



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

COMMUNITY AFFAIRS LEGISLATION COMMITTEE

Social Security and Other Legislation Amendment Bill 2011

TUESDAY, 6 SEPTEMBER 2011

CANBERRA

BY AUTHORITY OF THE SENATE

INTERNET

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

The internet address is:

<http://www.aph.gov.au/hansard>

To search the parliamentary database, go to:

<http://parlinfo.aph.gov.au>

ORIGINATING CHAMBER

JOB NAME

JobDate

Senators in attendance: Senators Boyce, McKenzie, Moore and Siewert

Terms of reference for the inquiry:

To inquire into and report on:

Social Security and Other Legislation Amendment Bill 2011

CAIN, Mr Paul, Director of Research and Strategy, National Council on Intellectual Disability.....	29
CHAMBERS, Ms Kasy, Executive Director, Anglicare Australia.....	37
COHEN, Associate Professor Milton, Director, Painaustralia.....	15
EGAN, Ms Susan, Executive Officer, Physical Disability Australia Ltd.....	8
GEROGIANNIS, Mr Bill, Solicitor, National Welfare Rights Network	21
HATCH, Mr Andrew, Section Manager, Disability and Carers Payments Policy Branch, Department of Families, Housing, Community Services and Indigenous Affairs	44
HOBSON, Ms Leah, Acting Chief Executive Officer, Australian Federation of Disability Organisations .	1
MURDOCH, Mr Paul, Vice-President, Australian Pain Management Association Inc.	15
O'HALLORAN AM, Ms Maree, President, National Welfare Rights Network	21
PATTISON, Mr Mark, Executive Director, National Council on Intellectual Disability	29
ROSE, Ms Sharon, Acting Group Manager, Disability and Carers Group, Department of Families, Housing, Community Services and Indigenous Affairs.....	44
THOMAS, Mr Gerard, Policy and Media Officer, National Welfare Rights Network	21
WILSON, Ms Serena, Deputy Secretary, Department of Families, Housing, Community Services and Indigenous Affairs	44

HOBSON, Ms Leah, Acting Chief Executive Officer, Australian Federation of Disability Organisations**Committee met at 09:04**

Evidence was taken via teleconference—

CHAIR (Senator Moore): Good morning. Thank you for coming to our committee. In our room we have the members of the Community Affairs Legislation Committee. I know you have done this before, but I have some things to go through to get it on record because you are the first witness.

I declare open this public hearing and welcome everyone who is present today both here and on the phone. The Senate Community Affairs Legislation Committee is inquiring into the Social Security and Other Legislation Amendment Bill 2011 schedule 3: disability support pension impairment tables. Today is the first public hearing for this inquiry. You have information on parliamentary privilege and the protection of witnesses and evidence, and if you have any questions or want further copies, just let us know.

We have your submission. It is No. 8 on the public record. Would you like to make a short statement before we go to questions?

Ms Hobson: Certainly. I would like to summarise some of the issues raised in our submission. Before I do that I would like to acknowledge that from the perspective of AFDO there are some positives associated with the introduction of the new impairment tables. They would be that, although there are obviously some concerns, we would like to see the government making some steps towards a functional model of disability as opposed to a purely medical one. It is not perfect, as you will me reiterate today, but it is a genuine attempt to make a step forward, and that is very pleasing to us. We have also had feedback from some of our member organisations that the new impairment tables will be much easier for people with disabilities and their advocates to interpret and understand, so that is also a very positive feature of the impairment tables.

As for our submission, we have some concerns with introducing new impairment tables at the present time given what we know from the draft impairment tables and the fact that they are going to be applied through a disallowable instrument. Our first concern, which we have raised with the government, is about the consultation process. That is partly because we feel that, as a first step, people with disabilities should be consulted about how any consultation surrounding something as central as income support payments for people with disabilities are undertaken. We should be going through a process with government where we have a say. We understand that they have to consult with expert groups, but we also understand that the lived experience of people with disability is important.

From our perspective, the process involved one person sitting on a committee after a very short consultation period with the broader sector. That one person was bound by confidentiality, so we found it very difficult to get further updates. The fact that there was one person with lived experience on the committee also meant that that person was trying to cover the whole breadth and depth of disability, and from our perspective that is simply an inadequate way to represent all of the diverse needs of people with disability. So obviously that section of the consultation process was particularly unsatisfactory from our perspective.

We are now at a phase where the government is starting to consult on the draft impairment tables that have been produced by that committee, and the consultation process is again less than satisfactory. They are doing four consultations in four eastern-state cities. Those consultations are going to run for a couple of hours each. I have been advised by people who have been invited—because we are on a separate advisory committee about changes to disability support pension, we are not participating in those consultations—

CHAIR: I am sorry. Did you say you are not participating? Your voice goes up and down a little bit.

Ms Hobson: Sorry, I am on a mobile phone here. We are not participating. We have not been invited to participate in those consultations.

CHAIR: So it is one of those invitation-only gigs.

Ms Hobson: It is invitation only. We have been asked to provide information about who we would like to see attending, and invitations have been extended to our member organisations but not to us, because we are participating in a separate committee around changes to the disability support pension.

Senator SIEWERT: Because you are participating in the committee?

CHAIR: Yes.

Ms Hobson: So from our perspective that process is less than ideal. We would certainly like to see government taking more opportunities to come to us before they begin consultations with people with disability to understand our particular needs and for us to get a sense of the context in which they are operating rather than

coming back to them and saying, 'This has been an issue for us,' and finding out they have had some particular constraints at their end or some things that they need to balance out. It is much easier if there is some dialogue from the start.

We were also concerned, reading through the information that has been released by the government, about the trials of the new impairment tables that were undertaken by a consultancy firm. It is very difficult to gauge from those trials what real impact the new impairment tables would have on people with disability, and that is in large part about the way the trials were conducted. For 10 of the tables six people or fewer were tested against those tables as part of the trials. You find that all of the trial participants were from Victoria, which causes some problems when you are looking at what the impact of the new impairment tables will be for people in rural and regional Australia, particularly very remote areas. Obviously the new impairment tables will rely a lot on allied health practitioners such as occupational therapists to provide information that backs up a medical diagnosis. In many of those rural, regional and remote areas you might not have an occupational therapist available to you. You might have somebody who only has minimal experience because they are a recent graduate. You might see people changing jobs quite rapidly. You are dealing with people who are new to an environment and new to understanding disability. So we would certainly say that those two particular issues especially need to be redressed. There needs to be either a much more comprehensive study of the new impairment tables before they are unleashed on the public or some incredibly close, publicly available monitoring of the new impairment tables as they progress from 1 January if that is the case.

We also feel that the trials did not necessarily capture the needs of people from non-English-speaking background or from Aboriginal and Torres Strait Islander heritage. We are particularly concerned about that because the introduction to the draft tables suggests that cultural background should not be taken into account as a consideration when assessing somebody under the new tables. But there is no way to say that that is irrelevant unless you have actually tested and checked against those particular population groups. So we are quite concerned about that as well.

We have talked with the government about the fact that the new impairment tables will be introduced as a disallowable instrument rather than through legislation, and we are very concerned about that. We think that that is going to allow for much less scrutiny of the new impairment tables. That is particularly a concern because the government has said that they are only going to be reviewing the tables on a regular basis every five years. It is great to see them committing to that given what has happened to the current impairment tables, which sat from 1993, but obviously if you are reviewing every five years there is no need for that not to be in the legislation, which can be properly scrutinised by parliament. If you are going to be refining and tweaking much more often that then perhaps there is a case for a disallowable instrument, but we obviously do not see it that way given current commitments.

We are also very concerned that the current tables, particularly in the five and 10 categories, are quite under-weighted. There are going to be a lot of people who would pass the 15-hour work test in that they would not be able to work for 15 hours or more a week and be eligible for DSP under that criteria but would fail the impairment table test under the current weighting, because they are simply weighted to ensure that people with more severe disabilities get fewer points for their disability. The fact that the point ratings have been condensed down to 30 points from what was a range of 60 points also means that you will be losing some ability to have some nuance in the needs of people with disability. Some of the light and shade in determining what somebody's level of need is has been lost as well.

We particularly feel that the under-weighting—or potential under-weighting—of people with disability in these tables is going to run a risk of creating discouraged workers who are put onto Newstart before they are ready and able to work even though they may be entirely willing to do so. They will be unprepared to do so. They will be sent to disability employment services who do not necessarily have the resources to support that person in the very long term to get and maintain a job. Their incentives are for the most part geared toward six-month outcomes. At best, we are concerned that we would see a lot of people with disability cycle through short-term job placements if people with more severe disabilities are under-weighted in these tables.

We are concerned that there is limited or no coverage of some conditions. Autism in particular is one we picked up. Certain conditions that may be very difficult for doctors to diagnose or recognise might not be covered so well. For example, somebody contacted AFDO to say they were particularly concerned about the needs of people who have multiple chemical sensitivities. Most doctors do not even know what that is. It is a complex condition that often results in delayed appearances of symptoms. Somebody may have an exposure and then have delayed fatigue, headaches or pain, so it is very difficult to diagnose and treat, which leads to a further concern of ours: the tables are only acceptable to people with disability who have been diagnosed, treated and stabilised.

As that example outlines, we are very concerned to see that people with disability have the complexity of their lives recognised. A diagnosis may not be easy to come by if doctors do not understand your condition. You may want to refuse very standardised treatments or pursue very experimental treatments. Your medical practitioner may or may not agree with you taking those paths. So that can be quite difficult as well. The stability of somebody's condition is particularly relative when somebody has flow-on conditions related to a primary condition or when somebody has side effects from their treatment such as medication that they might be taking. We are particularly concerned that the need for somebody to be diagnose, treated and stabilised may in fact hinder people with disability from accessing the tables in the first instance.

In light of all of these concerns, we are very concerned that there is a strong need for ongoing monitoring, consultation and review regarding the impairment tables. Whether the tables are brought in under a disallowable instrument or legislation, we feel that the government needs to consult quite regularly with people with disability and their organisations about how the tables are operating. They need to provide to the public appropriate data about how the tables are operating, what is happening to the numbers of people who go onto disability support pension, what is happening to those people who are put onto Newstart, whether those people are in fact getting the employment outcomes which are the alleged intent of these tables and whether people with disability have qualitative narrative responses to the impairment tables about their experience that can be useful in refining and making sure the tables and any guidelines associated with them are most useful to people with disability. We would particularly like to see, regardless of what happens with some of the specifics we have outlined here today, government asked to consult with people with disabilities and their organisations six months in and to provide us with the sort of data that I have just outlined, both qualitative and quantitative. Thank you.

CHAIR: Thank you.

Senator SIEWERT: I have a number of questions, so we will see how far we get in the time. I go to the issue of the consultation process. At one stage the sound went a bit down, and I think I might have misunderstood what you said, so I will ask for clarification. With regard to when you were talking about consultation in the eastern states, do you know why it is only in four cities?

Ms Hobson: I do not know why it is only four cities. I think you would have to put that question to FaHCSIA. My feeling would be that these consultations are being done in quite a short time frame and that that might be the issue there. We have raised with the minister's office the need to ensure that people from both rural and regional areas are able to participate, because having something in a capital city is inadequate in terms of allowing those people to participate—having their travel costs paid et cetera. We also need to look at what can be done to ensure that people who are not living on the eastern seaboard are able to participate in these consultations as well.

Senator SIEWERT: Exactly. As I am from Western Australia, you can understand how I feel about that.

Senator BOYCE: I think the east coast is more than sufficient!

Senator SIEWERT: I am intrigued that you were not invited to the consultation process because you are a member of the panel. I am personally concerned about that, but I also would have thought that, since your organisation is represented on the panel, it would be a good idea to have you there to hear what people are saying.

Ms Hobson: Indeed. I think we would have the same sort of feeling about that.

Senator SIEWERT: Are you definitely aware that you have not been included because you are on the consultation panel? Is that what was said to you?

Ms Hobson: That is my understanding, yes, but I am not entirely certain about that.

Senator SIEWERT: Okay. We will follow that up with the department. In terms of the process of the testing, the tables that you have in your submission show that, for example, for the communication function there were two people tested. Are you aware of whether the department has done any statistical validation of that process?

Ms Hobson: I am not aware that the department has done any statistical validation of the trials, no. I am not an expert in statistics, but certainly I was quite alarmed looking at the sample sizes against some of those tables.

Senator SIEWERT: Thank you. We will obviously follow that one up again. I am looking at your submission, and you talk about the diagnosed, treated and stabilised approach. Can you outline what your concerns are there in a little bit more detail?

Ms Hobson: Certainly. As I said at the start, our concerns are that the complexities of the lives of people with disability will mean that the criteria to be diagnosed, treated and stabilised before you can even be assessed for disability support pension will simply mean that some people do not access an assessment for disability support pension. A diagnosis is complex because often it can take quite some time to figure out what is wrong with a person or what condition they have. It can take quite some time for a diagnosis to be confirmed. There are many

conditions where there is no direct test available to confirm that somebody has a particular condition. So you may get a diagnosis, particularly in the psychosocial area, but even if you have a diagnosis—and it can be the professional opinion of somebody who may be in good standing—sometimes a person who is experiencing a psychosocial disability may reject that diagnosis. So simply getting a diagnosis can take a long time. It can mean that the person goes through lots of medical testing. It can mean that the person has to reject a diagnosis and simply find a number of opinions to make sure they are going to get appropriate diagnosis and treatment.

Treatment, again, is quite complicated. You might think a treatment is a round of medication and somebody clearly responding to that medication or a round of therapy and a person clearly responding, but treatment for a person with a disability can mean going through a number of trial-and-error processes to find the correct treatment. It can mean going through a process of taking some medication and realising that it is going to cause you a large number of side effects, so you could decide that the treatment is not worth the cure or improvement that it promises. You can find that people with disability at the upper end of the spectrum want to pursue experimental or innovative treatment such as stem cell research that may not have confirmed outcomes for them; it is their health, and they want to try whatever they can to pursue the best outcomes. In the meantime, while people are going through perhaps a complex array of trial-and-error processes, weighing in the balance whether a medication is worth the kind of side effects it provides for them or pursuing more experimental treatment, they are not necessarily going to have access to a claim for disability support pension even though their claim might be perfectly valid.

And 'stabilised', as you can see from what I have just said about treatment, is particularly difficult to define. For example, somebody may have a medical condition that fluctuates over time. Somebody with something like cystic fibrosis or multiple sclerosis might be very well at once stage but then drop. Although the table can take into account intermittent conditions to a certain extent, it is very difficult for somebody to definitively say they have stabilised. Somebody may have some flow-on conditions. A person who has positive HIV status might find that they have other conditions associated with that, such as pneumonia, that arise over time. Somebody who is taking medication in spite of the side effects might find that over the longer term some of those side effects are also quite difficult. The example we cited in our submission is a person who has a psychosocial disability and is taking medication for a long period of time. There is now some anecdotal evidence—I am not sure how strong the research base is here—that people experience memory loss over the longer term. So to say that somebody is stabilised sounds like a simple thing, but quite often it is not. We are very concerned that those kinds of complexities are the places where people will fall through the cracks and simply not be able to access even the chance to claim for DSP.

Senator SIEWERT: Thank you. That is much appreciated. In terms of how that compares to the current situation, what do you think will be the difference in the time frame in which people wait under the current system compared to the waiting period for the future?

Ms Hobson: My understanding is that diagnosed, treated and stabilised is already a criteria under the impairment tables for DSP. We would like to see that lifted so that some of the delays that people are currently experiencing might be shortened or lifted.

Senator SIEWERT: I missed a bit. You said that you were concerned that—

Ms Hobson: We would like to see any current delays for people with disability shortened or obliterated under the new tables so that we do not perpetuate a system that is already creating complexity and difficulty for people with disability.

Senator SIEWERT: Is it your concern that the new tables will make the current situation worse?

Ms Hobson: They will perpetuate the situation that is already in place and we would like to see that not continue.

Senator McKENZIE: Thank you for joining us. I have got a couple of questions. Leah, I am just wondering what your opinion is on what would be an appropriate consultation process—number of people, maybe some locations—to ensure that those with a disability residing in rural and regional Australia and not just on the eastern seaboard are taken into account. Do you have an idea of what that might look like?

Ms Hobson: I would think that at a bare minimum you would certainly want to go to all the capital cities in Australia and you would want to invite rural and regional organisations to attend in the first instance. You would want to provide their travel costs for them and any participation costs obviously that those people might have. At the moment, as I understand it, the consultations are only set to be two hours long and for people with disabilities that is a very short timeframe for something with the complexity and depth of the impairment tables. In a consultation context where you might be expecting people to be using interpreters or assistive and augmentative

communication devices, you would be wanting to see much longer timeframes for people to be able to have a say and to go through all the issues quite thoroughly. So we would like to see the consultations probably going for a day each at a time and this would allow time, too, for people who might have fatigue issues.

In terms of the number of people who should be involved, we would obviously like to see the broadest possible contingency of people with disability involved. But one of the complexities with something like the impairment tables is that for many organisations simply getting their heads around some of the issues, which can be very technical, and having the time and the staffing resources to do that, and having any additional information that they might need to do that, is really, really difficult. Again, that is another reason why I would suggest long consultations because you would want to go through some educative processes and be able to clarify things with people as you go along as part of a process like this because it is simply so complex.

Senator McKENZIE: Thank you. My next question relates to the job capacity assessors that you mention on page 7 of your submission. Could you flesh out your concerns with the suggested issues around the job capacity assessment and the impairment table assessment and the combination of roles within that particular job, and, secondly, do you know whether that particular role was suggested to be remunerated on a per-assessment basis or for the time it takes to complete the assessment?

Ms Hobson: As to the remuneration, I think that is a question you are going to have to ask of the department. We are not aware of what kind of remuneration is available to assessors. In terms of job capacity assessors generally, the feedback that we hear from member organisations and from organisations working in the welfare rights area, such as the National Welfare Rights Network who will be appearing later today, is that in reality job capacity assessors sometimes do not understand particular disability types that they may be working with. The job capacity assessments are supposed to go for a certain length of time, but often they are much shorter and more perfunctory. People with disability often find that their experiences are dismissed by job capacity assessors, or their input is dismissed as opposed to the sort of medical input that is provided by other people. So those things are obviously quite concerning to us in terms of just the general practices of job capacity assessors.

We have deep concerns about the job capacity assessors performing both the job capacity assessment and the impairment table assessment. We would like to see people feel that they can be assessed both on their functionality and on their job readiness separately. When you are being assessed for your job readiness, you want to put your best foot forward, you want to talk about your level of capacity and you want to show what you can do. But talking about their medical condition sometimes is a tricky situation for people with disability. So when you combine the two you might have somebody saying: 'I can't do these things on the impairment tables. I can't move my body. I can't turn around.' But when you go to an assessment of that person's job capacity they want to tell you: 'I can think. I have a degree. I can do all of these things in my head that make me perfect to get a job.' Combining those two conversations would make a lot of people feel (a) uncomfortable and (b) uneasy about the expertise of somebody to handle aspects of the complexities of what a person needs to look for in their job capacity versus what a person needs to look for in their functionality.

Senator McKENZIE: Thank you.

Senator BOYCE: Ms Hobson, I want to talk primarily about your recommendations on the definition of intellectual disability. But, firstly, what is the purpose of the consultations on the impairment tables which are happening at the moment?

Ms Hobson: About a week or two ago—and you will have to check with the department about the time frames here—emails were sent to organisations inviting them to consultations about the impairment tables. My understanding from those who have been invited is that they have not had any further papers. My understanding from the minister's office is that they are trying to get the discussions as open as possible. But we would be concerned that there is perhaps no structure there. My understanding is that one consultation has happened and that the final consultation is due to happen within the next couple of weeks. Again, I think you would have to check with the department about exact time frames. So they are happening fairly quickly. They are happening in Canberra, Melbourne, Sydney and Brisbane and they are by invitation only.

Senator BOYCE: Is it your understanding that the impairment tables would be changed as a result of these consultations, or could be changed?

Ms Hobson: Our conversation with the minister's office has indicated that if there are specific concerns that people have about the impairment tables and if those are consistent enough, then, yes, there could be some changes. Certainly our member organisations' feedback to us has been that they do not understand what the consultations are about and that if there is a potential outcome it has not been communicated very well.

Senator BOYCE: So they might in fact simply be information sessions rather than consultations in the sense of being prepared to change things?

Ms Hobson: Yes.

Senator BOYCE: I suppose that, 'What's new?' would be the next thing to say. Ms Hobson, you mentioned that AFDO felt that the changes went some way towards looking at functionality rather than at a medical model of disability. You suggested that there was further to go. Can you tell me where you think there is more to be done in terms of functionality being the driving force behind the impairment tables?

Ms Hobson: I think the steps that need to be taken are really about taking into account what people with disabilities themselves have to say about their functionality. As outlined in our submission, one of the things that we picked up and that assessors will be guided to look at is what a person can, or could, do not what they choose to do. For a lot of reasons, people with disability might choose not to do something—going back to our concern that cultural factors are not going to be taken into account. For instance, a person who is from a culturally diverse background might find that they have family who are able to provide assistance driving them places if they are vision impaired and taking them to any new environment that they need to go to. It is just a natural part of their family and cultural context that parents or siblings will help them out. That person is not necessarily making a conscious choice not to travel independently and they do not have the ground skills to travel independently. That person's choice, existing within the kind of family structure that perhaps some of us would not have and would not perceive as part of the Western system of making people with disability as independent as possible, just simply would not be taken into account. Somebody could say, 'I could button up my shirt, but it is going to take me half an hour to do it, so of course I am going to get somebody else to do it' or 'I could button up my shirt but I am not able to do it accurately. My blouse could come undone at an inappropriate time and then I am left in a very undignified position,' and the system simply will not be taking into account the feedback from people with disability about the complexity of their functionality. That is really important information to have and to feed into a process of assessing somebody.

Senator BOYCE: Thank you. I was a little surprised to see that the manifest conditions table is going to remain. How does that niche or integrate with tables that are supposedly based purely on functionality?

Ms Hobson: On the one hand it is good to have some recognition that people may have permanent, enduring and very severe disability. But on the other hand, yes, you are right, it certainly provides some challenges in working from a social and functional model of disability. You might find that those manifest conditions are based more on medical outcomes than on a person's functionality.

Senator BOYCE: Now I would just like to ask you about your recommendation about intellectual function. You are saying that the current table is insufficient and is not coherent with the international definition of intellectual disability. Could you tell us a little bit about what that means in practical terms for this definition?

Ms Hobson: Are you having the National Council on Intellectual Disability appear before you?

Senator BOYCE: Yes, I think so, yes. Are you suggesting that we ask them about that?

Ms Hobson: Yes, my suggestion would be to ask them. I could give you a broadstroke answer but they will be able to give you a much more detailed one.

Senator BOYCE: I am presuming that you are suggesting the same in terms of intellectual function and adaptive behaviours?

Ms Hobson: Yes, that is correct. We would certainly support any information that they put forward to you but they are going to be able to give you the most detailed information and I would be more confident of their information than my own because they are the specialists in the area.

CHAIR: Thank you, Ms Hobson. We will be putting the questions you have asked us to the department this afternoon on record, so we will be able to explore those issues. I have got one thing to follow-up. I have been advised by the department that there was an invitation given to your organisation to return those information consultation sessions and that you were asked whether a representative of your organisation would like to attend. It might just be a communication issue.

Ms Hobson: It is quite possible that there has been a communication issues are. We have been out of the office in dealing with emails via various technologies.

CHAIR: I understand totally.

Ms Hobson: If that is the case then I stand corrected.

CHAIR: There are many other issues that consultation but I just wanted to clarify that there was no effort from the department to exclude your organisation from the consultation sessions.

Ms Hobson: Okay. Thank you.

CHAIR: If you think of anything that you want to add, we have to report in the next sitting week but in the next couple of days if you go away and think of something that you really wanted to tell us, please be in contact. Thank you very much for your time.

EGAN, Ms Susan, Executive Officer, Physical Disability Australia Ltd

[09:47]

CHAIR: Welcome. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and if you need to have any further information or have questions about those, please contact the secretariat. To give you an idea of the time, we are hoping that this session will go through to about 10.30. Please make an opening statement and then we will go to questions, and each of the senators will introduce themselves when they start asking you questions.

Ms Egan: Thank you. This is just pointing out some issues for us. Whilst the tables we have provided do not actually present too much of a problem, we believe that the trial that has been held is not extensive enough and should have been more across Australia and involved many more people than it did. Most people who are our membership have indicated that they did not know anything about it and are not happy at not having a say. The other thing is that we believe that disability is as diverse as people are diverse and for that reason alone the consultation should have been more extensive on something as important as the disability support pension assessment process. We understand, and can be corrected if this is untrue, that the trial involved only about 200 people and that it was in Victoria. Our members are quite angry that the trial was as small as that for something as important as this.

The other issues that we will speak to you about—for instance, the tables—are based on a medical model which is hugely outdated. It is surprising because government has subscribed to the social model of disability and yet this goes back to a medical model which is extremely outdated and which has been proven not to work. We believe that life surrounds disability, so how a person copes in life, for instance, in getting to and from work for their age or fatigue factors should and must be taken into account, but we believe these issues are not taken into account when the assessments are being performed.

We would argue, for instance, that the range of functions that a person with an existing physical disability has will progressively slow down where there is physical disability. We also believe that training and experience come into account when we are talking about the qualifications of the assessors, because nowhere in the document does it give any indication of the professional requirements or of the qualifications the assessment team has. Looking at the Centrelink page I note that many on the team are not qualified to give assessments on people who have complex or dual disabilities, so one of the questions that we would have is: who are the assessors? Do they work for Centrelink or do they work independently? What are their qualifications and who is appropriately qualified to assess another person?

Those are basically some of the questions that we have. We believe that, for people with a physical disability, an accessible worksite and being able to get to and from work are crucial, particularly for people who work in rural areas where there is no accessible public transport. I live in a rural area myself and I work from home, but if I did not work from home there would be no accessible transport for me to get to work, as I have a disability as well. So I think that those factors need to be taken into account when considering whether a person should qualify for a DSP. That more or less covers what I wanted to say.

CHAIR: Thank you, Ms Egan. Was your organisation involved in the advisory committee on the tables?

Ms Egan: No.

CHAIR: And you have had no formal role in any of those things?

Ms Egan: No.

CHAIR: Have you raised with the department these questions you have just raised with us?

Ms Egan: Those questions are put into every submission we ever make, and if we are talking about FaHCSIA they should be fully aware of our position on that. We have made that clear in every submission we have ever made and it is clear in every statement we make.

CHAIR: Have you had discussions with the department around them?

Ms Egan: Yes.

Senator SIEWERT: In terms of raising these issues with the department about assessment and your concerns about rural and remote areas and about transport and accessibility, your points should be taken into account. AFDO, who appeared just before you, raised exactly the same point. It seems perfectly logical and reasonable to me. What has been the response of the department?

Ms Egan: I think this issue has been constantly brought up since Noah was a lad, because it is a fact. It has been raised in things like transport standards, education standards, employment standards and anything to do with

employment specifically for people with physical disability. The reaction is that departments can agree with us but cannot necessarily say, 'Yes, we'll do something about that immediately,' because we are talking about a process. Buses, for instance, are owned by businesses which are independent of government, yet they should be covered by a disability standard for transport. But in fact the length of time that has been given to transport to comply with an accessible transport standard is quite extensive and, therefore, has not been addressed yet.

Senator SIEWERT: I used to live in regional town and we did not have buses and we didn't have a taxi.

Ms Egan: That is the case where I live, too. I live 30 kilometres west of Kempsey, which, in rural terms, is not a long way, but there is no transport. There is a bus that picks up children for school, high school particularly, that comes morning and afternoon, but it is around 8.30 and if you miss that then you do not go to school. But this bus is not accessible and I am sure that is the case in many, many rural areas.

Senator SIEWERT: We were in fact just speculating on that here. Those buses do not have disability access in any case.

Ms Egan: No, they do not.

Senator SIEWERT: I absolutely understand the issues that you are talking about. In terms of the new impairment tables, do think it is going to make the situation worse?

Ms Egan: If it is not taken into account, yes it will, because a person will be denied a disability support pension based on the assessment tables alone but not other factors being taken into account, if we read the black-and-white documents to do with the assessment process. I understand, and most of us understand, that the assessment process is based on the tables alone, and that is the medical condition or abilities of that person. We understand that other factors, such as the lack of jobs in the rural area or the accessible transport issue, are not factored in.

Senator SIEWERT: The new approach is supposed to be moving away from the medical diagnosis model to the more functional impairment model.

Ms Egan: Yes, and I agree that it has done so to some degree, but I also have to say that this will in fact impede on some people's ability or necessity to get a DSP. If you do live in a rural area and you are looking for work there are no jobs and no transport for you—and there are no taxis, I might add. If I got a taxi from town to come and get me, I would have to pay for their trip out here and their return trip, of course. So those things do definitely impact. If it is not considered as a factor people will be penalised. Looking for work on a Newstart program will be a difficulty in itself.

Senator SIEWERT: Could you just go into that little bit. AFDO touched on it a bit and I do actually recall the evidence that AFDO gave at our last hearing when we were talking about the changes to employment and DSP. Could you expand on the comments you just made about looking for work on Newstart?

Ms Egan: I am not on Newstart so I am not familiar with all of the machinations, but I understand on Newstart that the person is required to look for work. If we assume that that is the case, when you live in a rural area, work is very hard to find because of the small population and fewer businesses. Attitudes in these areas is also an issue—people do not employ people with disabilities. We like to think that we are a very civilised society, but the fact is that people with disabilities will be last on the list to be hired. The transport factor: lack of jobs; fatigue in having to go so long away from your home in the travel, if you can get accessible transport; are huge issues. It may not be such an issue in other areas of disability. For instance, if you have an acquired brain injury in most cases you can still catch a bus—you do not need an accessible bus.

Senator SIEWERT: Thank you. Those are all very good points.

Ms Egan: Thank you.

Senator SIEWERT: You said that you do not have much of a problem with the tables. Is that from a physical disability point of view?

Ms Egan: Yes.

Senator SIEWERT: There is a difference of opinion in submissions about whether these tables should be a legislative instrument or part of the legislation. We have different organisations going for different approaches. Do you have any opinions on that?

Ms Egan: I have not given much thought, to be honest. I also must say that I am not really that qualified to say where it should fit. Because I have not given it consideration I will decline to comment, if you do not mind.

Senator SIEWERT: That is fair enough.

Senator McKENZIE: Ms Egan, my question relates to the comments you make in your submission on page five about grandfathering. I think that is quite a key point. Can you flesh that out for the committee, please?

Ms Egan: As we understand it, grandfathering is that people who are currently on DSP are not subject to the changes within the DSP and that they remain with the original assessment until such time as they are reviewed, which I understand is a process that everyone must go through at some time. If a person with a physical disability is assessed as being eligible for a DSP, in 99 per cent of the cases that will not change. Once you have been assessed as having factors such as cannot walk, cannot use arm function, cannot reach, hold or carry and cannot pick up weights and hold them, I would say that it would be pretty obvious that that will not change. I think that medical practitioners or whoever does the assessment would see, and can see, that that is not going to change; therefore, our belief is that those people should not be subject to having to go through this process all the time.

New people applying for a DSP may be an entirely different situation; therefore, if government sees fit to introduce changes, those people would be subject to those changes. But the same thing should apply in that, if it is obvious to the assessor, issues such as arm function and cannot reach, walk, hold, carry or pick up weights should be taken into account because that is simply not going to get any better. I am not sure whether I have answered your question there. I might have confused you and myself.

Senator McKENZIE: No. My concern was that there would be two tiers of recipients.

Ms Egan: There are anyway.

Senator SIEWERT: There are, because of Welfare to Work.

Senator McKENZIE: Thank you.

Senator BOYCE: Ms Egan, you mentioned that environmental factors affect your disability or your functionality in terms of transport et cetera. Do you think there is any merit in exploring the divide between state funding for some of these things and federal funding for others? Do you see that as being any part of the problem?

Ms Egan: I have to say no, initially, and I will explain what I mean by that. The person is being assessed for whether they qualify for a DSP. The outcome of that assessment is the most crucial issue. If they are assessed as eligible for a DSP that addresses the situation. But, for a person who has a physical disability who is put onto Newstart and considered not eligible for a DSP, that might be when the factor of state governments comes into play, and then, of course, you have the additional problem that all state governments are not the same. In, say, New South Wales, you might get some support for transport for people going to and from work, but that still does not address the situation that there is no accessible transport.

Senator BOYCE: So you are saying that this is a particular issue for not only rural and remote people but people who—

Ms Egan: Yes, that does not just apply to rural and remote people.

Senator BOYCE: The department has told us—and I am having trouble remembering the exact figure—that they are expecting about a third more people not to qualify for Disability Support Pension under the new tables. What is your view on that?

Ms Egan: I do not know the material that the department has access to that gives them that figure, but it certainly cannot be a recent figure because people are telling me, 'We have not been consulted about this.' So, if just over 200 people were involved in the consultation process, I do not think that gives you a picture of Australia at all because most of Australia is rural. The rural issue keeps coming up time and again. I know that people with disabilities in rural areas do not get a chance to work and yet they could.

Senator BOYCE: In some ways that is a problem they share with the general population, isn't it?

Ms Egan: Yes, it is, but the general population can drive a car—

Senator BOYCE: Yes, that is right.

Ms Egan: into a town or they can hop on whatever transport there is.

Senator BOYCE: Have you looked through the tables as an association or as an individual and thought, 'Under these tables, all the people I know would qualify' or 'Some of them would not qualify,' or whatever?

Ms Egan: Both. I used myself to begin with when I was looking through it, because, as I said before, I have a physical disability. I have a degenerative condition in that, as I age, my abilities are not as great as they used to be, shall we say. A lot of the issues are about, for instance, using my upper torso. My arms and hands have deteriorated over the past 10 years and, therefore, I can no longer do what I had been able to do 10 years ago. That applies to many of our members. I then thought about the cases of people I know as members—how Mary, Bob or whoever would cope if they were being assessed now, under the new system. I would have to say that many of

those people might miss out on being on a DSP, which would be totally unfair because, reading it in black and white, it is not taking into account the issues of fatigue or ageing.

Senator BOYCE: Surely, fatigue and ageing are related to your functionality. Are you saying that there should be some more qualifications?

Ms Egan: Yes, I agree that they do. I think that those are really extenuating factors, but, the way I read the tables and the document itself, there is no room for those extenuating situations. If it is based purely on a function that you can or cannot do—

Senator BOYCE: But the fact that you could not do it for half an hour is not relevant.

Ms Egan: That is exactly right. Most workplaces will require you to do repetitive work or a mixture of all of those things. Do not forget that, if you have a physical disability, in most cases there is equipment that comes with you. You have a wheelchair that you are required to propel during the time at work or you must use a pair of crutches or a walking frame or walking sticks during the time at work, or it may be that you are simply walking slower than anyone else. There is a whole range of physical disabilities out there that will be affected by this.

Senator BOYCE: And they are not reflected in the tables.

Ms Egan: Yes, that is our belief.

Senator BOYCE: Have you been involved in the invitation-only consultations that the department is currently doing? I am thinking of the association.

Ms Egan: I do not think so but I would need to take that on notice because I would have to check whether or not we had received that. So many things have come in in the last couple of weeks that I have to keep going over them to see where I am—for instance, an event is happening on Thursday in Brisbane that we have to plan for. That type of thing happening. So I would have to take that on notice. I can let you know if you want me to.

Senator BOYCE: Okay. Do you have any suggestions around how the tables should be altered to reflect the issues you have raised?

Ms Egan: I think that the whole assessment process—not just looking at the tables—needs to take into account situations for the individual, because not everybody with a disability is the same. We are all different. No two people will have matching symptoms or outcomes. Everybody is different, and I am sure that that will come across in other sectors as well.

Senator BOYCE: I imagine the department's response to that would be, 'Well, we have.' Are you able to tell us where you particularly see weaknesses?

Ms Egan: Our members are telling us differently, you see. I cannot question what they are saying. I cannot see what purpose there would be for them to say that without it being true. People are saying that these factors need to be taken into account when considering whether or not they can work.

There also has to be a little bit of leeway put in there for people who may not want to work and prefer to stay on a DSP, and we allow for that too. But I would say that an assessment for functional impairment cannot be made without including those other factors; it is not a true assessment.

CHAIR: Ms Egan, just before I go to Senator McKenzie, I can assure you that your organisation was invited to those consultations.

Ms Egan: Thank you.

CHAIR: It actually reinforces the whole issue of organisations and volunteer time and all those things.

Senator SIEWERT: And the short time frames.

CHAIR: I say that just so that you know for your records.

Senator McKENZIE: Ms Egan, I too have a particular passion for rural and regional issues. I wonder if you could let us know what percentage of those Australians with a disability, physical or otherwise, reside outside of capital cities.

Ms Egan: I do not know that we know that. I think the ABS would be best placed to give you that information. I would like to be able to tell you, but it is very difficult to assess for us because we observe the privacy of our members and can only go by their postcode or address. It would require a lot of work for us to look at who lives in a rural area and who does not. We do not get enough funding to do that. The ABS might.

Senator McKENZIE: Thank you.

Senator SIEWERT: Could I just pick up on that. I am aware that people on low incomes will move to rural and regional areas because of the cheap housing and housing affordability issues. Would that be a consideration for people living with a disability?

Ms Egan: Definitely. If you can afford to buy a house or to pay rent for a house much more cheaply than in a capital city then of course it will be. You would go there so that you could have a better lifestyle. I have been where I live for five years, and in that time I have noticed that there are an awful lot of people with physical disability around the mid-North Coast. Why that is I am not sure but I think it is something to do with the cost of living, and certainly living allowances and so on go further in the country than they do in the city.

Senator SIEWERT: I would like to go back to the grandfathering issue and clarify a position. I must admit I am not quite sure of something and I just want to clarify it. In terms of grandfathering, do you think that when people come up for review they should be assessed against the new tables?

Ms Egan: If that has been put into place—the new table—yes. This is my personal opinion, I might add, because I have not talked to people about this. I believe that if that is the law or the system for a disability support pension, then, yes I have been led to believe that people would be required to be assessed at the new system.

Senator SIEWERT: So, in effect they are not really grandfathered; basically they would be assessed against the new process like everybody else.

Ms Egan: If you check when that first came into place, the grandfathering system came in under the previous government, and I believe that that was the case at the time—that they would be required to be reviewed maybe two or three years down the track and if they were assessed as not eligible for a DSP that would be the case.

Senator SIEWERT: There is the group that were grandfathered through the Welfare to Work provisions and there are different requirements for those people. It is not just about being assessed against the tables.

Ms Egan: Okay.

Senator SIEWERT: So there are a couple of groups of people. We will check this with the department. Obviously any new applicants will go through the new process.

Ms Egan: Yes.

Senator SIEWERT: But those currently on DSP that come up for review you believe should be assessed against the new tables and in fact not grandfathered?

Ms Egan: That is very difficult. For most of those people that will be receiving a DSP—I am a bit optimistic, I am placing enough trust in the system to say that they will have been assessed appropriately at the time—I cannot see why they should have to go through a whole new process of whether they are eligible for DSP. For instance, as I said before, people who have muscular dystrophy, spinal injury, quadriplegics or spina bifida, who have been assessed as not being able to work before, why would they have to go through this new system?

Senator SIEWERT: There are a couple of issues that come up out of your answer. One is that, from what we can gather from the government's own figures and from what other organisations are saying, four in 10, I think it is, may drop out of DSP. Those who normally would have got DSP under this new process will not. It is fair to say, then, that those that are on DSP that are now going to be assessed against the new tables may well drop off DSP.

Ms Egan: Yes, but I think there are two issues that we are talking about here—or that I am talking about. One is that people who were grandfathered should have been assessed as totally not able to work and so therefore why should they have to be reassessed with a different system that may include them as being able to work and so therefore should go on to Newstart. Why I say that is that the factors we have already talked about—ageing, fatigue, lack of transport, lack of jobs; and that goes for cities to are not just for areas—need to be taken into account. If they are taken into account under the new assessment system then you would probably get the same results for those same people. But if we are looking at only those who apply for a DSP from the time it is in operation, then maybe four in 10 may miss out.

Senator SIEWERT: I am not trying to be difficult here, but I am finding your evidence really confusing. On the one hand you are saying they will meet the requirements and on the other hand you are saying they should be grandfathered.

Ms Egan: No—

Senator SIEWERT: We are talking about a different group of people—

Ms Egan: Yes.

Senator SIEWERT: not just those who are impacted by the grandfathering from Welfare to Work.

Ms Egan: Yes.

Senator SIEWERT: We are talking now about anybody that needs to be reassessed.

Ms Egan: Yes.

Senator SIEWERT: So do you believe that they should be grandfathered?

Ms Egan: Yes. They have been on a disability support pension for years for the obvious reason that they have a significant disability. I cannot see why all of a sudden an assessment should be able to prove that they do not have a long-lasting disability.

CHAIR: Could I just follow up on that. I am wondering what the role of a review is. Everybody, unless they are determined to be manifest, as you know, Ms Egan, is subject to review for whatever payment they have. Are you saying that you do not believe DSP people should be reviewed?

Ms Egan: I am saying that for those who have been on a disability support pension and have been assessed as having a significant disability and have proven that they cannot work, why would that change over time? The disability does not change. I am talking about, for instance, muscular dystrophy—

CHAIR: Ms Egan, you are thinking about people who have the most serious disabilities.

Ms Egan: Yes.

CHAIR: Under the previous system the most serious disabilities were, I think, called 'manifest'. Those people have gone through the process and there is no likelihood of their disability changing, but other people on DSP are subject to regular review.

Ms Egan: People have, for instance, a condition that happens at a particular time—they may get an injury that results in a physical disability—but over time that injury will settle and will allow them to work in some area with modifications or modified times to address fatigue. In that case, yes, they should be reviewed because they do not have muscular dystrophy or a spinal injury or spina bifida or any of those particular disabilities. I am thinking about those with less severe physical disabilities, and I am only talking about physical disabilities.

CHAIR: We will clarify with the department exactly what the review schedule is. We are probably in agreement; it was just the way it was said. We will ask the department this afternoon and you will be able to check the *Hansard* and see.

Senator SIEWERT: My point is that, for those who are being reviewed—and I agree that for those who do not have a manifest disability there is the review process—it is about whether they are reviewed under the old tables or the new tables. Basically, because they are being assessed under the new tables, they will potentially come off DSP and go onto Newstart.

Ms Egan: Yes. I guess they are saying that four in 10 will not go onto the DSP. That may be so—I will not argue with those figures—but I would say that it needs to be a quite adequate assessment, taking all the factors that we have discussed into account.

Senator SIEWERT: I want to go to the issue of co-morbidities, for those with a physical disability. The issue has been raised about co-morbidity and the impairment tables not necessarily picking that up. As I understand it, your comments have basically been through the lens of a physical disability. Have you looked at the tables and whether they pick up co-morbidity?

Ms Egan: I have to say that I did not, but I do understand that, as I said before, the issues of, say, muscular dystrophy or Friedreich's ataxia do not change. In fact, if anything, they get worse. I have not looked at it with that in mind.

Senator SIEWERT: Issues have been raised with us that the tables do not adequately pick up the issues around co-morbidity. It has also been suggested that some people with a physical disability may not meet the 20-point requirement with a physical disability but they have co-morbidities. Have you look at it from that perspective?

Ms Egan: No. I would have to say that I have not. Looking at the various sections in the assessment tables, I have come to the conclusion that a major number of our members would remain on the DSP.

Senator SIEWERT: Thank you.

CHAIR: Ms Egan, I think you have exhausted us, in terms of questions. We have to report in the first sitting week, which is late next week, so if you can think of anything you would like to add—sometimes it happens—could you get back to us by Thursday.

Ms Egan: Thursday this week. I can do that.

CHAIR: Thank you for your evidence.

Proceedings suspended from 10:25 to 10:48

COHEN, Associate Professor Milton, Director, Painaustralia

MURDOCH, Mr Paul, Vice-President, Australian Pain Management Association Inc.

Evidence was taken via teleconference—

CHAIR: I welcome our next witnesses, Mr Paul Murdoch from the Australian Pain Management Association Inc. and Professor Milton Cohen from Painaustralia, to today's hearing. In the room here with me, Senator Moore, are Senator Rachel Siewert from Western Australia, Senator Sue Boyce from Queensland and Senator Bridget McKenzie will be joining us from Victoria.

Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. If you have any questions or need more information, please let us know. Do you have any comments on the capacity in which you are appearing—the reason you are sharing your knowledge here with us today? Professor Cohen, would you like to go first?

Prof. Cohen: Thank you. I am appearing today as a director of Painaustralia, and I am on the board of Painaustralia as the representative of the Faculty of Pain Medicine of the Australian and New Zealand College of Anaesthetists.

CHAIR: Whereabouts are you, Professor?

Prof. Cohen: Sydney.

CHAIR: Mr Murdoch?

Mr Murdoch: I am the Vice-President of the Australian Pain Management Association Inc., a consumer health organisation representing people with persistent or chronic pain.

CHAIR: You are in Brisbane?

Mr Murdoch: Yes.

CHAIR: We have received the submission from the Australian Pain and Management Association as No. 1, and the submission from Painaustralia as No. 2. It just happened that they came in that order. I invite each of you, if you wish, to make an opening statement and then we will go into questions.

Prof. Cohen: Painaustralia wishes to make two main points with regard to its submission. The first is we support the review of the DSP tables because people with a disability should be assessed on their ability to function and therefore to work. That applies to some but not necessarily all people whose condition is characterised by chronic pain. So the transition to tables based on functional ability is certainly welcome.

However, the second point I wish to make is that, because the tables specifically proscribe pain as a consideration, we are concerned that some people with chronic pain conditions which do not attract an underlying diagnosis, let alone a treatable one, may be disadvantaged by that exclusion. Interestingly, in the report presented to the committee the majority of conditions for which DSPs were assigned, from June 2009 to June 2010, were assessed under table 20, 'Miscellaneous', by a short half-head behind psychiatric conditions. One would suspect that many of those were characterised by chronic pain. It is of some concern that pain is considered under the new proposals to be a symptom only and not a condition in its own right. We have two points to make there.

Firstly, this does not in fact acknowledge the change in medical knowledge, neurobiological knowledge, about the nature of chronic pain, which is really now considered to be an incurable condition and, in many cases, only partly reversible. It does not readily reduce to an antidiagnosis.

The second point is that the implication of note 35, which accompanies the new tables, is that pain is treatable. The note says: 'It is important that the cause of pain is properly diagnosed and treated.' With the best will in the world and the best knowledge in the world, that is not always possible. There are some people who do have an ongoing chronic pain problem and treatment is certainly limited.

The third part of our submission was in fact a suggestion to the committee to resolve the predicament of people with chronic pain who may not be covered or have access to support through the new tables. The suggestion was to consider the possibility of using table 5, which is the mental health table, not in any way at all to imply that chronic pain is a psychiatric condition, because that would further alienate and stigmatise those people but rather to look at the categories under which people with mental health disorders are to be assessed. Those six categories there may be more applicable to some people with chronic pain than the more somatically based tables.

CHAIR: Thank you, Professor Cohen; Mr Murdoch.

Mr Murdoch: I will begin by stating that, whilst APMA is a member of Painaustralia, our submission and my comments today differ slightly from the professor's on the basis that we have interpreted the revised tables

recommended by the advisory committee somewhat differently from PainAustralia. If it turns out we are wrong, then we would share the concerns that Professor Cohen has just raised. I will get to that in a moment.

We very much appreciate the opportunity to appear and provide our views. We welcome and support the aim of assisting people to remain in or return to the paid workforce. We think that is consistent with our philosophical approach to support people to manage what is a chronic condition. As the advisory committee has observed, working is good for health, wellbeing, social participation and self worth and, of course, it is the best way to ensure people participate in the economic prosperity that most Australians enjoy. We support the proposal to remove the impairment tables from their current position in the act and reissue them in the form of a legislative instrument to be issued by the minister. We agree that that will enable the contents to be kept more consistent with medical scientific developments, but still provide a reassuring level of parliamentary oversight through the provisions that apply to delegated legislation.

As identified in our submission, we have some relatively minor concerns that the revised impairment tables are not completely aligned with medical understanding of persistent pain. On that basis, we would like the committee to recommend to the minister that, before she issues the new tables, she consult with the Faculty of Pain Medicine and have that expert body review the tables to ensure that the functional impacts that can accompany the more severe cases of persistent pain are capable of being appropriately identified and rated. We understand that both the department and the minister's office are receptive to such a proposal. There is in fact a telephone conference involving ourselves, PainAustralia, Faculty of Pain Medicine and several others later this month.

We believe that the draft tables correctly differentiate between pain as a symptom and persistent pain as a condition. This is where we have taken a different view from PainAustralia. We believe, however, as the professor pointed out, that the current wording of paragraph 35 of the revised tables can be a little bit misleading. We have suggested in our submission the change of one word, which would clarify that distinction. We support the revised tables' requirement that proper investigation, diagnosis and management to the maximum extent possible be undertaken. In relation to people living with persistent pain, we do believe that this is in their interests even where they are seeking disability support pension payments and may face some delays as a result of this medical investigation. However, there are three areas of concern to APMA that I would like to draw to the committee's attention. The first, and perhaps most serious, is the serious inadequacies in the availability and accessibility of pain management facilities across the country. There are also serious shortcomings in the understanding and skills of general practitioners, in particular, at the primary level, which have the effect of clogging up the 60-odd persistent pain services which exist across Australia. This is not helped by the lack of community based services from organisations such as ourselves. Persistent pain is not recognised as a priority disease in the National Chronic Disease Strategy or any of its state counterparts. Delays in proper treatment will not only disadvantage applicants for the disability support pension with persistent pain, but cause increases in the chronicity and the severity of those people's persistent pain—thus making it even more likely that they will be required to receive DSP support. In this regard, I seek the committee's leave to table a document, which I have previously provided your secretariat, which graphically reveals the extent of the problem in accessing pain management facilities, particularly in the public sector.

CHAIR: The committee has agreed to accept the document, of which we have seen copies. Although we have the document we have not read it yet.

Mr Murdoch: The second issue to which I would like to draw your attention is the need for positive support and encouragement to employers to provide more flexibility and support in the workplace. The disability employment services can and should provide more services for people who are suffering chronic illnesses, such as persistent pain.

The third and final, and perhaps most serious, implication for some of our members relates to seeking a commitment not to apply the new impairment tables to existing disability support pension recipients. The minister intimated in a number of press interviews she had when the announcements were first made that it would only apply prospectively. But we are aware that people are regularly reviewed. We wish to protect those people who are currently in receipt of this payment from the anxiety of potentially being forced onto a lower paying benefit, particularly given the chronicity of their condition and, in many cases, the length of time they have been in receipt of such payments. We have been advised by the minister's office that the possible number who would be affected by reviews in future years is very small, judging by the 2010-11 figures. If that is true—and we are somewhat sceptical about whether that will continue to be the case—then the type of grandfathering provision we would seek to have inserted into the new legislative instrument containing the tables would be of minimal cost financially and administratively. If the committee is inclined to make such a recommendation I can provide

further details of a comparable legislative instrument that would provide the protection and reassurances that we are seeking in this instance for existing DSP recipients.

Senator SIEWERT: Going to the issue of the—'difference of opinion' may be too strong a term—difference in the understanding of where persistent pain sits in the tables and whether it is adequately covered, Professor Cohen, could you outline where you think it is not covered. I am not trying to set you up; I am just trying to get an understanding of whether or not pain is covered properly.

CHAIR: And whether either of you has clarified this position with the department.

Senator SIEWERT: Yes.

Mr Murdoch: If I could answer that question. I sought to clarify it with the minister's office yesterday but I was unable to get a clear understanding. I have yet to speak to the department. It really revolves around how one interprets, I believe, paragraph 35, which accompanies the tables. If you interpret it as excluding persistent pain, or any variant of it, as constituting a diagnosable condition, then there are concerns. But, if it merely requires that persistent pain, or any of the other types of chronic pain conditions that exist and are recognised in various ICT codings, then people's functionality can be assessed under the various tables and in my opinion there is no problem, albeit with the proviso that in some instances it may not fully take into account the various functional impacts of pain, which is why we would support the Faculty of Pain Medicine giving it a quick overview.

CHAIR: Professor Cohen, would you like to clarify your position for us?

Prof. Cohen: I do not think we necessarily disagree with APMA. It is just that chronic pain is not an accepted diagnostic category under these tables. Chronic pain is considered to be a symptom and not a diagnosis. Some tables are not going to apply for some people with, for example, chronic widespread pain or what is called complex regional pain. There the focus of functional problems is certainly important but it does not capture a diagnosis, and it is explicitly in the tables that an 'underlying diagnosis has to be present'. It does not look at these other dimensions like effect on concentration, on relationships, on sleep or on endurance for activity or for work, which chronic pain can impose. So it really boils down to the failure to recognise that chronic pain can be a condition in its own right, the complex expression, and is not captured by the diagnostic framework of it.

Senator SIEWERT: Mr Murdoch, I have to be honest and say that I am really struggling to understand this and I will go to another question that might highlight the issue. Do you agree with what Professor Cohen has just said?

Mr Murdoch: I agree with what he says but I think his assessment of the tables is incorrect. I do not think the tables exclude chronic pain, or persistent pain as we prefer to call it, or any of the various types of conditions, such as regional pain syndrome et cetera, from being accepted as diagnosable conditions. I think what the advisory committee that set up the tables is seeking to do is stop general practitioners in particular from merely reporting that a patient is suffering from pain, which of course is associated with a wide range of medical conditions, and, therefore, sending them off to Centrelink to apply for DSP on the basis of that reporting of the symptom.

Pain can be a symptom, but persistent pain is not a symptom; it is a disease in its own right. If the tables accept that, as we believe they do, the diagnosis of persistent pain constitutes a diagnosis of a condition rather than merely a description of one or more symptoms suffered by someone with an unknown disease, I do not think we have a problem. If the professor and PainAustralia are right and the tables do not accept a diagnosis from, for example, a pain medicine specialist that a person suffers from persistent pain, whatever the cause might be, there is a problem. We differ in our interpretation of what the tables are intending to say. I think that FaHCSIA this afternoon may shed some light on that.

Senator SIEWERT: Yes. I was just going to say that I think this is an issue that we need to take to FaHCSIA.

CHAIR: Mr Murdoch, you said that you had attempted to speak to FaHCSIA yesterday.

Mr Murdoch: No, I did not have the chance. I spoke to the minister's office yesterday.

CHAIR: Professor Cohen, have you spoken to the department?

Prof. Cohen: No, we have not done that yet. May I just comment on what Mr Murdoch just said?

CHAIR: Yes.

Prof. Cohen: I do not think we are that far apart, really.

Mr Murdoch: I do not think we are apart at all.

Prof. Cohen: I think we are actually on the same page, in the same groove, which is important. The fact is that chronic pain per se, as a condition in its own right, is not diagnostically acceptable yet. So the medical

practitioners and assessors are constrained to assign a diagnostic label to some people with chronic pain, and that may be inappropriate and it may not allow them to be assessed appropriately. That is our main concern. Medical knowledge has moved on to accept that chronic pain in most cases becomes a condition in its own right, and it is not readily reducible to another diagnosis is what the emphasis has been to date.

Senator SIEWERT: And it is your opinion that, at the moment, that is not adequately picked up in the tables?

Prof. Cohen: That is correct.

Senator SIEWERT: Mr Murdoch, in terms of your comments about the accessibility to persistent pain services, having had an extremely close relative on a waiting list for the pain clinic in Western Australia I can totally understand that, there is a concern here with the issues around diagnosis. From my personal experience, it has taken more than 12 months for the pain issue to get accepted and dealt with—in fact, it is way over 12 months. How does access to those sorts of services relate to the issue of diagnosis and the tables?

Mr Murdoch: It will certainly delay people getting to the stage where the department is prepared to accept that their condition has 'stabilised'—to use the jargon used in the tables. It runs the risk that those delays will worsen the condition and make it more likely that they will have to receive DSP support rather than being able to remain in or return to the workforce. It is a serious problem. And it is one of the issues that, albeit obliquely, the advisory committee recognised in appendix G of its report. It did not talk about pain management services explicitly but it did say that in a number of areas there were severe shortages of specialists and specialist services in certain fields, and also for the people living in certain locations—obviously rural and remote.

We would argue, and I am sure the professor would agree with me, that pain management services clearly fall into that category. There is a serious shortage right across the country, in all states and territories, and it is not getting better in a hurry.

Senator SIEWERT: Can we just explore that a little bit further. With this process, as you know, before you even go onto DSP, if you do not make the 20 points straightaway you have to go through the new employment process—and you just made the point about somebody's ability to find and maintain employment if they are in a situation where they cannot get treatment. How is that going to impact on their ability to find and maintain work?

Mr Murdoch: I do not think they will be capable of doing that.

Prof. Cohen: On both those issues I agree with Mr Murdoch. I have two comments. Firstly, it is interesting to note that in the introduction to the new tables point 2 says 'the tables represent an empirically agreed set of criteria' et cetera but it says no adjustments are made for a variety of 'non-medical factors' including skills, language fluency, personal motivation et cetera. Whilst one can understand that, on the one hand, a person in chronic pain is jeopardised again because these other, so-called environmental, factors are a fundamental component in their predicament.

The second point, as we made on page 3 of the PainAustralia submission in quoting from goals for the National Pain Strategy, which talks about people in pain having timely access to effective care, we note that the introduction of Medicare Locals may well provide the framework to facilitate the development of effective pain management at a primary care level, that Medicare Locals seem to us to be a good way of achieving that and that better primary care management, especially early, will diminish the number of people who develop chronic pain and who therefore would seek access to DSP.

But it is going to be a long time before those primary care services are actually in place and a change in the pattern of chronic pain in the community actually occurs. So I think we are at one with APMA in emphasising that the lack of access to skilled and knowledgeable services is a major factor in the number of people who go untreated and therefore have to approach the DSP for income support.

Senator SIEWERT: If you are taking medication for chronic pain, some medications, it seems to me, will have an impact on your ability to work as well.

Prof. Cohen: It is certainly possible. When treating chronic pain with medication one has to get a balance between effectiveness and side-effects. Clearly if side-effects of medication are interfering with ability to work that is a problem. The other side of the coin is that some people on medication in fact experience an improved quality of life and may well be able to work but the fact that they are taking medication then is a source of discrimination against them. I think this is an important point to emphasise. No-one likes to have to take medication long term but in situations where some medications taken for pain have in fact improved people's ability to live and therefore to work, that in itself should not be a point against them.

Mr Murdoch: I would agree with the professor's comments. I would also point out that, as you observe, in some cases the taking of medication can have functional impacts. It may impose restrictions, for example, on

driving, operating heavy machinery and a range of other things. Pharmacological treatment is just one of a range of ways in which a person is able to manage their persistent pain. What needs to be emphasised in this is that people's pain levels and functional impacts are not the same every day. They will vary from day to day, week to week, month to month. Where there is flexibility in the workplace, where employers recognise and value the skills and abilities that people come with and recognise that, even though they might not be able to come into work tomorrow because they wake up and their pain level is too high, the following day or the following week they may be back, contributing in extremely productive ways. That kind of flexibility and accommodation in the workplace is extremely important for people with persistent pain.

Senator BOYCE: I want to get back to the way the tables will or will not work, and we will certainly follow up with the department this afternoon around the queries that you have raised. Physical Disabilities Australia earlier made the point that in their view the tables did not allow for environmental differences such as people who lived in rural and remote areas and therefore did not have the same access to transport or jobs or treatment perhaps, as also that they did not allow for the fact that you could use your left hand when tested but if you were asked to continue to use your left hand for half an hour you would not be able to. Do those same sorts of concerns apply in your area?

Prof. Cohen: Yes, indeed. One of the issues for somebody with chronic pain is a lack of endurance for sustained activity. An assessment over a relatively short period of time and on a good day, as Mr Murdoch has already mentioned, may not reflect the true functional capacity. So the dimension of endurance for sustained activity has to be taken into account and often the day excess activity the person with chronic pain will be experiencing more pain. So it is a fluctuating condition dependent upon usage, and usage needs to be tailored to the person, not the other way around. On the other question you raised regarding the environmental issues, they are important and alluded to in point 2 of those tables that they are not to be taken into account, which does not seem quite right.

Senator BOYCE: It seems to potentially put people into a strange sort of limbo. Some of the submissions have raised concerns about the qualifications of the assessors who are going to be deciding if people are eligible for DSP or their work capacity. You mentioned earlier, Professor Cohen, the need for a letter or somesuch from a pain specialist. Do you have any concerns in this area and what would you suggest should happen?

Prof. Cohen: It speaks not just to the small number and maldistribution of specialist pain services but also to this very slippery position of chronic pain in medical knowledge, where traditionally it has been seen as a symptom of another condition; you treat the other condition and things get better. Chronic pain in particular is not well settled in medical knowledge, so there is concern that some assessors may not be up to date with knowledge of chronic pain and its complexity, and may interpret the person before them through a somewhat narrower focus as to what their underlying 'condition' might be. So I would agree: there is a function of medical knowledge which comes into play here.

Senator BOYCE: So you think that the assessors of people with persistent pain should, what, have spelt-out qualifications?

Prof. Cohen: I am not sure that that would be possible, but they almost certainly should be exposed to at least some summary literature on the nature of chronic pain—how it has changed, how its assessment has changed—so that they can change their framework for assessing pain. It is a matter of education. I do not know that the already stretched pain services in Australia can double up to back up such assessments, although I think, where there are difficult questions to be asked, that an opinion from a pain or rehabilitation specialist could be sought. But I think, if the education package for assessors could be enhanced with some recent insight into the nature of chronic pain, that may well help.

Senator BOYCE: But you are still struggling to have it recognised as a condition in its own right; is that correct?

Prof. Cohen: That is correct.

Senator BOYCE: Mr Murdoch, do you have any response to that?

Mr Murdoch: My concern is somewhat less about the assessors. It is more to do with—and I forget the title—the medical advisory unit within Centrelink which has had its resources increased in recent times and which will be the area to which assessors look for guidance in applying the tables and assessing the more complex cases, which we anticipate people with persistent pain falling into. I think the level of understanding of persistent pain that exists within that health assessment unit is perhaps even more critical than the level of understanding that the job assessors have.

Senator BOYCE: Okay. Have you had contact with them?

Mr Murdoch: No.

Senator BOYCE: Okay. The other question is: have either of your organisations been invited to be a part of the consultation on the impairment tables that is currently taking place?

Mr Murdoch: APMA was invited in mid-2010 to be involved but, unfortunately, at that stage did not have the resources to participate as it would have liked to. Since then, particularly given the submission that we have made to your committee and to the department, both the department and the minister's office have recognised that there are potential problems with persistent pain; and, as I mentioned earlier, a teleconference has been scheduled for later this month. So we do anticipate that any deficiencies in consultation and involvement that may have occurred in the past, for whatever reason, are likely to be addressed over the next couple of months and certainly, we would hope, before the finalisation of the new legislative instrument.

Senator BOYCE: You understand that this consultation could lead to changes to the tables at this stage—that that is what the consultation is designed to do?

Mr Murdoch: It would appear that, yes, there is some receptivity to at least minor adjustments to the tables.

Senator BOYCE: Okay. Thank you. They are all my questions.

CHAIR: Any further questions? No. Mr Murdoch or Professor Cohen, is there anything you want to add?

Prof. Cohen: No. I think Painaustralia have been given a very fair hearing. Thank you very much. I think we are really very close to APMA in what we are putting forward.

CHAIR: Thank you very much.

Mr Murdoch: I would agree with the professor. I think that we are very much singing from the same hymn sheet, albeit one of us is taking a more optimistic view than the other about what the tables actually mean. I would hope that FaHCSIA are able to clarify the matter favourably for the sake of people with persistent pain, who will need to access DSP in the future.

CHAIR: Thank you for your evidence.

GEROGIANNIS, Mr Bill, Solicitor, National Welfare Rights Network

O'HALLORAN AM, Ms Maree, President, National Welfare Rights Network

THOMAS, Mr Gerard, Policy and Media Officer, National Welfare Rights Network

Evidence from Mr Gerogiannis and Ms O'Halloran was taken via teleconference—

[11:48]

CHAIR: Welcome. As experienced people who share with us, you have information about parliamentary privilege and the protection of witnesses and evidence. If you have any questions or need to have more information, please let us know. Thank you for your submission, which we have numbered 7. Would you like to make an opening statement? We will then go to questions.

Ms O'Halloran: I will begin, then I will hand over to Mr Gerogiannis and then to Mr Thomas. Thank you very much for the opportunity to give evidence today. The National Welfare Rights Network is a network of 14 community legal centres that specialise in social security law, Centrelink practice and employment participation. We are direct service delivery people who provide legal services to people. To give you one example, at the Welfare Rights Centre in Sydney, approximately 25 per cent of our calls in any year—over 1,000 and perhaps up to 1,500 calls per year—would be about the Disability Support Pension or about the nexus between the Newstart allowance and the Disability Support Pension.

I begin at the outset by saying that we agree with and support entirely the government's objectives and their genuine commitment to improve employment and social outcomes for people with a disability. If everyone who is denied a disability support pension in the future were able to gain employment, we would be very thankful and we believe that is the best outcome. As it currently stands, however, we think that the legal regime being proposed and our uncertainty about the investment to help people into employment taken together mean that this outcome will not occur and that we will see many people with partial disability or multiple disabilities, including those with mental health issues, trying to live on \$237 per week, which is the Newstart allowance for people who are unemployed and is \$128 per week less than the Disability Support Pension. As you would be aware the major concerns that we have are set out in summary on pages 4 and 5 of our submission and I will only go to a couple of those. On the issue of the question of whether the impairment tables should be incorporated into the legislation or be a disallowable instrument, the view of the National Welfare Rights Network is that the tables should be incorporated into the legislation. It means that were they to change in the future there would be a far greater opportunity for scrutiny such as by this type of committee. Our experience, for example, with the disallowable instrument that brought in to place the changes for the disability support pension scheduled to start and which did start on 3 September this year was that we did not see that disallowable instrument until the day that the changes came into place so there was no real chance for scrutiny about the program of support that goes with those particular changes.

The next point I would make we have already made in detail on page 7 of our submission and then again on page 8. In table form we have pointed to the difference between the Newstart allowance rate of payment for people who are unemployed and the disability support pension payment and the growing gap between those two payments and that, of course, is an important part of our submission. We also at page 10 of our submission spend some time on the uncertainty we have about the level of investment that will be provided by the government to support people living with disability into work and also the level of support that will be provided by public and private employers.

The other point that we would like to make in brief to the committee is that we think it is important to have a look at the changes proposed here to the impairment tables in the context of other changes to the disability support pension. I have already mentioned that on 3 September this year the government implemented changes that mean that people who do not reach 20 points on one impairment table but across impairment tables reach 20 points and who have not been on a program of support for up to 18 months will be required to be on that program of support. Until that time their disability support pension claims will be rejected. We need to look in context at the numbers of people who will be moved from the disability support pension or be rejected in the future.

The final point that I would make in overview is that we believe that the numbers of appeals that will occur will increase and that will increase the burden on both Centrelink at the authorised review officer level, the Social Security Appeals Tribunal and the Administrative Appeals Tribunal and also on the legal services which are currently insufficient to help people in the circumstances that many people will find themselves. Thank you again for the opportunity and I will hand over to Mr Gerogiannis.

Mr Gerogiannis: First of all I would like to thank the committee for hearing from me today on behalf of the Legal Aid commission. Legal Aid New South Wales also thanks the National Welfare Rights Network for inviting us to this hearing. Legal Aid New South Wales represents many people with disability support pension appeals at all levels of the review process but principally at the Administrative Appeals Tribunal level where we have extensive experience in obtaining medical reports and extensive experience in interpreting the current legislation and how that plays out in practice. It is on that basis that I have been invited here today.

With respect to some of the concerns that we have in relation to the proposed impairment tables in particular, firstly, there is a concern about the lack of grandfathering provisions. According to schedule 3 the new subsection 27(3) in the bill says that anybody on disability support pension whose entitlement is reviewed after 1 January 2012 will be subject to the new impairment tables. This constitutes quite a significant change in the factors to be taken into account, given the change in the impairment tables. We believe that those people who have been on the disability support pension for quite some time, in particular, will face the potential threat of having their entitlements assessed under these new and, I think, generally acknowledged more onerous provisions, and will lead to an unfair outcome if they are cancelled based on the new provisions. We believe that grandfathering provisions ought to be included in the legislation so as to save this group of people so that any reviews are based on the current legislation. There is precedent for that in that when the changes to the DSP legislation were introduced, from 1 July 2006, which changed the continuing inability to work criteria from 30 hours a week to 15 hours a week, those who were on the pension before the change continued to be assessed under the 30 hours a week criteria.

There is a second issue that causes us some concern, and I should say here that it is a little unclear from reading the introductions of the impairment tables. I refer the committee, in particular, to paragraph 16, which refers to who can make an assessment. It says:

An assessment is to be undertaken by an assessor. An assessor is a person trained and experienced in applying the Tables. And it goes on. The concern that that raises for us is whether or not there would be any move towards considering assessments of eligibility for the disability support pension made by assessors—whom we assume to be job capacity assessors or the equivalent under the Centrelink regime—and whether their assessment will be binding in any form. Under the current system we have already had situations where we are appearing in the Administrative Appeals Tribunal where we have qualified a specialist in a particular field give an impairment rating under the tables and an opinion about a continuing inability to work where there has been a formal submission made by the departmental advocate that only job capacity assessors are in a position to do that.

We have objected to that approach and, to date, the department has shied away from pushing that line. However, the very specific introduction of those words in paragraph 16 in the introduction to the table leads to some concern that there may be a push to limit the evidence that can be taken into account or, at the very least, limit who can make a binding decision regarding impairment and loss of functional capacity. It is our view that there should be no such limitation and that assessment should be able to be made by properly qualified medical professionals, whether or not they are formally considered to be an assessor, however that may be defined.

And that a proper assessment of a person's eligibility for disability support pension ought to be made on as full a range of medical evidence as possible and that appropriate weight should be given accordingly. That is a concern that is potentially there. We do not quite know how that will be interpreted but, because it has been given such prominence in the proposed introduction to the table, at the very least we would like that clarified at some point. Also, we raise that concern that we think that any move to have assessors as the sole arbiter of eligibility ought to be resisted.

The overriding issue that we have is that, in whatever form the tables eventually pass—and we support the submission of the National Welfare Rights Network that it ought to be in the legislation rather than in a legislative instrument for the reasons outlined by Ms O'Halloran and in the submission—is that a lot of care needs to be taken in the way that these tables are implemented. We believe that, in order to make the system fairer, any changes have to be accompanied by improvements in the method of assessing eligibility for disability support pension. Numerous submissions made in the past by Legal Aid New South Wales and others are critical of the assessment process for disability support pension. We would very much like for those considerations that have been made in the past to be at the forefront of the implementation of these new provisions so that the assessment process is actually fairer.

Related to that is something that is also raised in the advisory committee's final report. The forms for the treating doctors' reports should be made a lot clearer, so that treating doctors who fill out the forms for disability support claimants are actually asked to address the specific criteria that are raised in the tables so that their reports

are clearer and address the relevant issues and so that the assessor and, ultimately, any decision maker has the full evidence on which to make a proper assessment of eligibility.

Finally, as a general comment, there is great emphasis in the tables on people's obtaining reports from relevant health professionals. Some allowance is made for people in remote locations, in paragraph 20, but particular care needs to be given to people with severe psychiatric and intellectual impairments, in particular to people with substance abuse. Our experience in many of those cases is that people in that position are particularly disadvantaged. They may not have regular contact with a treating doctor and may not have access to psychiatrists, clinical psychologists or any of the other health professionals that are required under the proposed tables. As I say, in our experience these are among the most disadvantaged in our community, and to set the bar at a level which, in many cases, they simply cannot meet is something that needs to be considered. Those are my introductory comments. Thank you.

CHAIR: Mr Gerogiannis, just before we move on, in the middle of your opening remarks you said that you want a lot of issues that you have raised previously to be taken into account in this process.

Mr Gerogiannis: Sure.

CHAIR: We have not seen anything in particular from the legal aid area in the Welfare Rights Network submission. The issues that you said that you wanted to be taken into account because of your experience in previous litigation: have you identified them anywhere?

Mr Gerogiannis: They were certainly identified in the comments on the review of the impairment tables for DSP that were posted on the govdex site—that was dated 14 October 2010. We do apologise that we did not provide a submission to this review; circumstances made that very difficult.

CHAIR: What we will do then, if we do not get back to it today, is get a copy of that from that web site. Our intent in the process for today is to gather the questions that you raise in this process with the committee and raise them with the Department of Families, Community Services and Indigenous Affairs when they come in later in the day. You mentioned those comments, amongst the other things you identified, so we will get hold of them and they will cover all the things you want raised.

Mr Gerogiannis: Thank you.

CHAIR: Mr Thomas.

Mr Thomas: I might just go briefly to a couple of other issues that we would like to raise. Maree O'Halloran raised earlier our concern that the Newstart allowance is not an appropriate payment for people with significant disabilities. Currently we have around 112,000 people on Newstart partial capacity as a result of the 2006 changes. We would expect to see a significant increase in those numbers as a result of these changes. We have mentioned previously that there is a \$128 difference. The other significant changes in relation to DSP which will affect people are things like the fact that people will no longer be eligible for the pensioner education supplement. People with disabilities who are now on Newstart will be subject to liquid assets waiting periods. For example, if you want to do any sort of renovation or have a little buffer of savings, rules which do not apply to the DSP will apply to Newstart. Obviously a much harsher income test and taper rate will apply to people on Newstart announce and there is the sudden death assets test. We have listed a range of these measures in our submission and went into quite a lot of detail.

Our fundamental contention is that it is not necessary to put people on a lower level of payment to encourage workforce participation. Indeed, we have documents and advice recently tabled on the FaHCSIA website and information from published FOI documents—that is, advice to the government and the minister—and I will leave these with the committee. The advice states in relation to people with disabilities:

People with disability who are limited to part-time work have similar workforce participation costs to those of full-time workers (such as costs of transport to and from work for a person with the capacity to work five short days a week), yet because part-time workers earn less, these costs can account for a greater proportion of their take-home earnings.

So the simple issue is that people are going to be facing great financial stress as a result of these changes.

The other issue we have concerns with in these changes is that we think the sample used to test these tables was totally inadequate. It included 215 people, and for two-thirds of the tables fewer than six individuals were tested.

Senator SIEWERT: There was one that has two people.

Mr Thomas: That is right. There were fewer than six in two out of three of those tables. The report itself acknowledges it is a small sample.

The final report to the minister acknowledges there are some issues around the relevance of intellectual function or capabilities and Indigenous clients, but it just has an asterisk saying that they are waiting for advice on

that issue. These are the most significant changes since 1991, when it used to be called the invalid pension. Our contention is that the tables should remain in legislation, as opposed to instruments, but we certainly do not think that the impairment tables should go forward unless there has been far greater testing of the tables.

We were involved in consultations around these tables with FaHCSIA recently. We met with them maybe a month ago, just before the tables were released. While we put in a submission from the National Welfare Rights Network we were not included in the advisory group, so we did not have access to that information. We are going to some of the eastern coast meetings that FaHCSIA has organised, but we have also raised the issue of the inadequacy of the consultation process around those changes with FaHCSIA and directly with the minister's office.

We are currently sitting on a DSP advisory group on the raft of new measures that have recently been introduced. Just to correct information, our representative on the committee was shown a copy of the instrument as it was being developed—this is the one for September—and we were able to provide some feedback but we did not get access to discuss the broader issue in detail. I might leave that there and answer any questions.

Senator SIEWERT: Okay. This question is directed to both Mr Thomas and Ms O'Halloran, and it is about the legislative instrument. You would be aware that some of the submissions and, in fact, some of the evidence we have had today—I know you, Mr Thomas, have heard it—are supportive of the legislative instrument, the argument being that it is easier to change and 'improve', and I put that in inverted commas, Ms O'Halloran! Do you think it is valid to argue that it can be more easily amended if it is a legislative instrument?

Ms O'Halloran: I think there are valid grounds for many issues to be in legislative instruments, but the impairment tables themselves have such a significant effect on so many people across Australia that I think it is better for them to be in legislation and, therefore, open to greater scrutiny when improvements are suggested to those tables or, in fact, where changes are suggested that are not improvements. So it is the number of people affected and the significant effect on those people that leads us to conclude that it would be better to have the impairment tables as they have always been: in the legislation. That is not to say that there would not be other issues for which it would be quite appropriate to be in a disallowable instrument. I think Mr Gerogiannis might have some points he would like to make as well on that issue.

Mr Gerogiannis: Yes, if I may. I agree with Ms O'Halloran. The other issue, from my point of view, is accessibility. If the current impairment tables are in schedule 1B of the Social Security Act, it is a far more accessible document than a legislative instrument. People can go on to Austlii, for example, and have quite easy access to the Social Security Act and to the impairment tables. Legislative instruments, in my experience, tend to be a bit harder to find, and I think that that is also an issue that should be taken into account.

Mr Thomas: The report on the impairment tables indicates that there are plans to review the tables every five years, apart from an initial subsequent review after 18 months. That would seem to be sufficient to update those tables as need be. There have been rather weak and unconvincing arguments being put, and there are no good, solid arguments that we have heard, as to why the tables need to go into an instrument as opposed to legislation. Our concern is that, a couple of years down the track—and it could be under the current or a future government—it would be too easy to tighten up these changes quite significantly. Certainly, this view of the capacity to reduce the level of scrutiny is also supported by a recent Parliamentary Library *Bills Digest* on this, No. 37, which said: ... the proposed change ... has the potential to reduce parliamentary scrutiny of any future changes made to them.

That is the Parliamentary Library that came to that conclusion.

CHAIR: Can I just ask a question on that. I am interested in whether, from your knowledge across the board, you are aware of any payment where the details of assessment for its payment are in the major legislation?

Mr Thomas: I am not, personally. It may be that there are some tables around Veterans' Affairs medical conditions that are, but I am not an expert on that.

CHAIR: Mr Gerogiannis, in terms of social security legislation, do you know of any examples where the detail, separate from the standard entitlement, appears in the major legislation as opposed to in the supporting regulation?

Mr Gerogiannis: I am not aware of any major payment type where the qualification criteria or a major part of the eligibility criteria is in legislative instruments. I think there may be some instruments surrounding excuses for participation failures in Newstart allowance, but they do not go to eligibility for the payment; they go to whether or not there is a reasonable excuse for not participating in an activity agreement for the purposes of Newstart allowance.

CHAIR: We will check that with the department. I just wanted to see if you knew of any other situations, from your background.

Mr Gerogiannis: I am not aware of any, no.

CHAIR: Thank you, Senator Siewert.

Senator SIEWERT: Okay. I am not trying to be pedantic here, but is this about what is actually in the legislation—the tables rather than the payment? Is that correct? It is about the detail of the tables that is in there?

Ms O'Halloran: As I understand it, the impairment tables are currently in the legislation and we are arguing that in the future they should remain in the legislation.

Senator SIEWERT: I am aware of the time so I am going to skip the issue of consultation. You talk about it here and other witnesses have spoken about it. It is not that I do not think it is important; I have well and truly got the point there. I want to go to grandfathering, first. Your position is, if I am correct, that those who are on DSP should be assessed under the exiting tables.

Ms O'Halloran: Our position is that these tables should not come into force until there has been proper consultation, but I hear what you are saying about that. The Nation Welfare Rights Network's position is that those people who are currently on disability support pension should continue to be assessed on the tables they were assessed on. We accept and understand that that will create some different categories of people on payment but that has often been the case when government has made changes. As you would be aware, with the 2006 Welfare to Work changes people were grandfathered from those changes. It is our view that if the legislation were to go forward and be implemented from 1 January 2012, and were the changes not to be grandfathered, we would find people who had been 10, 15 years or more on the disability support pension—perhaps in their late 50s—being taken off the disability support pension with absolutely no reasonable prospect of being able to find employment.

Senator SIEWERT: Earlier one of our witnesses said that the department said there would be low numbers. If these new tables come into effect without any changes and without further consultation and people are not grandfathered, do you have an idea of the numbers of people who would come off as the review process rolls out—as they come up over the review time frame?

Mr Thomas: We had some old information in our submission but just yesterday we got some information from the minister's office that in 2010-11, 18,000 people were undertaking a medical review for DSP. So it was not an income and assets test; it was a medical review. Of those, 1.6 per cent lost their DSP.

Senator SIEWERT: That was under the existing table.

Mr Thomas: That was under the existing table; that is right. If the figures in the trials are correct we would estimate that it would be around 4,500 people. So 38 per cent of those people who are reviewed would lose eligibility. That is if the government did not decide to undertake a large-scale review. They have said that this government will not do that.

Senator SIEWERT: Yes; it will be the normal rolling review process.

Mr Thomas: The normal review.

Senator SIEWERT: So it would be fair to say that the following year, if the two-year review process rolls out, would be about the same.

Mr Thomas: We would expect the same. Yes.

Senator SIEWERT: I take the point about those who have been on the pension for some time and who are older. As I understand it the proportion of people on DSP is becoming an older cohort. Ms O'Halloran, how many would then be in the category that you just mentioned—say, over 50 or 45?

Ms O'Halloran: The only way I could answer that question would be anecdotally in terms of the case work that we do here. I would estimate that probably 60 per cent or more are people who are older. It could be more than that. I do not think there is any other way I can answer that. I might just indicate that if 38 per cent of 18,000 were taken off, more than 6,000 would come off.

Mr Gerogiannis: From my practice experience in dealing with DSP appeals—this is not a scientific figure—I think that at least half the people I see would be 50 years of age or over.

Mr Thomas: As at December 2010 the average time on income support was 12 years, so many of those people, if they were reviewed off DSP, would have been on DSP for 12 years and would suddenly face a reduction in the annual income of \$6,500. That is what you are talking about in terms of the difference. That would be a huge blow to cop and represent huge financial stress for many people who were suddenly thrown into

looking for employment and things like that at that age. It is certainly a concern. Just the fear of getting letters from Centrelink is an enormous stresser. We would hate for people to get very anxious about getting letters from Centrelink

Mr Gerogiannis: Just related to that, I should also point out that people currently on DSP are exempt from the 3 September changes, which introduced the requirement to do an 18-month program. They are not going to be required to do those programs. We are talking purely about the effect of the new impairment tables from 1 January, as I understand it.

Senator SIEWERT: Yes, I understand. But for those people who drop out of DSP and onto Newstart the question is then: would they then go through the new process?

Mr Gerogiannis: If they were taken off DSP, for example, because they did not get 20 points under the new impairment tables on review, they may reapply for the pension but at that time then my understanding is that the full gamut of the new requirements would apply to them.

Senator SIEWERT: That would be my logical understanding.

Mr Gerogiannis: Yes.

Senator SIEWERT: Because they would either reapply for DSP or they would be on Newstart and would then have to undertake the employment search requirements as Newstart requires—and then fall into the category, Mr Thomas, that you are talking about earlier. The reason I was not asking you some questions then is because your submission outlines that fairly well and we also did canvass those issues when we talked about the 3 September changes. So it is your expectation that they would have to go through that process. We will clarify that with the department.

Senator BOYCE: I do not know who I should address this to. Did you undertake your own testing using the new impairment tables to arrive at any ballpark figure?

Ms O'Halloran: I will answer that. No, we did not do that. We provide legal services and most of the people here are solicitors, caseworkers or policy officers. So we did not undertake that type of analysis.

Senator BOYCE: Under the new impairment tables and the fact that you go onto Newstart for 18 months before you can try again for DSP—and I think this is probably directed to Mr Gerogiannis—are you anticipating any greater difficulties in appealing decisions?

Mr Gerogiannis: I am not quite sure what you mean by 'difficulties'. The review process, as far as we know, will not be affected. There is that qualification that I put in my introductory remarks in terms of what is going to be the status of the assessment made by the assessor, however the assessor is defined under paragraph 16 of the introduction to the table. Depending on which way that question is answered, that may or may not make things more difficult. If under this new regime the assessor's assessment is going to be in some ways binding or people are precluded from being able to obtain their own assessment of an impairment through a different health professional who is not an assessor, if that is the case, then it will be much more difficult. Because people will be in a position where they will have to convince the assessor, whoever that might be, to change their view in light of other medical evidence that we might obtain. In that sense, if that comes to fruition—and as I say, I do not know whether that is the intention, but it is a concern—appeals will be much more difficult because of the process that I have just explained.

CHAIR: What is your success rate now, Mr Gerogiannis, in appeals in DSP once it gets to the AAT?

Mr Gerogiannis: I am not sure of the overall appeal success rate.

Senator BOYCE: What is the appeal rate, too, please?

Mr Gerogiannis: The sample that I have is a bit skewed because we apply a merit test to cases and therefore will only run cases for which we have reasonable prospects of success. Our success rate is very high. But overall at the AAT my guess is that about one-third would be successful, especially when new medical evidence is introduced.

CHAIR: About a third. I am sorry, Mr Thomas, I cut across you there. I was asking questions about appeals. You were in the middle of making a comment.

Mr Thomas: Just with the 3 September changes, we have only just got the full copy, which we are looking at at the moment. Perhaps we can give you some further advice on that. Our solicitors have said to me that they expect that, to get an exemption from the program of work, people may have to make multiple reclaims for DSP. I am not sure how that is going to work, but we do see some issues around that.

Senator BOYCE: That is using the current impairment tables but the new requirements, which has only been in our for—what?—four or five days or something?

Mr Thomas: Yes, that is right.

Senator BOYCE: Can you explain to us in a bit more detail what that is going to do?

Mr Thomas: As I said, we will have to get back to you.

Ms O'Halloran: Sorry to interrupt. I think I might be able to explain it in a little bit more detail. We are referring out to 3 September changes.

Senator BOYCE: Yes.

Ms O'Halloran: There are a couple of issues, but if you are required to do a program of support for 18 months and your disability support pension application will be rejected in that time, there may be an issue where people have to keep their claim on foot every 13 weeks in order, potentially, to get some back pay. There is also a question about being able to get an exemption and whether or not you have to be registered for a program of support, which is a little bit more technical. But we have on those 3 September changes got some issues about the requirement for people to keep putting claims in. Also, of course, when you look at the payments table changes, if we find a number of people taken off the disability support pension, while the appeal process itself may not change, the numbers of people seeking access to the appeals process, as we said earlier, will increase.

Senator BOYCE: Is that what you are anticipating at the moment—that there will be a big increase in appeals?

Ms O'Halloran: I am certain that that will be the case. At the Welfare Rights Centre where I work and take phone calls, we have been getting an increasing number of calls from people who are facing medical review before 3 September but have heard about the changes. As part of our community legal education program I was recently per out at Auburn talking to people with acquired brain injury. All those people are very, very concerned, as you would expect, because every time it is spoken about in the public domain people are frightened. I certainly expect that the number of appeals will increase.

People have been living on a disability support pension are already doing it quite hard. If they have been living in that situation for more than 10 years, they are already living in quite difficult circumstances. They will find themselves living, as we have said, frequently on \$127 week less. I have to say that we will also see evictions. I had a client the other day who was facing a medical assessment under the current situation before 3 September before the impairment tables changes, 60 years old, taken off the disability support pension and facing eviction as a result. So you would have to expect that those cases will come forward.

Mr Gerogiannis: From Legal Aid's point of view I would support those comments. Inevitably there is going to be a period where there will be people who are refused or cancelled, particularly if there are no grandfathering provisions. I am confident that we will have a lot more inquiries because, simply, the people who are affected by this mostly do not have the resources to consult private lawyers. They will either come to Legal Aid or a community legal centre like Welfare Rights Centre to get advice about their appeals.

Senator BOYCE: Which leads to a question on resources in the legal advocacy area for people with disabilities. Mr Thomas is shaking his head. I presume they are not good already. Are there any ideas in train to try to address what will be an increasing problem?

Ms O'Halloran: I could speak on behalf of the National Welfare Rights Network. We are unaware of any government steps to deal with the question of resources. I am not sure about Mr Gerogiannis.

Mr Gerogiannis: I am probably not the right person within our organisation to answer that question so I will refrain, but I am not aware of any additional funding being available either.

Mr Thomas: I have a couple of figures. A quarter of all appeals to the SSAT are around DSP and 10 per cent of all appeals to the Administrative Appeals Tribunal are related to DSP, so it is the most appealed decision there is.

CHAIR: Does that include DVA stats, or are they just social security stats?

Mr Thomas: It is social security stats.

CHAIR: Thank you, I wanted to make that clear.

Senator McKENZIE: I want to know about people with disability who live in regional areas and any specific issues that you would like to raise with the committee on that.

Mr Thomas: I suppose it is really the fundamental issues raised earlier about environmental things. Whether you can access real jobs, transport and things like that just are not taken into account in the assessment process for

DSP. Years ago they would take into account the job prospects of older people, but that was removed sometime in the 1990s, I think, when we moved to a one-size-fits-all approach. The other issue for people in rural areas is getting access to medical specialists, and the cost of medical reports and evidence is quite problematic for people. The issues are just compounded if you are in an area that does not have a specialist. If you cannot get access to pain management at Prince of Wales Hospital you are not going to get it in one of these remote areas either.

CHAIR: These are issues that will be made worse, in your opinion, by these changes?

Mr Thomas: They will be exacerbated. There is no doubt about that.

Mr Gerogiannis: I do have a quick comment. It is good that in paragraph 20 of the introduction some of the difficulties of the people in rural and remote areas are recognised. However, it is also our experience, and with job capacity assessors in particular, that, as in paragraph 12, when you are looking at what 'reasonable treatment' is, it is treatment that is feasible and accessible and available locally. It is our experience that those sorts of issues are particularly relevant for people in rural and remote areas and that they often are not taken into account properly when the job capacity assessor is assessing whether a person can undertake what the system thinks is reasonable treatment. To some extent it does come back to the implementation of the impairment tables, and the way that they will be interpreted and applied will affect particular people and particularly how job capacity assessors read those provisions.

Senator McKENZIE: Thank you.

CHAIR: Thank you very much for your evidence. We have an extremely detailed submission, as you would expect, from Welfare Rights and from Legal Aid. Mr Gerogiannis, we have the document from govdex and most of the issues you have raised in your submission, but we will go through and see whether there is anything you did not raise.

Mr Gerogiannis: Thank you.

CHAIR: If you think of anything you want to add, please get back to us in the next two days. I do want to ask about the interaction between you and the department on these issues. You have pointed out that you were not on the advisory group but you have seen it. Have you met with the department subsequently on the issues?

Mr Thomas: We met with them, I think, in July, before the impairment tables were out. We discussed the September changes. We are on an advisory group that was set up as a result of the last committee hearing.

Senator SIEWERT: Which is the one that Frank Quinlan was talking about last night.

CHAIR: Yes. Have you met with the department since the impairment tables came out?

Mr Thomas: No we have not. We have talked with them but we have not met with them. We think that these two-hour consultations are clearly not sufficient. We understand that they are workshops. We would hope that they will lead to changes but our experience is that this is a bit of going through the motions. We would like to think that there is a further capacity to change the impairment tables after these workshops but, clearly, two hours does not cut the mustard for a whole lot of people to engage in that process in a useful way. We are pleased it is happening and we have encouraged the department to expand them.

Proceedings suspended from 12:20 to 13:27

CAIN, Mr Paul, Director of Research and Strategy, National Council on Intellectual Disability

PATTISON, Mr Mark, Executive Director, National Council on Intellectual Disability

[13:27]

CHAIR: I welcome Mr Mark Pattison and Mr Paul Cain of the National Council on Intellectual Disability to today's hearing. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. We have your submission, which is No. 3 on the Senate list for public advice. Either or both of you may make an opening comment and then we will go to questions.

Mr Pattison: When the revised ESP impairment tables were released at the end of July we provided feedback to FaHCSIA that the table for intellectual function, which is table No. 9, was inadequate. I think we have listed the inadequacies in our submission. Essentially the table for intellectual function lacked coherence with international definitions and assessments and the proposed table lacks any valid testing with people with an intellectual disability. We have since undertaken a process with FaHCSIA to address our concerns and, as a result, they have agreed to some changes or amendments to the introduction of the table.

We have clarified that people with an IQ score of less than 70 will continue to be manifestly qualified for the DSP and will not be subject to the tables. We have also clarified that the tables are relevant for people with IQ scores of 70 and above. This is a group of cognitive impairment and not significant enough to meet the criteria for intellectual disability in terms of the international definitions, but some of them may have poor community functioning.

FaHCSIA have asked NCID to prepare a proposal to establish a technical group to consider the option of using available adaptive behaviour assessments that have strong evidence of standardisation normed against the general population and have tests for validity and reliability. This option would be an alternative and, if accepted, would replace the revised table No. 9 on intellectual function. We are currently in the process of putting this proposal together and NCID is confident that this will provide a valid and reliable assessment that will assess conceptual, social and practical skills and, importantly, identify individuals with cognitive impairment who require assistance from others for basic adaptive functioning. We would like to acknowledge the leadership and cooperation of FaHCSIA in addressing our concerns, in particular Sharon Rose, Andrew Hatch and Katherine Dalton of the Disability and Carers Payments and Policy Branch.

I would like also to make some comments about employment and the linkage between the DSP and employment, which I am sure has been made prior to today. In particular we would like to concur with the statements made within the ACOSS submission that the current policy discounts the employment capacity of those on pensions. The DSP is an important income support and safety net for many people with intellectual disability and cognitive impairment. This recognises that without help these groups are unlikely to work in the open labour market but we do know that, if we provide these groups with the right employment, support and employment outcomes in the open labour market are possible, as has been demonstrated since the enactment of the Disability Services Act by demonstration of open employment programs of assistance.

Eligibility for the DSP should not lower our expectations of increasing work participation, but this expectation can only be realised if the Commonwealth invests in customised open employment services that are competent in assisting people with intellectual disability into jobs in the open labour market. The current outcome performance of the Disability Employment Services program is worrisome. With the 26-week employment outcome rate as at 30 June 2011 at 16 per cent less than two out of 10 people with disability entering the disability employment service will get a sustainable job.

CHAIR: Have you identified 'sustainable' Mr Pattison? When you say 'get a sustainable job' what do you mean?

Mr Cain: It is the word that is commonly used for meaning 26 weeks of employment.

CHAIR: I know it is in the guidelines. I was just wondering about your perspective.

Mr Pattison: For us that would be a minimum standard.

CHAIR: You are quite cool with the 26 weeks?

Mr Pattison: I would suggest that a 26-week outcome, of course, was sustainable. I would also suggest that that was a good minimum standard in which to hold service providers. The fact that the Commonwealth sees that as some sort of maximum as in quality standard we would have a problem with.

CHAIR: That is what I thought. I am sorry to interrupt, but that word is bandied around a lot.

Mr Pattison: It is. When it is factored in that a significant proportion of these outcomes include people with disability not on any income support, we should question the quality of the employment assistance to people with disability on income support payments. That means that the Disability Employment Services these days do provide support to people who are not necessarily on the DSP. I think it is 50-50.

Mr Cain: A big proportion of individuals achieving employment outcomes are from what they call the 'non-allowee group' not on any income support and, roughly speaking, for the 26-week outcome that you spoke of, about 50 per cent of those are people not on any income support payment. For us it is a signal that, if we are going to encourage people with disabilities on income support to move into an employment program, we therefore need an employment program that is quite successful and effective in working with that group of people with disabilities rather than those who may not necessarily qualify for income support payments.

Senator SIEWERT: DES providers you mean?

Mr Cain: Yes.

Senator SIEWERT: Rather than the JSAs?

Mr Cain: Exactly.

CHAIR: Could I just clarify that the changes you have been able to negotiate did not appear in the tables that we got. This is something that has come out later.

Mr Pattison: This has come through since then.

CHAIR: I wanted to be clear that I had not misread it. The discussion that led to that variation picked up one of the points in your submission, one of the things you were most concerned about. You have made some headway and you are still working on it.

Mr Pattison: That is true—yes.

Senator BOYCE: I would like to clarify that a bit further. We have not yet seen those suggested changes. Are they finalised, in your view, with the department?

Mr Pattison: No, they are not finalised. Some of them are. One of the minor but important issues we had was with the introduction to the table itself. Part of that was about being clear that people with an IQ score of less than 70 were manifest. That is in the guidelines but it was not in the table itself. I felt that would cause some confusion with families, individuals and also Centrelink. They have agreed to reword introduction to make that clear and they have also agreed that, whatever table comes out of it, it will also be clear within the tables themselves. The tables themselves were not clear about that. Within the table they talked about IQ testing and that was confusing because, in fact, it was not necessary if you had an IQ score of 69 or less.

Senator BOYCE: In your submission you talk about doing some trials on the first draft with people who had an IQ score of 70 to 79. Do the changes that you have negotiated, or believe you have negotiated, change that trial?

Mr Pattison: That is the part that we are having discussions about in terms of FaHCSIA now. When I first looked at the table, it was a lot harsher and harder than the previous table. There is a significant change. We were led to believe that there would not be significant changes within the table, but there was a significant change for that group of people. We have subsequently found out that it is actually quite a large group of people. It is just about half of the people who are on the DSP with an intellectual disability.

Senator BOYCE: Roughly, how many people is that?

Mr Pattison: It is 45 per cent of 90,000.

Mr Cain: It is about 41,000, roughly.

Senator BOYCE: About 41,000 people are in the 70 to 79 group?

Mr Pattison: Yes. That is quite large. When we did some minor testing, I was concerned that we needed to get some information as to exactly what would be the effect. We went to our constituency and service providers and asked them to run past the new table on the people they knew fit within that category. Most of the people would not be eligible for the DSP under that. There were some who were on the borderline. We started some conversations with FaHCSIA about the intent and whether they had done testing and rolled it on. Since then, they have come back to us. We had a meeting with them last week—it was the last meeting—and they have asked us to come up with a proposal around ways it could be structured. We are talking to psychologists about that—people who are expert in the field of intellectual disability assessment, in terms of the IQ and, more importantly, with an adaptive behaviour and adaptive skills test.

Senator BOYCE: That would seem to be a very clear way of establishing an impairment table.

Mr Pattison: I am not sure that I wish to comment on that.

Senator BOYCE: No—I am picking up on your point that you said you were appalled. In your submission you talked about being appalled at the lack of professional care taken in establishing the table. It appears that you have had some success in getting this ultimately put into the system. Sorry, I was being sarcastic.

Mr Pattison: It is okay. We understood, coming here today, that there were going to be some difficulties in that regard. I have said it publicly and I am quite happy to say it here: I think that FaHCSIA was poorly served by the advisory committee in terms of the DSP. I also think that maybe not enough thought was given in entering into the revision of the impairment table, regarding exactly what sorts of outcomes were going to be achieved. Part of it is our fault because we were led to believe at the very beginning that the review was not going to be a major review; it was simply going to be about looking at it. What actually happened is that it became a major review in terms of trying to match it with the ICF, the International Classification of Functioning, Disability and Health. If we had better information around that we probably would have had conversations or discussions a lot earlier than we did, making the assumption that there would be little change around the intellectual disability or the intellectual functioning table, because we would know that there would be some problems in terms of the ICF and intellectual disability in particular.

Senator BOYCE: And you made comments in your submission around how the tables did not gel; they were incoherent with the international classification.

Mr Pattison: Yes.

Senator BOYCE: You are anticipating that the problem will now be overcome—is that right?

Mr Pattison: Yes, I think it will be overcome in terms of the intellectual functioning one.

CHAIR: With the changes that you are hoping for will we comply with the international guidelines? Your concern about the lack of compliance with the international standard jumped out in your submission. Will it then in your opinion comply?

Mr Pattison: Yes, the indication that we have is that is what FaHCSIA would wish.

Senator BOYCE: Do you have any concerns about the fact that the tables will be a legislative instrument? I know that allows easy changing but is that always a good thing?

Mr Pattison: I have two comments on that one. In terms of the intellectual functioning one, no, because if what we are suggesting is accepted in the broad then we have the international guidelines and a standard which we can adhere to. That will be okay. I think in general what we have found with disallowable instruments is that the issue is about information. It is about whether we know when it gets tabled, what is involved and all of those sorts of things. Because of the lag, the process I guess, it is not necessarily a good way of doing it. That is a general statement because, obviously, we have already said that the intellectual functioning one if it gets accepted will be standardised internationally so that is fine for us. I am fearful about using that sort of way of dealing with what I would consider to be a really important process for people who need an income support safety net. It is something which is vital for our community. It is something which is vital for people with a disability and I am in two minds about it really, if that makes sense.

Senator BOYCE: So the council itself does not have a policy position on this?

Mr Pattison: On this particular one, no, because we would be clear that we are dealing with people with an intellectual disability and a non-specific cognitive impairment and we think that at the end of this process they will be safeguarded within the tables as they currently will be proposed and having a disallowable instrument will not adversely affect them.

Senator BOYCE: Apart from the fact that it was time, one of the reasons these tables were updated or changed was simply to attempt to limit people on the disability support pension. Do you believe that there will be people who pre 31 August qualified who will not any longer qualify and if so what stage once these changes that you are proposing have gone through?

Mr Cain: I think the true answer is that it is unknown. Based on what we are proposing what we will have is confidence in terms of an assessment that will discriminate well against those in that currently 70 to 79 IQ group. We will have confidence that it will discriminate between those who have poor community functioning and those who do not. Whether that translates in a change in numbers decreasing or increasing I do not think we can say at this point. I think the most important outcome is going to be having something that is valid and reliable. Our biggest concern was that what was put up was a bit like throwing a dart at a dartboard and not really having something that we could confidently say is valid and something that we could put our name to saying, 'Yes that is a good decision.' Effectively that does not really answer your question, but it is an unknown quantity.

Senator BOYCE: When would you anticipate knowing the final position of the department on your proposals?

Mr Cain: We are rapidly going through a process and we are right into it now. What did you call it, Mark, the 'hope on the horizon' is that our aim is to try to achieve something good before the rollout of 1 January. It is a very tight time frame. At this stage we are confident.

Mr Pattison: One of the things that we need to realise and why we pushed hard on this—why we were able to push hard on this—is that the definition and assessment of intellectual disability has been going on for a number of years and there has been lots and lots of work done on it. It is one of the disabilities that is very well standardised and normed. If you take the IQ score and you take adaptive behaviour and all of that sort of stuff there has been lots of work done on it through research and those sorts of things. So it is quite easy in a sense for us. As long as we are on that sort of level and that sort of playing field, we can have conversations and discussions with people and come to reasonable outcomes. We were not on that, because we had a scale which was not tested and not standardised and which did not relate to anything, and hence we were not at all confident that anyone who went through this would have any assessment whatsoever of their capacity. We are past that point now.

Senator BOYCE: I am fairly confident the answer to this question is no: were you on the advisory group?

Mr Pattison: Directly, no.

CHAIR: Are you on the group that has been formed now to look at the whole of the DSP changes? There is another group.

Mr Pattison: No.

Senator BOYCE: I understand that the training of assessors under this will largely be the responsibility of a unit—whose name currently escapes me—within Centrelink.

CHAIR: Perhaps something health—

Senator BOYCE: The national health advisory unit or national whatever. How confident are you about that unit's ability to train assessors to apply the tables adequately?

Mr Cain: Part of our proposal that we are developing at the moment will probably involve something a little bit different to that. Clearly the adaptive behaviour assessments that we will be proposing are commercially available products which a lot of psychologists already should know. But I think there will be an element of training that will have to take place. Whether that takes place with this particular unit or not is in some ways unknown, but we will be proposing that there be training on how to apply these standardised adaptive behaviour assessments, because it is critical. It is absolutely critical, because the psychologists are a broad church. There will be some that are familiar with these assessments and some that are not, so there is going to be a need for good reliability in applying the test, for sure.

Senator BOYCE: What is the council's view on the fact that the recommendation currently is that these tables would be reviewed in 18 months and then every five years?

Mr Pattison: Again, as Paul said, if our proposal around standardised commercially available tests is accepted then our chief concern would be about the assessment and about the people doing the assessments. I am not too sure. Eighteen months would be about 1,500 people, plus those being reviewed, so let us say 2,500 people, off the top of my head. That would give us a good number of people to be able to make some assessment as to whether they are being assessed correctly and whether the assessors are doing their job properly. If it were every five years, I would have a slight problem with that. I would prefer it to be after 18 months and then another 18 months and then, once we settle the whole thing down, going into five years. Once you have standardised tests and the norms and all that sort of stuff, it is fine, but our biggest concern is with the assessors and undertaking the assessment.

We have many a horror story, particularly about the IQ scores and IQ tests—Wechslers and things like that—and people undertaking them. We expect that there is a certain degree of knowledge among psychologists about that given that it is a fairly standard test and that sort of stuff, but we still get stories about how badly it is performed, both ways. I guess the other one is—

Senator BOYCE: Sorry. What do you mean by 'both ways'?

Mr Pattison: Underassessment and overassessment. We get people who seem to have a very low IQ score because of the way that it was assessed, and in fact they do not. It is that sort of stuff. That has impacts, because if you use the IQ score—or the IQ test in this case—properly then it can give you some indication of where people have a lower capacity and hence need particular support around a particular issue, whether it is motivation,

problem solving or whatever else, but if you do not do it properly then it does not give you your full range of ability to address people's needs.

Senator BOYCE: I continue to be concerned that there may be a group who, after 1 January, will just fall out of the system and nothing will happen to assist them for 18 months, other than that people will be aware that they have fallen out of the system. What comment can you make around that.

Mr Pattison: For me, as we said at the end, the more important issue is employment support. I am fairly confident that if we use standardised tests we will capture most people. We may not capture all—the assessment and all that sort of stuff. But even if you do not capture people the important thing is the whole issue about employment support. A 16 per cent outcome—it is obvious I think.

Senator BOYCE: I think we commented at the last inquiry that we are putting people through hoops to see who can fail. Nor is there really an indication of how many times they might be required to jump through these hoops.

Mr Pattison: Yes.

Senator BOYCE: Is it clear to you how appellable DSP decisions by assessors are going to be under the new system? Will the current system, where you can go to the AAT, continue?

Mr Cain: I must admit it is an issue we have not looked at very closely because we have been so absorbed with the actual table. It has really taken most of our time, but, yes, it is something that is an issue.

Senator BOYCE: It is a question I will be following up with the department, because it is not entirely clear to me. Either you have the situation where the appeal system does not change, in which case there will probably be a lot more appeals without the resources going to the organisations that support people who appeal, or there will be a change to the appeal situation, which would seem to me to be something of a rights issue.

Mr Cain: If anything, if we do achieve what we are trying to do at the moment, it should decrease the number of appeals. If we were to go with the current table, as it is, it is so highly subjective I imagine appeals would occur left, right and centre.

Senator BOYCE: It was stated that over 10 per cent of appeals to the AAT, the single largest class of appeals to the AAT, relates to being refused DSP.

CHAIR: Which table are you referring to?

Mr Cain: The current published one.

CHAIR: The draft?

Mr Cain: Yes, the draft.

CHAIR: It is not the old one, so what you are saying is that if the draft that we see went through you would expect more. But if the arrangement you negotiate for your group comes through it should release that for your people.

Mr Cain: Yes.

CHAIR: When you said the 'current one' I was wondering.

Mr Cain: It should theoretically diminish appeals, because of the standardisation; whereas if you have something subjective, like for instance the expression 'what is a complex newspaper', that could be interpreted in so many different ways by so many different assessors that I could imagine that would be a drama and an appeal situation. I would not want to hear that.

CHAIR: We have had that same discussion among parliamentarians.

Senator BOYCE: I noticed the following on page 14 of your submission:

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.

Is that true?

Mr Cain: That is correct.

Senator BOYCE: So is it a sort of backhanded way of encouraging people to segregate their children?

CHAIR: It is a particular interest of Senator Boyce's, Mr Cain!

Mr Pattison: Paul may not read it that way; I will read it that way!

Senator BOYCE: You will read it that way! Thank you! I will be raising this with the department of education, who keep insisting that they are encouraging everyone to undertake educational inclusion.

Senator SIEWERT: Going back to the timelines for when you expect the changes. Has the change under 70 been finalised?

Mr Cain: Yes.

Senator SIEWERT: And there is still the process of negotiation about 70 to 79. Is that correct?

Mr Cain: That is correct.

Senator SIEWERT: I think in answer to Senator Boyce you said you expected it to be finalised by the beginning of January?

Mr Cain: That is the hope, because we have got to go through a number of steps. We are trying to work out how much work needs to be done and can it fit within that timeframe. I am sure FaHCSIA would like it to fit that timeframe, and we are trying to balance that at the moment.

Senator SIEWERT: I am thinking of the timeframe of the legislative process.

Mr Cain: Yes.

Mr Pattison: From my point of view it will be finished way before that. If we have an acceptance—and I think we do—that we will use the internationally accepted, standardised tests around adaptive behaviour and skills then the process will be fairly quick and easy. We do not have conversations about newspapers, for example; we have conversations or, more to the point, psychologists have conversations, about the validity of certain tests. There is debate around the adaptive behaviour and skills tests, as there is around the IQ score test, but there are several which are internationally recognised. For example, there is the Vineland test and the adaptive behaviour test, and there is a third one as well. So there are options there, without getting too pedantic about it. After 18 months, we could see what was being used, how they were being used and what the consequences of using the different ones were.

Senator SIEWERT: I have enough problems with this process as it is without potentially being asked to agree to something—

Senator BOYCE: We will not see.

Senator SIEWERT: we will not see until the very last minute. I must admit I am not filled with joy or a sense of wanting to support something I already have problems with.

Mr Pattison: I appreciate that. From my point of view, I want to have it done as quickly as possible. I do not think it is a huge exercise given that we are going for internationally standardised, recognised tests I think we can do this quickly and shortly—

Senator BOYCE: Provided that you agreed the changes you wanted with the department, would you support the tables?

Mr Pattison: We would support the intellectual function table, yes.

Senator SIEWERT: Thank you for clarifying that.

Mr Pattison: That is where our expertise lies.

Senator BOYCE: Clearly we are not going to put through one table, are we?

Mr Pattison: Aren't they? We will not object if they do. You would appreciate that there is the brain function table and there is the communication table, which would also relate to people who have a cognitive impairment. Those tables are structured slightly differently than the intellectual function table, but we have not done a great deal of work on those; we have just looked at them in relation to the intellectual function table. We have looked at, for example, people with foetal alcohol syndrome and people with fragile X syndrome and had discussions with all those organisations around how they would use the revised tables, what would be appropriate and those sorts of things. They have spoken to us and said they want some clarity around the intellectual function table. They are quite happy with what we are doing, so that part of it is fine, but I would not want to talk about any of the others.

Senator SIEWERT: So that is the only table you are commenting on?

Mr Pattison: Yes. We are not commenting on the whole thing because, as I said, I think it turned out to be a more complex task than envisaged in the beginning.

Senator SIEWERT: I want to go back to the issue around those that may or may not drop out—the 41,000. Are they the people that would have dropped out under the old process?

Mr Pattison: No, the 41,000 people are the people who are currently on DSP and who have an IQ score between 70 and 79 and need some support with daily living. They get three points for the IQ score and an

additional three points because they need that support. That gives them their five points, which translates into 20 points and therefore makes them eligible for the DSP.

Senator SIEWERT: I would like clarification around the 90,000 people with an intellectual disability. Does that cover all intellectual disabilities?

Mr Cain: Yes. They actually label it 'intellectual and learning disability', and it is about 93,000 in total.

Senator SIEWERT: Of which 41,000 are in that group between 70 and 79?

Mr Cain: That is correct.

Senator SIEWERT: And, under the new process that you are negotiating, all those people would stay on?

Mr Pattison: My understanding is that they would stay on until they were reviewed.

Senator SIEWERT: So they are on at the moment and they would stay on until the normal review process came through. And then some of them might come off because, under the new test, they will not meet the requirements?

Mr Pattison: Yes.

Senator SIEWERT: In your opinion, for those people on the DSP with learning difficulties, what would be the impact of coming off DSP, going onto Newstart and having to then go through the employment process with significantly less money?

Mr Pattison: There are two issues there. One is the significantly less amount of money. The other is having to have some participation or some activity requirement around employment. The third part, connected with the second part, would be about the support they would get to get a job.

Senator SIEWERT: Yes, there are three things. I am particularly interested in—

Mr Pattison: The short answer is that I would be gravely concerned because the employment outcomes are only at 16 per cent. Half of those are people who are not on the DSP. You have a very low percentage of people who are getting employment out of Disability Employment Services who are currently on the DSP. So they will drop out of the DSP and be on \$128 a week less, and under the current system they would remain on \$128 a week less. Their likelihood of getting a job, would be—I was going to say 'minimal'—just about nil.

They might be in employment. For example, they might be in an Australian Disability Enterprise or a sheltered workshop. They might be in there but then their average wage is only \$170 anyway, but then they would have some sort of work experience. It is unlikely that they would be in there so they would be unlikely to have employment. So they would have a long history of unemployment; so they have a double disadvantage. They are not like a student coming out of school, who will not quite meet the test and hence have to go into some employment services; there will be a sort of flow there. They might be in their 30s or 40s. They might have had no history of employment or a very poor history of employment and then suddenly have all this obligation placed upon them. So I would have some grave concerns for them.

Senator SIEWERT: If they have a learning disability and have been on DSP for a significant period of time, would there be additional impacts in terms of a significant change of circumstances? If they were used to being in a particular circumstance and then they were subject to an entirely different set of circumstances—a whole new system—would that have additional impacts, or not?

Mr Pattison: The impacts would be many. The obvious one would be that there is a sudden change of circumstance. Without some negotiation and some transfer through that—we are talking about people who are on the DSP, so they need some support in terms of their daily living and they would also have problems with cognitive issues around problem-solving and a range of other things—there would be a significant impact upon this group of people just in terms of functioning during that change.

The issue there would be that two things would happen. One, they would get thrown back and it would become the responsibility of their families to negotiate that change with them. Two, if they do not have families, as many of them would not, they would be cast back onto the resources of the community. The resources of the community, for many of these people, are very few and far between. A lot of them are in housing department or housing commission houses, boarding houses and all those sorts of things. So in terms of their life circumstances there would be difficulties. Hence, it is really important that when the assessments are done the assessments are done well. Also, if you are looking at a transition, I would like to see—we would like to see—some kind of participation plan done. So that person does not suddenly say, 'You're now going onto this payment.' No, there needs to be some guided transition and there also needs to be some sort of participation plan, as they are planning for people under 35 who original go onto the DSP. We need to have some way of negotiating these people through this process and ensuring that they acquire the skills that they need and all those sorts of things.

Senator SIEWERT: This is my last question. In terms of the numbers, of the 41,000 that will be reassessed do you have an idea—a ballpark figure—of how many would not meet the new impairment table requirements? Once the new ones that you are negotiating come into place, would you have an idea of the percentage of the people you think may drop out once they have been reviewed?

Mr Pattison: No, and we will not know—until we have finalised the level for the adaptive behaviour and the adaptive skill tests—exactly at which point people have a moderate impairment or a moderate functioning difficulty.

Senator SIEWERT: So it could be zero or it could be 50 per cent.

Mr Pattison: We would hope that it would capture all those who needed ongoing support. That is the purpose of the test. That is the purpose of the assessments. That is what they have been designed, over many years, to do. That is why they have been re-evaluated. The Vineland scale, for example, has just been redrafted to make it up to date—looking at all the evidence over the last 10 years—and to make sure that it is capturing that group. That is why we wish to use these tools—they have a long history, they are constantly reviewed, they are updated and they are looked at very keenly by a wide range of people to ensure that they are actually doing their job.

Senator SIEWERT: In your opinion, would it be better to grandfather the whole of the 41,000—and I will talk about grandfathering for other groups later—and only apply the new process to people now applying for DSP, given their cognitive issues, the impact that the change will have and the lack of support services at the moment?

Mr Pattison: The pessimist within me says 'yes'; the optimist in me says 'no—not necessarily'. We still want people to have jobs, to pay taxes and to be valued members of their community who can say, 'I've got a job, and I am doing this, that and everything else.' The way that it is structured at the moment does not do that at all, so the preferred model would be to go back to participation: to have a participation plan where people acquire the skills that they need to be able to move within the community and get a job. We also need good employment services which are going to get people into jobs.

Senator SIEWERT: As a comment—I am not allowed to ask another question—I would suggest that that would be better done if they were still on DSP rather than Newstart.

Mr Pattison: The answer is yes; except that, speaking from personal experience, you do need a motivator—you do need to have a time-limited transition period so that people themselves see that they have some motivation to do this—and money, unfortunately, is usually a reason. It is not being unfair to them, because we are talking about people who have spent five, 10 or 20 years on an income support payment, and for them to go through a transition to get off it would be quite difficult.

CHAIR: Mr Pattison and Mr Cain, is there anything you want to add?

Mr Pattison: No.

Mr Cain: No, thank you.

CHAIR: Thank you very much to time and I apologise again for the confusion at the start.

Mr Pattison: That is all right. Thank you.

Mr Cain: Thank you.

CHAMBERS, Ms Kasy, Executive Director, Anglicare Australia

[14:07]

CHAIR: Welcome, Miss Chambers. We have information on parliamentary privilege and the protection of witnesses, all of which you have seen. If you have any questions, just let us know. We have your submission, and it is noted for our records as submission 6. If you would like to make an opening statement, please do so. We will then go to questions.

Ms Chambers: Anglicare Australia see some good in these changes. We have sought over a number of areas to increase the parity between benefits and work, so we like the increase in hours and some of those moves. We, along with some of the other people who have probably presented here today, also like the change in the focus of the tables towards functionality and away from a deficit model. However, we have identified a number of problems with the changes as they have been put forward.

Firstly, there is a structural one: all the changes that we are looking at now are placed on the person with a disability, not on the employment market and the employer. In fact, we seek permission to table a report called *What if employers say no?* which talks about the changes in the market place. We did foreshadow it in our submission.

CHAIR: The committee is happy to receive that report. If you give it to the secretariat staff member, we will accept it into the evidence.

Ms Chambers: Thank you. Our second category of concern is around the timing of these changes. It would appear that the timing is incredibly difficult to understand, and it is very hard for us to work out what some of the implications of the way the timings interact with each other are going to be. It does seem that the changes—the ones that could be shortened to be called 'the stick'—with their emphasis on the person with the disability, occur before the ones that offer support and become 'the carrot'. So there are some concerns about what happens to people in between those two sets of timings.

Our third category of concern is with the adequacy in monetary terms and in pure support from disability employment services as well as through the pension amount and through employers supporting people with disabilities.

Those are the three categories which concern us. That concludes my opening remarks.

Senator SIEWERT: I have not had a chance to read the report in depth, though I have seen some comments in the media. I presume that that is the report that is in the media today.

Ms Chambers: It is. It is literally hot off the press.

Senator SIEWERT: I have only seen the reporting in the media about it. The point that I presume you are making here is that there is 'the carrot' in terms of being able to get into employment and 'the carrot' in terms of whether employers will actually step up to the mark and employ people—there were some comments in the media I saw about the Public Service in particular. Surely the other side of the employment issue is whether there is enough support for people to be able to find work. You were not here for a lot of the National Council on Intellectual Disability's submission around the amount of sustained employment, which is about 16 per cent. I presume that that is the package of things that you are talking about on that side of the ledger.

Ms Chambers: Yes. I am not sure if I am allowed to talk about that report at all, because we have only just tabled it.

CHAIR: Absolutely.

Ms Chambers: It looks at the decline in jobs which might be termed entry-level roles, the increase in the requirement for complex-thinking tasks and the decrease in manual tasks and simple tasks that are done one at a time. That not only rules out people with disabilities but also makes the competition much more fierce for roles for people who do not have the capacity or the desire to apply for those other jobs, so the people with disabilities are missing out twice. We know that people who are on disability support pension traditionally have a much lower level of educational attainment than the general job market, so we can make a generalisation and say that it is going to be quite difficult for people, in particular those with intellectual disabilities or periodic disabilities such as mental health, to access some of those roles.

We do call on it for Public Service leadership, because we can see that that is an area which the government can have some control over. We do note, and I know that the members of this committee have noted it in the past, that for the last couple of decades the number of people with disabilities employed by the Public Service has fallen—that there are very few APS level 1 and 2, and even now level 3 and level 4, roles around. Those are diminishing, so we see that the government could take a large leadership role in leading larger companies.

We would also like to see the government lead the way not just in direct employment but also in buying and procurement to make sure that they follow the New South Wales government's example and preference organisations for procurement that encourage and support people with disabilities in their employment.

Senator SIEWERT: Staying on the employment side of things, have you also looked at the amount of support that people require to find a job? Have you looked at that side of the equation in terms of the level of support that is going to be available under the new, 18-month process?

Ms Chambers: We have not had a detailed look at that. A number of our members are involved in this kind of work, and we do not feel that the depth of that support is recognised by the proposed changes. I am talking about the depth in terms of working with people with disabilities—going along and working with the employer to make sure that those two sets of needs fit and generally supporting that so that that arrangement can stay in place long after the disability support agency has pulled out.

Senator SIEWERT: Can I go to the development of the tables and the consultation process. Was your organisation involved in the first advisory committee that was involved in the development of the tables or in reviewing the tables?

Ms Chambers: I probably cannot comment there because I am not sure whether some of our member agencies who run disability employment support agencies were consulted. If you are interested I can take it on notice and come back, but I cannot comment here.

Senator SIEWERT: I think that answer may apply to my next question. In that case, have you been involved in any consultation that is currently taking place in the four eastern state cities?

Ms Chambers: No, we have not. Our members who are running these types of services are not actually running them in those four cities. Our major provider in the Anglicare network, who operates in these kinds of services, operates across rural Queensland and into the Torres Strait.

Senator SIEWERT: That takes me to the next point. A number of organisations which have made submissions and have appeared today have raised concerns about the applicability of the tables in regional and remote settings. Has your Queensland based organisation had any experience or looked at them? Have they fed back any comments about regional applicability?

Ms Chambers: We have a network of regional providers within Anglicare and, whilst we have not asked them specifically about the effect of these tables, you would be aware of the issues that they face in servicing clients who are in areas that do not have a lot of services. So for clients who are living with a disability and who are not close to a range of employers it becomes particularly difficult for our agencies to support them when there is not really a great deal of choice and when a working day means long travel, in addition to the hours they would need to work.

Senator SIEWERT: Do you have any comment on whether this should be a legislative instrument or should actually be in the legislation?

Ms Chambers: Could I ask you to clarify the question.

Senator SIEWERT: It is now proposed that the impairment tables will be a legislative instrument rather than contained in the act. Do you have a view on that or have any of your organisations mentioned it?

Ms Chambers: We have not formed an opinion on that. We believe that all welfare benefits, for example, should be set by an independent tribunal type organisation, as opposed to the government of the day. But we have not formed a view on that particular point.

Senator SIEWERT: Would that include impairment tables?

Ms Chambers: I believe it would. I am thinking on my feet here but, yes, in terms of maintaining that level of transparency, independence and ability to consider the issues as to how they would play out for people with disabilities, their families and their carers, as opposed to setting it in the context of a balanced budget.

Senator SIEWERT: I would like to go back to the issues around the application of the tables and its intersection with the other side of the equation that you have been talking about in your report. According to the current statistics, 40 per cent of people who would in the past have been assessed for DSP will now not get DSP. If there is no grandfathering and the tables are applied in the review process, then a number of people will then, in theory, drop out of DSP and on to Newstart.

Ms Chambers: Yes.

Senator SIEWERT: Do you have an opinion about what impact that will have on those people currently on DSP who will drop onto Newstart not only in a personal sense to them but also in terms of their ability to access the sorts of services that you have been talking about in this report?

Ms Chambers: There is one area that concerns us most. I think the first impact that you have probably heard from a number of people is the level of stress, concern and confusion that this raft of changes is throwing up for people. So I think we owe it to people on DSP to start getting rid of some of the myths that are flying around at the moment and to actually be straight about what this might look like for them. I believe that the difference for a single person on weekly DSP and weekly Newstart will be a decrease of about \$128 a week. That is pretty large when we look at the types of incomes people are living on. Anglicare agencies operate a number of emergency relief and financial counselling organisations across the country and they are seeing an increase in people with disability support pensions trying to access ER as well over a number of years ago.

Another piece of evidence that I refer to is that Telstra have a program called Access for Everyone whereby they help people pay their Telstra bills. When we did some research with them two years ago or one and a half years ago now, they found that 36 per cent of the people using that help were DSP recipients. I would tender that as evidence that the Disability Support Pension is already not enough for people with disabilities to live on. Coming down quite markedly in amounts, we see people who are struggling to pay for medication, who are struggling to find the transport that they need, particularly if it is taxis, and for whom it is going to become very difficult when by any acknowledgement Newstart is supposed to be a short-term payment for people between work. So for people who might have to sit on Newstart for up to 18 months to prove their activities that is going to become very difficult, particularly when we say that these people would have increased costs of living due to disability.

Senator SIEWERT: You have mentioned Telstra. Do you have any figures for utilities? Some states have utility assistance or allowance as well.

Ms Chambers: No, I do not have those figures. I can tell you from my research around the emergency relief network that rent and housing costs are the greatest cause of people seeking emergency relief, followed by utility costs. That is the second-highest reason for people seeking emergency relief across the Anglicare network. I do not have that on hand broken down as to what number of those people are on DSP. As you would know, for a lot of people on DSP temperature control, being home for long periods of time and inadequate housing or housing that is difficult to insulate or temperature-control is a huge impact on people's utility bills.

Senator SIEWERT: I am aware of taking quite a bit of time. I do have more questions but I will hand over and come back if possible.

Senator BOYCE: I want to follow up on the table you have given us, table 1 in your submission, around when what you refer to as the sticks are coming in before the carrots, so to speak. What would you like to see happen there?

Ms Chambers: We found it quite difficult to draw out what was going to happen when, and that is something we would like to see simplified so that there is some communication for people who might be captured by these changes. To take a little bit of an aside, the other area where we would like to see some communication is being concerned for people who are currently on DSP who do not have the same compliance ratings as there are in Newstart. We must be careful that people who are now coming onto Newstart do not miss out on some of the things they need to comply to and therefore fall foul of that. We need to do some honest communication around that.

Senator BOYCE: That is education for people, saying, 'Complying with Newstart is different from DSP. This is what you need to do now.' That has got to be a bit more than just a letter, one presumes.

Ms Chambers: I think it has to be, and I think it has to be something that needs to be out of legalese. I understand the changes are so complex that to actually communicate them simply is very difficult, but I think there does need to be some support in the first instance for people who are coming onto Newstart or some leniency, but something to make sure that we do not just set people up to fail and have them fall through there.

The other thing with the timing of the changes is that there are some difficulties for us in that there are a couple of reviews happening which will not be finalised until about 2013, 2014 which would seem to offer some information as to what we ought to be doing about some of the things that we are doing prior to that. There is a review of the disability employment services and we will have the final for that in about 2013. There are some pilots at the end of that table, in 2013-14. I can understand the need to make some of these changes earlier, but it does seem a bit like putting the cart before the horse in some of those. So we are concerned about how much

motivation there is to take any information that is coming out of those, given that we will have gone through a lot of the big changes prior to that.

Senator BOYCE: So you would like to have actual dates put against this table and have that explained carefully to people who fail DSP, so to speak?

Ms Chambers: Yes. We are aware, through our members, of people who are already very concerned about these changes. They are people who are quite vulnerable and see themselves as quite excluded. They are getting a lot of their information from the media, and it is not clear what kinds of effects these changes are going to have and when—also, what some of the implications of the changes on each other are going to be. That is really quite hard to model.

Senator BOYCE: Yes, that is what is going to ask you. You have put out this report, *What if employers say no?*, which is very useful. Have you done any modelling based on the impairment tables as to who will be affected and how they will be affected? I know you have some general statements in here about that, and they are common sense—what you would expect to happen. How will you be monitoring that area?

Ms Chambers: To date, we have not done any actual modelling on what that means to people. We will be looking to our membership to give us information on what groups of people are perhaps most affected and perhaps most inadvertently affected, because sometimes we can amend those more easily. So will be working with our membership over the next two years to see just how those changes pan out. But at this stage we have not done any modelling of that, no.

Senator BOYCE: But one of the points of these changes is to decrease the availability of the DSP, so you would be anticipating that there will be a certain number of people who will fall in that, wouldn't you?

Ms Chambers: Yes, we certainly would. Anglicare are on the record in a number of places as stating that we do see work for people who can in any way work as the best way to go for their social constructs, their social connectivity, as well as their income. But, with all the best will in the world, there will still be some people who cannot work the number of hours that some of these changes may demand. We do feel that Newstart per se is inadequate, whether or not you have a disability. As a program that is meant for short-term unemployment, that may or may not be enough; but, after a year or more on Newstart, it is very difficult to make households budgets meet and we certainly see lots and lots of people struggling on that. We are doing a major research project over the next year around food security and people on low incomes. That is not specifically about this, but some of the things we see are adults going without food so they can feed their children, programming their whole week around getting cheap food and those kinds of issues. We do not see Newstart as adequate for people to live on for any period of time, so we would have some comments about that.

Senator BOYCE: Are you aware of what the appeal mechanisms will be for people who are refused DSP under these tables? Will there be changes, as far as you are aware?

Ms Chambers: I am not qualified to talk about the detail of the changes in that process, no.

Senator BOYCE: I have a mental block; Senator Siewert, do you have any fill-in questions?

Senator SIEWERT: Yes. On page 7 of your submission, you talk about being caught in the administrative trap. Can you outline your concerns there in a little bit more detail, because it is an area that other submissions have not brought up.

Ms Chambers: It is an area I can talk about and then perhaps give more detail on later. It is around issues where somebody might be assessed as being able to work for a certain number of hours—and I think it is between about eight and 30 that this gap happens; it is a gap more than anything—but then cannot get work for those hours. Also, the way that it interplays with the DSP is quite detrimental. My preference would be to come back to you with the exact interplay there, but it is where people have the capacity for greater than X hours but they are not able to work in a way that then gets them a salary that is large enough to make up for the pension that they are losing.

Senator SIEWERT: Okay, and that relates to somebody who is on Newstart. And then there are issues about the different taper rates between DSP and Newstart, aren't there?

Ms Chambers: Yes. It goes back to my comments at the start: any policy that seeks to soften the boundaries between work and the various payments lowers the marginal effective tax rate—those kinds of issues. There are a couple of very specific examples of people being able to work a certain number of hours but not being able to access full payments, and those people are really going to miss out with the new tables, as opposed to with the existing ones.

Senator SIEWERT: Okay. Sorry, I have not taken that from the comments that you made in the submission. It may just be my reading of it, and I need to read it again. But, if you could provide any further details, that would be much appreciated—

Ms Chambers: Yes.

Senator SIEWERT: because, as I said, we have not been talking about that specific issue much. That would be appreciated. Thanks. Senator Boyce, have you remembered where you were up to?

Senator BOYCE: I did work it out, yes! My question was about your recommendation that the Australian Public Service, for example, start putting its money where its mouth is. We had Mr Innes, giving evidence at the last estimates, saying that the rate of disability employment had fallen seriously. Have you had any talks with the government about this? Are you aware of any plans they have?

Ms Chambers: We actually had a phone meeting with an adviser in a minister's office yesterday—

Senator BOYCE: That was minister who?

Ms Chambers: that would be Minister Macklin—and we have set up a meeting just to look at what kinds of things we can think of there. But, no, we have not had any other meetings with any officials. It has been a theme of conversations we have had, but it is not something we have had particular meetings about.

Senator BOYCE: Yes. I think it is something that has been raised for perhaps over 12 months now and it appears there has been no genuine or real action on the topic.

Ms Chambers: The numbers that have come through from Senate estimates questioning show a decrease, and we have picked up on a table in that report on a decrease over the last 20 years. That is anecdotal as well. I have heard people say that there are no longer those positions available: SES do their own photocopying, mail is distributed differently. Our issue is also that, while we would not want to see a person with a disability in those positions forever, without those kinds of entry-level positions it is very difficult to get the experience, to get the references, to get the confidence, to get the practices of those kinds of workplaces.

Senator BOYCE: You mentioned the New South Wales government project Ready, Willing and Able. Presumably, procurement from agencies that employ people with a disability means ADEs, does it, or any organisation?

Ms Chambers: I think it can mean that or it can mean any organisation. So we would want the APS to perhaps set up some kind of measurement of how people are reporting on those.

Senator BOYCE: Because if we cannot get the private sector to pay attention it is always going to be very slow, isn't it?

Ms Chambers: Yes. We do think that large employers are the best people to lead these kinds of job creation initiatives, and it does seem to be an area in which we should be taking some leadership because the government can have some control over the APS. But, certainly, larger organisations are where it is naturally going to be a little bit easier to carve out roles for people who may not have the ability to multitask to begin with and to consider lots and lots of ongoing pressures at any one time.

Senator BOYCE: Do you have a disability employment program?

Ms Chambers: It is not an area where Anglicare is huge. It is not one of our larger areas, but we do have a couple across the country, yes.

Senator BOYCE: Do you run a disability employment service at all?

Ms Chambers: Yes, we run a couple across Queensland, and we have had some in the Hunter Valley.

Senator BOYCE: Are you anticipating that these would see a higher demand for people looking for work when the new tables go through?

Ms Chambers: We would think that they would have to have. We are aware that their intake has been uncapped so we are aware that that is there and that people can come through. But we are also aware of the review of those services. That is another concern, as to where people who are falling off DSP might go if those are being reviewed. We certainly would not want poor services to continue to exist. I am not saying there are poor services, but I am saying that obviously an ongoing review process is good for any services. But there seems to be a bit of a timing oddity here.

Senator BOYCE: And, as I understand it, there is no current suggestion that this review is about increasing the funds to cope with increased numbers.

Ms Chambers: No, I think it is about an ongoing review of quality and service.

Senator BOYCE: Thank you.

Senator SIEWERT: The DES review—although that is a re-tender.

Senator BOYCE: That is right.

Senator SIEWERT: I wanted to follow up on that line as well. A number of submissions have said that they doubt the capacity of the DES and JSAs to meet the increased demand and the quality of the increased demand for the specialised sorts of support that are needed. You commented a little bit on the DES. I understand from the inquiry that we held a couple of months ago around the changes that have just been introduced—you have to demonstrate that you have looked for a job for 18 months. A number of submissions have commented on the quality of the JSAs to be able to meet that. Have you had any experience or feedback—not about DESs; we talked about that—on the JSAs?

Ms Chambers: Not a heck of a lot. It is not an area where Anglicare members provide a lot of services. But since the demise of the old PSP scheme, a lot of the expertise in those areas has certainly left the employment services.

Senator SIEWERT: In terms of the combination of the JSAs and the DESs, what is your opinion of the capacity of those two services to pick up the increased workload now?

Ms Chambers: I will divide that into two answers, if I may. I think in terms of the quantity of the increase, we are assured that the places are uncapped, but I am not sure yet how the funding for that looks. We believe it is on registration of people. But in terms of the ability to pick up qualitatively and actually offer services to those people which lead to them finding meaningful and ongoing employment, I think we would have to say that we would not be overly confident, given the current records at the moment. There are some tables in that report that I have just tabled around the success rate of the Disability Employment Services.

Senator SIEWERT: I was about to ask a question and it went completely out of my head. It may in fact come back. I will come back to it. I want to go back—sorry to harp on it—to this administrative trap. While you were talking to Senator Boyce I had another read of it and I am completely confused. If it is possible for you to send in an augmented submission that would be appreciated.

Ms Chambers: We will.

Senator SIEWERT: I think it is an important point. I just do not quite get it yet.

Ms Chambers: We will send something in probably this afternoon or tomorrow morning.

Senator SIEWERT: That would be very much appreciated. Thank you. I wish I could remember the point about the JSAs. I might have to put it on notice. Is the report that you have tabled today going to government?

Ms Chambers: Yes. The changes were finished this morning and so we will lodge it now in all the due places.

Senator SIEWERT: Are you represented on the new advisory committee that is going to be overseeing the changes to the DSP?

Ms Chambers: Anglicare is not, no. I am unaware as to whether any of the partners who produce—

Senator BOYCE: What organisations do you have that work in this area?

Ms Chambers: Anglicare Australia is a peak body for the Anglicare members across the country of which there are 43. Four of them have employment services and this report is written in conjunction with three other major providers, two of whom, in fairness, provide more employment services than we do. As I said earlier it is not an area where Anglicare is huge but this report is written in conjunction with Catholic Social Services Australia, who have taken the lead in here and would have more experience in this area, Uniting Care Australia and the Salvation Army.

Senator SIEWERT: I have remembered my question. You may deal with this in the report which, as we have said, we have not read yet. When the government made the new budget announcements earlier in the year there was the announcement of, I think it was, \$3,000 for employment placements. Is that canvassed in here and do you think that will address some of the need that you have been talking about?

Ms Chambers: We would think that it would address some of it but the sheer numbers that are being talked about in the modelling that we use in our report that we have just tabled, which comes from FaHCSIA data, cannot possibly hope to pick up on that. Likewise we note that in the budget papers there is some provision—and I have not got them with me so the name escapes me—

Senator SIEWERT: That is what has gone out of my head too.

Ms Chambers: But there is a million dollars for some positions across the country to help people—

Senator SIEWERT: The broker positions.

Ms Chambers: That is right. Probably, by the time we spread a million dollars across the country, we would be lucky for that to amount to 10 people. We were thinking that would probably look like eight brokers and so the capacity to work in regional areas let alone rural or remote would be very stretched.

Senator SIEWERT: Thank you. We have addressed regional and remote but we have not specifically addressed the needs of Aboriginal and Torres Strait Islanders. Have you looked at these changes or had any feedback from your member organisations around their thoughts about the impact of the proposals specifically on Aboriginal and Torres Strait Islanders because they face a whole different set of barriers?

Ms Chambers: We have not drawn those special groups out other than to make the generalisation that a group that is vulnerable already is going to be more incapacitated by any of these changes. I come back to that point about being clear around communications as these changes draw out. The other question that we are not entirely clear about is—we talk about people being grandfathered—whether as you come up for a review you will be reviewed under the grandfather conditions or whether as you are reviewed you will come into the new regime then.

Senator SIEWERT: That is a question that has come up all morning and we will follow that up with the department. I am sorry I interrupted you.

Ms Chambers: That is all right. Those communication needs are going to be special again for people who are perhaps less attached or differently attached to some of those ways of communications that Centrelink and the government have.

Senator SIEWERT: Thank you.

CHAIR: Ms Chambers, if there is anything that we have missed that you go away and think you would really like to share with us, if you could get back to us in a couple of days, that would be good because this report is due next week. I think we have covered a lot of things but sometimes something comes up when you go. Thank you very much.

Ms Chambers: We will and we will make sure we get that requested information in.

Proceedings suspended from 14:45 to 15:00

HATCH, Mr Andrew, Section Manager, Disability and Carers Payments Policy Branch, Department of Families, Housing, Community Services and Indigenous Affairs

ROSE, Ms Sharon, Acting Group Manager, Disability and Carers Group, Department of Families, Housing, Community Services and Indigenous Affairs

WILSON, Ms Serena, Deputy Secretary, Department of Families, Housing, Community Services and Indigenous Affairs

CHAIR: I welcome Ms Serena Wilson, Ms Sharon Rose and Mr Andrew Hatch from the Department of Families, Housing and Community Services and Indigenous Affairs. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The very important clause we need to read into the *Hansard* is that as departmental officers you will not be asked to give opinions on matters of policy, though this does not preclude questions asking for explanations of policy or factual questions about when and how policies were adopted. That does not mean we will not try it, but it will not get through!

I know officers have been watching the proceedings, for their sins, and looking at the submissions. We want this afternoon to be a chance to have the questions raised by the witnesses and their submissions responded to so we can get some balance. You know what many of the questions are, but it would just be very helpful for all of us to have those questions responded to. I know we have all made notes, and Senator Siewert and Senator Boyce will lead off with questions. First, would you like to make an opening statement, Ms Wilson? We will go from there—and we intend to finish up at 4.30 pm.

Ms Wilson: Okay. Thank you. I hope the opening statement will address some of the issues that have been raised in the evidence and submissions, as well as give some background to this measure. Eligibility for the disability support pension is based on a person having a certain level of impairment and an inability to work for 15 or more hours per week within the next two years because of that impairment. DSP is designed to provide income support to people whose disability means they can only work with ongoing support to maintain employment or a discounted productivity based wage, or can only work a very low number of part-time hours.

In the 2009-10 budget, as part of the Better and Fairer Assessments for DSP measure, the government identified that impairment tables for DSP would be updated in consultation with the medical profession and disability stakeholders, and that revised tables would be introduced with effect from January 2012. The terms of reference for the review of the tables are that it will:

1. update the ... Tables to make sure they are consistent with contemporary medical and rehabilitation practice
2. introduce consistent consideration of the use of aids and equipment in the measurement of impairment in the DSP Impairment Tables
3. reassess the appropriateness of definitions contained in the Introduction to the DSP Impairment Tables, with particular regard to the assessment of people with intermittent psychiatric conditions
4. re-examine the descriptors in the DSP Impairment Tables to ensure that a score of 20 points aligns with an inability to work 15 or more hours per week in the open-labour market at or above award wages without the need for on-going support
5. redesign the ... Tables to focus more on ability and
6. ensure that the ... Tables can be used by both Allied Health Professionals and Medical Officers.

The terms of reference were limited to the impairment tables and did not extend to the design of the disability support pension more broadly.

To give you a bit of background on the tables, they are designed to assess a person's level of impairment. They represent an empirically agreed set of criteria for assessing the severity of functional limitations for work related tasks and do not take into account the broader impact of a functional impairment in a societal sense. For this reason, no specific adjustments are made for age, gender or ethnicity. The current tables consist of system based tables that assign ratings in proportion to the severity of the impact of the medical conditions on normal function as they relate to work performance. Many of the features of the current impairment tables—such as the requirement that the medical condition be fully diagnosed, treated and stabilised before being assigned an impairment rating—have been retained in the revision of the tables. While some submissions raise issues with these features, they are not new concepts or requirements and are part of the existing design of the disability support pension. In undertaking the revision, the revised tables are now function based rather than diagnosis based, and this focus on functional ability in the assessment of work related impairment is consistent with international trends and a contemporary philosophy of disability in work. It is worth noting that Australia is a signatory to the UN Convention on the Rights of People with Disabilities, in which article 27 recognises the rights of persons with disabilities to work and commits signatories to promoting vocational and professional

rehabilitation, job retention and return to work programs for people with disability. Submissions from some stakeholders in the consultations with this review of the tables also stressed the importance of recognising individual ability and the right to work. The impairment tables are applied by job capacity assessors. These assessors provide assessments to Centrelink to assist in determining eligibility for DSP. Assessors include a range of medical and allied health professionals, such as registered psychologists and rehabilitation counsellors.

I would like to address a few specific issues that have been raised in submissions and evidence to the committee. Some submissions have been critical of job capacity assessors but, again, we would like to note that the Organisation for Economic Cooperation and Development, the OECD, has commended Australia's approach to work capacity assessment compared with other countries. In its 2007 report, *Sickness, disability and work: Breaking the barriers*, in its volume on Australia, Luxemburg, Spain and the UK, it stated:

the new comprehensive JCA is a promising step as an integrated assessment aimed at earlier intervention, and the last step in a shift from a medical to a functional view of disability.

...JCAs, which were introduced in 2006, focus on identifying people's capacity to work and any barriers or impediments that prevent them from getting a job. This is a more comprehensive approach than in the other countries.

A move away from a purely medical model of assessment, replacing medical officers with allied health professionals, started under changes in the early 2000s by introducing job capacity assessments under the Welfare to Work program. This was continued in 2006. It was on the basis that allied health professionals who have experience in finding employment for people with disabilities have a better insight into work capacity than straight medical officers.

Another concern that I would like to address is a concern that the tables would be applied to current disability support pension recipients. The government has decided that the new tables will be applied to current DSP recipients if they are required to undergo a medical review. I would note that medical reviews are undertaken on only a very small proportion of the DSP population. Some 2.2 per cent in 2010-11 had medical reviews—around 18,100 customers of 818,500 customers.

Senator SIEWERT: Could you just give us those figures again?

Ms Wilson: Some 2.2 per cent, which represented 18,100 customers of a total of 818,500 customers had medical reviews last financial year, and in only 1.6 per cent of the medical reviews was a cancellation the result. That is some 298 individuals out of the more than 18,000 medically reviewed.

Senator SIEWERT: That was against existing tables, though.

Ms Wilson: That was against the existing tables. The new tables have not yet been introduced. What I am saying is the proposition is that the government has decided that the new tables will only be applied to existing customers where they are having a medical review. That is consistent with the view that the current advice should be sought in the assessment.

Senator SIEWERT: But, with all due respect, the 200-odd that were rejected last year is irrelevant if their new review is being carried out against the new tables.

Ms Wilson: I guess it indicates that, in any event, medical reviews are undertaken only for a very small proportion of disability support pension customers and, of those undertaken, a very small number, under existing tables correctly, are cancelled. We would not anticipate that we would have the sorts of results that people have raised as I understand it in evidence in terms of comparisons with the UK experience, where the UK took a decision to review all of their existing DSP equivalent stock under a new assessment tool. So I am just trying to point out the difference in Australia's approach in respect of existing customers.

Senator SIEWERT: Should I pursue this line of inquiry now or wait.

Ms Wilson: Maybe I could finish my statement.

CHAIR: When the statement is finished we will go to questions.

Senator SIEWERT: That is fine. There is some way to go on that one.

Ms Wilson: Some submissions have been critical of the testing of the revised impairment tables. A total of 215 test assessment results were available for analysis and 35 of those records included a supplementary assessment of the person by another assessor using the draft revised impairment tables. While the consultants found the sample size to be reasonably representative of the broader DSP population, the advisory committee that the department established for providing advice on the impairment tables review noted the small sample size and the limited use of some tables. Testing identified that 38 per cent of formerly eligible applicants under current tables were assessed as ineligible. While there was a downward movement across tables, the mental health function table—16 per cent of the sample—saw a general movement in scores but no significant changes in

eligibility. Inter-rater reliability results reported a difference in 35 per cent of cases when it came to the total scores allocated by assessors. The advisory committee also noted that the removal of current table 20 had some impacts. However, in the 132 cases where table 20—which is 'miscellaneous conditions'—was used in assessments using the current tables, assessors then tended to use more appropriate revised tables covering exertion, stamina, lower limb function, upper limb function and/or spinal function.

The upshot of the advice that the advisory committee gave to the department in response to the results of this testing was that we should monitor the initial implementation of the revised tables and undertake a comprehensive evaluation of their results over the first 18 months following implementation, and that thereafter the table should be reviewed regularly at least every five years. The advisory committee also recommended that feedback should be sought regarding the draft revised impairment tables from organisations listed in appendix B of its report prior to introduction of the revised tables, and we are continuing to do that.

I would just like to finish by taking a minute to talk about the consultation process that we have used for the development of the tables, and that process is ongoing. When the government made the decision to undertake the review of the tables, it requested that an advisory committee be established, and we certainly did that, with quite a broad membership. In addition, for broader stakeholder consultation and engagement, some 75 organisations were invited to participate in a consultative process through a secure govdex website, and they could also provide additional submissions should they wish to. I note that less than a third of the 75 participants in the govdex secure website did provide a submission in the construction and review of the new tables.

Notwithstanding that, FaHCSIA is continuing to consult with stakeholders on the revised impairment tables. For example, we are in ongoing discussions with the National Council on Intellectual Disability and a number of pain-management groups. We are also holding workshops for stakeholders to enable them to provide feedback and raise issues about the revised tables. For those who cannot attend the workshops personally, we have also provided the option of teleconference contact. The schedule for introduction of the disallowable instrument in which the tables will be located is the end of November this year, and all feedback gathered in the ongoing consultative process will be considered in finalising the disallowable instruments. That is the end of my opening statement.

CHAIR: Thank you very much, Ms Wilson. Mr Hatch or Ms Rose, do you have anything to add?

Ms Rose: No, thank you.

Mr Hatch: No, I do not.

CHAIR: Senator Siewert, as you have already started, it might be useful to lead off with you. Then we will go issue by issue. So, if Senator Boyce has questions about the same issues, we will try to knock them off in that way, because I think there are a number of clear areas where we want to ask questions.

Senator SIEWERT: Okay.

CHAIR: Were you starting with consultation?

Senator SIEWERT: I thought we would start with consultation. I am tempted to start with the review, but I think it is more logical to start with consultation.

CHAIR: We stick with logic always!

Senator SIEWERT: You said you invited 75 organisations to the govdex process. Excuse my ignorance, but what is the govdex process?

Ms Wilson: Ms Rose or Mr Hatch can give you more detail, but essentially it is a secure website where you can have a community of interests established and people are given a password to log on, and they can follow the process of an engagement process. So they can access papers that are put up on the website and they can post responses, submissions and the like. So it is essentially an online community; I guess that is a way of thinking about it.

Senator SIEWERT: Were people issued invitations to log on?

Ms Rose: They were contacted by email and, yes, they were offered the opportunity to join that govdex community.

Senator SIEWERT: Am I to take it from the fact that you mentioned that only half of them took the opportunity that you are implying that the other half are happy with the tables?

Ms Wilson: No, I am not. It was actually less than a third that provided a submission. I guess that what I am identifying is that there was an opportunity extended for submissions to be posted in that way, and a number of organisations posted submissions, but it was less than a third of the total who were invited to participate in the

govdex process. I was not making any commentary on the reasons for that. I was just identifying what the proportion was.

Senator SIEWERT: What time frame were they given to comment in?

Ms Wilson: It was over a period of months, was it not, Ms Rose?

Ms Rose: Yes.

Senator SIEWERT: We have had a bit of criticism about the four workshops that are being held in the eastern states. There were people who said that they were not invited but we have cleared it up and there has been some miscommunication, so I am not going to worry about asking about that. I am asking, though: why was it invitation only, who was invited and why were they only in the four eastern states and not in, for example, the west of the country?

Ms Rose: The reason for that was that there was a recommendation from the advisory committee that we contact all of those organisations that Ms Wilson has just mentioned and offer them the opportunity to attend a workshop. The responses that we got were centred more around the eastern states. In fact, I think we only got one response from WA, so we did not go and set up a workshop for two or three people. But we are willing and we have said that we are happy to have teleconferences with people from these areas if they wish to do so. They are not excluded because of that. If we find out that the message has gone out and there are other people who wish to participate then we can amend that schedule.

CHAIR: Ms Rose, have you ever given thought to advising the parliamentarians that this is happening and getting them to talk with the community? It does seem to me that there is a wealth of knowledge sitting in the parliament on some issues and that this is a really important thing. On behalf of Senator Siewert, I certainly feel that if she had been told this process was going to happen she would have been able, through her networks, to get a number of people responding. I am just wondering whether this a process you have used or thought about using.

Ms Rose: I believe there was a press release issued by Minister Macklin but it did not contain exactly where the workshops are; I accept that.

Senator SIEWERT: So there was a press release with a general invitation? Sorry, as much as I hate to insult the minister, I do not look at the minister's website all the time for media releases.

CHAIR: You do not read every one, Senator Siewert?

Senator SIEWERT: I do not read every one. What I am more concerned about is why it was by invitation only rather than a general invitation to come to workshops, because you may well not have got a response from groups per se in WA, but I am sure there are people in the community who would like to come and talk to you about impairment tables.

Ms Wilson: There were 75 organisations invited to attend. I guess it was based on the experience of those who have been interested in these issues in the past. That is how we formulate these invitation lists. But I take your point that going forward we could certainly consider a more open process. There was no intention to lock anybody out; it was just who we thought would be likely to be interested from our understanding of the stakeholder groups with whom we have normal and ongoing contact on these issues. They represent either disability-specific or medical-specific organisations as well as practitioner groups.

Ms Rose: Also, the advisory committee, AFDO, were represented, along with the Disability Advocacy Network Australia and Ms Rhonda Galbally, who chairs the National People with Disabilities and Carer Council.

Senator SIEWERT: Okay.

Senator BOYCE: I would like to follow up on the point that a number of organisations have told us they were not invited to attend but have subsequently found out that they were invited to attend. This suggests that, given the resources of some of these organisations, there was some sort of a problem with the way they were invited. My other question is: what is the purpose of these workshops?

Ms Rose: The purpose of the workshops is to talk through the tables and to let people know how the advisory committee came to the decisions that they did in terms of the number of tables and the process that was gone through so that people could raise any issues that they have about them.

Senator BOYCE: So it was about giving information?

Ms Rose: And receiving it.

Senator BOYCE: And so the tables are still open to being amended if required?

Ms Rose: We are certainly of that view. In fact, as you probably heard earlier, we are having discussions with the pain people and with NCID and obviously are still taking on board issues that they have raised and others have raised.

Senator BOYCE: I was going to ask some questions about them. The impression I got from people who had been involved was that the department was open to minor changes but there was no possibility of any major revision of the tables at this stage.

Ms Rose: I guess our view is that the advisory committee over some 18 months has come up with a view about a functional type of approach rather than the former approach and I do not think that would be open to further consideration in a broad sense. But where people are experts in areas that tell us, 'This won't work, you haven't considered X, Y and Z,' then we will obviously be taking note of that.

Ms Wilson: I think it is fair to say we are not seeking through that ongoing engagement process to go back to first principles. That was the process that the advisory committee undertook, as Ms Rose indicated, over an 18-month period. But certainly an ongoing dialogue in finalising the tables to ensure that, if there are concerns that we take them on board and consider them and if there needs to be some refinement in response to those concerns, that is developed.

Senator BOYCE: When would you anticipate that the final refined tables will be available?

Ms Wilson: We indicated I think in my opening statement that we proposed that the tables would be available in the disallowable instrument for introduction by the end of November this year, so we have got a couple of months in which to finalise the process and make any refinements that are required.

Senator BOYCE: My questions now follow that through.

Senator SIEWERT: I want to go next to the 38 per cent fail, et cetera, in the trialling process.

Senator BOYCE: Okay. You have got final tables by the end of November which will be available. The intention then is that in June 2013 you would review them.

Ms Wilson: Certainly, 18 months after.

Senator BOYCE: So whatever is there is set in concrete till June 2013. Is that correct?

Ms Wilson: It depends how you understand 'set in concrete'. Disallowable instruments of themselves provide for flexibility. One anticipates that this will not occur but, should there be something that went wildly wrong, our testing, which we have some confidence in, would not suggest that that is the case and our long process in developing them again gives us little concern in that regard. But disallowable instruments of their very nature provide for more frequent amendment and a less onerous process to do that should it become necessary. But the proposition is that 18 months down the track after their introduction in January next year we would do a review and thereafter five-yearly so that there is a regular cycle of updating.

Senator BOYCE: But, as you said, if something went wildly wrong then you would review. How would you know if something has gone wildly wrong?

Ms Wilson: It would be if there was something completely out of line with what the testing indicated to us, if there were appeal rates that were wildly different from what we had anticipated and set-aside decisions in the tribunals—those are all the sentinel things you look for after policy change to see whether it is in line with your expectations in the bedding-down period or not.

Senator BOYCE: How would that get put into the system and acted on?

Ms Wilson: We monitor, after the implementation of something, what is happening in terms of customer impacts against what was anticipated at the outset in the policy process. We do regularly monitor internal and external appeal and review processes in the social security system. That is one of our sources of information. Clearly representations are other sources of information. So we have a wide range of getting inputs—ministerial correspondence, the peaks and so forth.

Senator BOYCE: And then you would report to the minister that this has gone wildly wrong.

Ms Wilson: I am not anticipating that that would occur!

Senator BOYCE: No, I know. I just want to understand how quickly this process can react if there is a large unintended consequence.

Ms Wilson: My evidence is that we believe we have a flexible approach to introducing the tables which would enable them to be amended if it ever became necessary.

Senator BOYCE: That segues quite nicely into legislative instruments.

Senator SIEWERT: You touched on that. I want to go to timing in a minute too. But you consider an instrument to be easier to amend?

Ms Wilson: It is consistent with the approach we have used across a number of the disability and carer spaces. My recollection is that we moved to disallowable instruments in the late 1990s or early 2000s, when we introduced the carer assessment tool. The adult disability assessment tool and the child disability assessment tool were both disallowable instruments. The reason the then government decided to do that was to provide the flexibility to make more frequent changes than fully legislating everything in the Social Security Act would do. So we already have them in place with respect to carer payment and carer allowance and this is a similar approach.

CHAIR: Can you provide us with other places where you are using the instrument mechanism?

Ms Wilson: Certainly.

CHAIR: I asked the Welfare Rights Network and the New South Wales legal services about this and they were not sure. That interested me because it is a specialist area of research. I would like to know where the model is being used. A particular concern that was raised about going to a disallowable instrument was about access to the information. A number of witnesses said that, if something is in legislation and proposed changes come up, you can find it easily and everyone knows about it. Witnesses did not have confidence that, if we are going to use the disallowable instrument methodology, it would be easy to find the instrument and people would know about the change.

They also felt that the consultative mechanism around a disallowable instrument is not as clear. If you have something in legislation, consultation can be triggered through a process such as this. You could have a Senate inquiry into the whole thing. There was concern that that kind of public awareness and consultation process would not happen with the disallowable instrument mechanism. So it would be useful for the committee to have those two issues addressed by the department.

Ms Wilson: Certainly. I will undertake to do that.

CHAIR: If you look at the evidence from the New South Wales legal people, I think that was their concern—the difficulty with finding a disallowable instrument. There was also a general concern about how you actually make people aware that a change is being proposed and engage them in the process. If we could get something from the department on those specific issues, that would be good.

Ms Wilson: Sure.

Ms Rose: I would like to respond to that. We have recently established a disability advisory group which includes ACOSS, the Welfare Rights Network, People with Disability Australia and employment service providers. These would be exactly the types of things that we would take to that advisory group for their consideration.

CHAIR: Can we have a list of who is on that group? When we met last time, that group did not exist. It is a new group, so I would like to know who is on it and whether you have terms of reference. We had evidence from one of the witnesses that they were on it, and they were pleased to be on it, but they were not quite sure what they were doing on it. I do not think that is verballing the witness.

Senator BOYCE: No.

Senator SIEWERT: I want to go to the time line associated with the disallowable instrument. You would have heard the evidence from the council, which we will go to a bit more when we discuss intellectual disabilities. We had quite an extensive talk about the discussions you have already had with them, and then there are the ongoing discussions, as we understand it, on the group of people with an IQ of 70 to 79. I do not necessarily want to go to the nature of the discussions because I hope Senator Boyce is going to take the lead on that. What I am interested in is the time line of when you expect that to be done and what happens. We are dealing with taking the tables out of the act, and then we will have the disallowable instrument. Can you just quickly run us through the time line and what process you will use to incorporate anything you get back from the consultation—which is another question I will ask again in a minute.

Ms Rose: I think you are asking how we are going to accommodate the bilateral discussions with the time line to put in the instrument?

Senator SIEWERT: Yes.

Ms Rose: We had some correspondence with NCID yesterday, and they are coming back to us with a proposal in terms of how to move forward. They have said that they will do that by next Friday. As soon as we have a look at that and decide amongst us that it is the best way to proceed—and we have had discussions with them such that

we need to do this fairly quickly, so we will do that as soon as possible—we will make ourselves available to them as soon as they need to and to any others that they believe should be included in these discussions. Then we will consider that and go back to the relevant members of the advisory committee in relation to changes.

Senator SIEWERT: I am not trying to be pedantic. Which advisory committee—the first one or the second one?

Ms Rose: Probably both.

Senator SIEWERT: The first one is still functioning?

Ms Rose: They are not meeting anymore, but they did present this report to government, so we think it is only right and proper that they should have a look at any changes to the table. In fact, NCID have agreed that the person from the Australian Psychological Society who is probably best placed to look at some of these intellectual disability areas should be involved in these bilaterals.

Senator SIEWERT: Sorry, I am slipping back to the consultation process. Some concern was expressed that the consultation process is information not consultation. I am wondering what the process is for accommodating, if that is the purpose, people's suggestions and feedback on the impairment tables.

Ms Wilson: I think it is fair to say that the process is about a dialogue; it is certainly not one way. The minister was very keen that we have this dialogue after the work of the advisory committee and before finalising the disallowable instrument. That was so that we could listen to groups and respond to concerns raised, including, if necessary, making any amendments to the tables and then the disallowable instrument that would reflect the tables. I would like to be quite clear that it is about dialogue; it is not a one-way information provision. What was the second part of your question, Senator?

Senator SIEWERT: What, then, is the time line for accommodating that input? Presumably the process is that the outcome of those consultations will go back to the two advisory committees, in the same way as the council's input will go back to those two committees. Is that the process?

Ms Rose: That was what we were hoping to achieve, yes.

Ms Wilson: So we do not necessarily need to bring the advisory committee together physically for a meeting. We will have to take stock of whether that is the best way of getting back or whether actually it is better to do that virtually or engage bilaterally with those who are expert in an area that needs refinement.

Senator SIEWERT: Thank you. Maybe you could just supply to the committee the dates—or I suppose I could go to the minister's website to see the dates—of consultations for the meetings.

Ms Wilson: We can supply that, Senator.

Senator SIEWERT: If you could, that would be appreciated.

Senator BOYCE: Show us what is going to happen to get us to the end of November, which is the final. Then I am presuming that all that happens after that is that everyone can look at it for a month and then it is in force; is that right?

Ms Wilson: Yes, once introduced. We will have a process of tying off or rounding off the finalisation of the tables and their reflection in the drafting of the disallowable instrument from the office of legislative drafting—is that correct?

Mr Hatch: We will be doing the drafting.

Ms Wilson: We will be doing the drafting in house, so that is quite a fluid process for us.

Ms Rose: I have the dates here if you would like them now. This is for the workshops. We had one in Canberra last week on 31 August. The next one is in Sydney on Monday, 12 September. Do you want the times as well?

Senator SIEWERT: No.

Ms Rose: Then Melbourne on Friday, 16 September, and Brisbane on Thursday, 29 September. Could I also add—and this was raised by someone this morning—that we are having representatives from the advisory committee who drafted the tables—advisory committee 1, if you like, to attend all of those workshops. So it is not just us going there. We will have people who were involved in the advisory committee as well as our consultant, Jenny Pearson, to answer specific questions.

Ms Wilson: And hear particular feedback.

Ms Rose: And listen to the feedback.

Senator SIEWERT: We have asked for the names of the second advisory committee. Can we have the names of the first advisory committee?

Ms Wilson: I could provide those now, if you like, Senator.

Senator SIEWERT: If you could table it, that would be great. I am mindful of time.

Senator BOYCE: So we have the last consultation on 29 September, during October and November you will go back to the advisory groups about what has come out of those workshops, and at the end of November we will have the final table?

Ms Rose: Yes.

Senator SIEWERT: Just going back to the first advisory committee, how were they chosen?

Ms Rose: We put up proposals in terms of organisations that we felt would cover the whole spread of allied health professionals, Australian colleges of medicine and so on, and peak bodies. The decision was made by the minister's office.

Senator SIEWERT: There has been some criticism of the fact that, we have been told, there is only one person with life experience on it. We have not been told who is on it, but that there is only one person with life experience. Is that right?

Ms Rose: No, that is not. There is one representative of AFDO, the Australian Federation of Disability Organisations, but Ms Rhonda Galbally is also a member of that group. There is also Mr Kevin Cocks from—

Ms Wilson: Queensland Advocacy Incorporated.

Senator BOYCE: He is not anymore but he was.

Ms Rose: Yes.

CHAIR: We have Senator McKenzie on the phone. Senator, if you want to ask a question, just jump in. We are going through issue by issue and we are just going back to Senator Siewert.

Senator SIEWERT: I would like to go to the trial process, and I think several things will come out of that. There were 215 and, according to the information that we have received, in some of the table areas they were trialled on two people. For example, the information we received from AFDO on the communication function suggested that there were two people that it was trialled for, and there were a number that were below six. Is that considered statistically relevant?

Ms Rose: We did not set out to choose people, if you like, to be part of the trial. We asked CRS and Centrelink to trial the tables in the normal course of their assessments for DSP over that period. So in a sense those numbers are representative of what the types of claims were that would have been coming to those offices. We did say that we would try to cover all of the tables, but given the time frames that we had, we wanted to just try and use a representative sample of claims.

Senator SIEWERT: Thank you for that but it does not answer the question. This is a trial. Was it carried out in systematic way? You have heard me talk about trials and methodologies et cetera before. Was this statistically validated and was it approved by the process that you normally go through when you are trialling something?

Mr Hatch: No, it was not. Effectively, what the trial was looking at was whether there were any perverse outcomes from the new tables. It was part of the process. When the advisory committee had developed new tables, they were happy and satisfied with them and were happy to present them as they were, but we wanted to give them a level of assurance that there was not anything strikingly wrong with them. So we had agreed that we would test the tables first and report back to them on the results of the testing so they could see what happened.

Ms Wilson: It was usability testing. That is the term we would cover the testing process with. It tested whether they were usable by a wide range of assessors, whether they produced the sorts of results that would be anticipated with the updating of the tables, whether they provided iterated reliability, what the outcome was when you had two people using the tables, what the results were versus the old tables. It was seeing how they operated in practice.

Senator SIEWERT: Is it possible to get a list of the criteria you tested them against?

CHAIR: Do you have any model documentation on the process and the expectations of the trial, Ms Wilson? There has been considerable mention of concerns about the trials in the evidence we have received.

Ms Rose: We decided to get an independent view of the results of those trials and that is why we appointed Taylor Fry actuaries to do that for us. I believe that does show a level independent scrutiny of the trial. This was also put up on our website with the committee's report and the revised tables.

CHAIR: I do not remember seeing that. Was that provided to the committee or were we told about that? I certainly do not recollect having that drawn my attention.

Ms Rose: I thought we made the committee aware of all the information that was put up on the website. It was released by the minister.

CHAIR: That is fine. We will check the website. We do not normally operate, except in estimates, by reading websites to ask questions.

Ms Rose: Sorry, I did not mean to imply that. I thought we had advised the committee of the documentation. I apologise. It is publicly available.

CHAIR: That is fine. We will go to the website.

Senator SIEWERT: Was the 38 per cent fail rate part of the criteria? What were the criteria for the fail rate?

Ms Wilson: There were no criteria. The decision by the government was to update the tables in line with contemporary medical rehabilitation and allied health advice to get a set of tables that reflected the modern assessment of disability. There was no preconceived outcome.

Senator BOYCE: When we looked at the bill I am sure we took evidence on the fact that you had modelled that there would be a failure rate. What was that again?

Ms Wilson: We had modelled the net outcome of a range of related measures in the disability support pension better and fairer assessments measure, of which the revision of the impairment tables was one component. So we did not separately identify or model what an anticipated outcome was from revising the impairment tables, but we included in the costing process for that measure assumptions across this, the job capacity assessment change measure, the new guidelines for job capacity assessors, the use of the senior job capacity assessors, the introduction of the health professional advisory unit and also the changes to the manifest list, which had the impact of broadening the manifest criteria for disability support pension.

Senator BOYCE: What was that figure?

Mr Hatch: Eight per cent reduction net. It was 10 per cent less and two per cent more. As Ms Wilson said, some people were expected to get onto DSP who may not have before because of the new manifest guidelines. That was two per cent more people granted. Then there were 10 per cent less because of the various changes that were mentioned. So it was a net reduction of eight per cent or 5,000 people.

Senator SIEWERT: So we have got 38 per cent?

Ms Wilson: Thirty eight per cent in the usability testing of the impairment tables, but that is one component of the assessment for disability support pension.

Senator SIEWERT: How many do you really expect to not to be able to access DSP?

Ms Wilson: If the results of the impairment tables applied across a broad population, that might be the outcome. But there is no predetermined outcome. I note that the grant rate for disability support pension has been dropping across the last 12 months as a consequence of a range of things, including the changes to the manifest criteria, the introduction of senior job capacity assessors, the provision of the health advice professional unit and so forth. So we have seen for the first time a reduction in the grant rate. DSP numbers continue to rise nevertheless consistent with a range of drivers in the broader economy and society.

Senator SIEWERT: You did not answer my question. I appreciate the comments that you made, but you did not answer my question.

Ms Wilson: It is an indicative result of the usability testing that 38 per cent of the population that participated in the usability testing would not have been granted on the basis of the new tables as compared with the old impairment tables. It depends upon the route by which people come into disability support pension. There is a proportion that are manifestly granted, which is about 6.3 per cent. They do not have the impairment tables applied. So an indicative result might be a reduction in outcomes of that proportion for those who go through new impairment tables.

Senator SIEWERT: So manifest will go up from 6.3 to eight?

Ms Wilson: No.

Mr Hatch: The eight per cent was the net impact of all of the parts of the measure.

Senator SIEWERT: I beg your pardon. In fact it will go up to 8.3 per cent.

Mr Hatch: That part of the measure has already been implemented. It was implemented from 1 July.

Senator SIEWERT: So when you say 6.3 that is what we have already got.

Mr Hatch: At the moment, yes. That is for last year.

Senator SIEWERT: If it is two per cent, that went up from 4.3?

Mr Hatch: No. I think it went up from historically around five per cent.

Senator SIEWERT: So you factored in two per cent but in fact did not make two per cent. Is that correct?

Ms Wilson: It depends upon the proportion who present at any point in time in any year. The net impact in percentage terms for DSP claims and grants would have been across the four years of the measure. We did not pin down the exact contribution of each element of the measure, but we believe there would be a net impact in that order. As you would be aware, it is hard to anticipate what is going to happen in the broader economy and what is going to happen to your claim rate. All of these things drive what happens in an income support payment like disability support pension.

Senator SIEWERT: So we are working on 6.3 per cent for average manifest.

Ms Wilson: That was the result for last year.

Senator SIEWERT: Okay. At the moment let us use that as the baseline. Then we are talking about 92.7 per cent. Is it correct to say at the moment the usability test says that 38 per cent drop out of 92.7 per cent?

Ms Wilson: We would have to look at what else happens in terms of income, assets and those things. I could not off the top of my head do a flow-in for you because there are a range of qualification criteria that do not relate to disability or health condition that also need to be met. You would have to get the sequence of that right. Residential qualification and income and assets will also have an impact.

Senator SIEWERT: Can you take on notice the number of people who apply for DSP who do not get it because of those other qualifiers?

Senator BOYCE: And then what that figure should be if it is not 38 per cent of 92 per cent.

Senator SIEWERT: Actually, I should have said 93.7 per cent. That was my mistake.

Senator BOYCE: 93.7 per cent then. Can I just jump in there?

Senator SIEWERT: Are you going to go to the difference between the assessors?

Senator BOYCE: I was, but I just want to ask another question. You mentioned having indicators that told you if something was going seriously awry. Is that eight per cent overall reduction using all the measures going to be your base figure there, or is it the 38 per cent that has come up in the impairment tables that you would use as your base on which to decide if something was going seriously awry?

Ms Wilson: For those people who are being assessed under the new tables—taking out people who are manifest—we would look at what the outcomes are compared with usability testing and compared with previous results under impairment tables. We would look at the outcomes in respect of each functional area also. If I can draw an analogy with the disability carer mode assessment experience, we found out very quickly after the introduction of that instrument for carer allowance and carer payments, but particularly the carer allowance in respect of juvenile diabetes, that there were very different outcomes being experienced compared with previous outcomes. They were different from what was anticipated, and therefore the minister asked us to very quickly look at that and have a review, which we did, and that resulted in some amendments. So we would look at global outcomes but we would also look at outcomes within domains to track whether we thought something was looking right or not. We would look at appeal results, so both authorised—

Senator BOYCE: That is where we were heading. One thing I wanted to nail down is that you are not just going to be looking for very high failure rates; you are going to be looking for a low failure rate as well. Part of this is designed to decrease the number of people on disability support, isn't it?

Ms Wilson: It is designed to reflect a more modern understanding of the impact of disability and health conditions on the ability to work and impairment.

Senator BOYCE: And one of the consequences of that will be fewer people on disability support.

Ms Wilson: One of the consequences of that might be a reduced flow into disability support pension, yes.

Senator BOYCE: There did not seem to be a general understanding amongst earlier witnesses as to whether there was any change to the appeal structure for being refused DSP.

Ms Wilson: No.

Senator BOYCE: There will be no changes whatsoever?

Ms Wilson: No. People can still appeal a decision about their qualification in the same way that they have previously been allowed to and able to appeal. So there is the same hierarchy of internal reviews, external reviews to the SSAT, the AAT and so forth.

Senator BOYCE: What are you anticipating the appeal rates would be? I understand that they are currently about 10 per cent. Is that correct? Would you be able to tell me on notice what the current appeal rates are, presumably to the AAT, how many of those are successful and what you anticipate they will be under the new impairment tables?

CHAIR: It would be useful to have some of that finer detail. I know the department keeps this information.

Ms Wilson: I have some data for you. I do not have the overall appeal rates, so we will have to take on notice the proportion of claims. But I can tell you that 26.4 per cent of rejections were overturned by internal review—by authorised review officers—in the last three months of last financial year. About 460 rejections were overturned.

Senator BOYCE: Are these standard sorts of rates? I know it is going to vary through the year, but that is not madly at variance?

Ms Wilson: No, it is just the last quarter's results. We look at it quarterly and this is just the last quarter's results. So we report it in the annual report for a full year. We have annual reports about this, but we monitor it quarterly. In terms of the Social Security Appeals Tribunal, in the same quarter 19.9 per cent of DSP rejections were overturned by the SSAT. The most common reason for that is more evidence being provided than was available at the time of the original claim, so the SSAT often has the opportunity to consider more evidence than has previously been provided. It is similar for the authorised review officers.

CHAIR: And the AAT?

Ms Wilson: I do not have AAT data with me, I am afraid. It is a much smaller proportion.

Senator BOYCE: Could you give us that as well?

Ms Wilson: Certainly.

CHAIR: And the numbers that are appealed as well. That is the percentage of claims. We would like the base numbers as well.

Ms Wilson: I will give you the base numbers. What proportion of overall DSP claims result in an appeal; whether they are internal or external; whether they are SSAT or AAT—we can provide that for you on notice.

Senator BOYCE: And also that figure—you said before the appeal rate will be something you will look at, so if you could tell us what you are anticipating the appeal rate to be that would be good. Do you want to do assessors now?

Senator SIEWERT: Yes, but I do want to go to the Fry report. Due to the wonders of modern technology—and somebody is able to send me the link—in fact, we are talking about 41 per cent, not 38 per cent.

Mr Hatch: Forty-one per cent if you did not include five-point ratings in the appeal tables; and 38 if you did include them.

Senator SIEWERT: There is a comment about the five-point ratings as well, isn't there? We want to go to the assessors' issue: there was a 35 per cent difference in assessment between two assessors.

Ms Wilson: Of those that were tested for inter-rater reliability—correct—35 per cent showed a difference.

Senator SIEWERT: How many were tested, because I have not gone into that level of detail in the report, for that?

Ms Wilson: So it was 35 per cent of 35, and in 14 cases the supplementary assessor gave lower ratings than the primary assessor. We think that is because the primary assessor was doing the old tables as well as the new—or the proposed new.

Senator SIEWERT: So of 215, you tested 35 to see whether the two assessors got it right—do I understand that correctly?

Ms Wilson: Thirty-five were tested for inter-rater reliability.

Senator SIEWERT: And 35 per cent difference.

Ms Wilson: And 35 per cent of those, which is 11 or something, 12, is it—of that order—

CHAIR: If they were tested for that, that was having the same person tested by two different assessors.

Ms Wilson: That is correct.

CHAIR: And that is not commonplace? You do not do that as a normal—

Ms Wilson: Not as a normal course.

CHAIR: I am just checking that.

Ms Wilson: No. So one of the things that usability testing will do is try and assess the extent to which having a different disciplinary background, for example, or different assessors varies the results.

CHAIR: We have got nothing on which to base that against what happens now, do we?

Ms Wilson: That is correct: we do not have two assessors now.

CHAIR: You do not have a double assessment model anywhere. In this particular process of looking at the interaction of a new process, which has been quite a useful thing, we do not know whether that is a higher rate. We already hear anecdotally that there is a variation between assessments in all kinds of payments, including DSP, from one person to another. We have got no baseline, and in this particular test of 35 people there was a 35 per cent variation in decision making, which was noted by a number of witnesses as being high.

Senator SIEWERT: It says here:

However we have no reference point for how this compares with existing tables.

Surely you do this between assessors.

Ms Wilson: No, we do not, Senator.

Senator SIEWERT: You never check?

Ms Wilson: There is an audit process that is to be undertaken on the job capacity assessments. That is a process of taking a sample and auditing it to see whether you get consistent results. We have put the senior job capacity assessors in to try and get more consistency. We have also established the Health Professional Advisory Unit within human services, which provides advice and support to job capacity assessors to address concerns about consistency and outcomes but we do not have two people undertaking the assessment.

Senator SIEWERT: But you do not even check it—like trials of how it works.

Ms Wilson: There is quality checking.

Senator SIEWERT: So has there ever been a sample size that you have tested through two assessors that this study could have been compared to?

Ms Wilson: Not to my knowledge.

Mr Hatch: A very long time ago.

Ms Wilson: Original tables. A 1997 amendment to the tables, was that it?

Mr Hatch: I think it was 1993.

Ms Wilson: The 1993 revision and review.

Senator SIEWERT: So in 18 years you—

Senator BOYCE: So the appeals mechanism is really your QA.

Ms Wilson: The internal review and appeals mechanism is one of the QA processes.

Senator SIEWERT: I asked earlier about coverage and I have the *Analysis of the testing of draft impairment tables*. It says—and I would not read this to be statistically valid:

While the trial study is constrained by sample size, all tables are represented in the data and the spread of conditions and demographic characteristics is a reasonably representative sample of DSP customers—

I still maintain it is not a statistically valid sample size—

with the obvious exception of geographic distribution.

Another significant issue that has come up today is the geographic distribution. You would be aware of the criticisms around the use of impairment tables and the geographic issues for regional and remote communities. Have you thought about that?

Ms Wilson: I understand that the concerns about regional and remote communities go to the broader criteria for DSP and the availability of treating doctors, including specialists, to provide treating doctors reports.

Senator SIEWERT: Yes, but there is also functionality. As I understand them, the comments made this morning—and Senator McKenzie will be able to articulate this better than me—were about functionality. You are right: there is not the same access to treating doctors and specialists and there is not the same access to transport et cetera. People have brought up a range of issues.

Ms Wilson: As I understand the issue, it is outside the tables themselves and it is about whether a condition is permanent, fully diagnosed, treated and stabilised and that an assessor must consider whether any further reasonable treatment is likely to lead to significant functional improvement in the next two years. The criticism has gone to that and to the issue of whether treatment is locally available, feasible and accessible. Reasonable treatment for the purposes of supporting job capacity assessor decisions is defined as treatment that is available locally, is at reasonable cost, can reliably be expected to result in a substantial improvement in functional capacity, is regularly undertaken or performed and has a high success rate and carries a low risk to the person. So there is an attempt to take account of what is available to the person, accessible and at reasonable cost in looking at the extent to which something is treated or treatable and likely to result in functional improvement within the next two years.

Senator SIEWERT: Were the tables tested against somebody in a regional or remote area?

Mr Hatch: In Victoria? I do not believe so.

Senator SIEWERT: I forgot—all the trials were in Victoria. Why were all the trials in Victoria, by the way?

Mr Hatch: Due to the spread of assessors and availability. That was the area that CRS and Centrelink said they had the capacity to undertake the testing. It was done in one area so we could gather the assessors there at the same time to provide some background information and training.

Senator BOYCE: I have the report in front of me. Twenty one per cent who would not have a job capacity to work more than 15 hours or more were found ineligible under the draft tables. There is a slight caveat on that, but, nevertheless, what have you done about that? I am looking at page 4, section 1.2 of the executive summary, 'What we have found—total ratings'. The second point made is that 21 per cent who could not work for 15 hours would have been ineligible for the DSP.

Mr Hatch: In the trial, they did not go back and retest work capacity. From what we have seen, it appears—

Senator BOYCE: What do you mean by retest?

Mr Hatch: They looked at a DSP claimant under the current rules using the current impairment tables and they also gave a recommendation about their work capacity.

Ms Wilson: They are two separate tests. They looked at the impairment score—

Senator BOYCE: What do you think the proportion would then be? If you are saying that what they have done here is not a valid piece of statistical information, what do you think that percentage would be?

Mr Hatch: We think that would be quite small. I do not think I could guess about it. I think this has highlighted to us concerns that some assessors assume that once you get 20 points you automatically cannot work. We need to stress to them in their training that there are two different tests. Both need to be considered. They need to consider both the impairment score and the work capacity.

Senator BOYCE: That is great, but it is certainly not going to be great for anyone who misses out on DSP and cannot work 15 hours. Where do those people go? What happens to them, even if it is quite small?

Ms Wilson: You have to pass both tests to be eligible for the disability support pension. You must have the impairment level of the 20 points and you must have a continuing inability to work. Only meeting one and not the other has not and will not qualify you for the disability support pension. It is not a new feature of the qualification for the disability support pension. It has been the qualification since it was introduced in 2006 around the 15 hours.

Senator BOYCE: Yes, you need the points and need to not be capable of working 15 hours or more. But this seems to be saying that people became ineligible and did not have the capacity to work.

Senator SIEWERT: You have got the capacity to work less than 15 hours and you do not make it on the impairment table.

Ms Wilson: As has always been the case, you have to meet the two tests for disability support pension.

Senator SIEWERT: But they used to. These people are now ineligible. That is how I read that. I may be misreading it. Under the revised tables they would become ineligible.

Ms Wilson: No, the tables do not go to the hours.

Senator SIEWERT: Presumably under that they have been found to have the capacity to work less than 15 hours. That is what I read that to mean. But under the revised tables they would be found to be ineligible for DSP because they would not meet the requirements under the impairment tables.

Senator BOYCE: Obviously we are only looking at the summary here because that is all we have had time to do. Rather than going to and fro here, could you tell us how many people meet those criteria right now? If 20 per

cent of people who cannot work 15 hours a week are failing to become eligible for DSP, I would have thought we would have heard about it in a far louder way now if that is what currently happens. Can you give us the figures now compared to what they are saying here?

Ms Rose: I think what Mr Hatch was trying to allude to before is that, although the tests are separate and both have to be passed, the impairment table rating is done first and that may, because we have not got other benchmarks to compare it with, lead people down a path in how they apply the continuing inability to work test. That is what we think might have occurred here. Because they applied the second tables but they then did not apply the continuing inability to work test on those people, this result may have occurred.

Senator SIEWERT: Can you take that on notice and get back to us. I am aware of the time and I really want to get onto the grandfathering thing.

CHAIR: We will do assessors first and get that out of the way. Then we will go to the grandfathering and go from there.

Senator BOYCE: There has been considerable evidence raised about the assessors' qualifications and what new training they will do. I understand the Health Professional Advisory Unit—from Centrelink or DHS?

Ms Wilson: It is DHS from July this year.

Senator BOYCE: Can you talk us through that and why we should have confidence that the assessors will know what they are doing?

Ms Rose: A number of things have changed in relation to job capacity assessments. On 1 July last year only senior job capacity assessors were able to do DSP claims, so that was one thing. From 1 July this year all of the assessments for DSP have come into government. Previously they were contracted by 15 external providers. We believe that taking them back into government will allow us to make more rapid inroads into training if we can see immediately that—

Senator BOYCE: So they are government employees?

Ms Rose: Yes, they are. So they will be able to receive instant updates through the DHS system, who can send alerts to say: 'Something has been brought to our attention here that is not working. Fix it.' As you mentioned yourself, Senator, the Health Professional Advisory Unit was established on 1 July last year—then under Centrelink, now under the Department of Human Services. That has been an extremely successful exercise. There are doctors, psychologists, nurses and other allied health professionals. They are taking a case management approach to tricky DSP claims where they will all consult each other. The job capacity assessors are ringing the hotline to say: 'I am not sure how to interpret this treating doctor's report. Can you give me some assistance?' We have had very good feedback that that is being greatly utilised.

Ms Wilson: I would note that in order to be a job capacity assessor for DSP an individual has to be a doctor, a physiotherapist, a registered nurse, a registered OT, a registered psychologist, a rehabilitation counsellor, a social worker, a speech pathologist or an accredited exercise physiologist. They have to be available for full registration with a professional registration body, meet any mandatory accreditation or competency based standards and be allowed to practice without supervisory requirements and meet all relevant state and territory registration requirements. There is a fairly high professional accreditation and registration required of job capacity assessors.

Senator BOYCE: How many assessors are there?

Ms Wilson: I am sorry, we would have to take that on notice. I just do not know off the top of my head.

Senator BOYCE: Presumably they are jurisdictionally based. If you are going to give us the numbers, perhaps you would like to break them down for us as well.

Ms Wilson: We can ask DHS to have them broken down by jurisdictions, yes.

CHAIR: I would like you to review the evidence by Mr Gerogiannis from the New South Wales National Welfare Rights Network, who had particular questions about the status of assessors. He had a range of concerns about who was making the assessment and how that impacted on appeals and legal rights. Rather than go into that, if you could check that, that would be good.

Ms Wilson: Sure.

Senator BOYCE: Also raised in evidence today was the familiarity of assessors with adaptive functions and intellectual disability and functional testing there, the international classifications and also their knowledge of persistent pain as a condition rather than as a symptom. These would not be the only groups. Lots of groups would want to know that the assessors were aware of the particulars of their disability.

Ms Rose: I think a lot of this goes to the training of assessors. One thing we have heard anecdotally and that I think is also backed up in the Taylor Fry report is that the assessors actually found these new tables much easier to use. They were different, not the same as the old ones. When they understood how they were to be applied, they thought they were much easier. That is one thing. We are very well aware of the need to train assessors and DHS is looking at that as well. When we have final tables we will be making sure that appropriate training is carried out for them.

Ms Wilson: The other point worth mentioning, which does not go to the tables themselves but was part of the budget measure, is about the availability of funding to get supplementary treating doctors' information for clients. So if it is something that is not as well known or if more clarification is required from a treating doctor's report, which is part of the intake process for disability support pension, the Health Professional Advisory Unit can pay for a written report or for a telephone consultation with a treating doctor to make sure that they have got all the advice that is relevant to a claimant's case. That was part of the attempt to make sure that all the information is available. Where doctors might be uncomfortable or reticent about providing very explicit information via a client—I guess that goes particularly to things like terminal conditions and the like—that there is the opportunity to follow up and get more information that makes it very clear whether someone, for example, might have a manifest entitlement to disability support pension. That was one thing that came out of the better and more accurate assessments, and the fair assessment measures to ensure that the most up-to-date information on clients is available for assessors to make their decisions.

CHAIR: Can we move onto grandfathering?

Senator SIEWERT: You quoted figures before: 2.2 per cent of people have a medical review. Is that the only occasion where the new impairment tables will be used for existing DSP recipients?

Ms Wilson: That was only in the case where someone was selected for a medical review and where they did not have a manifest entitlement. Sometimes the case documentation is old and you do not have recorded on the system that they have a manifest entitlement. In first undertaking that review, that review does not proceed any further in the case of anyone who has a manifest entitlement. So only those who were selected for a medical review and did not have a manifest entitlement or continuing entitlement to disability support pension would be subject to the new—

Senator BOYCE: What percentage do not have a manifest entitlement?

Ms Wilson: Overall, I cannot give you the stock but, of the flow of claims in the last financial year, it is about 6.3 per cent.

Senator BOYCE: The vast majority do not?

Ms Wilson: That is correct. So within certain groups it is a much higher proportion because of the nature of the disability.

Senator SIEWERT: How many people are reviewed when they do not have a manifest?

Ms Wilson: Last year, 2.2 per cent of all DSP customers were selected for a medical review. It is a small number. It is around that proportion every year.

Senator BOYCE: How are those selected?

Ms Wilson: It is a profiled selection. Mr Hatch could give you the detail of how that is selected.

Mr Hatch: It is a risk based algorithm, so it looks at certain factors for the population and adds a weighting on certain things. It might add a weight for age, which means you are less likely to be selected than somebody who is younger. So if you are over 55, you might be less likely to be selected than someone who is 35. It looks at excluding some people like the manifest group, particularly the manifest group who we know a lot about. Over time, manifest rates have changed. In the 1990s the manifest rate was much higher. It was 25 per cent in some places. That is pretty much how it works. It grabs those people and then, once they have been reviewed, they get put to the bottom of the pile and are not selected again for 12 months. They cannot be reselected for 12 months.

Senator SIEWERT: Let us go to the medical review. Last year 2.2 per cent, or 18,100, were assessed. Is it always 2.2 per cent?

Ms Wilson: It is of that order. So a very small proportion of the whole client base is selected for a medical review.

Senator SIEWERT: So a small proportion, 18,000 people, are assessed. When they are assessed in the future, will they be assessed against the new impairment tables?

Ms Wilson: Yes. Anyone selected for a medical review in the future who does not have a manifest continuing entitlement to a disability support pension will be assessed against the new impairment tables.

Senator SIEWERT: So if we have a 41 per cent dropout, how do we know that 41 per cent of those 18,100 people will not then drop out of DSP?

Ms Wilson: We do not know what the impact will be because the usability has looked at a claimant group, not an existing client based group, and it is only with experience of the existing client base over time that we will be able to establish the outcome. There is quite a difference in the new claimant group—the inflow to Disability Support Pension compared with the existing client base. They tend on the whole to be more female; they tend to have a different profile of diagnoses and nature of disability than the old customer base. So it does change over time.

Senator SIEWERT: So we do not know. How do we know it is going to remain at 2.2 per cent?

Ms Wilson: There is a cost benefit to medical reviews. Historically, cyclical medical reviews were undertaken. There was a decision in one budget year to increase the number of medical reviews on the assumption that it would in fact produce savings and cancellations in Disability Support Pension. In fact, it was a cost measure because there were many fewer cancellations than had been anticipated and the cost of the reviews outweighed any savings from the cancellations. There was a move away from the cyclical medical reviews on efficiency and outcome grounds a number of years ago, in the 1990s.

Senator SIEWERT: Was that done on the table on which they were originally assessed against?

Ms Wilson: They were originally assessed against the old tables. That is correct.

Mr Hatch: I will just mention that when the impairment tables were changed in 1997 there was no grandfathering. So people who were granted pre-1997 were assessed against the new tables as well.

Ms Wilson: If the tables are updated, when people are selected for a medical review they will be assessed against the latest tables.

Senator SIEWERT: The standard practice was to assess against the new tables?

Ms Wilson: That is correct.

Senator SIEWERT: If you have said this before, I missed it: how many were assessed?

Ms Wilson: I do not have with me how many were medically reviewed at the point of the move to the tables that were implemented in 1997. We might be able to get that data for you. We moved away from the cyclical medical reviews to the risk profiled reviews around 2000.

Mr Hatch: About 2004, I think.

Ms Wilson: On the face of it, therefore, I would suggest that we had a much larger number of people who were medically reviewed when the tables were last updated.

Senator SIEWERT: Sorry, could you say that again.

Ms Wilson: Apart from the manifest client group for Disability Support Pension, it used to be cyclical. It was a two-year and five-year cycle. In 2004 we stopped doing the medical reviews and moved to the risk profiled reviews.

Senator SIEWERT: You said the cyclical process found more people coming off—sorry, it was more cost—

Ms Wilson: Historically, the medical reviews did not produce cancellations on the grounds of disability.

Senator SIEWERT: I understand that. In the process that you went through in 1997, the last time the tables were changed, you assessed everybody. Could you tell us how many people were then assessed to come off DSP?

Ms Wilson: If we can find the data, we can take that on notice. I do not think we have that information with us.

Mr Hatch: No, we do not have it with us.

Senator SIEWERT: You select a risk profile when you go through the process of review and that may or may not link to the 2.2 per cent?

Ms Wilson: The Department of Human Services has a risk profiling tool that it applies to the Disability Support Pension client base. The proportion is relatively stable, but I do not have the historical data with me of how many are selected each year. A small proportion is risk profiled. That is what is done now as part of the review process. It might vary a little from year to year, depending on the whole review program and what the resources are for the review program in any year and what other activity is being taken in other payments, but it is of that order.

Senator SIEWERT: In terms of the risk profile, Human Services decides that?

Ms Wilson: The Department of Human Services has developed an algorithm which does the profiling. We moved two profiling reviews in the mid-2000s and algorithms were developed. They were tested and then they were applied ongoing. Centrelink undertake that activity and it gets reported to FaHCSIA and it is part of a broad review and compliance program that they undertake.

Senator SIEWERT: When you were testing the new tables why did you decide to test on new clients rather than existing clients so you could have a comparator?

Ms Rose: We wanted to replicate what would happen when they were applied and new claimants would come through the door. In addition, we did not want to call an existing DSP recipient in and make them anxious about the possibility of losing their payment as they may see it. Those were the two main reasons.

Senator BOYCE: On that basis, Anglicare have suggested that there will be a lot of concern. What are you doing to advise the disability community and individuals about the changes and try to assure people that there will not be a diabolical outcome, so to speak?

CHAIR: Witnesses, we will give you questions on notice but we will not have them this afternoon because we are going up against a plane schedule. On that question, a number of submissions talked about the real fear that this is causing particularly around the grandparenting issue. There was a degree of relief when people felt that they were going to be under the same system as they were used to over many years. The evidence of a number of submitters has been that there have been genuine fear and concern raised by people within the existing DSP community, as opposed to those coming in. So that has been raised quite seriously, and I am following up from Senator Boyce's question. What methodology is going to be used to ensure that is allayed?

Ms Wilson: There is a range of outlets that we have for communicating with the DSP client base. One is through the peaks and the provision of information in their newsletters and the like.

Senator BOYCE: But this is one of those groups saying, 'What are you going to do?'

CHAIR: It is one of the peaks.

Ms Wilson: We also have the Centrelink information products and we will ensure that there are articles in those information products that are providing information and advice about the new impairment tables and that we periodically provide that input that goes to every recipient of the disability support pension.

Senator BOYCE: But isn't it likely that a lot of people who receive DSP will have great difficulty with the impairment tables so it will all need more explaining?

Ms Wilson: No, we would not put the tables in them. We would write an article. What we do is work with Centrelink to write an article about what is new, what is changing and what will have an impact on people and what will not have an impact on people. We have information available on websites.

Ms Rose: There is news for seniors that Centrelink put out. There is a range of regularly published things we can do.

CHAIR: We are going to have a range of questions that will come to the department and some of them are not for FaHCSIA and they are actually more for the employment agencies consistently on the evidence that there has been concerning—

Senator BOYCE: I have got some others to ask.

CHAIR: We have got to finish at 4:30 so they will have to be on notice. These people cannot answer the questions because they are about a DEEWR issue around employment agencies.

Senator BOYCE: I wonder if they could answer one of them which was around the fact, as Senator Moore said, that there has been a lot of concern around this as there is not a job market out there. Firstly, would you be able to look at table 1 on page 5 of the Anglicare report and as far as possible put some actual dates against that table? They raised the concern as to financial years. If it could be made any more definite that would be good. They make the point that a lot of countries, when they are looking at disability eligibility, talk about jobs that exist in principle in the economy, rather than actually available jobs. What is used in Australia in the disability area?

Ms Wilson: I am not sure I quite understand the question.

Senator BOYCE: This is in a report released today called *What if Employers say No?* from a group of disability employment service providers at page 16 under 'Creating more opportunities for work'. I ask you to have a look at what they say about assessing disability benefit eligibility and actual jobs and give me an answer on what we use here, whether it is a theoretical figure or an actual figure.

Senator McKENZIE: Can I add a new question—whatever methodology we use here around those questions of employment—as to the applicability of that to the particular issues outside of capital cities.

CHAIR: Yes. We are going to have to call this afternoon's session to an end. We should be getting the *Hansard* within 24 hours so we can keep an eye on that but from watching the evidence today, which I am sure you have done, you would have seen the questions that we have remaining. They particularly go to the issue of employment opportunities and also to the social impacts to be taken into account in any assessment in terms of the other issues that came out from a number of witnesses, apart from purely medical ones—and the other senators may have other questions. We will get them to you as soon as possible. Because of the time frame we need the answers by Friday. You have not even got the questions yet but I think none of them would come as any surprise to the department.

Ms Wilson: We will undertake to get the answers that we can provide by Friday.

CHAIR: We will keep talking to you about them as well. On that basis I end this afternoon's session. I thank the officers of the department and all the witnesses who gave evidence today, *Hansard* and also the secretariat for their work during the day.

Committee adjourned at 16:31