Real Jobs, Real Incomes,

not poverty, homelessness and prison

Submission to the

Senate Community Affairs Committee Inquiry

into

Social Security and Other Legislation Amendment Schedule 3 (Disability Support Pension Impairment Tables) Bills 2011

Version 1.0

18 August 2011

The National Council on Intellectual Disability (NCID) was established over 50 years ago by parents and friends, in an endeavour to improve the quality of life of people with intellectual disability and to fill the need for national unity and information.

The Council is the recognised national peak body with the single focus on intellectual disability, ie, our actions and priorities centre on issues that affect the lives of people with intellectual disability and their families. Our mission is to work to make the Australian community one in which people with intellectual disability are involved and accepted as equal participating members.

NCID has over 5,000 members representing all 8 States and Territories. In addition to having people with disability on its Board, NCID receives policy advice from Our Voice. Our Voice is a committee the membership of which is exclusively people with intellectual disability representing all States and Territories.

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Statement of Principles

- All people have inherent dignity and worth and equal and inalienable rights.
- All people are valued members of the Australian Community.
- People with intellectual disability as equal participating members of the Australian Community have the same rights:
  - to respect for their individual autonomy and independence
  - to make their own choices
  - to participate in decisions which affect their lives
  - to pursue any grievance which affects their lives
  - to diversity of choice for housing, education, work, recreation and leisure
  - to equity and justice
  - to be empowered to take their full place in the Australian Community
  - to dignity and privacy in all aspects of their lives

National Council on Intellectual Disability will:

- ✓ work to make the Australian Community one in which people with intellectual disability have full and equal enjoyment of all human rights and fundamental freedoms and are involved and accepted as equal participating members.
- ✓ promote and protect the human rights of all persons with intellectual disability, including those who require more intensive support.

Consultation Statement

National Council on Intellectual Disability consults people with intellectual disability and family members through our State and Territory Agency Members. In particular we:

- ➡ conduct an annual survey of members and stakeholders
- ➡ hold two meetings a year, rotating through all States and Territories
- ➡ present at the Having a Say Conference each year, attended by over a 1,000 delegates the majority of whom have a disability
- ➡ hold forums on specific issues
- ➡ sponsor actions and representations on issues of importance to people with disability

On the issue of the **revised DSP Impairment Tables** National Council on Intellectual Disability has consulted with members and undertaken a survey of people with intellectual disability who have an IQ score of 70 - 79 and currently receive the Disability Support Pension.

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Real Jobs, Real Incomes - not poverty, homelessness and prison

The revised DSP Impairment Tables being proposed by the Gillard Government will see 20,000 people with intellectual disability denied access to the Disability Support Pension and forced onto the NewStart Allowance with little to no hope of ever getting support to get a job.

Therefore, NCID opposes the removal of Schedule 3 from the Social Security Act; until the revised DSP Impairment Tables provide an adequate income support safety net and the Gillard Government provides adequate support for people with intellectual disability to get a job.

- NCID has undertaken a trial of the revised impairment tables on people with intellectual disability, who have an IQ score of 70 - 79, and currently receive the DSP and all of them would fail to get the DSP under the revised Table.

- 20,000[1] people with intellectual disability fall into this group.

- The Department of Families, Housing, Community Services and Indigenous Affairs and the Minister know that only 16% of people with a disability being supported to find and keep a job will actually get a job - **therefore 84% will not get a job!**

- The Department of Families, Housing, Community Services and Indigenous Affairs has designed a system that is NOT focused on getting people with intellectual disability into work but to force the next generation of people with intellectual disability (at least 16,800 [84%]) onto NewStart and to save the Gillard Government $111,820,800 per year.

- We know that this group is over represented in prisons[2], boarding houses and homelessness; these people with intellectual disability will now have no hope of establishing safe, secure and stable lives that will allow them to become members of the community.

    - ★ A greater risk of experiencing homelessness, than members of the general population (Burdekin Report: 1989; Patterson & Hunter: 1993; Price-Kelly & Hill: 1995).

    - ★ Significant over-representation in the criminal justice system - as victims of crime; as suspects, defendants and offenders; and in prisons and detention centres (French: 2007; Law Reform Commission of NSW: 1992; Hayes and Craddock: 1992).

    - ★ More likely to be a victim of crime,assault,sexual assault,and fraud(Law Reform Commission of NSW: 1992); Hayes and Craddock: 1992).

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[1] NCID has asked FaHCSIA for the exact figure but they have not provided it at the time of this submission. NCID determined this figure by subtracting the number of people with intellectual disability receiving support under the NMDS ('severe and profound') from the 83,000 people with intellectual disability receiving the DSP.

[2] 10.5% of the prison population, compared with 7.8% of general population; Hayes, The Incidence of Intellectual Disability in the New South Wales Prison Population, 2006

- ★ More likely to experience a mental illness (Report of National Inquiry into the Rights of People with a Mental Illness: 1993); Lennox et al: 1997).

- ★ More likely to suffer with under-diagnosed or under-managed health issues (Hammond et al 1995).More likely to be unemployed (Ierace: 1989; Coleman: 1994). [3]

- **A direct consequence of the revised Tables will be that families of people with intellectual will have to take on additional financial responsibility for their children and additional support in relation to employment and other activities.**

Intellectual Disability is defined as:

Intellectual disability is characterised by significant limitations both in intellectual functioning and in adaptive behaviour. This disability originates before age 18.

This means:

> Intelligence is a general mental ability. It includes reasoning, planning, solving problems, thinking abstractly, comprehending complex ideas, learning quickly, and learning from experience. Intelligence is not merely book learning, a narrow academic skill, or test-taking smarts. It reflects a broader and deeper capacity for comprehending our surroundings - catching on, making sense of things, or figuring out what to do.[4]

Thus people with intellectual disability need support to understand complex ideas, to adapt effectively to their environments, to learn from experience, to engage in various forms of reasoning and to overcome obstacles by thinking and communicating.[5]

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[3] O'Connor and Macdonald, p. 26, Homelessness and People with Intellectual Disability, 2008.

[4]AAIDD, p 15, Intellectual Disability - Definition, Classification and Systems of Support, 2011

[5] Adapted from Intellectual Disability - Definition, Classification and Systems of Support, 2011

Executive Position

The revised Table for *Intellectual Function* requires significant revision in consultation with the National Council on Intellectual Disability (NCID) and other specialists with knowledge in the areas of:

- intellectual disability, intellectual function and adaptive behaviour assessment, and,
- the work capacity of people with intellectual disability.

Such an informed process has not taken place.

As the national peak association for people with intellectual disability and their families, we have had access to the revised Tables for a little over two weeks.

With due respect to the advisory committee and associated consultants who assisted the Commonwealth to develop the revised Tables, the Table on *Intellectual Function*,

- lacks coherence with international definitions and assessments of intellectual function,
- lacks consistency with the World Health Organisations' International Classification of Functioning, Disability and Health (ICF),
- lacks coherence with the Commonwealth's Guide to Social Security Law for manifest (DSP) qualification,
- lacks any valid testing with people with intellectual disability and the general population to determine the validity and impact of the Table, and
- lacks standardisation and clarity within the Table itself.

We recommend that the Senate Committee <u>not</u> support this Bill. Support for this Bill provides tacit approval of the DSP Impairment Tables and would require a motion in parliament to disallow this instrument.

NCID is appalled at the lack of professional care in the development of the revised DSP impairment tables.

NCID does not take this position lightly. We are in agreement that the current Tables require revision. And we understand the benefits of the Tables becoming a disallowable instrument in order to make it easier for the Commonwealth to make changes without the need to put a draft Bill to parliament.

The process to revise the DSP Impairment Tables, however, has been poor and the result is potentially harmful to people with intellectual disability and their families in terms of decisions about social security, employment participation, and other supports required for their inclusion and participation in the community.

NCID is endeavouring to work cooperatively with the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) to urgently address our concerns with the revised Tables.

We have submitted amendments to FaHCSIA for their consideration, including:

- an amendment to the general introduction to the revised Tables to ensure that people with disability currently listed with conditions which manifestly meet DSP qualification are not subject to the Tables;

- an amendment to the introduction to Table 9 - *Intellectual Function* - to provide clarity of the definition and assessment of intellectual function, to provide a link to the current manifest DSP qualification guidelines specific to people with intellectual disability, and to clarify the level of intellectual function when a person is subject to an assessment by the revised Tables to determine DSP qualification.

NCID has expressed serious concerns about the impact of the revised Table on people with intellectual disability assessed with a low intellectual function (i.e. IQ from 70 - 85, or one standard deviation below the mean of a standardised test of intellectual functioning).

To address our concerns NCID has proposed to FaHCSIA that:

- the Table be reviewed by individuals with in-depth knowledge in the area of adaptive behaviour assessment and the World Health Organisation's International Classification of Functioning, Disability and Health (ICF).
- this range of intellectual functioning (IQ 70 - 85) requires careful consideration and testing. Research studies show great variability of work capacity among this group of individuals. Some make very satisfactory adult adjustments; others continue to require assistance for basic adaptive functioning. The revised Tables must be able to make this distinction with a high level of confidence. As there has been no testing of the revised Table with this group of individuals, the impact is currently unknown.
- that if an immediate solution cannot be found, it would be in the best interests of people with intellectual disability for the Commonwealth to utilise published standardised adaptive behaviour scales that have credibility in the psychology field.

It is important that our proposed changes are put in place before this Bill becomes law. Given the ease by which future changes can be made to the revised Tables, the Senate committee should give consideration to a required process by which the Commonwealth should undertake before future tabling of the disallowable instrument in Parliament.

We request that the Senate recommend that the Commonwealth undertake further work to ensure that the Tables are valid, reliable and consistent with the international definition, classification and assessment of intellectual disability before the legislation is permitted to pass the Parliament.

Recommendations

1. That the revised Table be rejected as insufficient in terms of coherence with the international definition of intellectual disability and does not demonstrate validity in terms of its correlation and coherency with intellectual functioning and adaptive behaviour assessments.
2. That a new Table be designed to be coherent with the latest definition and research of intellectual disability, its definition and assessment, and the current DSP manifest qualification guidelines.
3. We propose a table with two parts; 9A and 9B.

9.A Intellectual Function

9.A.1 Intellectual function measured as an IQ of less than 70, (where the mean is 100 and the standard deviation is 15), or two standard deviations below the mean of an individually administered, standardised instrument that measures general intellectual function, is deemed to have met the 20 point requirement for qualification of the DSP.

Note: This is similar to the current manifest definition of intellectual disability currently in the Social Security Guidelines - and the Commonwealth will be keeping this guideline.

9.A.2. Intellectual function measured as an IQ from 70 to 85, (where the mean is 100 and the standard deviation is 15), or is one standard deviation below the mean of an individually administered, standardised instrument that measures general intellectual function, receive a score of 10 points.

Notes:

1. This recognises a population which has a lower than average intellectual function.
2. That this is not sufficient to meet the international definition of intellectual disability.
3. Research indicates that some members of this group have major difficulties adaptively functioning in the community, including finding and keeping employment.
4. This level of intellectual functioning is not alone sufficient to qualify to for the DSP, and should be subject to further assessment inquiry in terms of adaptive behaviour.

9.B Adaptive Behaviour

9.B.1 One standard deviation below the mean of either: (a) one of the following three types of adaptive behaviour: conceptual, social, and practical skills or (b) an overall score on a standardised measure of conceptual, social, and practical skills, receives a score of 10 points.

9.B.2 Two standard deviations below the mean of either: (a) one of the following three types of adaptive behaviour: conceptual, social, and practical skills or (b) an overall score on a standardised measure of conceptual, social, and practical skills, receives a score of 20 points.

Notes:

1. A person with an IQ from 70 to 85 would receive a standardised adaptive behaviour test to determine if their low IQ was associated with limitations in adaptive behaviour.
2. 9.B.1 is a slightly modified recommendation proposed by National Research Council (USA)
3. 9.B.2 meets the international requirement for a classification of intellectual disability.

Other Amendments

NCID also proposes the following amendments to the Revised DSP Impairment Tables

Manifest DSP Qualification (insert in general introduction to the Tables)

DSP claimants are considered to be manifestly qualified, when they clearly and obviously meet all the qualification criteria in SSAct section 94. Only in very clear cut cases outlined in the guidelines, can claims be granted without assessment via the DSP Impairment Tables and JCA. [See Guide to Social Security Law (Version 1.178 - Released 1 July 2011), 1.1.M.30 Manifest (DSP), & 3.6.2.20 Manifest Grants & Rejections for DSP].

Proposed Amendment to Introduction to Impairment Table 9

Table 9 - Intellectual Function

Intelligence is a general mental ability. It includes reasoning, planning, solving problems, thinking abstractly, comprehending complex ideas, learning quickly, and learning from experience.

Intellectual functioning is currently best conceptualised and captured by a general factor of intelligence.

An assessment should be conducted by a psychologist who is qualified in terms of professional regulations, and who has met the assessment instrument publisher's guidelines for conducting a test.

The Wechsler Adult Intelligence Scale - Fourth Edition (WAIS-IV), and the Stanford Binet Intelligence Scales - Fifth Edition (SBIS-5), are widely used and accepted measures to assess intellectual function. The Wechsler Intelligence Scale for Children (6 years - 16 years 11months; WISC-IV Australian) is also acceptable for people aged 18 years or under at the time of a DSP claim.

There will be circumstances, however, in which the WAIS-IV, SIBS-5 or the WISC-IV will not be appropriate. This maybe because an individual has cognitive deficits below the floor of the test, has sensory or motor limitations that preclude test presentation and response, or is influenced by a variety of cultural, social, ethnic and language based factors.

An equivalent contemporary assessment must be deemed acceptable by the Health Professional Advisory Unit. Test selection should employ an individually administered, standardised instrument, with relatively recent norms, that yields a measure of general intellectual functioning. Test selection should also be based on individual factors, including the individual's social, linguistic, and cultural background.

The full scale or composite score, and the standard error of measurement for the specific instrument, should be recorded.

A claimant with an assessed intellectual function of less than 70, or two standard deviations below the mean of an acceptable assessment, considering the standard error of measurement, meets the manifest qualification which would attract 20 or more points for the DSP without assessment via the Tables or a JCA. [See Guide to Social

Security Law: (Version 1.178 - Released 1 July 2011), 3.6.2.50 Assessment of People with Intellectual Impairments for DSP.]

A claimant with an assessed intellectual function above 70 and below 85, or one standard deviation below the mean of acceptable assessment, considering the standard error of measurement, is subject to an assessment by the Tables.

Assessors should consider evidence from a range of sources in determining which rating applies to the person being assessed. Examples of corroborating evidence may include (but are not limited to):

supporting letters, reports and/or assessments relating to the person's development, intellectual function, adaptive behaviour and/or programs of support.

interviews with the person and those providing care, support or treatment to the person.

Assessors should note that a diagnosis of a learning disorder such as dyslexia does not equate to a diagnosis of intellectual disability. [See draft Fifth version of the Diagnostic and Statistical Manual of Mental Disorders for the definition of "learning disorders" (American Psychiatric Association)].

Definitions for Clarity

The revised Table suggests to NCID that the Commonwealth is not clear about the definition and assessment of intellectual disability. To provide some clarity we present the current international definitions on intellectual disability, low intellectual function, and learning disability.

Intellectual Disability

- Intellectual disability is characterised by significant limitations both in intellectual functioning and in adaptive behaviour. This disability originates before age 18.
- A significant limitation in intellectual function is an IQ score that is approximately two standard deviations below the mean (i.e. < 70, mean of 100, and standard deviation of 15), considering the standard error of measurement for the specific instrument used.
- A significant limitation in adaptive behaviour is performance that is approximately two standard deviations below the mean of either; (a) one of three types of adaptive behaviour: conceptual, social or practical skills; or (b) an overall score on a standardised measure of conceptual, social and practical skills.
- Intellectual disability is not a medical condition, although it may or may not be associated with a medical condition.

Low Intellectual Function

- Individuals with IQ scores from 70 to 75 do not technically have *intellectual disability* but have low IQ scores often referred to as *borderline intellectual disability.*
- Individuals with IQ scores from 75 to 85 do not technically have *intellectual disability* but are seen as people having low intellectual functioning.
- The adaptive behavior of people with low IQ scores (i.e. 70 - 85) varies widely. Edgerton (2001)[6] reviewed the literature on the community functioning of people diagnosed in this IQ range. These studies show great variability among individuals; some make very satisfactory adult adjustments, whereas some continue to require assistance from others for basic adaptive functioning.

Learning Disability

- The Diagnostic and Statistical Manual of Mental Disorders (DSM-5) will have a classification of *Learning Disorders*, including *dyslexia*, *dyscalculla*, and *disorder of written expression*. The proposed definition is:
    - ★ *A group of disorders characterized by difficulties in learning basic academic skills (currently or by history), that are not consistent with the person's chronological age, educational opportunities, or intellectual*

[6] Edgerton, R. B. (2001). The hidden majority of individuals with mental retardation and developmental disabilities. In A. J. Tymchuck, K. C. Lakin, & R. Luckasson (Eds.), *The forgotten generation: The status and challenges of adults with mild cognitive limitations* (pp. 3-19). Baltimore: Paul H. Brookes.

abilities. Basic academic skills refer to accurate and fluent reading, writing, and arithmetic. Multiple sources of information are to be used to assess learning, one of which must be an individually administered, culturally appropriate, and psychometrically sound standardized measure of academic achievement.

★ *These disorders affect individuals who otherwise demonstrate at least average abilities essential for thinking or reasoning. As such, Learning Disorders are distinct from Intellectual Developmental Disorder* [i.e. intellectual disability].

What is Intellectual Function?

The revised Table claims to assess intellectual function at Table 9. However the Table actually attempts to assess adaptive behaviour. This is confusion and error requires clarification as to what intellectual function actually is, and how this is assessed.

- Intellectual functioning is currently conceptualised and captured by a general factor of intelligence.[7]
- Intelligence is a general mental ability. It includes reasoning, planning, solving problems, thinking abstractly, comprehending complex ideas, learning quickly, and learning from experience.[8]
- The assessment of intellectual functioning is a task that requires specialised professional training. An assessment should be conducted by someone who is qualified in terms of professional regulations, and who has met the instrument publisher's guidelines for conducting a test, (i.e. a psychologist).[9]
- Test selection should employ an individually administered, standardised instrument, with relatively recent norms, that yields a measure of general intellectual functioning. Test selection should also be based on individual factors, including the individual's social, linguistic, and cultural background.[10]
- The Wechsler Adult Intelligence Scales (WAIS-IV) and the Stanford Binet Intelligence Scales (SBIS-5) are widely used and accepted measures to assess intellectual function. There will be circumstances, however, in which neither will be appropriate. This may because an individual has cognitive deficits below the floor of the test, has sensory or motor limitations that preclude test presentation and response, or is influenced by a variety of cultural, social, ethnic and language based factors.[11]
- The full scale or composite score, and the standard error of measurement for the specific instrument, should be recorded to determine manifest DSP qualification

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[7] American Association on Intellectual and Development Disabilities (AAIDD). 2010. Intellectual Disability: Definition, Classification, and Systems of Supports. 11th Edition. AAIDD

[8] AAIDD. 2010

[9] AAIDD. 2010

[10] AAIDD. 2010

[11] AAIDD. 2010

or need for assessment by the DSP Impairment Tables; and as evidence if a disability employment service claims the 70% employment assistance funding loading for jobseekers with an IQ of 60 or less.[12]

A claimant with intellectual disability may be manifestly granted DSP where they have an IQ of less than 70.

FaHCSIA's Branch Manager for Disability and Carer Payments Policy, has informed NCID that the manifest DSP qualification guidelines will remain in force. NCID believe that the revised Tables should be amended to ensure that manifest conditions are transparent within the Tables to assist assessors and DSP qualification decisions.

- An assessed intellectual function of IQ less than 70 meets the manifest qualification for the DSP without a JCA. [Guide to Social Security Law: 1.1.M.30 Manifest (DSP); 3.6.2.20 Manifest Grants & Rejections for DSP; 3.6.2.30 Manifest Grants & Continuing Inability to Work (DSP); and 3.6.2.50 Assessment of People with Intellectual Impairments for DSP.][13]
- The guide to social security law notes: *Claimants with intellectual disabilities who are about to turn 16 years of age, and have been in a 'special school' do not need to provide a medical report in support of their claim for DSP. In these cases it is unnecessary for the claimant to provide a medical report - rather they should be asked to provide a report from the school to support their claim including the latest result from testing conducted by their school.*
- The guide notes that: *In some cases a report from the special school may indicate that the recipient has a very severe intellectual disability and is therefore not able to undergo an IQ test - these recipients may also be manifestly granted DSP.*
- The guide explains, *In these situations the treating doctor often does not have any record of IQ testing - as this type of testing is often done within the child's school.*
- Manifest DSP qualification should <u>not</u> be subject to medical reviews as intellectual disability is not a medical condition but is rather a permanent disability. This qualification should retain DSP status if in receipt of an employment program of ongoing support, including flexible, moderate and high ongoing support levels; and be encouraged to work as many hours per week as possible without triggering DSP suspension or review.
- A policy goal should be to maximise earned wages so that this is the main source of income, and so reduce reliance on the Disability Support Pension through the impact of the income test when an individual earns a wage.
- Best employment service practice indicates average weekly wages of approximately $330 per week for approximately 21 hours of work per week. This provides substantive employment participation and earned income for people with significant intellectual disability, and substantial pension savings for the Commonwealth.

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[12] Department of Education, Employment, and Workplace Relations, (DEEWR). Disability Employment Services, Moderate Intellectual Disability Loading Guidelines.

[13] Guide to Social Security Law. Accessed online at http://www.facsia.gov.au/guides_acts/ssg/ssg-rn.html

- Below is a simple table to classify intellectual function; including *no limitation*; *low intellectual function* that is below average intellectual function; and *significant limitation* in intellectual function at the level of intellectual disability.

Points	Limitation	Descriptor
0	None	A full scale IQ score that is above one standard deviation below the mean of an individually administered, standardised instrument that measures general intellectual function, considering the standard error of measurement for specific instruments. (e.g. IQ of 85 and above)
10	Low (equivalent to ICF mild & moderate impact)	A full scale IQ score that is one standard deviation below the mean of an individually administered, standardised instrument that measures general intellectual function, considering the standard error of measurement for specific instruments. (e.g. IQ less than 85)
20	Significant (equivalent to ICF severe & extreme impact)	A full scale IQ score that is two standard deviations below the mean of an individually administered, standardised instrument that measures general intellectual function, considering the standard error of measurement for specific instruments. (e.g. IQ less than 70)

Adaptive Behaviour

The revised Table for intellectual function is actually an attempt to devise a scale of adaptive behaviour. Alarmingly, this has been devised without consultation or testing with people with intellectual disability or the general population. Below we provide the authoritative definition of adaptive behaviour in terms of standardised testing which we recommend the Commonwealth use to ensure validity of testing.

- Adaptive behaviour is a collection of conceptual, social, and practical skills that have been learned and are performed by people in their everyday lives.[14]
- Adaptive behaviour is a multi-domain construct that has emerged from a long history of factor-analytic studies and include the following:
  - ★ *Conceptual skills*: language; reading and writing; money, time, and number concepts.
  - ★ *Social skills*: interpersonal skills, social responsibility, self-esteem, gullibility, naïveté (i.e. wariness), follows rules / obey laws, avoids being victimised, and social problem solving.

[14] AAIDD. 2010.

- ★ *Practical skills*: activities of daily living (personal care), occupational skills, use of money, safety, health care, travel/transportation, schedules/ routines, and use of the telephone.[15]

- Significant limitations in adaptive behaviour should be established through the use of standardised measures, normed on the general population, including people with disabilities and people without disabilities.
- Similar to IQ tests, there are adaptive behaviour assessments that are valid and highly recognised which could be the subject of approval for use. The Vineland Adaptive Behavior Scales and the Scales of Independent Behavior are examples of such.
- The revised DSP Impairment Table for Intellectual Function has not been tested, standardised, or normed on the general population.
- Below is a simple table to classify adaptive behaviour through the use of standardised adaptive behaviour tests.

Points	Limitation	Descriptor
0	None	Performance above one standard deviation below the mean of an overall score on a standardised measure of conceptual, social, and practical skills
10	Low (equivalent to ICF mild & moderate impact)	One standard deviation below the mean of either: (a) one of the following three types of adaptive behaviour: conceptual, social, and practical skills or (b) an overall score on a standardised measure of conceptual, social, and practical skills
20	Significant (equivalent to ICF severe & extreme impact)	Two standard deviations below the mean of either: (a) one of the following three types of adaptive behaviour: conceptual, social, and practical skills or (b) an overall score on a standardised measure of conceptual, social, and practical skills

Work Capacity

The vocational research on people with intellectual disability and open employment is clear and without disagreement. The general finding is that people with intellectual disability have the capacity to work in the open labour market <u>when</u> provided evidence based employment assistance and long term ongoing support.

This quality of support remains under developed by the Commonwealth. The availability of this support is arguable the single most important factor if people with intellectual disability are to move from a lifelong dependence on the pension as their main source of income.

First;

[15] AAIDD. 2010.

- Gainful employability of people with intellectual disability in the open labour market is heavily dependent on variables that are external to the individual.
- The conditions that allow people with intellectual disability to be employed often go unmet.
- Unlike certain other disabilities, for which the provision of short-term interventions such as vocational rehabilitation can result in long-term gains in employment skills, from an employment perspective intellectual disability is a lifelong disability.
- Although employment is often possible and desirable, the supports, services, and networks needed by this population in order to be continuously employed are significantly underdeveloped.
- DSP qualification criteria that does not capture this population is likely to leave vulnerable individuals without critical supports.

Second;

- Given their dependence on external supports and their vulnerability to changes in the work environment, it should be made easy for people with intellectual disability to maintain receipt of DSP qualification throughout their lives when they either become employed and earn weekly wages less than the DSP income test maximum, (currently $804.30 per week).
- The knowledge that DSP eligibility can be retained or reestablished easily may encourage those already receiving benefits to seek employment. There is evidence that some, who might otherwise work, continue to receive benefits instead, because they fear for their future security if they choose work.

Third,

- The earned income of gainfully employed persons with intellectual disability in the open labour market is relatively low (approximately an average of $260 per week[16]), and this population is highly vulnerable to unemployment in economically depressed periods.
- The Commonwealth disability employment service (DES) program holds great promise, but it is not always relevant, tailored to the needs of this group, available in every labour market region, or effective. The national Disability Employment Services 26 week employment outcome rates are poor, (16% at 30 June 2011). Employment outcome rates for people with intellectual disability are not published, although collected by the Commonwealth.
- There is a desire of many people with intellectual disability to be gainfully employed, tax-paying contributing members of society.
- A critical step is the provision of effective services that assist individuals to maintain employment. Best employment service outcomes for people with intellectual are as high as 75% for 26 week outcomes. This quality of service is however rare.

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[16] This data is from the old Disability Employment Network data on average wages per week - before March 2010. The Commonwealth no longer publishes the national average weekly wages attained by jobseekers who enter the Disability Employment Services program.

- Employment assistance programs should not be time-limited because of the enduring nature of intellectual disability and its impact on the individual's ability to work.

Assessing and Predicting Work Capacity

From the beginning of open employment research for people with intellectual disability, findings emphasised that performance of complex social, communication, and self help skills is not a necessary pre-requisite to perform productive employment (Horner and Bellamy, 1979)[17].

An initial assessment of people with intellectual disability is, therefore, not a good predictor of work capacity. The research found, however, that people with intellectual disability have the breadth and depth of capabilities to demonstrate work capacity (Marc Gold 1972)[18] after systematic training on the job. This body of research is now about 40 years old and has repeatedly shown that given job placement, job training and long term support, people with intellectual disability can work in the open labour market. Without this support, however, participation in the open labour market is unlikely.

With long term demonstrations of people with significant intellectual disability being supported in open employment, it is important to review our assumptions that significant levels of intellectual impairment mean low levels of work capacity. What is apparent is that people with low levels of intellectual function are at risk of not obtaining gainful work when not having access to the right support.

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[17] G. Thomas Bellamy, Gail O;Connor, and Orv C. Karan. 1979. Vocational Rehabilitation of Severely Handicapped Persons. University Park Press: Baltimore.

[18] Gold, M. (1972). Stimulus Factors in Skill Training of Retarded Adolescents on a Complex Assembly Task: Acquisition, Transfer, and Retention. American Journal of Mental Deficiency, 1972, 76, 517-526.

Major Problems with the Revised DSP Impairment Tables

The revised tables are incoherent with international understanding of intellectual disability, intellectual function, adaptive behaviour and the relationship of these terms with a capacity to work.

1. Intellectual disability is not a medical condition. An assessment of intellectual disability is typically conducted by a psychologist. The requirement for a report from a medical doctor and a discussion of symptoms required by the revised Table is inappropriate and demonstrates a misunderstanding of the nature of intellectual disability.
2. The ICF uses the term "impairment" to relate only to body functions and structures. Yet the revised Tables use the term to mean a mix of health conditions, body functions and structures, activity limitations and participation restrictions. This is a confusion of concepts and makes the revised Tables incoherent and inconsistent with the ICF framework.
3. The introduction to the revised Table 9 - Intellectual Function - states that the Table applies to an individual who has already been diagnosed as having intellectual disability. Given that such an individual has already been subject to an assessment of intellectual function and adaptive behaviour; it is unclear as to how the proposed table offers anything different to what a person with intellectual disability has already undergone by way of assessment.
4. To obtain a diagnosis of intellectual disability an individual has already be subject to a intellectual function test of verbal comprehension, perceptual reasoning, working memory, and processing speed. And subject to an adaptive behaviour assessment test of conceptual skills: language; reading and writing; money, time, and number concepts; social skills: interpersonal skills, social responsibility, self-esteem, gullibility, naïveté (i.e. wariness), follows rules/obey laws, avoids being victimised, and social problem solving; and practical skills: activities of daily living (personal care), occupational skills, use of money, safety, health care, travel/transportation, schedules/routines, and use of the telephone.
5. The revised Table appears to have created an *additional* adaptive behaviour test. This scale has no evidence of a history of testing against a normative population to provide standardisation, or demonstrate correlation with intellectual function and adaptive behaviour assessments.
6. The revised Table report does not present research evidence on what impact this will have on the current and future population of people with intellectual disability applying for the DSP.
7. We question the credibility and validity of the revised Table as it is (1) not a scale of intellectual function and (2) is at best a clumsy attempt at an adaptive behaviour scale that would not past muster under international guidelines for such assessments.
8. The evaluation of the revised Table utilised a small sample size of 215. We find the size and representative nature of the sample to be inappropriate as a basis to advise on the impact of the revised Tables. People with intellectual

disability make up 11% of the current DSP population (over 80,000 people) yet there is little to no evidence of testing of the table and its results against individuals with intellectual disability.

9. The current manifest DSP qualification for an individual with an IQ of less than 70 according to FaHCSIA will reportedly remain as a guideline. Yet an assessment of intellectual disability (<70 IQ) is not necessarily sufficient to get 20 points in the Table. Such an individual may only score10 points; even though they have already been assessed with intellectual disability which requires an IQ of less than 70. This is a significant incoherency in the Table.

10. The *none, mild, moderate severe, extreme* scale doesn't fit coherently with the international definition of intellectual function.

11. A significant limitation of intellectual function is internationally recognised as being less than 2 standard deviations (i.e. <70, when the mean is 100 and a standard deviation of 15. This is about 2.1% of the population). This is the criteria for intellectual disability.

12. The population that has an intellectual function that is less than 1 standard deviation but more than 2 standard deviations from the mean (i.e 70 - 85) have lower than the average intellectual function range; but does not meet an assessment of intellectual disability. This is a population that may or may not have a capacity to work at 15 hours or more per week without a program of ongoing support.

13. There is no explanation as to how the items in the Table link to a notion of work capacity that is related to intellectual function. For example, we are aware of research showing that intellectual disability has a significant impact on the capacity of an individual to find and compete for work, to gain job skills, and maintain employment. We also know from the research that there is also a societal impact, where people with intellectual disability are given low expectations of working in the open labour market. We know from the research that open employment outcomes for this population are heavily dependent on receiving the right support and evidence based assistance. Yet the Table is unclear on the relationship between the Tables and an assessment of work capacity.

14. There is no evidence for the 'calibration' across the tables to prove that the number of points for each table are equivalent in terms of work capacity.

15. Where is the empirical evidence that the 41% that will be excluded could obtain work for 15 hours per week via employment assistance?

16. The rating and scaling of 'intellectual function' (Table 10) is problematic: The categories are not exhaustive: for instance, while the Table 9 (communications) goes from '0 – no functional impact', to '5 – mild impact in **at least one area**', Table 10 goes from '0 – not functional impact' to '5 – mild impact in **at least 2 areas**'. This 'skipping' continues up the categories.

Appendix 1: An analysis of the Learning and applying knowledge domain of the revised DSP Table for Intellectual Function

Introduction

NCID had identified significant validity and reliability issues with revised Table on intellectual function. The issues identified below indicated that it is highly likely that there would be poor inter-rater reliability due to a lack of clarity, definition and differentiation between levels of impact.

We could conduct the same analysis for the other two domains but considered that the quantum of problems with just one domain should be enough to alert the Senate that there are significant problems with the revised Table.

The following should be read in conjunction with the revised Table on intellectual function.

0 Points - No Impact

The Table states that at this level there is *no impact on intellectual functions such as learning, reasoning and problem solving. For example, the person has intellectual functioning within the average range and displays an average range of adult skills in activities of daily living, socialisation, communication and appropriate behaviour and is able to live independently in the community.*

- What is the definition of *no impact* of intellectual function in terms of learning, reasoning and problem solving
- What is the average range of intellectual functioning that the table refers to?
- What is the average range of adult skills in activities of daily living, socialisation, communication and appropriate behaviour? Is there a standardised test for such that the Table is referring to?
- Why doesn't this part refer to learning and applying knowledge as per the other parts of the Table?
- What is the level of *no impac*t in terms of needing instructions and demonstrations to learn a complex task - i.e. what is the baseline to judge mild, moderate, severe and extreme against?
- Is there data or standardised assessments that are being used in the assessment framework of instructions or demonstrations to learn?
- For instance, how much instruction and demonstration does a person in the average range of intellectual function need to assemble a complex bicycle brake?

5 Points - Mild Impact

The Table states that a person at this level *may have mild difficulties with literacy and/or numeracy e.g. difficulty reading a complex newspaper article*.

- What is the definition of *mild*?
- Why does the Table say *may* for each criterion? Is this a guess? Do the criterion matter or not?

- Is *mild* based on a standardised literacy or numeracy test?
- What is a *complex* newspaper article? How will an assessor determine what is and what isn't a *complex* newspaper article? Is there an example or standard for such?
- What exactly do the Tables require to determine a *mild* impact with regard to numeracy?

The Table states that a person at this level *may need more instructions and demonstrations than peers to learn a complex task*.

- What is *more* instructions and demonstrations to learn a complex task? More than what?
- What complex tasks is the table alluding to? When is a task considered *complex*?

10 Points - Moderate Impact

The Table states that a person at this level has *difficulties with literacy and/or numeracy are evident e.g. significant difficulty reading and completing forms*

- What is meant by difficulties? What kind of difficulties? What is a *significant difficulty* in reading as compared to just a *difficulty*? Is *difficulty* based on a standardised literacy and numeracy test?
- What is meant by difficulty with *completing forms*? What types of forms, and what level or complexity of forms, e.g. Court documents, Centrelink forms, the ABS Census form, a mobile phone contract, a University enrollment form.
- Does *completion* mean filling in any response on the form, or does it have to be legible, or meaningful?

The Table states that a person at this level needs *repeated demonstrations to learn tasks involving several steps and/or concepts*.

- What is meant by *needs repeated demonstrations to learn tasks involving several steps and/or concepts?*
- Does this mean that to meet the *mild impact* criterion above that an individual only needs to be shown once. And that for the *no impact* criterion that an individual doesn't need to be shown at all?
- What is the difference between a need for *more demonstrations* in the mild criterion and needing *repeated demonstrations* in the moderate impact criterion. If one needs repeated demonstrations is not one getting more demonstrations?
- Why is the comparison to peers dropped in the moderate level on this criterion?
- What is meant by *several steps*? Is this more than 2 steps as per the dictionary definition or is this based on different scale?
- What is the difference of meaning of *several steps* in this criterion with the meaning of *complex task* in the mild impact criterion. Would not a complex task require several steps?

20 Points - Severe Impact

The Table states that an individual at this level *has only basic reading and writing skills e.g. can read only simple text and perform only basic counting but not calculations such as addition or subtraction of double digit numbers.*

- What is a *basic level* of reading and writing skills? Is this based on a standardised test of literacy?
- How is performance in basic counting an example of reading and writing skills?
- If this level is met by having a basic level of reading and writing - then are the levels of moderate and mild impact above a basic level of literacy but not at an average level? How is this determined?
- What is *simple* text? And how will this be distinguished from a "significant difficulty reading" in the moderate level?

The Table states that an individual at this level *needs repeated demonstrations to learn tasks involving two or three steps and/or concepts.*

- How will this be distinguished from *needs repeated demonstrations to learn tasks involving several steps and/or concepts?*
- Several steps is more than 2 steps. At this severe level the criterion also involves tasks of more than 2 steps (i.e. 3).
- Is the number of tasks the important factor in this criteria?
- What number of repeated demonstrations is required here to differentiate this level from the moderate level which also states repeated demonstrations?

General Questions and Comments

How does different levels of literacy and numeracy, and different levels of instruction intensity impact on an ability to work? Does this mean that if you cannot read, write or count that you are unable to work? Does this mean that if you need intensive instruction to learn that you cannot work?

If the Commonwealth believe that literacy is an important factor to determine an ability to work - why not simply use a standardised set of tests for reading, math and writing, and base the scale on standardised scores?

If the Commonwealth believe that the intensity of instruction to learn complex tasks is a factor for an ability to work, then it needs to reconcile this with the vocational research that demonstrates that with systematic instruction people with intellectual disability can be trained to perform complex tasks of value in the open labour market.

The issue for qualification for the DSP, however, is whether a person with intellectual disability can perform work in the open labour market without explicit instruction, and a program of ongoing support. How does this concept link with the revised Impairment Table?

Appendix 2: The Productivity Commission - Disability Care and Support - No. 54, 31 July 2011

The Productivity Commission recently published its report on the development of a National Disability Insurance Scheme. The Productivity Commission included discussion and recommendations on linkages between an insurance scheme and the Disability Support Pension.

NCID agrees with the Productivity Commission *that the norm should not be lifelong use of the DSP, among people with permanent conditions who could have much higher hopes for employment participation*.[19]

The research evidence and demonstration is that people with intellectual disabilities are able to participate in the open labour market when provided the right support.

On average people with intellectual disabilities have demonstrated that they can earn around $260 per week through open employment assistance. High performing specialist open employment providers have reported average weekly wages of around $330 per week at approximately $15 per hour.

These are modest wages. But they do have important social and economic impacts for individuals in terms of participation in the open labour market, increased dignity, increased disposable income, and decreased dependence on the pension as their main source of income. The pension savings for the Commonwealth through the income test and income tax paid are considerable.

The most significant reform required is the development and purchasing of specialist open employment services that are adept at placing and training people with intellectual disability in the open labour market. This is the most critical difference that research and demonstration has identified.

As a nation we still have yet to move from a demonstration of open employment for people with intellectual disability to where this model is provided on a national scale. Continued investment by the Commonwealth in segregated options in Australian Disability Enterprises and in non-work day programs by state governments dominates the adult service options for people with intellectual disability and their families. These well meaning options, as research continues to find, provide little in terms of social inclusion or wages that have any impact on reducing *lifelong* reliance on the pension.

If we are to move to a norm where people with intellectual disability are not reliant on a *lifelong use of the DSP* as recommended by the Productivity Commission then we need to consider what service support produces outcomes that place, train and provide ongoing support of people with intellectual disability in paid work in the open labour market. This service model exists and is based on research and demonstration of at least 25 years.

The Productivity Commission recommends that we should be ***improving data collection and analysis for monitoring outcomes for people on the DSP and the***

[19] Productivity Commission No. 54, 31 July 2011, p. 302.

interventions that produce the largest impacts. The Commonwealth should examine closely employment service models that are producing the best results in placing people in paid work that have the maximum impact of reducing reliance on the pension.

The question is; do we as a nation have the will or commitment to build a response where youth with intellectual disability and their families have an expectation that they will pursue a pathway from school to work, where the service system will be charged and funded with a responsibility to find, train and support youth into a paid job in the open labour market? Where pension eligibility is maintained for those with permanent disability, so as to remove fear about social security eligibility, but encouragement is provided to participate in the workforce, for as many hours as possible, and earn as much wages as possible, and have the dignity of employment.

This is not an idealistic dream. NCID would like to offer members of the Senate Committee to introduce you to individuals with intellectual disability, their family, their employers and their service provider where working in open employment, getting a wage, and a part pension is a reality.