the draft *Quality Framework for the Disability Employment Services Program*³ are informed by the job seeking and job keeping experiences of our members.

Segregation

In our earlier submissions, PDA argued, and here continues to argue, that just as Australia's education, health, housing and transport services are legally required to become inclusive and put in place measures to accommodate **all** service users, employment services should be held to this same community expectation⁴.

¹ <https://engage.dss.gov.au/des-reforms-recent-reviews-and-recommendations-relating-to-disability-employment/>

² <https://engage.dss.gov.au/national-disability-employment-strategy/>

³ <https://engage.dss.gov.au/a-draft-quality-framework-for-the-disability-employment-services-program/>

⁴ <https://engage.dss.gov.au/wp-content/uploads/2022/02/PDA-Response-to-Employment-Consultation-Paper-01Feb22.pdf> and <https://www.pda.org.au/wp-content/uploads/2023/11/PDA-DES-Quality-Framework-Submission-13Mar23.pdf>

Our view is **no** jobseekers with disability should be funnelled towards DES providers who are collectively known to be ineffectual if not a complete waste of their participants' time⁵.

We are disappointed that the Australian Government did not take the opportunity to adopt our twice made recommendation and require all its *Workforce Australia Services* providers to assist jobseekers with disability, as should be required under section 21 "Employment Agencies" of the *Disability Discrimination Act 1992*⁶, and that the DES program be abandoned.

Given the apparent commitment of the Australian Government to sustain a segregated employment service, what follows are PDA's considered thoughts regarding the reform options under consideration and answers to the related questions as presented at the 27 February, 2024 Disability Representative Organisations (DRO) Forum and DSS facilitated public webinars⁷.

Eligibility

PDA is of the view that DES resources should be available to all jobseekers with disability who wish to use them regardless of their deemed 'hours per week' paid employment capacity on an as-requested basis.

Workplaces today are often not places at all, and working hours are often completely flexible. If jobseekers with disability are only 'capable' of working less than 8 hours per week and/or not 'capable' of working every week, then DES providers should be expected to have the expertise necessary to find these would-be participants employment opportunities that fit these needs.

- Quality employment for this cohort would have the same characteristics as it would for every other working Australian. It would: be in open accordance with the *Fair Work Act 2009*⁸; satisfy their aspirational needs for contribution to, and recognition from, society; and provide remuneration and superannuation proportionate to community expectations for the quality and quantity of work being done.
- Key features of this service for this cohort would, again, have the same characteristics as they would for every other Australian jobseeker. The employment service provider (DES or *Workforce Australia Services*) would: help them develop the resources needed to get their desired employment outcomes; and facilitate their applications for appropriate employment opportunities as they arise.
- As PDA has no experience in assisting any jobseekers directly, we suppose that the required expertise to assist this cohort of jobseeker would, again, be the same as they would be for any employment service. Staff would be able to:
 - Identify jobseekers' employment options;
 - Determine the resources jobseekers will need to secure appropriate employment;
 - Refer participants wanting new skills to vocational education and training providers; and

⁵ <https://disability.royalcommission.gov.au/news-and-media/media-releases/not-recipe-success-creaming-parking-and-churn-disability-employment-services>

⁶ <https://www.legislation.gov.au/C2004A04426/latest/text>

⁷ <https://engage.dss.gov.au/des-reforms-recent-reviews-and-recommendations-relating-to-disability-employment/consultation-on-disability-employment-related-recommendations-webinars/>

⁸ <https://www.legislation.gov.au/C2009A00028/latest/text>

- Be able to successfully case manage participants' transition from jobseeker to secure employee within timeframe and budget expectations.
- PDA believes that employment provides its own incentives. People with disability who have it are socially and financially better off, and they are relieved of the psychological stress associated with claiming and securing income support payments from *Services Australia*. If these intrinsic incentives do not motivate jobseekers with less than 8 hours per week deemed work capacity to seek DES support (as ineffectual as it may be), then their choices should be respected.

Incentives may encourage engagement with DES providers, and these may build jobseeker motivation, but the effects of incentives will only last for as long as they are provided if the benefits of having less than 8 hours per week employment do not outweigh the costs of sustaining it. As such, PDA does not recommend providing formally ineligible jobseekers with incentives to become DES participants.

Were members of this cohort to secure appropriate employment under new DES program settings, we would expect appropriate supports to be provided by the NDIS⁹ or the Australian Government's *JobAccess* program¹⁰ as applicable.

- PDA can see no unintended consequences to offering DES support (as ineffectual as it may be) to jobseekers with a deemed 'capacity' of less than 8 hours per week provided participation is optional and consequence free.

Similarly, we recommend the 2-year limit on DES participation be rescinded if participants wish to continue receiving this support (as ineffectual as it may be), just as *Workforce Australia Services* participants receive supports indefinitely¹¹.

Service Structure

As PDA understands the current service structure, there is very little difference between the Disability Management Service (DMS) and Employment Service Support (ESS) divisions of the DES program:

DMS is for jobseekers with disability, injury or health condition who need assistance to find a job and occasional support in the workplace to keep a job... [and] ESS provides assistance to jobseekers with permanent disability to find a job and who need regular, ongoing support in the workplace to keep a job¹².

All jobseekers with disability, regardless of the level of workplace support they require, have faced systemic discrimination in Australia's employment market, and each should be entitled to individualised DES supports (however ineffectual they may be) appropriate to their impairments and situational employment preferences.

- As far as we can see, there is no reason to retain DMS and ESS distinctions. All jobseekers with disability should be recognised as individuals and not cohort members by DES (and all other Australian Government funded disability support) providers.
- PDA can see no unintended consequences for this recommended reform.

⁹ <https://www.ndis.gov.au/understanding/supports-funded-ndis/supports-employment>

¹⁰ <https://www.jobaccess.gov.au/node/28181>

¹¹ Workforce Australia Services users are more or less compelled to participate in their providers' programs until they find appropriate employment in order to secure continuing income support payments (<https://www.workforceaustralia.gov.au/individuals/coaching/how-to/workforce-australia>).

¹² <https://www.jobaccess.gov.au/people-with-disability/about-des>

PDA would also be happy to see DES support offerings be expanded from ‘full service’ to flexible and tailored offerings based on participants’ preferences and circumstances. Having alternate economic activity pathways for participants would reduce stress for jobseekers with disability who might not want any of the paid employment situations potentially available to them at any given time. That being said, referral to Commonwealth, jurisdictional and community agencies with expertise in volunteer and educational placement would be more cost-effective than developing equivalent expertise in DES providers.

- As suggested above, this type of service would benefit jobseekers with disability not enamoured with the paid employment opportunities available to them, but who still want to contribute to their community’s economy.
- If DES provides delivered expanded service offerings on a referral basis, as suggested above, providers (and the Australian Government) would realise reduced costs through not having to provide all participants with an obligatory ‘full service’.
- PDA can see no unintended consequences for this recommended reform if it was implemented through a referral-based process as suggested above.

Mutual Obligations

PDA finds the Australian Government’s Social Policy Law settings that imposes Mutual Obligation Requirements (MORs) on many jobseekers in receipt of *Jobseeker*, Youth Allowance and parenting payments¹³ to be odious and unconscionable. Compelling people who, for one reason or another, rely on these payments, to ‘sit-up-and-beg’ lest they have their very meagre stipends suspended or cancelled foists unjustifiable psychological stress and economic hardship on those who can least endure it¹⁴. The MOR rules also impose unnecessary costs to Australia’s social services budget¹⁵, and seem to serve only political purposes¹⁶.

The fact that similarly supported people with disability are also compelled to comply with MORs rules whilst, at the same time, contend with an employment market that continues to discriminate against them¹⁷, should be a cause for deep shame to the Australian governments that conceived of and sustain this callous practice.

Instead of simply providing “greater flexibility and tailoring of mutual obligations, with a focus on [getting more DES customers] participating meaningfully in services”¹⁸, PDA recommends in the strongest possible terms that the MOR policy that **punishes** certain DES participants (and their *Workforce Australia Services* counterparts) be revoked immediately.

As noted above, appropriate paid employment provides its own incentives. If DES participants see that completing their MOR inspired workplan activities will improve their chances of securing paid employment, then they will complete them. PDA therefore recommends that DSS adopt an opt-in workplan activity policy that utilises the allure of paid employment and clear linkage of this goal to participant work plan activities to drive effective engagement. PDA recommends the Australian

¹³ <https://guides.dss.gov.au/social-security-guide/3/11>

¹⁴ <https://www.acoss.org.au/mutual-obligation-snapshot-payment-suspension/>

¹⁵ PDA has been unable to find a precise 2023-24 Budget allocation for these costs, however the *2023-24 Mid-Year Fiscal Outlook* suggested the Australian Government had been paying employment services over \$77 million per year to implement its MOR policy on its behalf (https://budget.gov.au/content/myefo/download/08_App_A.docx p. 237).

¹⁶ <https://humanrights.gov.au/our-work/projects/social-justice-report-2001-chapter-2-mutual-obligation-welfare-reform-and#obl>

¹⁷ <https://humanrights.gov.au/sites/default/files/document/publication/discussion-paper-disability.pdf>

¹⁸ <https://engage.dss.gov.au/wp-content/uploads/2024/02/webinar-slides-february-2024.pdf>

government replace the MOR settings of Social Policy Law with an opt-in work plan activity alternative as a matter of the highest priority.

- ✓ If the punitive MOR provisions were to be revoked and replaced with opt-in, outcome-oriented guidelines, participants would be self-motivated to effectively engage in the paid employment focused activities in their work plans, and all the more so if the activities were tailored to each participant's circumstances.
- ✗ If, on the other hand, the MOR provisions were to be retained, participant benefit from engagement in DSS provider endorsed activities will be hard to quantify regardless of the tailoring for meaningfulness undertaken. There will be no way to differentiate between: those who engage in work plan activities because they see them as being stepping stones to appropriate paid employment; and those who engage in workplan activities for fear of having the income support payments suspended or cancelled.
- ✓ PDA can see no negative consequences to allowing DES providers greater latitude in determining specific activities to include in participants' work plans... provided the selected activities are evidence-backed with regard to helping participants fulfil their paid employment goals.
- ✗ Alternately, the negative consequences of allowing DES providers to continue compelling participants to engage in a narrower and possibly arbitrarily chosen sets of work plan activities would be the same as those imposed currently. Many participants will meet their MORs because they do not want to risk having their income support payments suspended or cancelled regardless of any intrinsic benefits the activities might bestow; and those who fail to meet their MORs will continue experiences psychological stress and economic hardship from having their income support payments suspended or cancelled.
- ✓ Under a MOR compulsion free DES program, participant failure or refusal to engage effectively in work plan activities would be a result there being no clear connection between the activity and their paid employment goals. If participant activity completion rates are used in DES provider quality assessments, this will drive them to do a better job in tailoring activities to suit their customers' needs.
- Under the current MOR settings, participant failure or refusal to engage effectively in work plan activities would be a result of them being more onerous than the loss of income support payments that might result. In these circumstances, DES providers may well be motivated to do a better job in tailoring activities to suit their customers' needs, but afflicted participants' engagement effectiveness will still hinge on their assessment of which alternative – effective engagement or ineffective engagement / non-engagement – is more bearable.

The governing Australian Labor Party's (ALP's) *2023 National Platform*¹⁹, ratified at its 2023 Annual Conference, claims that its Senators and Members of Parliament "recognise that current aspects of the mutual obligations system can be punitive, cause stress and anxiety, and be a barrier to attaining employment", and are committed to "reviewing the nature and extent of mutual obligations" (p. 23). PDA looks forward to seeing the realisation of a respectful and jobseeker-centred employment services system for *Workforce Australia Services* and DES participants.

We hope future ALP National Platforms (and their opposition parties' social policy position statements) drive the Australian Government to reduce stress and anxiety further by removing MORs from Social Policy Law altogether²⁰.

Ongoing Support

As with our support for relaxed DES eligibility criteria, PDA also supports a similar relaxation of ongoing support criteria. All DES participants should have as-required access to any DES / *JobAccess* / *Work Assist*²¹ resources they might reasonably benefit from... just as employment-seeking and employed NDIS participants have access to immediate and enduring reasonable and necessary supports associated with their goals in the area of 'finding, keeping and changing jobs'²².

To achieve this equity-focused outcome, PDA recommends DSS implement a functionally equivalent the National Disability Insurance Agency's (NDIA's) 'Employment Support' guidelines²³ This would provide reassurance to DES participants that they will have flexible access the ongoing supports they need to thrive in their workplaces.

- In line with the above, PDA sees no problem with paying ongoing support providers (DES or otherwise) on a per item or hour basis. Additionally, we recommend that outcome payments do not signify the end of support provision. The NDIA understands NDIS participants are going to need supports for the remainder of their lives. DSS should understand that DES participants are similarly likely to need workplace supports for the remainder of their careers.
- DES participants will clearly benefit from having their ongoing support needs funded at the commencement of their employment and will benefit further if their provision is secure for as long as supports are required. This will increase the administrative burden of the DES providers delivering them, however the receipt of funding for the ongoing supports they provide would provide the necessary recompense.
- PDA can see no unintended consequences for this recommended reform if ongoing support for DES participants who gain paid employment was funded on an as-required entitlement basis.

Conclusion and Inquiry Findings Beyond the Narrow Focus of this Consultation

As the number of footnotes in this document suggest, we have undertaken a lot of research to produce this submission. This submission covers a select number of the DRC, NDIS Review, and SHCWAS findings as they were presented to us in the consultation resources, and we hope our detailed thoughts and recommendations related to these are seriously considered by those who will be responsible for designing and commissioning the new DES system. However, PDA is disappointed that this consultation did not solicit community consideration of **all** the noted inquiries disability employment recommendations.

Minister, we implore you to direct DSS to gauge community support for **the overlooked headline recommendations** detailed below and, with your Cabinet

²⁰ The 2023 ALP National Platform section titled 'A fair social security system' states "Labor is committed to a social security system that keeps people out of poverty, whether they are unemployed, working age, escaping family or domestic violence or in retirement (p. 67).

PDA contends that any implementation of MOR that might leads to unemployed Australians having their social security payments suspended or cancelled renders the commitment meaningless.

²¹ As outlined here (<https://www.jobaccess.gov.au/>) and here (<https://www.jobaccess.gov.au/people-with-disability/work-assist>).

²² <https://www.ndis.gov.au/participants/finding-keeping-and-changing-jobs>

²³ <https://ourguidelines.ndis.gov.au/understanding-supports/employment-supports>

colleagues, reconsider any decisions to reject them that might have been made, including the decision to retain a segregated DES program for jobseekers with disability.

The DRC's summary DES reform recommendations include that the new DES model:

- is developed using inclusive design principles and is co-designed with people with disability.²⁴

The NDIS Review's summary recommendation is:

That DSS and the NDIA should improve linkages between the NDIS, DES and related initiatives targeting improved employment outcomes for all people with disability, including NDIS participants.

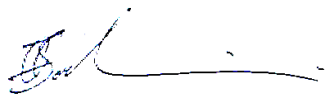
...It should include a joint action plan linking different elements of the ecosystem that contribute to improved employment outcomes for people with disability, including initiatives that build employee confidence and capability to employ people with disability...²⁵

The SHCWAS's final report, *Rebuilding Employment Services*²⁶, did not specifically refer to DES in its recommendations, but it was suggested that:

Over the longer term, DES should ultimately be integrated into the Commonwealth Employment Services [Workforce Australia Services] System (p. 131).

From PDA's perspective, **all** these overlooked recommendations have merit and none of them should be rejected before taking into account the support people with disability and their representative organisations may or may not have for them.

Your sincerely



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c.c. The Hon Bill Shorten MP, Minister for the NDIS and Government Services
The Hon Michael Sukkar MP, Shadow Minister for Social Services, the NDIS,
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About Us:

Physical Disability Australia (PDA) is a national peak membership-based representative organisation run by people with physical disability for people with physical disability. PDA was founded in 1995 and have over 1,200 members from all Australian States and Territories. Our purpose is to:

- Remove barriers through systematic advocacy to all levels of government to enable every Australian living with a physical disability opportunities to realise their full potential;
- Proactively embrace and promote difference and diversity for an inclusive society; and
- Actively promote of the rights, responsibilities, issues and participation of Australians with physical disability.

²⁴ <https://disability.royalcommission.gov.au/system/files/2023-11/Final%20report%20-%20Executive%20Summary%2C%20Our%20vision%20for%20an%20inclusive%20Australia%20and%20Recommendations.pdf> p. 108

²⁵ <https://www.ndisreview.gov.au/sites/default/files/resource/download/working-together-ndis-review-final-report.pdf> p. 64

²⁶ https://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/RB000017/toc_pdf/RebuildingEmploymentServices.pdf