



Australian  
Human Rights  
Commission

# Next Steps in Supported Employment: Consultation on the way forward

Australian Human Rights Commission

Submission to Department of Social Services

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# 1 Introduction

## 1.1 The role of the Australian Human Rights Commission

The Australian Human Rights Commission (the Commission) welcomes the opportunity to provide a submission to the Department of Social Services' (DSS) consultation on *Next Steps in Supported Employment*.<sup>1</sup>

The Commission is Australia's National Human Rights Institution, established under the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act).<sup>2</sup> The Commission provides independent and impartial services, policy development and research to promote and protect human rights and fundamental freedoms in Australia.<sup>3</sup>

The Commission investigates and conciliates complaints of unlawful discrimination, including under the *Disability Discrimination Act 1992* (Cth). The Disability Discrimination Act makes it unlawful to discriminate on the basis of disability in employment and other areas of public life and requires reasonable adjustments to be provided so people with disability can participate in employment on an equal basis with others.<sup>4</sup> The Commission also has broad functions to promote compliance and understanding of the Disability Discrimination Act, led by the Disability Discrimination Commissioner.<sup>5</sup>

The mandate of the Disability Discrimination Commissioner includes promoting implementation of the standards and principles of Australia's human rights obligations, in particular the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD).

The Commission delivers *Equality at Work* (the second phase of the IncludeAbility project).<sup>6</sup> This project builds the capacity of employers to employ people with disability and pathways from segregated to open employment. The project has worked with supported employment providers to create positive employment outcomes for both people with disability and employers.

The Commission's position has been made clear in past submissions to both domestic and international bodies<sup>7</sup> and remains consistent: people with disability have a right to work in open employment, with equal pay, and without discrimination. This includes access to individualised support regardless of perceived productivity and support needs.

## 1.2 Note on terminology

The discussion paper refers to people requiring supported employment as people with 'high support needs'. In this submission, the Commission uses 'people facing greater barriers to employment', unless it is necessary to refer explicitly to support needs. This re-framing emphasises the impact of ableism which results in systemic inequality and discrimination and low expectations, rather than the individuals' support needs.

The use of the term 'supported employment' in the discussion paper refers to the disability employment program aimed at ensuring people with disability with high support needs receive extra support while they are at work. In this submission, unless referring specifically to the 'supported employment program', the Commission uses the term 'supported employment' to refer more broadly to supports that are required by people with disability to exercise their right to work on an equal basis with others. This reflects the terminology in the CRPD General Comment No. 8 (2022) on the right of persons with disabilities to work and employment.

## 2 Recommendations

The commission recommends:

**Recommendation 1: The Australian Government should commit to developing and implementing a National Inclusive Employment Roadmap. The roadmap should:**

- a) **Be underpinned by the standards and principles of the *Convention on the Rights of Persons with Disabilities*, including article 27.**
- b) **Be informed by the guidance provided under General Comment No. 8 by the Committee on the Rights of Persons with Disabilities.<sup>8</sup>**
- c) **Be co-designed with people with disability and their representative organisations and involve people with disability in governance processes to ensure accountability.**
- d) **Have time limited actions to transition away from segregated settings (ADEs) to the open labour market and to eliminate sub-minimum wages and ensure the application of labour rights in segregated employment settings during transition.<sup>9</sup>**

- e) Seek to address systemic and structural barriers to employment experienced by people with disability across both private and public sectors and broader policy areas.**

**Recommendation 2: A National Inclusive Employment Roadmap should include a comprehensive action plan with sufficient allocation of resources, explicit measurable targets and benchmarks and human rights indicators.**

**Recommendation 3: The Australian Government should implement specific measures and dedicated funding to increase employer demand, capability, and the development of inclusive, accessible workplace cultures that uphold the rights and meet the needs of employees with disability.**

**Recommendation 4: The Australian Government should urgently reform the *Disability Discrimination Act 1992 (Cth)*, as recommended by the Disability Royal Commission and the Australian Human Rights Commission.**

**Recommendation 5: Australian Disability Enterprises (ADEs) should be supported to transition into labour market intermediaries that deliver employment supports to both job seekers and employers exclusively within open employment settings.**

**Recommendation 6: The Australian Government ensure that reforms to supported employment are designed to complement and integrate with the broader disability employment service system.**

**Recommendation 7: The Australian Government establish a sustainable supported employment funding model that is commensurate with the level of support required to enable people with disability to obtain and maintain employment in open and inclusive settings. This model should:**

- a) Recognise the true cost of job customisation, workplace adjustments, and ongoing support**
- b) Provide adequate and flexible funding to service providers and employers to deliver these supports**
- c) Ensure that funding is not limited by rigid program boundaries (e.g. NDIS vs employment services) but instead reflects the holistic needs of the individual and is made universally available.**
- d) Be informed by evidence from pilot programs, and evaluations of the Structural Adjustment Fund and other grant-funded initiatives.**

**Recommendation 8: The Australian Government improve the NDIS system architecture to align funding structures to incentivise open employment pathways over segregated models, including:**

- a) Ensuring consistent and reliable access to employment supports in NDIS plans, including skill development and ongoing employment supports**
- b) Establishing mechanisms for rapid plan adjustments in response to changes in employment status or opportunities**
- c) Providing clear guidance and training to planners and providers on employment-related supports and their role in facilitating inclusive employment outcomes**

**Recommendation 9: The Australian Government publicly respond to the NDIS Review and implement recommendations to improve planning processes and coordination across employment and disability support systems.**

**Recommendation 10: All Australian governments strengthen their role as model employers by:**

- a) Expanding and resourcing disability employment strategies across public sector agencies with clear targets and accountability measures.**
- b) Embedding inclusive employment practices and programs, including affirmative measures, customised employment and career development opportunities**
- c) Leveraging public sector leadership to influence broader labour market reform through procurement, partnerships, and pilot programs.**

**Recommendation 11: A National Inclusive Employment Roadmap should be developed alongside, and aligned with, a rights-based National Roadmap to Inclusive Education.**

**Recommendation 12: National Roadmap to Inclusive Education should include actions to assist young people with disability to make informed and empowered choices about their employment pathways, including where and how they work.**

## 3 Human rights and supported employment

### 3.1 The right to work

The right to work on an equal basis with others is a fundamental universal human right recognised in international human rights treaties.<sup>10</sup> It forms an inseparable and inherent part of human dignity. Meaningful work and employment are related to the realisation of other human rights, such as adequate standard of living and physical and mental health and is critical to one's sense of identity and role within the community.

The United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) is the principal binding international instrument that guarantees the human rights of people with disability on an equal basis with others. Equality and non-discrimination is a general principle and standalone right protected by the CRPD.<sup>11</sup> CRPD Article 27 (work and employment) affirms the right of people with disability to work on an equal basis with others, including equal opportunity to gain a living by work freely chosen in a labour market, equal remuneration, and to a work environment that is open, inclusive and accessible.<sup>12</sup> As a party to the CRPD, Australia has agreed to protect these rights.

In *General Comment No. 8 (2022) on the right of persons with disabilities to work and employment* (General Comment No. 8), the United Nations Committee on the Rights of Persons with Disabilities (CRPD Committee) is clear that governments have an obligation to promote the right to supported employment in an open labour market.<sup>13</sup> It highlights that the obligation to provide supported employment is a key element of the requirement to provide reasonable accommodation (or adjustments) in the workplace,<sup>14</sup> and that 'programmes and financial support for the provision of personal assistance is critical to ensuring [the] right to work' for people with disability.<sup>15</sup>

The CRPD Committee has confirmed that segregated employment settings are inconsistent with the rights provided for under Article 27<sup>16</sup>, and that they have the potential to limit the rights of people with disability to 'choice, consent and freedom from coercion'.<sup>17</sup> The CRPD Committee has also stated that 'payment below the minimum wage on the basis of disability' is not justifiable under any circumstance,<sup>18</sup> and that State Parties should ensure that 'workplaces ... in the process of making the transition away from segregated employment are not exempt from paying equal remuneration for work of equal value'.<sup>19</sup>

The CRPD Committee has advised that Article 27 of the CRPD ‘implies an obligation on the part of States Parties to create an enabling and conducive environment for employment, including in the private sector’.<sup>20</sup>

Facilitating the transition away from segregated settings into the open labour market and eliminating policies that permit the payment of sub-minimum wages to people with disability are core obligations of article 27.<sup>21</sup>

A rights-based approach to supported employment negates the need to maintain segregated systems of employment designed exclusively for people with disability. The CRPD Committee urges State Parties to phase out segregated employment by adopting ‘concrete action plans, with resources, timeframes and monitoring mechanisms that ensure the transition from segregated employment to the open labour market’.<sup>22</sup>

### **3.2 Supported employment in Australia**

Australia has one of the lowest employment rates for people with disability in the OECD, with persistently low labour force participation rates of people with disability over three decades.<sup>23</sup> People with disability continue to be excluded from mainstream employment and segregated into supported employment settings designed exclusively for people with disability - Australian Disability Enterprises (ADE) - and paid sub-minimum wages under the Supported Wage System, based on productivity assessments.

These policies and programs are underpinned by ableism<sup>24</sup> which informs low expectations and negative attitudes towards people with disability and justifies differential treatment and exclusion. Ableism, like racism and sexism, permeates law, policy and practice and societal attitudes, and requires concerted efforts to actively dismantle and combat.

In its most recent Concluding Observations on Australia, the CRPD Committee expressed concerns about ‘[t]he low labour force participation of people with disability’ and ‘the ongoing segregation of people with disability employed through [ADEs] and the fact that such persons receive a sub-minimum wage’.<sup>25</sup> The CRPD Committee recommended:

- The government ensure ADEs operate in accordance with Article 27 and provide services to enable people with disability to transition into open, inclusive and accessible employment, with equal remuneration.<sup>26</sup>
- The government implement measures to address systemic and structural barriers to employment experienced by people with disability.<sup>27</sup>

Segregated employment and sub-minimum wages for people with disability are human rights concerns that are shared by the United Nations Committee on Economic, Social and Cultural Rights (CESCR Committee).<sup>28</sup>

The Commission acknowledges the significant work of the *Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability* (Disability Royal Commission), which examined the experiences of people with disability in both segregated and open employment. The Disability Royal Commission highlighted concerns with supported employment including limitations on the exercise of choice and control for people with disability working in ADEs, increased vulnerability to, and experiences of, violence, abuse, neglect and exploitation, and unfair treatment related to sub-minimum wages.<sup>29</sup>

While Royal Commissioners held differing views on the future of segregated employment, the Disability Royal Commission made many recommendations to improve employment inclusivity and accessibility.<sup>30</sup> The findings of the Disability Royal Commission and the evidence shared by people with disability should be the basis for determining the next steps in supported employment, grounded in the CRPD.

The CRPD allows for the progressive realisation of economic, social and cultural rights – such as the right to employment – but requires States to take expeditious and targeted action to reduce inequality, using the maximum available resources.<sup>31</sup>

Progressive realisation does not apply to the core minimum obligation to ensure non-discrimination and equal protection of employment.<sup>32</sup>

The Australian Government has made limited progress in reducing segregated employment in almost two decades despite recurrent recommendations highlighting the need to reform segregated and supported employment in line with human rights principles, including:

- the ratification of the CRPD in 2008
- the Full Bench of the Federal Court's decision in *Nojin v Commonwealth of Australia* (2012) that the use of the Business Services Wage Assessment Tool was unlawful indirect discrimination<sup>33</sup>
- the CRPD Committee's 2019 Concluding Observations and recommendations

- the Disability Royal Commission’s findings and recommendations in 2023.

To progressively realise the right to work for people with disability, urgent actions with explicit targets and benchmarks, and sufficient allocation of resources, are required. Maintaining segregated employment and subminimum wages is not an example of progressive realisation of the right to work.<sup>34</sup>

## **4 Developing a National Inclusive Employment Roadmap**

### **4.1 The role of a roadmap to realise the right to work and employment**

Question 4 of the Discussion paper seeks feedback on a roadmap to guide further reform in the supported employment sector. The Australian Government must develop a holistic plan that seeks to reorient Government-funded services towards supporting the employment of people with disability in the open labour market.

The Commission supports the tenor of recommendation 7.32 of the Disability Royal Commission that the Australia Government develops a National Inclusive Employment Roadmap to end segregated employment and eliminate subminimum wages for people with disability. This Roadmap will require specific steps to be taken that progressively reduce any inequality and that are done so in as expeditious manner as possible and within the maximum available resources.

The Disability Royal Commission’s findings illustrated how systemic issues hinder the ability of people with disability to exercise choice and control over where and how they work and who provides their support.<sup>35</sup> For some people with disability, segregated employment settings are their only option.

To meet its obligations under article 27 of the CRPD, Australia must take targeted action to transform its current labour market systems to ensure that all people with disability have access to freely chosen employment in open and inclusive environments.

This submission recommends the foundational aspects of a National Roadmap that promote inclusive, accessible, safe and healthy working environments,<sup>36</sup> ensure just and favourable conditions of work, and promote equality and non-discrimination in the workplace across both private and public sectors.

To achieve its objectives, a National Roadmap must also address broader systemic and structural barriers to employment. The Roadmap should involve coordinated efforts across government portfolios, acknowledging their interrelated nature with employment outcomes, such as:

- Social security reform to ensure people with disability do not lose the benefit of disability allowances when they start working and are not disincentivised from seeking employment, ensuring the system is responsive and flexible to individual circumstances and provides an adequate standard of living.<sup>37</sup>
- Addressing current issues with education to employment transitions by providing more supports for young people with disability to pursue careers in open employment.
- Reform to the Disability Discrimination Act to strengthen anti-discrimination protections, including via a positive duty to eliminate disability discrimination and to provide adjustments, and to support employers to understand their obligations.<sup>38</sup>

Section 5 of this submission explores specific actions to reform supported employment policy by increasing accessible, inclusive, and open employment opportunities. These actions will support the transition away from segregated employment.

## 4.2 CRPD Obligations

A National Roadmap must be co-designed with people with disability and meet CRPD obligations, meaning with the objectives to respect, protect and fulfil<sup>39</sup> the right to employment and work for people with disability.

- **Respect:** The Roadmap should include actions to reform or abolish any systems and policies that interfere with the enjoyment of the right to work and that deny or limit equal access on the basis of disability,<sup>40</sup> such as the Supported Wage System.
- **Protect:** The Roadmap should include measures to eliminate disability discrimination in employment across all sectors. This includes protecting people with disability from all forms of discrimination in employment (e.g. denial of reasonable adjustments) and adopting legislation, policies and programmes that explicitly recognise multiple and intersectional discrimination.<sup>41</sup>
- **Fulfil:** The Roadmap should include actions that facilitate,<sup>42</sup> provide<sup>43</sup> and promote<sup>44</sup> the right to employment for people with disability including adopting appropriate legislative, administrative, budgetary, judicial,

promotional and other measures towards ensuring work environments are open, inclusive and accessible.<sup>45</sup>

The standards and principles of the CRPD, such as those outlined in Article 3 (general principles),<sup>46</sup> should underpin the development and implementation of a National Roadmap and are integral to realising the above obligations.

**Recommendation 1: The Australian Government should commit to developing and implementing a National Inclusive Employment Roadmap. The roadmap should:**

- a) **Be underpinned by the standards and principles of the *Convention on the Rights of Persons with Disabilities*, including article 27.**
- b) **Be informed by the guidance provided under General Comment No. 8 by the Committee on the Rights of Persons with Disabilities.<sup>47</sup>**
- c) **Be co-designed with people with disability and their representative organisations and involve people with disability in governance processes to ensure accountability.**
- d) **Have time limited actions to transition away from segregated settings (ADEs) to the open labour market and to eliminate sub-minimum wages and ensure the application of labour rights in segregated employment settings during transition.<sup>48</sup>**
- e) **Seek to address systemic and structural barriers to employment experienced by people with disability across both private and public sectors and broader policy areas.**

**Recommendation 2: A National Inclusive Employment Roadmap should include a comprehensive action plan with sufficient allocation of resources, explicit measurable targets and benchmarks and human rights indicators.**

## **5 Increasing open and inclusive employment opportunities**

### **5.1 Increasing employer capacity and demand**

A National Inclusive Employment Roadmap should include funding and policy to support hiring people with disability facing greater barriers to employment and to challenge ableist employer attitudes. Effective employment policy for people with disability must address both supply and demand. While current government

initiatives (such as Disability Employment Services, and Information, Linkages and Capacity Building grant programs) largely focus on improving job seeker readiness and qualifications, the Disability Royal Commission highlighted how pervasive negative attitudes and low expectations among employers had the most significant impact on the employment and life outcomes for people with disability.<sup>49</sup>

Similarly, the evaluation of the first phase of the Commission's *Equality at Work* project (formerly IncludeAbility) found that 'the biggest barrier for a person with disability is low expectations of the employer'.<sup>50</sup> The evaluation highlighted that a general lack of awareness about disability and lack of contact with people with disability frequently acts as drivers of negative attitudes about their employment potential.<sup>51</sup>

The Disability Royal Commission heard that some people with disability who had worked in both ADEs and open employment chose to return to ADEs, despite lower wages received, because of the harassment, discrimination and social isolation they experienced in open employment.<sup>52</sup>

Segregated employment reduces the imperative for employers and governments to eliminate workplace discrimination against people with disability and reinforces structural and cultural barriers in the workplace. As a result, many employers across industries lack the knowledge, experience, and willingness to offer meaningful and safe work to people with higher or ongoing support needs.

There are a range of evidence-based practices that enable mainstream workplaces to offer inclusive and accessible employment for people with disability.<sup>53</sup> These include on-the-job training, flexible recruitment, customised job design, ongoing support and workplace cultural change.

**Recommendation 3: The Australian Government should implement specific measures and dedicated funding to increase employer demand, capability, and the development of inclusive, accessible workplace cultures that uphold the rights and meet the needs of employees with disability.**

Both the Disability Royal Commission and the Commission recommend reform to the Disability Discrimination Act to strengthen workplaces<sup>54</sup> by introducing a positive duty to eliminate disability discrimination and to provide adjustments. The Government should prioritise its commitment to review the Disability Discrimination Act as a necessary component of supported employment reform.

**Recommendation 4: The Australian Government should urgently reform the *Disability Discrimination Act 1992 (Cth)*, as recommended by the Disability Royal Commission and the Australian Human Rights Commission.**

**Success Story: *Equality at Work* – phase two of the IncludeAbility project.**

The Commission's *Equality at Work* project (formerly IncludeAbility) is a national initiative that aims to fulfil the right of people with disability to employment on an equal basis with others. Since 2020, the project has worked with proactive employers to pilot inclusive employment models and build organisational capacity to recruit and retain people with disability.

The initiative is co-designed with people with disability and leverages their expertise to inform employer practices and build inclusive workplace cultures. All pilot employment opportunities are in open employment and offer competitive wages that are at or above the national minimum wage.

The Commission provides tailored support to participating employers, drawing on its statutory expertise in human rights and its experience in conciliating disability discrimination complaints. This support includes training, guidance on inclusive recruitment and workplace adjustments. The pilots also establish communities of practice, enabling employers to share insights and build sector-wide capability.

These pilots offer a practical prototype for addressing the barriers people with disability face accessing equal employment opportunities. They equip organisations to assess and improve their policies, practices and processes to uphold the rights of their employees with disability.

## **5.2 Role of service providers**

In response to Question 6 of the Discussion Paper, the Commission acknowledges that workplaces providing specialised employment opportunities have historically played a role in supporting people with disability, particularly those facing greater employment barriers. However, the Commission advocates for a future in which these services evolve to operate exclusively within open and inclusive employment settings.

The Commission recommends that ADEs be supported to transform into labour market intermediaries that deliver employment supports to both job seekers and employers in the open labour market, with dedicated funding and resources to deliver these services.

A recent survey of supported employment providers found that many are still exploring how to offer alternative employment pathways. When asked if they support employees to pursue mainstream employment goals, 20% said no with

no plans to do so, while another 27% said no but intend to in the future, highlighting a growing interest in expanding services to build on employees' goals and skills.<sup>55</sup>

Many ADEs are already evolving their services with support from the Supported Employment Structural Adjustment Fund and exploring innovative methods to job development, such as customised employment.<sup>56</sup> These supports must be decoupled from segregated settings and embedded in the open labour market.

The transition aligns with international best practice, such as the supported employment model implemented in the UK, which delivers individualised, on-the-job support in open and inclusive settings.<sup>57</sup> It also reflects Australia's obligations under the Convention on the Rights of Persons with Disabilities, particularly Article 27, which affirms the right to work on an equal basis with others.

**Recommendation 5: Australian Disability Enterprises (ADEs) should be supported to transition into labour market intermediaries that deliver employment supports to both job seekers and employers exclusively within open employment settings.**

Employment policies and programs must prioritise supported employment pathways, including self-employment and vocational training.<sup>58</sup> The Australian Government must provide targeted investment in services that facilitate job seeker choice and control, deliver tailored and sustained support in open employment,<sup>59</sup> and seek to build employer capability to meet obligations.

While ADEs are a key stakeholder in this transition, other service providers also play a critical role in delivering employment supports in open settings. It is essential that reforms to supported employment consider the role of, and co-exist with, established programs. These include:

- Inclusive Employment Australia, the new disability employment program commencing late 2025, which will offer customised, person-centred support to people with disability
- The Centre for Inclusive Employment, which will provide evidence-based guidance and training to employment service providers across programs such as Workforce Australia, the Community Development Program and the NDIS.
- NDIS-funded individualised personal and employment supports, including those that are designed to facilitate transitions to open employment.

- Social enterprises offering open employment opportunities designed to build employment skills aligned with individual's goals and interests.
- Job Access which plays a vital role in connecting employers with resources, funding (such as the Employment Assistance Fund), and expert advice to create inclusive workplaces.

Strategic reform across services will facilitate continuity of support, alignment of employment pathways, avoid duplication, and enable a cohesive and coordinated approach to inclusive employment.

The Commission also notes the value of employer-focused pilots, such as the Tourism Local Navigators Pilot, the Career Pathways Pilot and other grant funded employment programs and initiatives, including the Commission's *Equality at Work* project. These pilots demonstrate the potential for mainstream employers to become more inclusive and confident in hiring people with disability and should be scaled and embedded into broader employment reform efforts.

**Recommendation 6: The Australian Government ensure that reforms to supported employment are designed to complement and integrate with the broader disability employment service system.**

**Success Story 2: *Equality at Work* (IncludeAbility) Perth pilot**

The IncludeAbility Perth Pilot Employment Program was a collaborative initiative between the Commission, Woolworths, and Good Sammy (ADE). It was designed to explore new pathways for employing young people with intellectual or cognitive disability in open employment.

Fifteen individuals employed at Good Sammy were offered roles in Woolworths stores across Perth, working eight hours per week for twelve weeks at full award wages.

Good Sammy facilitated the job customisation process, ensuring that each participant's interests and abilities were matched with suitable tasks at Woolworths. This approach required rethinking job design and challenging conventional assumptions about role requirements. Throughout the pilot, Good Sammy, alongside the Commission, provided intensive wraparound support to both the employees and Woolworths managers. This included ongoing guidance, problem-solving, and disability rights training, which helped create a more inclusive and supportive work environment.

At the end of the pilot, twelve of the fifteen participants were offered ongoing roles with Woolworths, demonstrating the effectiveness of the model. The pilot demonstrated how ADEs can undertake an intermediary role to support employers and employees to transition to open employment. The evaluation highlighted the valuable expertise of ADEs, and the level of support required for success.

### 5.3 Funding

Findings from the IncludeAbility evaluation highlight the resource-intensive nature of successful inclusive employment models. In the IncludeAbility Perth Pilot, the level of job customisation, workplace adjustments and ongoing supports required a substantial investment of human and organisational resources by Woolworths, Good Sammy and the Commission.

This level of intensive and highly adaptive employee and organisational support is beyond what most employers and employment service providers deliver within their existing business models.<sup>60</sup>

This emphasises the need for a clear and sustainable policy response to address:

- Who bears the cost of providing necessary levels of adjustment and support, including clarity around supported employment pathways
- How funding is structured to enable inclusive employment at scale
- What mechanics are needed to ensure that employers – particularly small and medium enterprises, can access the resources to enable employment.<sup>61</sup>

Funding must be adequate and flexible to ensure the sustainability of employment supports across all stages of the employment journey.

**Recommendation 7: The Australian Government establish a sustainable supported employment funding model that is commensurate with the level of support required to enable people with disability to obtain and maintain employment in open and inclusive settings. This model should:**

- a) Recognise the true cost of job customisation, workplace adjustments, and ongoing support**
- b) Provide adequate and flexible funding to service providers and employers to deliver these supports**

- c) Ensure that funding is not limited by rigid program boundaries (e.g. NDIS vs employment services) but instead reflects the holistic needs of the individual and is made universally available.**
- d) Be informed by evidence from pilot programs, and evaluations of the Structural Adjustment Fund and other grant-funded initiatives.**

## **5.4 Improve NDIS system architecture to facilitate open employment for NDIS participants.**

The National Disability Insurance Scheme (NDIS) is a critical mechanism for supporting people with disability to pursue their employment goals. However, its current system architecture presents persistent barriers that limit its effectiveness in facilitating transitions to open employment, particularly for people facing greater employment barriers.

Employees working in segregated employment are primarily NDIS participants: 28% of NDIS participants aged 15 and over who had a paid job were working in an ADE.<sup>62</sup>

The NDIS was designed to support people in segregated employment to transition into open, mainstream workplaces. However, the Disability Royal Commission found that persistent systemic barriers in the NDIS, such as inconsistent access to employment supports, limited provider capacity and knowledge, and complex planning processes, continue to prevent this vision from being realised in practice.<sup>63</sup>

The structure of NDIS funding itself presents systemic issues. Open employment supports in participant plans are often inconsistent, inflexible and subject to change at each review, making it difficult for individuals to rely on ongoing assistance. Participants who successfully gain open employment may see their funding reduced, limiting access to the supports that enable employment to be sustained.<sup>64</sup> In contrast, NDIS funding for segregated employment services tends to be more stable and predictable making it easier for providers to plan and deliver services.

This disparity not only undermines the NDIS' original intent to promote inclusion and independence but also creates an incentive structure that favours segregated employment models. It disincentivises providers from adopting more flexible, person-centred models like customised employment, as the lack of consistent funding streams makes these approaches difficult to sustain.<sup>65</sup>

The IncludeAbility Perth Pilot illustrated these challenges. Good Sammy, the participating ADE, was unable to draw on NDIS plan funding to support pilot participants working in roles in Woolworths due to the rapid turnaround time for delivering the pilot. Individual's NDIS plans could not be reviewed in time to reflect their new employment circumstances. Good Sammy noted that to be effective, future initiatives would require the National Disability Insurance Agency to be able to respond quickly to a change in circumstance (such as starting employment) and provide the necessary funds for individualised support across all stages of the employment journey, including recruitment, onboarding and ongoing employment support.<sup>66</sup>

Without sustained and responsive support, NDIS participants are at risk of losing opportunities in open employment due to unmet needs in skill development, role customisation and on-the-job support. This reinforces the gap in options for ongoing support in open employment and limits the capacity of the NDIS to deliver on its promise of inclusion and economic participation.

The Independent Review of the NDIS (NDIS Review) called for the development of a unified system of support for people with disability.<sup>67</sup> The Commission supports Action 1.7 which seeks stronger links between the NDIS, Disability Employment Services and related initiatives to improve employment outcomes.<sup>68</sup> The Government should prioritise this as an essential element of supported employment reform.

**Recommendation 8: The Australian Government improve the NDIS system architecture to align funding structures to incentivise open employment pathways over segregated models, including:**

- a) Ensuring consistent and reliable access to employment supports in NDIS plans, including skill development and ongoing employment supports**
- b) Establishing mechanisms for rapid plan adjustments in response to changes in employment status or opportunities**
- c) Providing clear guidance and training to planners and providers on employment-related supports and their role in facilitating inclusive employment outcomes**

**Recommendation 9: The Australian Government publicly respond to the NDIS Review and implement recommendations to improve planning processes and coordination across employment and disability support systems.**

## 5.5 The public service should lead the way

The public service has a unique responsibility to lead by example as a model employer that reflects the diversity of the community it serves.<sup>69</sup> Federal, state, and territory governments should take proactive steps to increase employment opportunities for people with disability, particularly those who face greater barriers to employment such as people with intellectual and cognitive disability.

As large, structured employers with significant influence over workplace culture and policy, public sector agencies are well-positioned to demonstrate best practice in disability employment and set benchmarks for other sectors to follow.

The Disability Royal Commission recommended that public sector agencies adopt disability employment targets across all levels, including specific targets for new-hires and people with intellectual disability and cognitive disability.<sup>70</sup> To ensure these targets are meaningful and achievable, they must be supported by initiatives that improve accessibility, organisational culture, and inclusion.

A programmatic approach is recommended whereby governments develop disability employment strategies that include tailored recruitment and retention initiatives with transparent reporting and accountability measures.<sup>71</sup> Examples include affirmative measures, as outlined in the Australian Human Rights Commission's *Targeted Recruitment Guidelines*,<sup>72</sup> or the establishment of designated intake streams such as the Victorian Government's Graduate Program Disability Stream and Youth Employment Service Disability Stream.

Programs could also implement work-based learning approaches that support on the job training as opposed to pre-work training. These approaches provide structured pathways into public sector employment and help address systemic barriers to inclusion.<sup>73</sup>

As required by Article 27(1)(e) of the CRPD, initiatives must also create and promote opportunities for career advancement for people with disability.<sup>74</sup>

These programs should be co-designed and implemented in conjunction with people with disability and their representative bodies.

The Commission is aware that the Australian Public Service Commission is implementing recommendations made by the Disability Royal Commission, including via co-design processes. This is a positive step that requires ongoing commitment.

**Recommendation 10: All Australian governments strengthen their role as model employers by:**

- a) **Expanding and resourcing disability employment strategies across public sector agencies with clear targets and accountability measures.**
- b) **Embedding inclusive employment practices and programs, including affirmative measures, customised employment and career development opportunities**
- c) **Leveraging public sector leadership to influence broader labour market reform through procurement, partnerships, and pilot programs.**

## **5.6 Greater focus on transitions from education to employment**

A National Inclusive Employment Roadmap must be developed in parallel with, and aligned to, a National Roadmap to Inclusive Education, as outlined in recommendations 7.13 and 7.14 of the Disability Royal Commission.<sup>75</sup> This alignment is critical to dismantling the cycle of segregation that begins in education and continues into employment for people with disability.

It is well established that early intervention in career development has the greatest impact on long-term employment outcomes.<sup>76</sup> Yet, current systems are failing to support young people with disability to transition successfully into open employment. The Disability Royal Commission heard extensive evidence that low societal expectations begin early in life and have a corrosive effect on young people's aspirations and opportunities,<sup>77</sup> and identified a strong correlation between segregated schooling and subsequent segregation in employment.<sup>78</sup> This segregation contributes to exclusion from career planning and work experience and default referrals to ADEs rather than support to pursue inclusive, meaningful employment in an open labour market.<sup>79</sup> Supports for career planning conversations, work experience and training must begin during school years and continue into adulthood.

The National Roadmap to Inclusive Employment must be designed in tandem with inclusive education reforms that uphold the right of people with disability to education on an equal basis with others.

**Recommendation 11: A National Inclusive Employment Roadmap should be developed alongside, and aligned with, a rights-based National Roadmap to Inclusive Education.**

**Recommendation 12: National Roadmap to Inclusive Education should include actions to assist young people with disability to make informed and empowered choices about their employment pathways, including where and how they work.**

<sup>1</sup> See Department of Social Services, 'Next Steps in Supported Employment: consultation on the way forward' (webpage) <<https://engage.dss.gov.au/next-steps-in-supported-employment-consultation-on-the-way-forward/>>.

<sup>2</sup> *Australian Human Rights Commission Act 1986* (Cth) s 7.

<sup>3</sup> *Ibid* s 11(1)(g).

<sup>4</sup> *Disability Discrimination Act 1992* (Cth) ss 3, 5, 6, 15-21B.

<sup>5</sup> *Ibid* s 67.

<sup>6</sup> See Australian Human Rights Commission, 'IncludeAbility – Equality at Work' (Web Page, 2025) <<https://humanrights.gov.au/our-work/disability-rights/includeability-equality-work>>.

<sup>7</sup> Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (Final Report, May 2016) <<https://humanrights.gov.au/our-work/disability-rights/publications/willing-work-national-inquiry-employment-discrimination>>; Australian Human Rights Commission submission to the Special Rapporteur on Contemporary Forms of Slavery, Tomoya Obokata, *Call for input on country visit to Australia* (15 July 2024) 8-9 [28]-[41] <<https://humanrights.gov.au/our-work/legal/submission/call-input-country-visit-australia>>; Australian Human Rights Commission, submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Employment Issues Paper* (24 September 2020) <<https://humanrights.gov.au/our-work/legal/submission/people-disability-and-employment-2020>>; Australian Human Rights Commission submission to the United Nations Committee on the Rights of Persons with Disabilities, *Combined Second and Third Periodic review of Australia* (25 July 2019) [106]-[111] <[https://humanrights.gov.au/sites/default/files/int\\_crpd\\_nhs\\_au\\_35594\\_e.pdf](https://humanrights.gov.au/sites/default/files/int_crpd_nhs_au_35594_e.pdf)>.

<sup>8</sup> See United Nations Committee on the Rights of Persons with Disabilities, *General Comment No 8 (2022) on the right of persons with disabilities to work and employment*, UN Doc CRPD/C/GC/8 (7 October 2022) [64(b)] ('CRPD General Comment No. 8').

<sup>9</sup> *Ibid* [64(a)].

<sup>10</sup> The right to work guarantees all people the opportunity to earn a living through freely chosen work, free from discrimination, and with access to just and favourable working conditions, including equal pay for equal work: See *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) arts 23 and 24; *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, GA RES 2200A (XXI) (entered into force 3 January 1976) arts 6, 7 and 8(1); and the *United Nations International Covenant on Civil and Political Rights*, GA 2200A (XXI) (23 March 1976, adopted 16 December 1966) arts 8 and 22.

<sup>11</sup> *United Nations Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 3(b), art 5 ('CRPD').

<sup>12</sup> *Ibid* art 27.

<sup>13</sup> *CRPD General Comment No. 8* (n 8) [64(b)]

<sup>14</sup> *Ibid* [19]

<sup>15</sup> *Ibid* [74]; See generally *CRPD* (n 11) art 19(b).

<sup>16</sup> *CRPD General Comment No. 8* (n 8) [12], [15]; See also United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 5: Persons with disabilities*, UN Doc E/1995/22 (9 December 1994) [21].

- <sup>17</sup> *CRPD General Comment No. 8* (n 8) [53].
- <sup>18</sup> *Ibid* [26]; The United Nations Committee on Economic, Social and Cultural Rights has also commented that persons with disability ‘must not suffer wage discrimination due to a perceived reduced capacity of work’: United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 23 (2016) on the right to just and favourable conditions of work*, UN Doc E/C.12/GC/23 (27 April 2016) [47(c)]; See also, for example, CRPD Committee, *Concluding Observations on initial report of New Zealand*, UN Doc CRPD/C/NZL/CO/1 (31 October 2014) [57]-[58]; See also Ilias Bantekas et al, *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press, 2018) 778.
- <sup>19</sup> *CRPD General Comment No. 8* (n 8) [28].
- <sup>20</sup> *Groninger et al v Germany*, Communication No. 002/2010, UN Doc CRPD/C/D/2/2010 (7 July 2014) [6.2].
- <sup>21</sup> *CRPD General Comment No. 8* (n 8) [63(a)].
- <sup>22</sup> *Ibid* [82].
- <sup>23</sup> The labour force participation rate of people with disability aged 15-64 years has only seen an increase of 5.6% between 1993 and 2022 and remains significantly lower than that of people without disability (60.5% and 84.9% respectively). Latest data indicates that the employment rate of people with disability aged 15-64 years is 56.1% compared to 82.3% of people without disability: Australian Bureau of Statistics, *Disability and Labour Force Participation, 2012* (Catalogue No 4433.0.55.006, 5 February 2015) <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/4433.0.55.006>>; Australian Institute of Health and Welfare, ‘People with Disability in Australia’, *Labour Force Participation* (Web Report, 23 April 2024) <<https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/employment/labour-force-participation>>; Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia 2022: Summary of Findings* (4 July 2024) <<https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/latest-release>>.
- <sup>24</sup> Ableism is the foundation of the medical and charity models of disability and leads to ‘social prejudice, inequality and discrimination against [people] with [disability]’: *CRPD General Comment No. 8* (n 8) [3].
- <sup>25</sup> United Nations Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of Australia*, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019) [49(b)]-[49(c)].
- <sup>26</sup> United Nations Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of Australia*, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019) [50(b)].
- <sup>27</sup> *Ibid* [50(c)].
- <sup>28</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 5: Persons with disabilities*, UN Doc E/1995/22 (9 December 1994) [21].
- <sup>29</sup> *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 7(b) 470-90.
- <sup>30</sup> See *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 7(b).
- <sup>31</sup> See *CRPD* (n 11) art 4(2).
- <sup>32</sup> *CRPD General Comment No. 8* (n 8) [63]-[64]; see also United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 18: The Right to Work*, 35<sup>th</sup> sess, UN Doc E/C.12/GC/18 (6 February 2006) [31].
- <sup>33</sup> *Nojin v Commonwealth of Australia* (2012) 208 FCR 1, [15], [121].
- <sup>34</sup> *CRPD General Comment No. 8* (n 8) [15], [64(c)].
- <sup>35</sup> *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 7(b) 470-5.

- <sup>36</sup> See *CRPD General Comment No. 8* (n 8) 64(f).
- <sup>37</sup> See *Ibid* [63(c)], [78]; See also *Royal Commission into Violence, Abuse, Neglect and Exploitation Against People with Disability* (Final Report, September 2023) vol 7(b) 406-7, 469-70, 474-5, 495, 497 (including recommendation 7.28).
- <sup>38</sup> See *Royal Commission into Violence, Abuse, Neglect and Exploitation Against People with Disability* (Final Report, September 2023) vol 4, vol 7; Australian Human Rights Commission, *Free and Equal: A reform agenda for federal discrimination laws* (Position Paper, December 2021).
- <sup>39</sup> *CRPD General Comment No. 8* (n 8) [55]-[59].
- <sup>40</sup> *Ibid* [57].
- <sup>41</sup> *Ibid* [58].
- <sup>42</sup> See *Ibid* [60].
- <sup>43</sup> See *Ibid* [61].
- <sup>44</sup> See *Ibid* [62].
- <sup>45</sup> *Ibid* [59].
- <sup>46</sup> See *CRPD* (n 11) art 3.
- <sup>47</sup> See *CRPD General Comment No. 8* (n 8).
- <sup>48</sup> *Ibid* [64(a)].
- <sup>49</sup> See *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 7(b) 382-5, 486, 507-10.
- <sup>50</sup> Jenny Crosbies and Erin Wilson, Centre for Social Impact, *Evaluation of the Australian Human Rights Commission 'IncludeAbility' Project 2020-2023* (Key findings, September 2023) 14 <<https://humanrights.gov.au/our-work/disability-rights/includeability-evaluation>> ('IncludeAbility Evaluation 2020-2023')
- <sup>51</sup> *Ibid* 13-15.
- <sup>52</sup> See *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Overview of responses to the Employment Issues Paper* (Report, March 2021) 6 <<https://disability.royalcommission.gov.au/system/files/2022-03/Overview%20of%20responses%20to%20the%20Employment%20Issues%20paper.pdf>>; See also *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 7(b) 383, 469.
- <sup>53</sup> See Lucy Macali et al, Centre for Social Impact, *Growing intellectual disability employment in NSW government* (Final Report, May 2025) <<https://apo.org.au/sites/default/files/resource-files/2025-05/apo-nid330753.pdf>>; J Kregel et al, *A Comprehensive Review of Evidence-Based Employment Practices for Youth and Adults with Intellectual and Other Developmental Disabilities* (Final Report, 1 July 2020) <<https://engage.dss.gov.au/wp-content/uploads/2022/02/Jobsupport-Evidence-Based-Practices-Review-Final-11.pdf>>; Erin Wilson and Robert Campaign, *Inclusion Australia, Fostering employment for people with intellectual disability: the evidence to date* (Report, August 2020) <<https://www.everyonecanwork.org.au/wp-content/uploads/2020/11/Fostering-employment-for-people-with-intellectual-disability-Accessible.pdf>>.
- <sup>54</sup> Recommendations 4.23 – 4.34: *Royal Commission into Violence, Abuse, Neglect and Exploitation Against People with Disability* (Final Report, September 2023) vol 4; Recommendation 7.26: *Royal Commission into Violence, Abuse, Neglect and Exploitation Against People with Disability* (Final Report, September 2023) vol 7(b); Australian Human Rights Commission, *Free and Equal: A reform agenda for federal discrimination laws* (Position Paper, December 2021).
- <sup>55</sup> National Disability Insurance Agency (Cth), *Supported employment survey report* (Report, March 2025) 21.
- <sup>56</sup> *Ibid* 8, 19, 24; See also Perri Campbell et al, Centre for Social Impact, *Connecting Pathways to Employment with the Work Integration Social Enterprise (WISE)-Ability Model* (Final Report, July 2024) <[https://assets.csi.edu.au/assets/research/SF016\\_SC-Social-Impact-Project-Report\\_FINAL.pdf](https://assets.csi.edu.au/assets/research/SF016_SC-Social-Impact-Project-Report_FINAL.pdf)>.

- <sup>57</sup> See British Association for Supported Employment, 'Quality in Supported Employment', *Background to the Supported Employment Quality Framework* (Web Page, 2025) <[Quality in <Supported Employment - The British Association of Supported Employment>](#)>; See generally Susan Baxter et al, 'Understanding interventions and outcomes in supported employment and individual placement supports: A qualitative synthesis' (2024) 17(2) *Disability and Health Journal* 101579 < <https://doi.org/10.1016/j.dhjo.2024.101579>>.
- <sup>58</sup> See CRPD (n 11) art 27(f).
- <sup>59</sup> This includes work that is freely chosen: See CRPD (n 11) art 27(1); and providing assistance in finding, obtaining, maintain and returning to employment: See CRPD (n 11) art 27(1)(e).
- <sup>60</sup> *IncludeAbility Evaluation 2020-2023* (n 50) 58.
- <sup>61</sup> Ibid.
- <sup>62</sup> National Disability Insurance Agency (Cth), *Employment Outcomes for NDIS Participants* (Report, 31 December 2022) 28 <<https://dataresearch.ndis.gov.au/media/3953/download?attachment>>.
- <sup>63</sup> See *Royal Commission into Violence, Abuse, Neglect and Exploitation Against People with Disability* (Final Report, September 2023) vol 7(b) 470, 472, 473-74, 495-97; Counsel Assisting the Royal Commission, Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Public hearing 22, 19 July 2022) [222]-[225], [229], [238]-[239], [248]-[250].
- <sup>64</sup> Andrew Joyce et al, 'Organisational and policy barriers to transitioning from supported into open employment for people with an intellectual disability' (2024) 50(1) *Journal of Intellectual and Developmental Disability* 95, 101-2 <<https://www.tandfonline.com/doi/epdf/10.3109/13668250.2024.2352510?needAccess=true>>.
- <sup>65</sup> Perri Campbell et al, Centre for Social Impact, *Connecting Pathways to Employment with the Work Integration Social Enterprise (WISE)-Ability Model* (Final Report, July 2024) 10-11, 21-4, 88 <[https://assets.csi.edu.au/assets/research/SF016\\_SC-Social-Impact-Project-Report\\_FINAL.pdf](https://assets.csi.edu.au/assets/research/SF016_SC-Social-Impact-Project-Report_FINAL.pdf)>.
- <sup>66</sup> See Australian Human Rights Commission, 'Lessons from IncludeAbility', *Webinar Q and A* (Web Page, November 2023) <<https://humanrights.gov.au/our-work/disability-rights/lessons-from-includeability>>.
- <sup>67</sup> Recommendations 1-7: See Department of Prime Minister and Cabinet (Cth), *Working together to deliver the NDIS: Independent Review into the National Disability Insurance Scheme* (Final Report, October 2023) 53-137 <<https://www.ndisreview.gov.au/sites/default/files/resource/download/working-together-ndis-review-final-report.pdf>>.
- <sup>68</sup> Ibid 62.
- <sup>69</sup> See CRPD (n 11) art 27(1)(g); *CRPD General Comment No. 8* (n 8) [40]-[41].
- <sup>70</sup> Recommendations 7.18 and 7.19: *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 7(b) 423, 424.
- <sup>71</sup> See *CRPD General Comment No. 8* (n 8) [41]; *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 7(b) 429-30.
- <sup>72</sup> Australian Human Rights Commission, *Guidelines for the targeted recruitment of people with disability* (November 2022) < <https://humanrights.gov.au/our-work/disability-rights/publications/guidelines-targeted-recruitment-people-disability>>.
- <sup>73</sup> See *CRPD General Comment No. 8* (n 8) [82(m)].
- <sup>74</sup> This includes reskilling and upskilling, training, lifelong learning and mentorship programmes: See *CRPD General Comment No. 8* (n 8) [36]-[37]; The Disability Royal Commission also notes that opportunities for career progression, including into leadership roles, are important to support disability employment target initiatives: *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 7(b) 421.
- <sup>75</sup> See *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 7(b) 279-80, 323-8.

<sup>76</sup> See Jenny Crosbie et al, Centre for Social Impact, *School to work transition for young people with disability in Australia: the Ticket to Work Approach* (Report, May 2024)

<<https://apo.org.au/sites/default/files/resource-files/2024-05/apo-nid326979.pdf>>.

<sup>77</sup> See Children and Young People with Disability Australia, Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (October 2020) 21

<[https://cyda.org.au/wp-content/uploads/2023/08/response\\_to\\_drc\\_employment\\_issues\\_paper\\_october\\_2020.pdf](https://cyda.org.au/wp-content/uploads/2023/08/response_to_drc_employment_issues_paper_october_2020.pdf)>

<sup>78</sup> *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 7(b) 470.

<sup>79</sup> *Ibid* 507; Counsel Assisting the Royal Commission, Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Public hearing 22, 19 July 2022) [206]-[209] 65.