



25 August 2011

Senator Claire Moore
Chair
Senate Community Affairs Legislation Committee
Parliament House
Canberra ACT 2600

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Dear Senator Moore,

**RE: Social Security and Other Legislation Amendment Bill 2011
Schedule 3 (Disability Support Pension Impairment Tables)**

The National Welfare Rights Network (NWRN) welcomes the opportunity to provide comment on *Schedule 3 of the Social Security and Other Legislation Amendment Bill 2011* regarding the revised impairment tables which were released on 30 July 2011 as well as related issues.

The impairment tables have not been significantly updated since 1993, though some modifications took place in 1997. The Bill, should it be passed in its current form, will have major implications for Australia's existing income support system. This Bill would see the impairment tables removed from the Act, enabling the relevant Minister in future to revise or replace the tables through a Ministerial determination (Disallowable Instrument). NWRN opposes this aspect of the Bill.

The impairment tables play a major role in determinations related to eligibility for the Disability Support Pension (DSP). The initial outcomes of the trials from the application of the new tables indicate that between 36 to 45 per cent of existing successful claimants would fail in any future claim for DSP.

The NWRN believes that a cautious approach and rigorous scrutiny of the proposed changes is particularly warranted in the case of this Bill given the implications for many individuals and families. It is also important to examine the changes proposed in this Bill in the context of other proposed changes to the DSP. The potentially adverse consequences for individuals as a result of this Bill include being placed onto the Newstart Allowance, which is a third less than the rate of the pension, and potentially facing activity obligations which cannot be fulfilled.

The attached submission details our concerns with the current Bill and the reasons why we believe that it should be rejected by the Committee.

NWRN would welcome the opportunity to provide further comment at public hearings that are scheduled to consider the changes in more detail.

Yours sincerely

The NWRN is a network of services throughout Australia that provide free and independent information, advice and representation to individuals about Social Security law and its administration through Centrelink. For member details, services and information visit:
www.welfarerights.org.au

Maree O'Halloran, AM
President
National Welfare Rights Network



**Submission on the Social Security and
Other Legislation Amendment Bill 2011
Schedule 3
(Disability Support Pension Impairment Tables)**

**By the National Welfare Rights Network (NWRN)
24 September 2011**

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1. Introduction

The National Welfare Rights Network (NWRN) welcomes this opportunity to provide comment on *Schedule 3 of the Social Security and Other Legislation Amendment Bill 2011* on the revised impairment tables which were released on 30 July 2011 and related issues.

The impairment tables have not been significantly updated since 1993, though some modifications took place in 1997. The Bill, should it be passed in its current form, will have major implications for our existing income support system. The Bill will see the impairment tables removed from the Act, enabling the relevant Minister in future to revise or replace the tables through a Ministerial determination (Disallowable Instrument). NWRN opposes this aspect of the Bill.

The tables play a major role in determinations related to eligibility for the Disability Support Pension (DSP). The initial outcomes of the trials on the application of the new tables indicate that between 36 to 45 per cent of existing successful claimants would fail in any future claim for DSP.

Given the major implications for individuals denied the DSP, decisions to make dramatic changes as suggested with inadequate time for rigorous scrutiny is dangerous. The potentially adverse consequences for individuals include being placed onto the Newstart Allowance, which is a third less than the rate of the pension, and potentially facing activity obligations which cannot be fulfilled. In the latter case, financial penalties may well be applied. Existing concerns with the DSP assessment and Job Capacity Assessment process of long-standing are likely to be exacerbated by a rush to *make* major changes to the system. If a balanced approach is not achieved, the consequences could be disastrous for many people with disabilities, their families and carers.

NWRN fully supports the right of people with disability to work and applauds the Government's objective of assisting people into work. However, it is important that people who are unable to work are not adversely affected. The NWRN has made a number of public statements to this effect.¹

In our experience people with disability do want to work, but only 54 per cent of people with disability in Australia are in paid employment. Many people with disability are let down by an unwillingness, even on the part of large public and private sector employing bodies, to tailor employment and workplace conditions to accommodate the disability. Employers may be under-estimating the productivity output of people with disability and over-estimating the potential for insurance risks.

Government too has shown less leadership than it should in this area, with the number of people with a disability employed in the Australian Public Service dropping from 6.6 per cent in 1986 to just 3.1 per cent in 2010. The Federal Disability Commissioner Graeme Innes, generally an opponent of targets, has called for stronger action to fix this policy failure and supports the introduction of targets or quotas to address the decline in the employment of people with disabilities in the public service.²

In the recent period there has been a deliberate and concerted attempt to misinform the Australian public by suggesting that the numbers of people receiving the Disability Support Pension have

¹ The Australian, *Pension overhaul: thousands to miss out*, 8 August, 2011, p. 8,

² The World Today, *Call for Disability Quota in Public Service*, ABC Radio, 25 May, 2011.

reached a crisis point. The point behind this messaging about DSP grants being “out of control” is to foster a climate and appetite for major reductions in the numbers of people eligible for the DSP and reducing future entitlements for people with disabilities.

The recent Productivity Commission report into Disability Care and Support summed up the range of DSP policies in the recent Federal Budgets as ‘intended to promote the social and economic participation of people with disabilities (and to save money)’.³

The published data and facts about the DSP do not show that it is ‘out of control’. For example, the Department of Families, Housing, Community Services and Indigenous Affairs stated in its submission to the Productivity Commission that: ‘The number of individuals receiving the DSP is growing slowly’. The growth is due to four factors: overall population growth; Australia’s ageing population; substantial growth in the number of older women receiving the DSP because of the reduction in other social security payments under previous governments, and a growth in the proportion of young people aged 16-17 receiving the DSP.⁴

NWRN has not undertaken a detailed assessment of particular proposed ratings in this submission. We have attempted to place the revised impairment tables in the context of other imminent and mooted changes to the DSP as well as in the context of the social security system overall.

2. Major concerns – a summary

Below we briefly highlight the main concerns that stem from the current Bill.

- Arguments for removing the Impairment Tables from the Act and placing them into a Disallowable Instrument are weak and the recommendation from the Advisory Review for 5 yearly reviews of the Tables can be done without removing the Tables from the legislation.
- Significant numbers of people who are denied the DSP will be placed onto Newstart Allowance, which is \$128 a week less than the pension, has a much harsher income test and taper withdrawal rate and is inferior to the DSP in many ways (for example, there is no eligibility for the Pensioner Education Supplement and the Liquid Assets Waiting Period applies).
- There are major questions with the current quality and accuracy of Job Capacity Assessments (JCA) which are likely to be exacerbated by the proposals. A 2010 DEEWR survey reported that 50 per cent of Disability Employment Services expressed a ‘lack of confidence in JCA assessments of work capacity’.
- Current DSP recipients will be assessed under the new Tables at their next medical review. At this stage, it seems that 38 per cent of these current recipients will lose eligibility when review under the harsher Tables. Manifest cases (around 5 per cent), were excluded from the sample. A more wholesale application of medical reviews such as is currently occurring in the United Kingdom could leave many people destitute trying to survive on the much lower Newstart Allowance after many years out of the workforce.

³ Productivity Commission Report, Disability Care and Support, Appendix K, The Disability Support Pension, 2011, p. 24

⁴ Department of Families, Housing, Community Services and Indigenous Affairs, Submission No. 997 to the Productivity Commission, *Disability Care and Support*, 2011.

- Rejections of claims for the DSP stemming from the revised impairment tables and the 3 September 2011 changes to the DSP would be expected to result in a significant increase in the number of people seeking appeals. Currently DSP related appeals account for one in four reviews at the Social Security Appeals Tribunal (SSAT). Should the current proposals become law, increased pressure will be placed on an already stretched and under-resourced Centrelink review and appeal process and will translate to extra demand for assistance at the SSAT, the Administrative Appeals Tribunal, Legal Aid and also the Commonwealth Ombudsman. There will also be increased pressure on inadequately funded information and advice services provided by members of the NWRN.
- People with significant disabilities on Newstart or Youth Allowance will struggle to meet activity requirements and will be confronted by an increasingly complex, punitive and harsh compliance regime.
- Concern over the reduction in impairment ratings scale to a maximum of 30 points, which may limit choices of medical practitioners and assessors. Practitioners may tend to moderate an assessment that, on the current larger scale Tables, would have achieved a higher rating of impairment.
- Sufficient numbers of employment service providers may be poorly equipped to assist and provide appropriate levels of support for increasing numbers of people with serious disabilities, including mental health conditions and other chronic and episodic conditions.
- Concerns that the 5 and 10 point ratings criteria are under-rated across a range of Tables. Concerns for individuals with 15 points as they are likely to face major difficulties in the employment services system. The removal of existing 'miscellaneous' Tables 20 and 21 will significantly limit options for many people with co-morbidities, which can be degenerative and ongoing. This change will particularly affect, by way of example, those people experiencing serious constant pain, fatigue, and people undergoing cancer treatment or with terminal illnesses.

3. A realistic, workable approach to disability and employment

The difficulties experienced by people with disabilities in traversing a complicated and stressful assessment process to secure an adequate income is often compounded by a labour market which fails to consider or be responsive to the 'real life' experiences of people with disabilities. The new tables are said to be a significant improvement because of the focus on functionality, and 'on what a person can do, as opposed to what they cannot.' In fact, the focus on 'ability' has long been a fundamental tenet of the assessment process, especially since 2006. Assessments that disregard the impacts of a person's medical condition may undermine users' confidence in the system leading to negative outcomes.

Another feature of the existing assessment process that creates unease and difficulties for people is that individuals own 'lived experiences' are given no weight in the assessment. What this means in particular, amongst many things, is that the situation of the local labour market is not considered relevant nor are their own real job prospects.

The modernisation of the impairment tables, in relation to the use of hearing aids, for example, makes sense, though it is unlikely that their use would have been a critical factor in the granting of DSP claims.

Until the real experiences of people with disability are properly accounted for in the assessment, the processes for granting DSP will continue to be problematic. This is particularly so if the main motivation behind these proposals is on reducing the numbers of people on the DSP rather than increasing the employment of people with disabilities.

The failures of the labour market if not properly addressed will mean that people with disabilities, met with in our view an unfair system, will further spiral into social disadvantage and exclusion. A realistic, fair and workable approach to employment for people with disabilities is one that takes into account the conditions of the economic and labour markets, a focus on assisting rather than restricting the rules, and addressing the barriers, inequities and deficiencies in the current system.

4. Some facts about the Disability Support Pension in Australia

Before proceeding to explore some of these issues in greater detail it is useful to obtain a clearer understanding of the situation in which many people with disability find themselves. We have also assembled some comparative information with respect to the Disability Support Pension and Newstart Allowance. We do so to highlight the potentially negative consequences which may arise for people who are moved onto Newstart Allowance. The payment gap between the pension and the allowance and associated work disincentives are key issues which must be addressed in order to remove the participation roadblocks which confront people with disabilities.

- The share of working age population on DSP was around one in every 20 people in 2010, roughly equivalent to enrolment in disability pension programs in other Organisation for Economic Co-operation and Development countries.
- Very few DSP recipients receive any income from employment, with just 9.2 per cent reporting employment earnings at June 2010. Fewer still are engaged in looking for work, with just 0.8 per cent of people on the DSP (around 6,600 of 807,000) using Job Services Australia.⁵
- There are currently about 112,000 people with disabilities on Newstart Allowance (Partial Capacity) as a result of the 2006 'welfare to work' policies. They are required to look for work for 30 hours a fortnight and generally must look for six jobs a fortnight (as opposed to 10 jobs under Newstart Allowance activity requirements). People who are assessed with a 'partial capacity to work' will be entitled to the Pensioner Concession Card (PCC). (It is unclear what proportions of current or future recipients who are assessed under the new tables will have a 'partial capacity to work'. It would be expected that most would qualify for a PCC, though this needs clarification).
- Around 80 per cent of DSP recipients are on the full pension (as very few have income above the \$150 per fortnight that reduces payments).
- Around 7 per cent of current recipients leave the payment each year, with around 2 per cent leaving payment altogether due to employment, but often cycle on and off the DSP.

⁵ Productivity Commission, Disability Care and Support, Appendix K, The Disability Support Pension, 2011, K 1.

- Over 20 per cent of DSP recipients live in public housing, with a high proportion living on their own. In total, 101,372 single people and 22,876 couples lived in public housing as at December 2010. Public housing tenants are amongst some of the most disadvantaged and socially isolated members of the community.⁶

5. **Newstart Allowance or the Disability Support Pension – what a difference a payment makes!**

One of the key concerns with this Bill is that it is likely to result in large numbers of people with significant disabilities being moved onto a lower social security payment. Below, we briefly explore the financial implications of receiving the DSP or Newstart Allowance.

NWRN urges the Committee to carefully consider this information which is based on payment rates and conditions at August 2011. For ease of comparison, some of the main differences between Newstart and the Disability Support Pension are captured in Table 1, below.

- The full rate of DSP for a single pensioner aged over 21 years is \$729 (including the Pension Supplement) and Newstart Allowance is just \$475 per fortnight.
- The Pension Supplement of \$58.40 per fortnight (which incorporates allowances to cover partly the costs of the GST, utilities, telephone bills and pharmaceuticals) is paid only to DSP recipients.
- The DSP is not assessed as 'taxable income', unlike all other primary income support payments.
- A generous earnings threshold of \$150 a fortnight applies before the DSP is reduced by 50 cents in the dollar. For Newstart Allowance, earnings above \$62 per fortnight reduce by 50 cents in the dollar, up to \$250 per fortnight. Amounts above this level reduce by 60 cents in the dollar. The earnings free area for pensions is indexed in July each year to the Consumer Price Index. However, the income free area for Newstart Allowance is not indexed and has increased by just \$1 in the last 30 years. As highlighted in Table 1, the harsher earnings and taper rates mean that the income support payment cuts out at much lower income levels for Newstart Allowance and Youth Allowance recipients. This has a number of significant 'flow-on' effects, and can reduce or totally cut a partners' or child's eligibility for an income support payment.
- DSP recipients automatically receive a Pensioner Concession Card, which provides various discounts (such as reduced cost PBS-listed medications, assistance with hearing services and, depending on the state or territory, benefits such as reduced property and water rates, lower energy bills and motor vehicle registration costs, reduced public transport fares and, in some cases, free rail travel). Its estimated value is around \$60 a fortnight.
- People studying an approved subject at an approved educational institution for at least 25 per cent of the usual study load are eligible for \$62.40 a fortnight under the Pensioner Education Supplement (PES). This supplement is generally not eligible for Newstart Allowance recipients.

⁶ Department of Families, Housing, Community Services and Indigenous Affairs, *Submission No. 997*, op cit,

- The Liquid Assets Waiting Period (LAWP) does not apply to the DSP. For a person with disability with modest savings, for a single adult the LAWP means an extra weeks wait before Newstart Allowance/Youth Allowance is granted for every \$500 in savings above \$2,500, with a maximum waiting period of 13 weeks.
- Generous assets test tapers applies to pension payments, unlike ‘sudden death’ assets test that applies to Newstart Allowance. (See Table 1 for more details.)

Table 1: DSP & NSA: a comparison, August 2011

Payment Features	Newstart Allowance (single) (\$pw or %)	DSP (single) (\$pw or %)
Rate	\$237	\$365 (inc. supplement)
Earnings free area	\$31	\$75
First taper rate	50%	50%
2 nd threshold	\$125	N/A
Second taper rate	60%	N/A.
Payment stops when earnings at	\$442	\$804
Payment taxable	Yes	No
Assets cut-out (homeowners)	Nil payment at \$181,750	Pension cuts out at \$673,000
Assets cut-out (non-homeowners)	Nil payment at \$321,750	Payment cuts out at \$808,000
Pensioner Education Supplement	Not eligible	\$31.20
Liquid Assets Waiting Period	1 week wait for every \$500 in savings over \$2,500; max. 13 weeks	Not applicable

6. Will the reforms make the DSP "simpler, fairer and sustainable"?

The Explanatory Memorandum states that the aim of Schedule 3 is to make DSP ‘simpler, fairer and sustainable’. In practice, the outcome may be that the DSP will be much more complex, with individuals facing a more complicated regime of rules and regulations to determine eligibility for payment.

As for the system being fairer, we note FaHCSIA’s submission to the Productivity Commission that the ‘DSP is intended to ensure that people with disabilities have adequate levels of income’.⁷ Placing many thousands of people with disabilities onto Newstart or Youth Allowance, which is \$128 a week less than the DSP, is hardly fair by any measure.

Should these people with disabilities be unable to secure sustainable employment they will face years of living on an inadequate level of payment. If they obtain part-time employment, they will face a harsher earnings area and taper rate that is attached to Newstart Allowance. Claimants will also face the Liquid Assets Waiting Period and ‘sudden death’ assets test. The recent report *Australia’s Future Tax System* concluded that these rules were counter-productive, unfair and should be abolished.⁸

⁷ Department of Department of Families, Housing, Community Services and Indigenous Affairs, *Submission to the Productivity Commission Report, Disability Care and Support*, No. 997 at 7.1.

⁸ Australian Government, *Australia’s Future Tax System*, 2010.

The expected \$35 million in savings during the first year of these tougher policies is delivered by cutting payments to some of the most vulnerable Australians. These reforms are neither fair nor sustainable.

The proposed modernisation of the disability pension system should not proceed unless the Government is also willing to overhaul its out-dated and unfair payments system.

In the absence of reforms aimed at addressing the current inequities whereby people on Newstart Allowance are paid substantially less than that available on Disability Support Pension, NWRN cannot support the current schedule 3 in this Bill and recommends that it be opposed by the Committee.

7. Removing the Impairment Tables from the Act to an Instrument

The *Explanatory Memorandum* states that by placing the tables and guidelines in a legislative instrument it will allow the tables to be '*updated regularly in response to developments in medical or rehabilitation practice*'.⁹

The recently released Review of the Tables for the Assessment of Work-Related Impairment for Disability Support Pension (the Advisory Committee Final Report) proposes that, in addition to a review after 18 months, the Impairment Tables should be reviewed every five years.¹⁰

A review of the DSP Tables by the entire Parliament every five years would indicate to the wider community the importance of achieving the right policy settings and balance for people with disabilities.

There have been no compelling or persuasive arguments put by either the Minister or the Department of FaHCSIA indicating why the expected five year review of the Tables in legislation would not be sufficient to satisfy the need to update the *tables 'in response to developments in medical or rehabilitation practice'*.

Conversely, under these proposals there will be an increased risk of changes that may have far-reaching, negative and unintended consequences that may unfairly restrict eligibility for the DSP. This may occur without the sufficient scrutiny from members of the Parliament, stakeholders and individuals that occur with legislation, through committee processes such as the current inquiry.

This schedule grants extensive and overly broad power to the executive arm of a government. Depending on the balance of power in both Houses of Parliament, a government could exercise unilateral control and influence, without due consideration of alternative points of view. Additionally, we note from practical experience that the capacity to amend instruments, as opposed to legislation, is considerably smaller.

As a fundamental ingredient of qualification for DSP the tables should have a position of prominence within the legislation itself. Awareness of legislative instruments and the related processes around them is an area of which there is virtually no knowledge or awareness. Most instruments are

⁹ Minister for Families, Housing, Community Services and Indigenous Affairs, *Explanatory Memorandum, Social Security and Other Legislation Amendment Bill, 2011*, p. 8.

¹⁰ Advisory Committee Final Report, *Review of Tables for the Assessment of Work-Related Impairment for the Disability Support Pension*, submitted to the Department of Families, Housing, Community Services and Indigenous Affairs, 30 June 2011, p. 33.

unnoticed, travel “under the radar”, generating no public comment, interest or awareness. Major changes to a most important social security payment could go virtually unnoticed, with no input from either the community or individuals likely to be most impacted.

The law will also be made far more complicated if the legislative instrument is changed frequently, which could occur if it were removed from the Act. Changes in the impairment tables and the guidelines should therefore be made rarely to undue complexity. Although this has always been the case, the Act tends to be changed less frequently. Frequent changes will make the job of welfare and legal advisers and decision makers at all levels far more difficult, which is contrary to the stated aim of the amendments.

8. Is there sufficient help to get people into employment?

The Government has made a number of statements since the release of the revised impairment tables indicating that there will be sufficient levels of support to assist people with disabilities into employment if they are moved onto Newstart Allowance after 1 January 2012.

Welfare Rights, along with a wide range of community organisations welcomed the 2011-12 Federal Budget measures that increase the programs and financial supports to assist people with disability to engage in the workforce.

The Budget information noted the removal of the cap on Disability Employment Services, with an extra \$1.7 billion over the contract period, though it is not clear about the total level of financial support for employment assistance for people with disabilities.

The Government is investing \$92.8 million in new requirements for DSP recipients to increase their participation. Of this amount, there is an extra \$30.4 million for employment services for people with disability. This amount is also for the under 35s participation initiative.

Other initiatives aimed to support people with disability include:

- an extra new \$50 million for the much praised Personal Help and Mentors (PHAM) mental health initiative that supports people with mental health issues;
- a new six month wage subsidy program for very long term unemployed people with disabilities in JSA and DES providers, worth \$96.4 million over four years;
- a \$11.3 million investment in wage subsidies of \$3,000 for employers who employ people with disability for at least 15 hours a week for at least six months; and
- a \$1 million investment in targeted Disability Employment Broker projects in 2012-13.

In light of the much greater demand on employment assistance as greater numbers of people with disabilities who will be receiving Newstart Allowance and Youth Allowance, it is difficult to establish whether there will be sufficient programs of support and assistance.

NWRN recommends that the Committee clarify with the policy departments what specific funding programs will support people with disabilities affected by the restrictions to the impairment tables. to the Government should provide a detailed breakdown of the various types of programs how many individuals will be supported.

9. JCAs and capacity to work

A Job Capacity Assessment (JCA) provides a comprehensive assessment of an individual's work capacity and barriers to finding employment, including the impact of any medical conditions on their ability to work. Job Capacity Assessors play an integral role in the determination of a person's work capacity. Over 2,400 full-time equivalent allied health professionals come from a range of professions, with 43 per cent being psychologists, 13 per cent social workers and 0.5 per cent being trained speech pathologists. The average JCA for informing DSP decisions are usually completed within 90 minutes.

In 2009-10 Centrelink completed 307,767 JCAs, up from 246,219 the previous year.

In July 2010 the Health Professional Advisory Unit (HPAU) was established. The HPAU consists of a team of medical practitioners and support staff who aim to provide medical advice and opinion to JCA and Centrelink staff. The unit provides expert medical and rehabilitation advice to those involved in the assessment of DSP claims, reviews and appeals.

Since JCAs were introduced as part of the 2006 *'welfare to work'* measures their role has, at times, been controversial and frequently contested. Even the Productivity Commission notes that the assessment can result in incorrect decisions and negative outcomes for DSP claimants. The Commission's considered verdict is that *'the JCA is not a gold standard of impairment and the capacity to work, but will include false negatives (failing to provide the DSP when it should) and false positives (providing the DSP when it should not).'*¹¹

There is other evidence which adds weight to concerns over the JCA process and influence. An evaluation into the effectiveness of the Disability Employment Services in its first year of operation found very significant levels of dissatisfaction over the quality of assessments and referrals from Job Capacity Assessors. One in two Disability Employment Services indicated a lack of confidence in the JCAs assessment of work capacity in 2010.¹²

People who contact Welfare Rights Centres about DSP and activity issues continue to raise what are now long-standing concerns with the JCA process which act to undermine the integrity of the JCA processes in the eyes of users of the system.

It is claimed that the establishment of the Health Professional Advisory Unit within Centrelink has resulted in a number of improvements to the assessment and referrals systems. Notwithstanding this, there is a familiarity with the themes that emerge from feedback that continues to frustrate individuals, carers, families and advocates of those who interact with the system.

Common feedback related to the JCA includes:

- an inability to obtain specialist reports;
- a mismatch in the client's condition and the qualifications and the skills of the assessor;
- a belief that assessments are rushed and perfunctory;
- that an assessor may be dismissive of a client's feedback on their condition, and
- that the information contained by the treating doctor is routinely ignored.

¹¹ Productivity Commission, *op cit*, p. 22.

¹² Department of Education, Employment and Workplace Relations, *Evaluation of Disability Employment Services Interim Report*, June 2011, p. 51.

Centrelink claims that its expanded role in undertaking the entire JCA assessment load will result in greater consistency in decision-making. However, for consumers, what this could lead to is a more consistent level of *poor quality* decision-making.

The expected increase in rejections of DSP arising from the changes to the DSP will again ensure a focus on the accuracy and fairness of JCA processes. Given the significance of the JCA its impact cost and the sheer numbers of assessments undertaken, the Government should take community and provider concerns with the JCA processes and people's experiences in the system seriously.

It is deeply troubling to find that many of the concerns raised above about people's experiences with the JCA are raised so frequently and with such vehemency and sometimes great distress. It is unwise for policy and service delivery agencies to dismiss users' frustration with the system with the usual claims that recent enhancements to JCA processes have addressed all concerns.

Consideration should be given to initiating a process whereby client experiences with the process can be explored and addressed in a more systematic way, through targeted research and consultations and/or re-establishing a version of the former JCA Advisory Group.

NWRN recommends that, should Schedule 3 proceed, the Department of Human Services establish an ad-hoc Working Group to advise Government of ways to improve the effectiveness of assessments and improve client satisfaction with the Job Capacity Assessment arrangements. The working party should include community stakeholders, relevant experts, government agencies, policy departments and Job Services Australia and Disability Employment Service Providers.

10. Potential impacts upon people claiming the DSP after 1 January 2012

The Department of Families, Housing, Community Services and Indigenous Affairs reviewed the tables as part of the 2009-10 Budget measure, *DSP Better and Fairer Assessments*. The revised Impairment Tables were completed in February 2011 and 215 DSP cases analysed what was essentially a 'trial run' of the new impairment tables. Manifest cases were not included. According to the report from the firm of actuaries who were tasked with analysing the 215 assessments, the small, non-randomised sample 'encompassed both new DSP claims, reviews of existing claims and case review files, the latter of which targeted less common conditions'.¹³

The testing of the revised Impairment Tables revealed:

- 41 per cent of those formerly eligibly for the DSP will be found to be ineligible;
- 21 per cent of those whose future job capacity was found to be under 15 hours will be assessed as ineligible under the revised tables;
- there was a 'significant amount of disagreement' between assessments of the same person, with differences in 35 per cent of cases when an inter-rater comparison was undertaken.¹⁴

The media widely reported comments from Minister Macklin in July 2011 that 38 per cent of current successful claims for the DSP would be rejected under the revised impairment tables. In order to determine the impacts of these reforms and the numbers of people who may be affected it is necessary to look at current rejections and claims for the DSP.

¹³ Taylor Fry, Analysis of the Testing of Draft Impairment Tables, 22 June 2011.

¹⁴ *Ibid*, p. 33.

Based on the latest publicly available data, around 143,000 claims for the DSP are made annually.¹⁵ Around 41 per cent of claims are rejected. Almost 20 per cent of claims are denied because the person fails to obtain 20 points on the impairment tables.¹⁶ Using the latest publicly available data this would result in 58,600 rejections, and just 84,400 DSP claims would be granted.

Other changes to the DSP from 3 September 2011 will see many people initially denied the DSP, though some will eventually be granted payment. (It is uncertain if people eventually placed on DSP will receive back payment.) According to data provided by FaHCSIA, in 2012-13, of 18,000 initially rejected, almost 8,000 will eventually end up on the DSP.¹⁷

As indicated previously, the trial of the revised tables excluded any person whose condition was assessed as 'manifest'. This would account for around five per cent, or one in twenty people, who claim DSP.

Even taking this into account, the trial of the revised impairment tables of just 215 people has resulted in many more people being denied access to the Disability Support Pension than indicated by the Government when this change was initially flagged in the 2009-10 Budget. If these results are replicated in practice it is possible that two in every three future claims for the Disability Support Pension may be rejected.

Recent community discussion around the DSP has acknowledged that the profile of the typical DSP recipient is changing, from musculoskeletal conditions to those with mental health conditions. In 2001, less than 23 per cent of those claiming DSP had a psychiatric or psychological condition. But now this condition accounts for 29 per cent and is increasing, along with intellectual disabilities, which are more commonly diagnosed among younger people.

11. Some comments on the revised Impairment Tables

NWRN has some brief comments on the Introduction to the Tables. We note that there are challenges in making an assessment as to whether a condition has been 'fully diagnosed, treated, stabilised'. This is particularly the case for a person who cannot or will not obtain treating doctor's reports, or who refuse treatment due to their lack of insight into their condition or fear of the side-effects of the treatment. Assessors should be encouraged to exercise their discretion and practical guidance in the guidelines and resource material may be useful.

Paragraph 16, 'Who can make an Assessment?', would appear to be too limiting, particularly as it would appear to exclude people who would otherwise be able to make a considered opinion as to the effects of a person's impairment(s).

Particular care needs to be taken in relation to the weight of emphasis on the 'assessor's objective observation', particularly in the case of episodic conditions, without placing equal weight on functional impairments documented but not displayed on presentation at a JCA.

¹⁵ Department of Families, Housing, Community Services and Indigenous Affairs, *Characteristics of Disability Support Pension Recipients*, 2009-10.

¹⁶ Lunn, S. *Gillard tightens disability pension*, *The Australian*, 30 July 2011, p. 1.

¹⁷ Department of Families, Housing, Community Services and Indigenous Affairs, *Answers to questions on notice, RE: Family Assistance Bill*, 17 June 2011, p. 1.

Great care, sensitivity and judgement will be required in relation to claimants being asked to 'perform' and demonstrate in front practitioners, as this may be stressful and may be seen as humiliating and demeaning by some people. (Paragraph 18).

It is not just people living in remote areas who experience lack of access to the appropriate health professionals, therefore 'appropriate alternate assessment arrangements' should be broadly available where needed. (Paragraph 20).

Potential for inadequate ratings

As noted previously, we have not undertaken a detailed examination of the revised tables. In the following section we do make comment on some of the particular Tables. However, the absence of submissions from the NWRN about any particular Table is not to be taken as agreement or otherwise of the content of that Table.

The following descriptors apply to a person who obtained a score of 10 points on the Impairment Table 5 (mental health) and 5 points under Table 9 (Intellectual Function). With 15 points rating, this person would, in the absence of ongoing employment, be most likely placed on the Newstart Allowance. The evidence suggests that people claiming DSP on the grounds of mental disability are very likely to also experience other conditions including drug and alcohol issues, intellectual disabilities, mobility restrictions, etc. In order to illustrate our concerns we have isolated some indicators from the Table that examines a rating of 10 points and later, matched them with descriptors from a 5 points rating.

At Appendix 1 we have assembled the revised functions for 5 points and 10 points. An exercise of 'mixing and matching' can reveal various 'profiles' of individuals with significant disabilities, for example, intellectual disabilities and mental health problems who, with an impairment rating of just 15 points, will not meet the threshold for DSP eligibility.

Table 3. A Profile of a jobseeker with intellectual disabilities and Alcohol, Drugs and Other Substance Use -15 points

Functioning related to Alcohol, Drug and Other (5 points)	Intellectual Function (10 points)
<p>There is mild functional impact from alcohol, drugs or other harmful substance use.</p> <p>At least one of the following indicators applies:</p> <ul style="list-style-type: none"> • The person engages in alcohol or illicit drug use and experiences some physical or cognitive effects that carry over into working hours (e.g. poor concentration, lethargy, irritability). • The person may have <u>occasional</u> difficulties in reliably attending work/education/training sessions or appointments or completing duties or assigned tasks. <p>The person is sometimes absent from work, education or training activities due to the effects of substance use.</p>	<p>There is moderate impact on intellectual functions in at least two of the following domains:</p> <p>Learning and applying knowledge</p> <ul style="list-style-type: none"> • difficulties with literacy and/or numeracy are evident e.g. significant difficulty reading and completing forms • needs repeated demonstrations to learn tasks involving several steps and/or concepts <p>Daily living skills</p> <ul style="list-style-type: none"> • difficulties in managing money and needs regular assistance with budgeting • may need assistance with travel and public transport arrangements to new destinations • may need occasional reminders to maintain adequate personal hygiene, nutrition and health care <p>Social skills</p> <ul style="list-style-type: none"> • difficulties with interpersonal skills e.g. social interactions and behaviour may not always be appropriate to the situation • may have difficulty communicating more complex needs or issues • needs guidance and advice to understand and follow rules, obey laws and maintain personal safety <p>The person will have an assessed intellectual impairment using the WAIS IV or equivalent contemporary assessment of intellectual function, deficits in adaptive behaviour and a history of developmental difficulties before 18 years of age.</p>

The descriptors that relate to skills, decision-making, behaviour, skills and training are included in Table 2 and Table 3. A person experiencing the above behaviours and traits may find it difficult to attract employment and employers may be reluctant to grant them a chance in the workplace.

We believe that both the 5 point and the 10 point ratings are under-weighted in a number of the Tables.

To achieve a 5 or 10 point rating, most or all of the indicators must apply and so we believe that these point ratings are underweighted.

It would be difficult to imagine a workplace or an employer that could (or would) easily accommodate such potentially disruptive and challenging behaviours.

12. Monitoring the employment and financial outcomes of the Bill

If a person's disability or disabilities prevents them from finding work all that would have been achieved is to moving them onto Newstart Allowance, which is just \$237 a week and \$128 a week less than the pension.

NWRN does not question the Government's genuine commitment to improving the employment and social outcomes for people with disabilities. However, the real test of these reforms and their impacts will be the number of people with disabilities shifted onto Newstart Allowance who find suitable and sustainable employment.

If the impairment table changes simply shift people with disabilities from a nearly adequate level of income support to a totally inadequate income support payment then these changes will have failed. The only beneficiary of these reforms will be the budget bottom line.

Instead of spreading opportunities, the only thing that will be spread by these tighter impairment tables is poverty and increased anxiety amongst people with disabilities, their families and carers.

If the Government is confident that the revised impairment tables and the additional employment assistance and supports will be sufficient enough to result in positive employment outcomes, then they will agree to ongoing monitoring and reporting into the impacts of the most major reform to our system of support for people with disabilities since 1991 when the DSP was introduced and replaced the Invalid Pension.

Section 15 is relevant to these considerations and also includes some approaches to monitoring and evaluation suggested by the Productivity Commission.

NWRN recommends that should Schedule 3 proceed, the Government should commit to undertaking regular monitoring and qualitative and quantitative research into the financial and employment outcomes and the experiences of job seekers whose DSP is rejected during the first 24 months of the operation of the revised impairment tables.

13. DSP 'reviews' of existing recipients and the revised impairment tables

NWRN notes with some concern inaccurate and misleading information regarding the cohorts of DSP recipients who will be assessed under the revised impairment tables.

It has been stated in the media that revised and more restrictive impairment tables will not apply to existing DSP recipients and will take effect from 1 January 2012 for new claimants.¹⁸ Unfortunately, statements that the revised tables will only apply to new claims post 1 January 2012 are only partially correct. NWRN understands that if existing DSP recipients are reviewed they will be assessed under the revised tables.

¹⁸ The Hon. Jenny Macklin, Minister for Families and Housing, Community Services and Indigenous Affairs, *Transcript, Interview with Nick Grimm*, ABC News 24, 30 July, 2011.

At present 30,000 people on the DSP, around 4 per cent, are reviewed each year. If the results from the recent trials are replicated around 11,000 of people reviewed would be moved onto another, lower payment. Some of this group who are reviewed off the DSP may have been on the DSP for significant periods of time, as the average time spent on income support of current DSP, at December 2010, was twelve years. If moved onto a lower level of payment, such as Newstart Allowance, a person would face significant cuts to their standard of living and be faced with a major financial crisis with a reduction in their weekly and yearly income by a third.

The reduction in income will be felt most harshly as they may still face substantial additional costs as a result of their disabilities.

Most income support recipients are unaware of the triggers for DSP review. However, should the knowledge that a DSP entitlement review could trigger a transfer to another lower payment become widespread among the DSP population many people will react with concern and alarm. Even if the actual risk of a DSP review is relatively small, many people will be concerned about the possibility for a review. For these people, the arrival of a letter from Centrelink will trigger significant anxiety and fear.

14. The allowance/pension gap: the critical workforce disincentive

The Organisation for Economic Co-operation and Development warned in November 2010 that the single rate of Newstart Allowance had fallen below the poverty line, raising ‘issues about its effectiveness in providing support for those experiencing job loss or enabling someone to look for suitable work’¹⁹. The recent *Australia’s Future Tax System* report has recommended an increase to the basic allowance rate.

Newstart Allowance is not an appropriate payment for people with disabilities and the design of the payment makes it unsuitable for increasing the workforce participation of people with disabilities. Table 1 (page 6) notes the highly inequitable payments system between Newstart Allowance and the Disability Support Pension. Table 4, below, further highlights the continuing unfairness of the existing income support arrangements in the broader context of a continuation of existing indexation arrangements.

The current payment differentials and indexation arrangements become more unsustainable and difficult to defend each time that the gap between these payments increases.

Table 4: The gap between Newstart and the Disability Support Pension			
Year	DSP \$ per f/n	Newstart \$ per f/n	NSA as share of DSP %
1980	116	116	100.0
2011	729	475	65.1
Projected 2020a	1036	593	57.
Projected 2040a	2271	972	242.8

Source: Productivity Commission, 2011.

¹⁹ Organisation for Economic Cooperation and Development, *Enhancing Labor Market Utilisation in a Socially Inclusive Society*, 2010.

Government is clearly cognisant of feedback from DSP recipients that shows a significant influence is the fear of losing eligibility for the pension if they attempt and fail, or succeed, in work. This fundamental policy paradox must be tackled. The failure to address the payments gap problem will undermine other policies aimed at increasing employment rates and participation among people with disabilities.

Reforms are urgently needed to overcome the participation roadblocks in the existing social security arrangements. As a first step in removing these roadblocks the Government should implement the recommendations from the recent report from the former Treasury Secretary, *Australia's Future Tax System (AFTS)* and increase the rates of Newstart and Youth Allowance by \$50 per week, as a first step in modernising our social security system to meet the challenges of increasing participation rates.

NWRN recommends that other suggestions in the AFTS be examined as a matter of priority, including the removal of liquid assets waiting periods, a relaxation of the 'sudden death' assets test for allowances and a review into concession entitlements.

15. Future DSP "reform" and the Productivity Commission report

NWRN notes that the Productivity Commission's *Disability Care and Support* report also makes comments more broadly on the Disability Support Pension (DSP) and suggests a number of areas where there is need for further reform.

The Commission's recommendations are extremely relevant to the reforms under consideration by the Committee and NWRN considers that it is vital that they be considered, though we are extremely apprehensive with the overall directions suggested.

The report provides a potted history of recent efforts to reform the DSP and documents many of the challenges that result from different eligibility and grandfathering provisions, assessment, payment levels, client confusion of existing incentives, 'review risk' and the provision of employment support, all of which pose serious policy challenges for Government.

The Commission comments on the low level of awareness of existing supports and incentives aimed at encouraging greater participation, such as the two year suspension provisions and the ability to maintain entitlement to the Pensioner Concession Card for 12 months after losing eligibility for the DSP. Their findings are similar to the observations that NWRN has raised with both Centrelink and FaHCSIA and in submissions on employment services reviews. There is considerable scope for combined efforts of community organisations and Government to improve client understanding in these areas which, if successful, could lead to increased participation and engagement.

The Impairment Table Final Report also noted that the loss of Pensioner Concession Card (PCC) and the resultant denial to some state disability services present major disincentives to work. NWRN believes that these matters, including the current rules that allow access to the PCC for 12 months after losing eligibility for the Disability Support Pension should be on the table for discussion, including at the October 2011 Tax Forum.

The Productivity Commission report also highlights the importance of improving data collection and analysis for monitoring outcomes for people on the DSP to identify the interventions that produce

the largest impacts.²⁰ Specific mentions are made in relation to assessment tools and the important of adequate training and supervision which are relevant for the Job Capacity Assessments.

The Commission makes a number of proposals, including for a public review of all aspects of the DSP. The NWRN is fully supportive of the Government's proposed National Disability Insurance Scheme. However, we are now concerned that the important contributions of the Productivity Commission for people with manifest disabilities may adversely affect a range of other people living with serious disabilities. We hope that the Government does not propose to pit people with manifest disabilities requiring major personal services, supports, equipment and care against other people other serious disabilities for scarce resources and public support.

The Productivity Commission suggests that the Government "consider the early implementation" of some of its proposals, including rejecting new claims for the 'blind' pension.

As noted earlier, the Government is planning a raft of changes to the DSP; the 3 September 2011 requirement for new claimants with capacity to demonstrate efforts to participate; revised Impairment Tables from 1 January 2012 and from 1 July 2012 under 35s "participation" interviews.

During the past 12 months there has been a steady stream of media reports and current affairs programs which send messages that there are many people on the DSP who should not be because their conditions are 'less serious', 'treatable' or 'fixable'. The implication from these types of stories is that there are large numbers of people receiving the DSP who should not be entitled to income support.

The result of all of this is that people with disabilities are telling NWRN that they feel "under siege". This has negative impacts on their health and well-being and is working against efforts to improve participation and ensure social engagement.

NWRN urges the Committee carefully consider the issues in the Productivity Commission's report as they deliberate on proposals to reform the Disability Support Pension.

16. Appeals, information and advice about the DSP

NWRN has previously alluded to the impact that the changes to the DSP will have, upon an already overstretched Centrelink internal review and appeals system. To place our concerns in context, a recent investigation of the Centrelink review and appeals system by the Commonwealth Ombudsman concluded that some problems were 'intractable' and that Centrelink's internal review system fell short of being 'legally sound, efficient and effective'.²¹

Changes of the magnitude that the Committee is considering are certain to result in a significant increase in the numbers of people seeking a review of the Centrelink decision to reject their claim for the DSP. As noted below, there is already a very high rate of appeals against Centrelink decisions regarding the DSP.

The Disability Support Pension accounts for more applications from Centrelink clients seeking review of decisions than any other income support payment. In 2009-10, there were 2,811 applications for

²⁰ Productivity Commission, *op cit*, p. K. 27.

²¹ Commonwealth Ombudsman, Centrelink: right to review – making choices, having choices, 16 March, 2011.

review related to the DSP, which accounted for 25.1 per cent of total SSAT appeals.²² Age Pension appeals accounted for just 11.3 per cent of the total, with Newstart Allowance at 18 per cent. Of completed DSP reviews, 23.4 per cent were set aside.²³ The average (financial) cost of an appeal at the SSAT in 2009-10 was \$1,858.

The high proportion of administrative review at the SSAT is replicated at the higher tribunal, the Administrative Appeals Tribunal (AAT). The proportion of cases involving the DSP is a significant issue. DSP matters accounted for one in ten of all AAT applications received from all jurisdictions – including social security, tax, veteran’s affairs, workers compensations.

There were more applications lodged related to the qualification and eligibility for DSP In 2009-10 (567 applications) at the Administrative Appeals Tribunal (AAT) than for any other matter. Overpayments and debt recovery matters – a large area where problems can arise – accounted for just 506 matters out of a total of 2,077.²⁴ A total of 5,787 AAT applications were lodged in 2009-10.

Welfare Rights understanding is that when clients pursuing cases about DSP at the SSAT and AAT rejections are represented or assisted by a legal representative or community agency, their chances of success are greatly increased. In practice, however, very few DSP claimants have the benefit of legal advice and representation at the stage of a formal hearing.

As noted earlier, rejections of claims for the DSP stemming from the revised impairment tables and the 3 September 2011 changes to the DSP would be expected to result in a significant increase in the number of people seeking information, advice and assistance from Legal Aid and the Commonwealth Ombudsman. There will also be increased pressure on inadequately funded information and advice services provided by members of the NWRN.

NWRN member centres report high numbers of contact with clients experiencing difficulties with claims for the DSP, with demand for assistance greatly exceeding the capacity to provide the required assistance and advice within the current funding capacities. The Welfare Rights Centre Sydney, for example, reports that a quarter of clients in 20010-11 sought assistance with a DSP-related matter.

Should the Bill be passed, the Government should ensure that individuals wishing to challenge a Centrelink decision are able to access representation, independent information and legal advice and about their options.

²² As with all appeals to the SSAT appeals could relate to the rate of payment or the existence or amount of an overpayment, but our casework experience would suggest a very large proportion of appeals are related to qualification issues

²³ Social Security Appeals Tribunal, *Annual Report, 2009-10*, p. 83.

²⁴ Administrative Appeals Tribunal, *Annual Report 2009-10*, p. 127.

17. Summary of Recommendation

- 1. NWRN recommend that Schedule 3 be opposed**
- 2. NWRN recommends that the Committee clarify with the policy departments what specific funding programs will support people with disabilities affected by the restrictions to the impairment tables. to the Government should provide a detailed breakdown of the various types of programs how many individuals will be supported.**
- 3. NWRN recommends that, should Schedule 3 proceed, the Department of Human Services establish an ad-hoc Working Group to advise Government of ways to improve the effectiveness of assessments and improve client satisfaction with the Job Capacity Assessment arrangements. The working party should include community stakeholders, relevant experts, government agencies, policy departments and Job Services Australia and Disability Employment Service Providers.**
- 4. NWRN recommends that should Schedule 3 proceed, the Government should commit to undertaking regular monitoring and qualitative and quantitative research into the financial and employment outcomes and the experiences of job seekers whose DSP is rejected during the first 24 months of the operation of the revised impairment tables.**
- 5. Reforms are urgently needed to overcome the participation roadblocks in the existing social security arrangements. As a first step in removing these roadblocks the Government should implement the recommendations from the recent report from the former Treasury Secretary, *Australia's Future Tax System (AFTS)* and increase the rates of Newstart and Youth Allowance by \$50 per week, as a first step in modernising our social security system to meet the challenges of increasing participation rates.**
- 6. NWRN recommends that other suggestions in the AFTS be examined as a matter of priority, including the removal of liquid assets waiting periods, a relaxation of the 'sudden death' assets test for allowances and a review into concession entitlements.**
- 7. NWRN urges the Committee carefully consider the issues in the Productivity Commission's report as they deliberate on proposals to reform the Disability Support Pension.**
- 8. Should the Bill be passed, the Government should ensure that individuals wishing to challenge a Centrelink decision are able to access representation, independent information and legal advice and about their options.**

Appendix 1. Five and ten point ratings in the revised impairment tables of various medical conditions

EXAMPLES OF DESCRIPTORS WITH MAJOR EFFECTS ON WORK CAPACITY		
Table	'mild functional impact' – 5 points	'moderate functional impact' – 10 points
1. Functions requiring Physical Exertion and Stamina	<p>There is a mild functional impact on activities requiring physical exertion or stamina.</p> <p>The person experiences symptoms such as <u>occasional</u> or <u>mild</u> shortness of breath or fatigue or <u>occasional</u> cardiac pain when performing physically demanding activities. Due to these symptoms, the person has <u>occasional</u> difficulty:</p> <ul style="list-style-type: none"> walking (or mobilising if in a wheelchair) to local facilities such as a corner shop or around a shopping mall, larger workplace or education/training campus, without stopping to rest; and/or performing physically active tasks such as climbing a flight of stairs (or mobilising up a long, sloping pathway or ramp if in a wheelchair) or heavier household duties (such as vacuuming floors or mowing the lawn). <p>The person is/would be able to perform most work-related tasks, other than tasks involving manual labour (such as digging, carrying or moving heavy objects, concreting, bricklaying, laying pavers, etc.)</p>	<p>There is a moderate functional impact on routine daily activities that require physical exertion or stamina.</p> <p>The person <u>frequently</u> experiences symptoms such as shortness of breath, fatigue or cardiac pain when performing day to day activities around the home and community.</p> <p>Due to these symptoms, the person:</p> <ul style="list-style-type: none"> is <u>unable</u> to walk (or mobilise in a wheelchair) far outside the home and needs to drive or get other transport to local shops or community facilities; and/or <u>has difficulty</u> performing day to day household activities (such as changing the sheets on a bed or sweeping paths). <p>The person is still able to use public transport and walk or mobilise in a wheelchair around a supermarket.</p> <p>The person is/would be able to perform work-related tasks of a clerical, sedentary or stationary nature (i.e. tasks not requiring a high level of physical exertion).</p>
2. Upper Limb Function	<p>There is a mild functional impact on activities using hands and/or arms.</p> <p>The person has <u>some difficulty</u> with most of the following:</p> <ul style="list-style-type: none"> picking up heavier objects such as a 2 litre carton of milk or carrying a shopping bag handling very small objects such as coins 	<p>There is a moderate functional impact on routine daily activities using hands and/or arms.</p> <p>The person <u>has difficulty</u> with most of the following:</p> <ul style="list-style-type: none"> picking up a one litre carton full of liquid picking up a light but bulky object requiring the use of two hands together (such as cardboard box) holding and using a pen or pencil

Table	'mild functional impact' – 5 points	'moderate functional impact' – 10 points
	<ul style="list-style-type: none"> • doing up buttons, and/or • reaching up or out to pick up objects. <p>The person can still manage most daily activities requiring use of the hands and arms.</p>	<ul style="list-style-type: none"> • doing up buttons or tying shoelaces • using a standard computer keyboard, and/or unscrewing a top on a soft-drink bottle.
3. Lower Limb Function	<p>There is a mild functional impact on activities using lower limbs.</p> <p>The person has <u>some difficulty</u></p> <ul style="list-style-type: none"> • walking to local facilities such as shops or bus-stop; and/or • walking around a shopping mall without a rest; and/or • climbing stairs. <p>The person needs assistance to rise from kneeling or a squat, and/or is unable to stand for more than 10 minutes.</p> <p>OR</p> <p>The person can mobilise effectively but needs to use a lower limb prosthesis or a walking stick.</p>	<p>There is a moderate functional impact on routine daily activities using lower limbs.</p> <p>The person <u>is unable to</u>:</p> <ul style="list-style-type: none"> • walk far outside their home and needs to drive or get other transport to local shops or community facilities; and/or • kneel or squat; and/or • use stairs or steps without assistance; and/or • stand for more than 5 minutes. <p>Although the person has mobility limitations, the person is still able to use public transport and/or their own vehicle and walk around in a supermarket. This category includes a person who can <u>move around independently</u> using a wheelchair and can <u>independently transfer</u> to and from a wheelchair (e.g. can use an accessible toilet independently). The person may require additional time and effort to move around a workplace, may need to use disabled access entries, lifts and toilets, and may not be able to access some areas of a workplace or training facility.</p> <p>This category also includes a person who can move around <u>independently</u> using walking aids such as quad stick, crutches or walking frame.</p>
4. Spinal Function	<p>There is a mild functional impact on activities involving spinal function.</p> <p>The person has <u>some difficulty</u> in:</p> <ul style="list-style-type: none"> • activities over head height (involving looking upwards); or • bending down to pick a light object (such as a piece of paper) off the floor; or turning their trunk or moving their head (for example. to 	<p>There is a moderate functional impact on activities involving spinal function.</p> <p>The person:</p> <ul style="list-style-type: none"> • is unable to sustain overhead activities (for example accessing items over head height); or • has <u>difficulty</u> moving their head to look in all directions (for example, turning their head to look over their shoulder); or • <u>is unable to</u> bend forward to pick up a light object placed at knee height; or

Table	'mild functional impact' – 5 points	'moderate functional impact' – 10 points
	look to the side or upwards).	<ul style="list-style-type: none"> • <u>needs assistance to get up out of a chair (if not independently mobile in a wheelchair).</u> The person is still able to sit or drive a car for 30 minutes.
5. Mental Health Function	There is a mild functional impact on activities involving mental health function. All or most of the following indicators apply to this person: Self Care and Independent Living <ul style="list-style-type: none"> • lives independently but may sometimes neglect self-care, grooming or meals Social/Recreational Activities and Travel <ul style="list-style-type: none"> • is not actively involved when attending social or recreational activities Interpersonal Relationships <ul style="list-style-type: none"> • has interpersonal relationships that are strained with occasional tension or arguments Concentration and Task Completion <ul style="list-style-type: none"> • has difficulty focussing on intellectually demanding tasks for more than 30 minutes • has some difficulties in completing education or training Behaviour, Planning and Decision-making <ul style="list-style-type: none"> • may have slightly unusual or eccentric behaviours • may have slight difficulties in planning and organising more complex activities Work/Training Capacity occasional interpersonal conflicts at work, education or training may require changes in placement or groupings.	There is a moderate functional impact on activities involving mental health function. All or most of the following indicators apply to this person: Self Care and Independent Living <ul style="list-style-type: none"> • needs some support (i.e. occasional visit or assistance from family member or support worker) to live independently and maintain adequate hygiene and nutrition Social/Recreational Activities and Travel <ul style="list-style-type: none"> • goes out alone infrequently and is not actively involved in social events • may sometimes be reluctant to travel alone to unfamiliar environments Interpersonal Relationships <ul style="list-style-type: none"> • may have difficulty making and keeping friends/sustaining relationships Concentration and Task Completion <ul style="list-style-type: none"> • finds it very difficult to concentrate on longer tasks e.g. reading a chapter from a book • finds it difficult to follow complex instructions e.g. from an operating manual, recipe or assembly instructions Behaviour, Planning and Decision-making <ul style="list-style-type: none"> • may have difficulty coping with situations involving stress, pressure or performance demands • may have occasional behavioural or mood difficulties such as temper outbursts, depression or withdrawal Work/Training Capacity often has interpersonal conflicts at work, education or training that require intervention by supervisors/managers/teachers and/or changes in placement or groupings.
6. Functioning related to Alcohol, Drug and Other	There is mild functional impact from alcohol, drugs or other harmful substance use.	There is moderate functional impact from alcohol, drugs or other harmful substance use.

Table	'mild functional impact' – 5 points	'moderate functional impact' – 10 points
Substance Use	<p>At least one of the following indicators applies:</p> <ul style="list-style-type: none"> The person engages in alcohol or illicit drug use and experiences some physical or cognitive effects that carry over into working hours (e.g. poor concentration, lethargy, irritability). The person may have <u>occasional</u> difficulties in reliably attending work/education/training sessions or appointments or completing duties or assigned tasks. <p>The person is sometimes absent from work, education or training activities due to the effects of substance use.</p>	<p>Most of the following indicators apply:</p> <ul style="list-style-type: none"> The person regularly uses harmful amounts of alcohol, drugs or other substances and as a result experiences difficulties performing physical or cognitive tasks. The person often has difficulty completing daily tasks and responsibilities due to the short term or long term effects of alcohol, drugs or other harmful substances. The person's substance use may be having a detrimental effect on family or social relationships and activities. The person may have <u>more frequent</u> difficulties in reliably attending appointments or completing duties or assigned tasks. The person is often absent from work, education or training activities due to the effects of substance use. <p>This category includes people in receipt of treatment and in sustained remission (e.g. a person who is receiving Methadone treatment or other opiate replacement therapy and is able to complete most activities of daily living).</p>
7. Brain Function	<p>There is a mild functional impact resulting from a neurological/cognitive diagnosis.</p> <p>The person has <u>mild difficulties</u> in <u>at least one</u> of the following areas but is able to complete most day to day activities without assistance:</p> <p>Memory</p> <ul style="list-style-type: none"> occasionally forgets to complete a regular task, sometimes misplaces important items <p>Attention and Concentration</p> <ul style="list-style-type: none"> has some difficulty concentrating on complex tasks for more than one hour may have some difficulty focussing on a task if there are other activities occurring nearby <p>Problem solving</p>	<p>There is a moderate functional impact resulting from a neurological/cognitive diagnosis.</p> <p>The person has <u>moderate difficulties</u> in <u>at least one</u> of the following areas and <u>needs occasional (less than once a day) assistance</u> with day to day activities:</p> <p>Memory</p> <ul style="list-style-type: none"> often forgets to complete regular tasks of minor consequence (such as putting the bin out on rubbish night), often misplaces items, needs to use memory aids such as shopping lists to remember any more than three or four items <p>Attention and Concentration</p> <ul style="list-style-type: none"> has difficulty concentrating on complex tasks for more than 30 minutes has significant difficulty focussing on a task if there are other activities occurring nearby <p>Problem solving</p>

Table	'mild functional impact' – 5 points	'moderate functional impact' – 10 points
	<ul style="list-style-type: none"> • has difficulty solving complex problems that may involve multiple factors and/or abstract concepts • may show a lack of awareness of problems in some situations <p>Planning</p> <ul style="list-style-type: none"> • has some difficulty planning and organising complex activities such as arranging travel and accommodation for an interstate or overseas holiday <p>Decision making</p> <ul style="list-style-type: none"> • has some difficulty in prioritising and complex decision making when there are several options to choose from <p>Comprehension has some minor difficulty in understanding complex instructions involving multiple steps</p>	<ul style="list-style-type: none"> • has difficulty solving some day to day problems or problems not previously encountered and may need assistance or advice from time to time <p>Planning</p> <ul style="list-style-type: none"> • has difficulty planning and organising new or special activities such as planning and organising a large birthday party <p>Decision making</p> <ul style="list-style-type: none"> • has some difficulty in prioritising and decision making and displays poor judgement at times, resulting in negative outcomes for self or others <p>Comprehension</p> <ul style="list-style-type: none"> • has difficulty understanding complex instructions involving multiple steps and may need more prompts, written instructions or repeated demonstrations than peers to complete tasks <p>Visuo-spatial function</p> <ul style="list-style-type: none"> • has some difficulty with visuo-spatial functions e.g. has some difficulty reading maps, giving directions or judging distance or depth but this does not result in major limitations in day to day activities <p>Behavioural Control occasionally has difficulty controlling behaviour in routine situations (e.g. may show frustration or anger or lose temper for minor reasons but displays no physical aggression)</p>
<p>8. Communication Function</p>	<p>There is a mild functional impact on communication in the person's main language. The person has <u>mild difficulties</u> in <u>at least one</u> of the following areas:</p> <p>Receptive communication (understanding language)</p> <ul style="list-style-type: none"> • has some difficulty understanding complex language with complex words and long sentences such as a TAFE or university lecture <p>Expressive communication (speaking) has mild difficulty in producing speech and has minor difficulty with being understood</p>	<p>There is a moderate functional impact on communication in person's main language. The person has <u>moderate difficulties</u> in <u>at least one</u> of the following areas:</p> <p>Receptive communication (understanding language)</p> <ul style="list-style-type: none"> • has some difficulty understanding day to day language, particularly where a sentence or instruction includes multiple steps or concepts, such as <i>'Please take this book out to Jane at the front desk and ask her to give you some paper clips and bring them back in here.'</i> • may need instructions repeated or broken down into shorter sentences. <p>Expressive communication (speaking)</p> <ul style="list-style-type: none"> • has moderate difficulty in producing speech, such as a stutter, stammer,

Table	'mild functional impact' – 5 points	'moderate functional impact' – 10 points
		<p>difficulty coordinating speech movements or damage to speech structures (e.g. vocal cords, larynx) which makes speech effortful, slow and/or sometimes difficult for strangers to understand</p> <p>Alternative or augmentative communication (e.g. sign language, technology that produces electronic speech, use of symbols to communicate)</p> <p>is unable to speak clearly but uses recognised sign language (Auslan or signed English) fluently and is able to lip read</p>
<p>9. Intellectual Function</p>	<p>There is mild impact on intellectual functions in at least two of the following domains:</p> <p>Learning and applying knowledge</p> <ul style="list-style-type: none"> • may have mild difficulties with literacy and/or numeracy e.g. difficulty reading a complex newspaper article • may need more instructions and demonstrations than peers to learn a complex task <p>Daily living skills</p> <ul style="list-style-type: none"> • may have some difficulties in managing personal finances e.g. may need occasional assistance with budgeting • may have some difficulties managing personal safety. <p>Social skills</p> <p>may have minor difficulties with interpersonal skills and understanding social responsibilities</p>	<p>There is moderate impact on intellectual functions in at least two of the following domains:</p> <p>Learning and applying knowledge</p> <ul style="list-style-type: none"> • difficulties with literacy and/or numeracy are evident e.g. significant difficulty reading and completing forms • needs repeated demonstrations to learn tasks involving several steps and/or concepts <p>Daily living skills</p> <ul style="list-style-type: none"> • difficulties in managing money and needs regular assistance with budgeting • may need assistance with travel and public transport arrangements to new destinations • may need occasional reminders to maintain adequate personal hygiene, nutrition and health care <p>Social skills</p> <ul style="list-style-type: none"> • difficulties with interpersonal skills e.g. social interactions and behaviour may not always be appropriate to the situation • may have difficulty communicating more complex needs or issues • needs guidance and advice to understand and follow rules, obey laws and maintain personal safety <p>The person will have an assessed intellectual impairment using the WAIS IV or equivalent contemporary assessment of intellectual function, deficits in adaptive behaviour and a history of developmental difficulties before 18 years of age.</p>

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10. Gastrointestinal Function	<p>There is a mild functional impact on work-related or daily activities due to symptoms or personal care needs associated with a gastrointestinal condition.</p> <p>The following indicators apply:</p> <ul style="list-style-type: none"> • the person's attention and concentration at a task are sometimes interrupted or reduced by pain or other symptoms or personal care needs associated with the gastrointestinal condition (e.g. on most days); and/or the person is sometimes absent from work, education or training activities due to the gastrointestinal condition. 	<p>There is a moderate functional impact on work-related or daily activities due to symptoms or personal care needs associated with a gastrointestinal condition.</p> <p>At least two of the following indicators apply:</p> <ul style="list-style-type: none"> • the person's attention and concentration at a task are often interrupted or reduced by pain or other symptoms or personal care needs associated with the gastrointestinal condition (e.g. at least once a day but not every hour) • the person is unable to sustain work activity or other tasks for more than two hours without a break due to symptoms of the gastrointestinal condition the person is often absent from work, education or training activities due to the gastrointestinal condition.
11. Hearing and other Functions of the Ear	<p>There is mild functional impact on hearing.</p> <p>The following indicators apply:</p> <ul style="list-style-type: none"> • The person has <u>some difficulty</u> hearing a conversation at an <u>average volume</u> in a room with background noise (e.g. other people talking quietly in the background); and/or • The person <u>may have to</u> turn the television volume up <u>slightly louder</u> than others in the household to hear clearly; and/or • The person <u>may</u> use a hearing aid, cochlear implant or other device; and/or • The person may have difficulty hearing conversations when using a standard telephone; <p>OR</p> <p>The person may have <u>occasional difficulty</u> with balance (e.g. occasional dizziness) or occasional ringing in the ears, less than once a week,, due to a medically diagnosed disorder of the inner ear such as Meniere's disease.</p>	<p>There is a moderate functional impact on hearing even <u>when using</u> a hearing aid, cochlear implant or other hearing device or sign language interpreting.</p> <p>The following indicators apply:</p> <ul style="list-style-type: none"> • The person has <u>difficulty</u> hearing a conversation at average volume in a room with <u>no</u> background noise; and • The person has to turn the television volume up <u>much louder</u> than others in the household to hear clearly; and • The person may be partially reliant on lip-reading and/or Auslan or other sign language; <p>OR</p> <p>The person may have <u>more frequent difficulty</u> with balance (e.g. has to sit down or hold on to a solid object) or ringing in the ears, at least once a week, due to a medically diagnosed disorder of the inner ear such as Meniere's disease.</p>

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<p>12. Visual Function</p>	<p>There is a mild functional impact on vision. The person has mild difficulties seeing things at a distance or close up <u>when wearing</u> glasses or contact lenses if these are usually worn. The person <u>can still perform most day to day activities</u> involving vision.</p> <p>The following indicators apply:</p> <ul style="list-style-type: none"> • The person has some difficulty seeing the fine print in newspapers or magazines (may have to hold the print further away or use brighter light); and/or • The person has some difficulty seeing road signs, street signs or bus numbers and/or may have some difficulty reading road signs at night but can still travel around the community and use public transport without assistance; and/or • The person experiences some discomfort when performing day to day activities involving the eyes (e.g. mild occasional watering of the eyes, mild difficulty opening the eyes, or mild difficulty moving or coordinating the eyes, or difficulty tolerating bright lights and sunlight); and/or <p>The person has functional vision in only one eye (or only has one eye) but has good vision in the remaining eye.</p>	<p>There is a moderate functional impact on vision. The person has moderate difficulties seeing things at a distance or close up <u>when wearing</u> glasses or contact lenses if these are usually worn. The person may need to use vision aids or assistive devices other than spectacles and contact lenses for some tasks.</p> <p>The person <u>has difficulty performing some day to day activities</u> involving vision.</p> <p>The following indicators apply:</p> <ul style="list-style-type: none"> • The person has some difficulty seeing routine workplace, educational or training information such as signs, safety information, or manuals and <u>may need to use</u> alternative formats (e.g. large print) and/or assistive devices or technology for vision in work, training or educational settings; and/or • The person experiences moderate discomfort when performing day to day activities involving the eyes (i.e. frequent watering of the eyes, frequent difficulty opening the eyes, or moderate difficulty moving or coordinating the eyes, or unable to tolerate normal levels of light indoors or outdoors); and/or • The person has only one eye or functional vision in only one eye and has mild problems with the vision in the remaining eye. • The person is still able to function independently in <u>familiar</u> environments (i.e. without regular assistance from other people) <p>The person is able to <u>travel independently</u> using public transport when using any assistive devices that they have. +</p>
<p>13. Contenance Function</p>	<p>There is a mild functional impact on maintaining continence of the bladder and/or bowel during the day. The following indicators apply:</p> <p><u>Bladder</u></p> <ul style="list-style-type: none"> • the person has <u>minor</u> leakage from the bladder (e.g. a small amount of urine when coughing or sneezing) at least once a day but not every hour; and/or • the person has urgency (has to get to a toilet very quickly and has difficulty 'holding on' to urine) and/or 	<p>There is a moderate functional impact on maintaining continence of the bladder and/or bowel. The following indicators apply:</p> <p><u>Bladder</u></p> <ul style="list-style-type: none"> • the person has <u>minor</u> leakage from the bladder (e.g. a small amount of urine when coughing or sneezing) several times each day; and/or <p><u>Bowel</u></p> <ul style="list-style-type: none"> • the person has <u>major</u> leakage from the bowel (e.g. enough faecal matter to fully soil underwear and stain outer clothes if a continence pad is not worn) in most weeks; and/or

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	<p>has occasional loss of control of bladder (at least weekly); and/or</p> <ul style="list-style-type: none"> the person has difficulty passing urine (e.g. has to strain or has restricted flow of urine or has difficulty emptying bladder); and/or <p><u>Bowel</u></p> <ul style="list-style-type: none"> the person has <u>minor</u> leakage from the bowel (e.g. enough faecal matter to soil underwear but not outer clothes) more than once a week but not every day; and/or the person has urgency and/or occasional loss of control of bowel at least monthly; and/or <p><u>Continence aids</u></p> <p>the person has a stoma, or uses a catheter or other collection device to manage their continence <u>independently without any difficulties</u> and does not need any assistance with this.</p>	<p><u>Continence aids</u></p> <ul style="list-style-type: none"> the person has a stoma, or uses a catheter or other collection device to manage their continence independently but requires frequent bag or catheter changes, or has frequent equipment failure. <p>The person's continence difficulties result in interruption to tasks, work or training on most days</p>
<p>14. Functions of Skin</p>	<p>There is a mild functional impact on activities requiring healthy, undamaged skin (i.e. the person has to make <u>minor</u> adaptations to <u>some</u> daily activities). At least one of the following indicators applies. The person:</p> <ul style="list-style-type: none"> has <u>minor</u> difficulties performing activities involving use of their hands due to minor skin lesions, dermatitis, skin allergies or scarring and may need to wear protective gloves for some tasks, apply protective cream to the hands, and/or limit repetitive tasks involving use of the hands has <u>minor</u> difficulties performing activities involving use of other parts of the body due to minor skin lesions, dermatitis, skin allergies or scarring <p>has <u>minor</u> difficulties performing activities</p>	<p>There is a moderate functional impact on activities requiring healthy, undamaged skin (i.e. the person has to make adaptations to <u>several</u> daily activities). At least one of the following indicators applies. The person:</p> <ul style="list-style-type: none"> has <u>moderate</u> difficulties performing activities involving use of their hands due to minor skin lesions, dermatitis, skin allergies or scarring and needs to wear protective gloves for most tasks, avoid contact with all detergents and soaps, and/or avoid repetitive tasks involving use of the hands has <u>moderate</u> difficulties performing daily activities due to scarring from burns which restricts movement of limbs and/or other parts of the body (e.g. may require additional time to perform some tasks, and/or some tasks may need to be modified) has <u>moderate</u> difficulties performing daily activities due to lesions on skin which require creams and/or dressings and limit movement and comfort (e.g. may require additional time to perform some tasks, and/or some

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	involving exposure to sunlight due to heightened sensitivity to sunlight (this may be a result of certain medications or past history of skin cancers) and needs to take higher than normal precautions to limit exposure to sunlight	tasks may need to be modified) has <u>moderate</u> difficulties performing activities involving exposure to sunlight due to heightened sensitivity to sunlight (this may be a result of certain medications, past history of skin cancers, albinism, or other genetic condition) and needs to take higher than normal precautions to avoid exposure to sunlight (e.g. must wear sunscreen at all times, wear hat and other protective clothing at all times outside and has to limit time spent outside in sunlight).
15. Functions of Consciousness	<p>There is a mild functional impact on maintaining consciousness during waking hours when occupied with a task or activity. The following indicator applies:</p> <ul style="list-style-type: none"> The person has <u>rare</u> episodes of involuntary loss of consciousness or altered state of consciousness due to a diagnosed medical condition (e.g. no more than twice per year and not usually requiring hospitalisation) <p>The person is still able to perform most daily activities of living but may have restrictions on a driver's licence due to the medical condition.</p>	<p>There is a moderate functional impact on maintaining consciousness during waking hours when occupied with a task or activity. The following indicators apply:</p> <ul style="list-style-type: none"> The person has episodes of involuntary <u>loss of consciousness</u> due to a diagnosed medical condition <u>more than twice each year</u> (but not every month) and loses all functional abilities during these episodes (i.e. falls or slumps to the ground or in a chair and is unresponsive during the episode). Requires first aid measures and may require emergency medication and/or hospitalisation. <p>OR</p> <ul style="list-style-type: none"> The person has episodes of involuntary <u>altered state of consciousness</u> that occur <u>at least once per month</u> (e.g. the person remains standing or sitting but is unaware of their surroundings or actions during the episode). Functional abilities are affected during these episodes. Episodes are less than 30 minutes in duration. <p>The person is still able to perform many daily activities of living but is unlikely to be granted a driver's licence and may have other safety-related restrictions on activities.</p> <p>The person may not be able to attend work, education or training activities on a full-time basis and may be restricted due to safety issues in the work-related activities that they can undertake.</p>