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SENATE

COMMUNITY AFFAIRS LEGISLATION COMMITTEE

**Reference: Disability Services Amendment (Improved Quality Assurance)
Bill 2001**

TUESDAY, 25 SEPTEMBER 2001

CANBERRA

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SENATE
COMMUNITY AFFAIRS LEGISLATION COMMITTEE

Tuesday, 25 September 2001

Members: Senator Knowles (*Chair*), Senator Allison (*Deputy Chair*), Senators Brandis, Denman, Chris Evans and Tchen

Participating members: Senators Abetz, Bartlett, Brown, Calvert, Coonan, Crane, Crowley, Eggleston, Faulkner, Ferguson, Ferris, Forshaw, Gibbs, Gibson, Harradine, Harris, Lees, Lightfoot, McGauran, Payne, Schacht, Tierney and Watson

Senator Cherry for matters relating to family and community services

Senators in attendance: Senators Allison, Denman, Chris Evans and Knowles

Terms of reference for the inquiry:

Disability Services Amendment (Improved Quality Assurance) Bill 2001.

Committee met at 3.41 p.m.

BAKER, Dr Ken, Chief Executive Officer, ACROD Ltd

O'CALLAGHAN, Mr Paul, Senior Adviser, ACROD Ltd

CHAIR—The committee is taking evidence on the Disability Services Amendment (Improved Quality Assurance) Bill 2001. I welcome representatives from ACROD. I always remind witnesses that evidence given to the committee is protected by parliamentary privilege. However, the giving of false or misleading evidence may constitute a contempt of the Senate. The committee has before it your submission. Do you wish to make any alterations to that submission?

Dr Baker—No.

CHAIR—I now invite you to make any statement that you would like, at the conclusion of which I will invite senators to ask you questions.

Dr Baker—Thank you for the opportunity to present ACROD's position to this committee. ACROD supports the bill as it stands, but not because it is a soft option. Indeed, on the contrary, it will impose some very significant demands upon service providers across the country. We support the bill because we believe that at the end of the day it will make a very significant contribution to improving the quality of employment services provided to people with disabilities and will improve the consistency of those services across the country.

ACROD is the peak body for service providers, but we are not in the business of defending the practices of the minority of poor service providers. We believe that those who are not providing good quality services are often doing so because of a lack of capacity rather than intention. We believe in finding practical, workable strategies to help those service providers to improve the quality of the services they provide. As part of that, we are a joint partner with the Department of Family and Community Services in the Business Services review, which is a very ambitious strategy for implementing a process of continuous improvement in Business Services and for ensuring that they can achieve commercial financial viability and provide good employment conditions for people.

The quality assurance system, as has been proposed, is tough in a number of ways, but in ways that we support. It is tough on identifying and punishing non-compliance. Organisations that fail to comply after the implementation period will be defunded by the Commonwealth. That is a very substantial penalty. It is an independent process involving independent auditors who are accredited by JAS-ANZ, an internationally recognised non-profit organisation that has the expertise to certify agencies. There will be a number of complaints procedures, not only internal to organisations but independent as well, to allow consumers to voice complaints. The audit teams will involve consumers, and that amounts to, in my view, a highly accountable system. The system has been extensively trialled and has received the support of all stakeholders, including consumers, from that trial. The trial was evaluated by an independent research organisation.

The interpretation of two of the standards appears to be contentious. With regard to standard 5, which relates to the participation and integration of employees with a disability, there is a hardline ideological interpretation of that standard, but that would effectively prohibit Business Services supported employment services from existing, and that seems to me to be a conclusion we want to avoid if we are serious about

retaining choice for people with disabilities. If they choose to attend a Business Services supported employment service, then our goal should be to ensure that that service is a high quality service.

The second standard which is contentious is standard 9, which relates to the provision of employment conditions and, in particular, to the payment of wages. The payment of wages is an important issue in services, but it is worth noting that a national survey of consumers, commissioned by the Productivity Commission, found that only nine per cent of consumers thought their current wages unfair. So although wages are an issue, they are not the most important determinant of the quality of a service. It needs to be kept in perspective.

KPI 9.1, which seeks to interpret standard 9, is quite demanding. It insists that services pay award based wages. It refuses to accept incapacity to pay as a reason for not paying those wages. It insists that service providers implement a transparent assessment tool—one that is based upon reliability and validity, the wage outcome, practicality and the relevant legislation. That seems to be more than sufficient KPI to reflect that standard.

The supported wages system has been proposed, I notice, as an alternative transparent assessment tool. The supported wage system currently operates in open employment services but is considered by most business services to be inappropriate for the sort of service they provide. Recently an evaluation of the supported wages system by KPMG found, among other findings, that it had high administration costs and that the minimum wage it includes would pose a significant barrier to the employment of people with high support needs and low productivity. I think we should be seeking an outcome that enables employment opportunities to exist for people with high support needs and low productivity who nevertheless wish to work.

In conclusion, I do think the system as proposed, which has been developed over a long period of consultation, is robust. It will place significant and at times onerous demands upon service providers. But on balance we support the system, because we think it will improve outcomes for the people who really count, the people with disabilities in employment.

CHAIR—Thank you, Dr Baker. Senator Allison?

Senator ALLISON—I refer to some of the comments made by the National Caucus of Disability Consumer Organisations. One of their main criticisms is that Business Services is crying poor, to put it in their words, and unable to say when it will become financially viable enough to pay proper wages. Could you respond to that?

Dr Baker—There is no doubt that a significant proportion of Business Services face viability problems at present. The Business Services review found that only 53 per cent currently break even or generate a surplus. So there are significant viability issues. The question really is what to do about that. It is out of that finding that ACROD, with the Department of Family and Community Services, has jointly initiated the ambitious strategy, which involves 52 recommendations, which will over the next three years address the viability issues as well as implement a continuous improvement process within Business Services. That seems to be an ambitious but nevertheless practical way to address that issue. It is, as I say, ambitious but it has the advantage that it does not require Business Services to improve the wages they pay without also addressing their capacity to pay. It seems to me if we are serious about having Business Services as a legitimate employment option for people with disabilities, we have to address their capacity to pay, at the same time as implementing a process to ensure that those that are not paying fair wages do pay fair wages.

Senator ALLISON—At the end of a three-year period, would you expect some of those businesses to be not in operation? How do they change their method of conducting business in order to be viable?

Dr Baker—It may be that after that three-year period there are some that cannot reach the required standards. The bottom line as far as ACROD is concerned is not the survival of any one organisation but the survival of a service to people with disabilities. So there may be a reconfiguration of some organisations. I think that has to be a voluntary process. But at least that process in which ACROD and the government are investing a lot gives those Business Services an opportunity to improve their viability and improve the outcomes for employees.

Senator ALLISON—But this proposal has been around now for some years, since 1996 or 1997, I believe.

Senator DENMAN—Fifteen years.

Senator ALLISON—Fifteen years; thank you, Senator. How is it that another three years will make a difference?

Dr Baker—Finally there is a concrete practical strategy in place which has the support of the industry. Previous attempts to reform the industry have not had the support of the industry.

Senator ALLISON—Is it possible to characterise those industries which are less likely than others to be viable?

Dr Baker—There are some that are more at risk than others, and although there are some very vibrant rural services I guess that those in isolated rural areas are probably more vulnerable than others are. That is a particular concern because, in many of those townships that may have only a single Business Services in operation, if that were to close down, the people who attended that service would be basically sitting at home watching television all day. So that would be a major concern, if there were not an alternative service available to those people.

Senator ALLISON—It has been suggested by some submissions that we should get on things. In fact, one recommends that the committee make a quick response to the terms of the issues for consideration and view a single tool, be it SWS or something that uses that as its basis, as the only recognised assessment tool, and then gives a range of reasons for that stance. You do not agree with that position?

Dr Baker—The SWS is not an accepted wage assessment tool for supported employment. There has been a study done by Health Outcomes International for the Department of Family and Community Services quite recently which assessed the range of existing tools, looked at their strengths and weaknesses, and recommended that there was no ideal tool that could apply to Business Services at present and that one ought to be developed. It identified a number of flaws within the supported wage system tool as applied to Business Services. Those flaws include, for example, that it is commonly recognised that, when one is dealing with people with very low levels of productivity and high support needs, it is essential to have an assessment of not only their productivity or their rate of working but also their range of skills, because many jobs involve a constellation of skills and they may only be able to perform one or two of those tasks or skills. So there needs to be a competency or skills assessment as well as a productivity assessment. Now the SWS tool does not assess competency or skills. There is also the difficulty that the SWS system relies upon making a comparison between an employee with a disability and an employee without a disability doing similar tasks, so that one can measure their comparative productivity. That situation is very hard to find in Business Services, where most employees have a disability.

Senator ALLISON—Do you think it is important that any new system does not cost any additional money in wages?

Dr Baker—In wages? It is important that any new system ensures that fair wages are paid, and I think that fair wages need to be determined by some objective, transparent means. It does seem to me that at the end of the day an organisation, to be viable, does have to pay fair wages. The issue is really about how best to determine those fair wages. Because there is not yet a tool that is universally accepted as properly assessing a fair wage, the current wording—which does insist on a transparent tool without naming one, but says it must be reliable and valid and that it must produce an adequate wage outcome and must be practical—seems to be the best form of wording to take into account the current situation.

Senator DENMAN—Do you think it is fair that some clients are paid 50c an hour and others \$2 an hour?

Dr Baker—I think that entirely depends upon their productivity and the job they are doing.

Senator DENMAN—But you could say that for your department, surely.

Dr Baker—For my organisation?

Senator DENMAN—Yes. Are you under an award wage?

Dr Baker—There are award wages that operate, obviously. But the award wage assumes a certain level of capability across a range of skills, as well as a certain level of productivity. We are dealing with people who, if employers had to pay an award wage, would simply be locked out of employment, would be denied jobs. So we are trying to think about the best system that will enable those people to have employment opportunities, just as everybody else has employment opportunities, and that can only be a system which links their wages fairly and transparently to their skills and productivity. As to whether it is fair that one employee gets paid \$2 and another gets 50c, it depends very much upon their skills and productivity.

Senator DENMAN—I have been to an organisation where I would doubt that is true.

Dr Baker—There are some organisations which clearly are not paying fair wages, and this is what the reform process is about. The quality assurance system will ensure that such organisations do pay fair wages.

Senator DENMAN—But how are you going to guarantee that organisation A and organisation B are using the same formula to assess their workers? Are you going to do something about that?

Dr Baker—ACROD's position is that there should be a single wage assessment framework developed for the whole industry. That would ensure that whatever tool was used met agreed criteria and principles.

Senator DENMAN—The Productivity Commission found that only nine per cent of people with a disability were dissatisfied. Were there people to interpret for them? As you and I both know, some of these people struggle with interpretation. Where did they get the base of people that they surveyed?

Dr Baker—I am not aware of the details of the survey, other than that the Productivity Commission did employ an experienced research and survey company to undertake that national survey. I suppose what I am saying is that that is the best information we have about what consumers really think.

Senator DENMAN—You do not know whether there was someone there who would assist the consumer with the questionnaire?

Dr Baker—No, I do not know.

Senator DENMAN—Then I would suggest that maybe nine per cent is not a terribly accurate figure, if we have not got that information.

Dr Baker—Can I just add that, in the surveys of non-disabled workers that I know of, wages ranks down the list. There are many other things that people gain from employment.

Senator ALLISON—Can I ask about complaint handling, and I am again looking at the National Caucus of Disability Consumer Associations submission to the committee. The submission says:

The new system must be funded at a realistic level for a minimum of five years and there should be a right to advocacy support and advice. We also need an enforceability clause in the new legislation that allows anyone to enforce a recommendation made by the complaints service.

Do you have a response to that part of the submission?

Dr Baker—In terms of the level of detail which should be contained within the legislation, it is appropriate to talk about an independent complaints mechanism being put in place. I think the details of that have to be worked out over the coming months. The current time line would see it in place by July 2002, but any decent complaints handling procedure would have sufficient checks to ensure that people's complaints were properly and independently handled.

Senator ALLISON—So it ought to be, as the submission says:

An independently run and controlled consumer complaints system

It must receive funding for an initial five years with a built-in evaluation system

Management of the service must include a majority of people with a disability.

Do you have any disagreement with any of those points?

Dr Baker—I am not sure about whether a majority of people with a disability should be managing it.

Senator ALLISON—Can you expand on that?

Dr Baker—Certainly, it needs to represent the views of people with disabilities but, in general, people should be selected for tasks, not on the basis of whether they have a disability or not. It would be a poor complaints procedure if it did not ensure that people with disabilities had substantial input into both its development and its operation.

Senator ALLISON—What about the suggestion that there be a person with a disability included on certification audit teams as a disability services auditor?

Dr Baker—That is the current proposal—that there be a representative on an audit team with a disability. That seems appropriate to ensure that the perspectives and insights of people with disabilities are reflected within the auditing process.

Senator ALLISON—And what about a training course for the qualification of disability service auditors?

Dr Baker—There are a range of training institutions available through the TAFE system and other places. There should not be a single one specified. I do not think any organisation should have a monopoly on providing training.

Senator ALLISON—What about a professional association being responsible for the accreditation of training of the auditor qualification?

Dr Baker—Could you repeat that?

Senator ALLISON—It says:

We are seeking that the Professional Association be responsible for the accreditation of training of the Disability Services Auditor Qualification.

Dr Baker—Which professional association?

Senator ALLISON—I am not sure.

Dr Baker—I cannot respond because I do not know which professional association is being discussed.

Senator ALLISON—I will ask that question when National Caucus of Disability Consumer Associations come before us. What is your response to this statement in their submission:

The need for independent support for consumers during and between audit assessments

Funding must continue to be provided to independent organisations to provide independent support and advocacy to people with disabilities who are attending services funded by FACS.

Dr Baker—Yes, that seems reasonable.

Senator DENMAN—Are you the only groups resistant to the supported wage system?

Dr Baker—ACROD represents a very significant proportion of the sector—around 70 per cent of Commonwealth funded employment services. There are other sub peaks within ACROD who would support our position.

Senator DENMAN—Why are they resistant?

Dr Baker—They are resistant I think because of the reasons identified in the research into wage assessment processes that took place—that is, there are a number of practical and technical difficulties with applying the supported wage system tool particularly to people with high support needs and low productivity. That tool, as I said, does not attempt to measure skills or competencies; it only measures productivity. A person in that position may not be able to perform a constellation of tasks or skills involved in a single job.

There is also concern about the impact of a minimum wage on the employment opportunities for people with very low levels of productivity. Again, this was an issue identified by KPMG in its evaluation of the SWS, where it did say that it was concerned that the SWS system may pose barriers to the employment of that particular group of people with high support needs. ACROD certainly does not want to support a system that would reduce employment opportunities for people with disabilities. Our view is that such employment opportunities ought to expand, not be reduced, particularly because of essentially an ideological attachment to the supported wage system. The supported wage system was not developed for Business Services. It was developed for open employment services.

CHAIR—As there are no other questions, I thank you both for giving us your time this afternoon.

[4.07 p.m.]

CAIN, Mr Paul, Representative, National Caucus of Disability Consumer Associations

CHAIR—Welcome, Mr Cain. Witnesses are reminded that the giving of evidence to the committee is protected by parliamentary privilege. However, the giving of false or misleading evidence may constitute a contempt of the Senate. We have before us your submission. Do you wish to make any alterations to that submission?

Mr Cain—No, I do not.

CHAIR—I invite you to make a short opening statement, and senators will no doubt ask you questions at the conclusion of that.

Mr Cain—Thank you very much for your invitation to speak with you today. The National Caucus of Disability Consumer Associations supports the notion contained within the bill that is before you. We believe that there is very much a need for change within the disability employment service program that the Commonwealth funds. We have no quarrels with the framework that the bill proposed—the framework of accreditation, certification, standards, KPIs, external auditors, an auditor who has a disability, which we fought extremely hard for and had to fight every inch of the way to achieve. We totally support and endorse that framework.

The actual issue—and we believe that the terms of reference of this committee have quite rightly identified this—is: will that framework actually achieve change? Will it actually tell us that, at the end of that audit, services comply with the principles and objectives of the Disability Services Act? We have come to the conclusion that, no matter how good the framework is, if the rules of compliance are no good, then the framework itself will not give us the result we need. That today I believe is the crux of the matter that we are presented with.

I will just talk about the need to change. I think it has already been mentioned earlier that we have had 15 years of so-called change, and I must emphasise that it is change in terms of process but not change in terms of outcome. We have had all sorts of things; we have had research, consultancies, transition funding, amendments to the Disability Services Act and disability service standards introduced in 1993. All these particular reforms, changes and processes were fully endorsed by all parties. Let me emphasise that: all those reform processes that have been put before the community were supported by all parties, including consumers. Throughout those 15 years, consumers showed a lot of patience with change. We accepted that it would take time to change, but I think it would be fair to say that our position is that time is up.

CHAIR—That was a very opportune sentence, because a division has been called in the Senate.

Proceedings suspended from 4.10 p.m. to 4.20 p.m.

CHAIR—Thank you for your patience, Mr Cain. I invite you to proceed.

Mr Cain—Thank you. As I was saying, the current situation has been going on for a number of years where change has not occurred, despite many attempts and many different processes. In the specific issue of employment and the employment standard, we are currently seeing a number of gross exploitations of people with disability through the industrial relations system. To illustrate this, I need to inform you that, at the beginning of this current government's reform of the Commonwealth disability services program, the National Caucus of Disability Consumer Associations worked very hard to seek an outcome of employment to include an award based wage or a wage that is determined by a legal industrial agreement. In fact, we could not succeed through negotiation; we had to seek a complaint through the Human Rights and Equal Opportunity Commission and, through subsequent conciliation with the Secretary of the Department of Family and Community Services, we were able to achieve that outcome.

We are quite surprised at the perverse result that has occurred since achieving that outcome, with many employers, known in this program as Business Services or sheltered workshops, rushing to the Industrial Relations Commission seeking a workplace agreement. We think that that particular phenomenon illustrates the vulnerability of people with disabilities in negotiating and understanding workplace agreements. We think it illustrates their vulnerability to being a target of exploitation. We also believe that it illustrates the motivation of many of these employers, and that is to get across the line—to achieve an eligibility status to achieve funding, rather than the motivation of seeking true employment rights for people with disability.

That particular environment continues. I myself, together with the National Council on Intellectual Disability, am currently involved in a hearing in the Australian Industrial Relations Commission, the second one that we have intervened in. We find that, when challenged, most of these agreements fall apart. They are agreements that seek to legitimise the status quo of poor employment conditions, poor wages. Interestingly enough—and I think this is what the Senate needs to understand in its deliberations on this issue—they seek

the status quo of poor wage assessment processes. Those processes range from ‘pick a number’—and some of the agreements simply do that: they say that supported employees will receive 12½ per cent of the award based wage, full stop; and some of these have been certified—to sophisticated, convoluted wage assessment processes which end up with the same outcome before we started with the wage assessment process.

This is why the National Caucus of Disability Consumer Associations has come out with a very strong position as to why the supported wage system needs to be the performance indicator for standard 9: it is the only system that we have that actually provides any safeguard for these vulnerable employees. All other systems are based on notions of employers doing the wage assessment, employers designing the wage assessment, employers calculating the wage assessment. We think that, given the history of non-compliance and the history of exploitation, this is not the road for Australia to go down. This is a road that places people with disabilities in even more vulnerable circumstances. It places them as vulnerable within the industrial relations system: whereas they were outside the industrial relations system and being exploited, we are now placing the burden of them having to understand and negotiate their way through the system by saying that we must have a legal certified industrial agreement. But the burden of them seeking out their rights falls directly on them. When you consider that these people have cognitive impairments often and that their particular life is akin to an institutional life, where they are very dependent on the service, which makes them fearful of doing anything that will hurt that situation, these are the reasons why simply going ahead with a very vague performance indicator which talks about transparency, validity and reliability will not do, when we have the opportunity to actually say, ‘No, that’s not good enough; we need a wage assessment process that is based on our industrial regulatory framework, that is based on award wages and that provides independent accreditation.’ These people deserve it. They have waited for so long.

Most work for a pittance. Most are not covered by an agreement. Most are congregated in the employment setting, which just adds to their vulnerability as well. We are not talking about an employment setting where you may have a few employees with disability integrated with a number of employees without disability. That in itself provides a level of protection, because you cannot simply negotiate an agreement with such a mixture of people and get away with some of the things that are happening in the industrial relations system at the moment. We are looking at large groups of people with disability being placed in an incredibly vulnerable situation. The object of the principles and objectives of the Disability Services Act 1986 was, and still is, to treat people with disabilities as people, as Australians with the same rights, the same citizenship and the same wants to participate and grow as a member of our community. How can a person participate and grow and enjoy our community when we are providing \$111 million for a service system that makes them dependent—dependent on the pension, dependent on a service? Where is the human service principle behind such a Commonwealth policy at the moment?

Integration is a key object of the act. It is mentioned a number of times not only within the objects of the act but within the principles and objectives. It is the opposite of denying the individuality of a person with a disability. Integration does not deny the rights of people with disability; it recognises them as equal citizens. Integration does not believe that all people with disabilities are the same. To illustrate that point, we have already heard today this notion that everyone in sheltered workshops has high support needs, severe disability, and low productivity. It just simply is not true. That is the result of segregation and congregation, where you have a lowest common denominator effect when you group numbers of people with disability together. We know that through research from the past 25 to 30 years, and that is one of the main reasons that integration is a key object of the act. The reality is that the people with disabilities employed in sheltered workshops or Business Services cover a wide range of productivity, from very low to very high, even higher than award based wages. The other reality is that people with disabilities in sheltered workshops have a range of ability and a range of support needs from very high to very low. So this notion that if we impose the supported wage system all of a sudden they will suffer is a nonsense.

The other interesting piece of evidence is that our census of these programs says that the average wage is somewhere between \$40 and \$80. We have heard this morning that the minimum wage of the supported wage system will be a detriment to the Business Services industry. The minimum wage for the supported wage system is \$45. If the average of Business Services is somewhere between \$40 and \$80, how can a \$45 weekly wage be a detriment to the industry?

The National Caucus of Disability Consumer Associations has three representatives on the Quality Assurance Working Party; we are indeed a minority. So, when it is read that there is a majority, that does not mean that the representatives of consumers agree with a particular stance. In fact, you will hear today that there was a particular meeting on 7 June, I believe, where a number of decisions were made, a meeting which no Caucus representative attended. We chose not to attend that particular meeting because we wanted to speak with the minister—and, indeed, we ended up speaking to the minister’s adviser—because we had grave concerns about a range of issues, particularly on employment conditions. In a previous meeting of the working party, we actually took a vote on the issue of the supported wage system, and the majority were

supportive of the supported wage system—only for the vote to be tied by the chair of the meeting—who, I point out, is very much involved with Business Services and sheltered workshops. We believe that it was a gross conflict of interest for that person to make such a decision at that time.

The standards in the KPIs therefore have a big job to do. We have to turn around a major area of discrimination, a major area of exploitation. The National Caucus of Disability Consumer Associations agrees that it cannot occur overnight. However, by setting the proper standard and the proper performance indicator, we at least know where that quality standard lies and where the change needs to go towards. How can Business Services become viable if we have no idea of what the wages cost should be? The supported wage system will inform Business Services and the community on what fair wages should be. It gives them a target in terms of break-even and viability; it also provides the employees with a fair indication, without any interference or conflict of interest from the employer about what their fair worth is. Given that we have a three-year time frame of change for both Business Services and the quality assurance reform, if we have the supported wage system as the KPI, Business Services do not have to meet that tomorrow. In fact, Business Services tomorrow will not meet many of the KPIs. So this is not a slam-dunk of Business Services, but at least it actually makes a definite prescribed point of safety to prevent exploitation from continuing.

Proceedings suspended from 4.34 p.m. to 4.38 p.m.

CHAIR—I am sorry, Mr Cain, that we have had to attend another division. Please proceed.

Mr Cain—We are particularly concerned with current industrial relations. I want to make some comments about the supported wage system and some of the criticisms that have been levelled at it. The KPMG report actually recommends the extension of the supported wage system to Business Services. It talks about modifications and refinements. The committee needs to understand this in context. The KPMG report says that modifications to and refinements of the supported wage system should occur anyway, for any employment setting. But it begins by saying that this is a valid, reliable, very robust system accepted by the broad employment sector, including unions and the Australian Chamber of Commerce and Industry.

In the particular report that has also been referred to, the research done by Health Outcomes International, a lot of the criticisms that are levelled at the supported wage system there are not criticisms of research. That is just a mere reporting of what the managers of sheltered workshops have said to the researcher, and they are ridiculous things. Perhaps I could just point out that the very first part of a table in the report says that a disadvantage of the supported wage system is that wage costs will increase. Well, excuse me! If we have an industry that is paying a pittance and poor wages based on exploitation, yes, if we implement a supported wage system, wages will go up. But that is not a disadvantage; that is justice. I could go through each of those criticisms and point out the ridiculousness of those criticisms to you, if time permitted, but I will not bore you with those details.

At the end of the day, we have to put this in context. This is an industry that has gotten away with a crime for a number of years and it will do and say anything to wriggle out of doing what is right. If that means bagging the supported wage system, the industry will do it. This is now the time to set the record straight. We cannot continue to spend \$111 million on an employment model that does not uphold the rights of people with disability, that continually institutionalises them in terms of those employment conditions and their lifestyle. If we are going on a journey of change once again, let us make sure that we get there. Thank you for listening.

CHAIR—Thank you, Mr Cain.

Senator CHRIS EVANS—Can you clarify for me the process? What do you say is wrong with the bill in relation to the supported wage system and employment standards? It is an absence of a provision, is it, that you say is wrong? I am just talking about the process. You have given an articulate description of your concerns about the principles underlying it, but I just want to understand the process.

Mr Cain—The way I see it is that the bill gives the minister the authority to approve the key performance indicators. So our problem is that the implication of the bill is that, if those KPIs are not correct, we are stuck with a system that does not address a major area of noncompliance. Now there could be a multitude of ways of solving that. One of the ways we have suggested in our submission that is maybe the KPIs should become part of the disallowable instrument. At least that may give the parliament some element of review rather than having a system of absolute right in the minister for setting these very critical performance indicators. But there may be other ways of achieving the same thing.

Senator CHRIS EVANS—So you are saying that under the current bill they would be determined by the minister as regulations?

Mr Cain—No, not as regulations. My understanding is that the standards themselves will be regulations but that the actual indicators of the standards, what is going to be assessed, will be simply approved by the minister.

Senator CHRIS EVANS—I see; so it will just be a minister signing off on a submission of some sort. So you say the battle is over the key performance indicators. I do not want to go into the whys and wherefores of the working party and who voted for what or whatever, but what is the nature of the debate? Was there a debate with the working party—and I do not know how confidential this is—about whether they ought to be specified in the bill? Or was it always understood that they would not be specified in the bill?

Mr Cain—No. The working party never had such a discussion or debate.

Senator CHRIS EVANS—Your concern for the bill seems to go back to this question of the key performance indicators. Were you ever under the apprehension that they would be specified in the bill? I am trying to understand your concern: what is it that has not happened that you thought was going to happen, that would have provided you with reassurance?

Mr Cain—I had two understandings which have been proved false. My original understanding was that the KPIs were going to be part of the disallowable instrument. That was my understanding, because currently the standards do not have performance indicators; they have supporting standards—which I understand is also part of the disallowable instrument. So there is a technical issue there about how we reach a decision on the performance indicators. It was something that was not, in terms of the legislation, discussed at a working party level. In fact, we were not even informed of the legislation being tabled.

Senator CHRIS EVANS—So, in a perfect world, how should the legislation deal with the key performance indicators? Clearly there is a disagreement between some of the service providers and yourselves as consumers, about the appropriateness or not of the supported wage system. But how in your view should that be resolved?

Mr Cain—The National Caucus of Disability Consumer Associations has taken a position that the bill should be amended so that the KPIs become part of the disallowable instrument. That is the position that we have put in our submission.

Senator CHRIS EVANS—So there is no sense that there was any resolution about the supported wage system and key performance indicators among the working group prior to the legislation being presented?

Mr Cain—Can you say that again, please?

Senator CHRIS EVANS—There is not a consensus that has broken down here, or whatever. There was never a consensus, I gather, about the key performance indicators.

Mr Cain—In terms of the process and legislation, we never had a discussion and the working party did not come to an agreement on how the performance indicators should be presented in terms of legislation. The discussions that have gone on at a working party level have gone to the content of them, rather than how they should be presented to parliament or how they should be written into the legislation or whatever.

Senator CHRIS EVANS—I missed ACROD's evidence and I will read the *Hansard*, but I have spoken to them previously about this. This debate about the appropriate wage levels and how you assess them in disability employment is, even to my limited knowledge, not a new fight or a new argument. It seems to be one that has dominated for as long as I have known anything at all about disability employment. I just do not get a sense from your submissions or ACROD's written submission of whether there was an attempt to resolve this as part of this process. This is a long-running point of difference and it is at the heart of the reform process. Was it agreed that it would be put off to another day, and that the bill wouldn't cover it?

Mr Cain—You make a good point: it is something that the National Caucus of Disability Consumer Associations continually tried to discuss and to put on the agenda. It was something that was often seen as too hard and always delayed, put off. For instance, Caucus approached the department before the trial, with our concerns regarding the performance indicators. We were told, 'Don't worry about it. We'll review them later. We'll talk about it later.' There was constantly that theme going through. We did not think that was disingenuous at all, but we always wanted to get to that point where we could have a very good discussion about it. If you look at the submission that is provided by the department, they give a lot of weight to a meeting where Caucus representatives were not present, and that does not seem to be a very genuine and good process to determine a very hot issue.

Senator CHRIS EVANS—You did not put it that way, but I gather you boycotted that meeting.

Mr Cain—In short, yes.

Senator CHRIS EVANS—I think it is important that we have a frank discussion about this, so I will ask the department similar questions. But why did you boycott the meeting?

Mr Cain—Based on our experience from the previous working party meeting, where we tried to have a discussion and resolve the issue, we came to the conclusion that we needed to bring to the attention of the minister our concerns before continuing with the working party. We also believed that the working party had reached the stage where we were not going to achieve agreement.

Senator CHRIS EVANS—Have you ever seen the John Cleese training movie about them making the decision when you are out of the room? I think you should have watched it beforehand. Once you storm out of the meeting, they make the decision while you are not there.

Mr Cain—Yes.

Senator DENMAN—So these were the things you were hoping to resolve, had you met with the minister? Is that what you are saying? I think I read that in your submission.

Mr Cain—Yes. We take the view that this in some ways should not even be an issue of trying to achieve consensus, because this is an issue of rights. If those people on the working party are the doers of the discrimination, if we need to achieve their consensus, we will never get it. That became very clear to us at one of the working party meetings, and so we became incredibly worried about where this reform was going. If we could not resolve this, then this you-beaut-reform quality assurance process was not going to address something that had been around, as Senator Evans has pointed out, for a long time. Yet that is one of the reasons we went down this path. We were going to solve it, resolve it, fix it, because the current QA system either does not appear willing to, or it cannot—that is a matter of debate. If we are not going to resolve it, then, yes, we may get some improvement in a few cosmetic areas of the service industry. But, on this big issue—and when you think about it, this is employment conditions. It may only be one standard and perhaps one KPI, but this is a core element of why we go to work and why people with disabilities are looking for employment assistance—if that cannot be resolved, then it seems that everything else pales into insignificance.

Senator CHRIS EVANS—Thanks for that.

CHAIR—Thank you very much, Mr Cain, for your time today.

[4.51 p.m.]

MALLISE, Ms Fiona Anne, Acting Assistant Secretary, Disability Service Reforms Branch, Department of Family and Community Services

McCORMICK, Mr Gordon Rory, Director, Quality Assurance, Disability Service Reforms Branch, Department of Family and Community Services

CHAIR—I welcome officers from the Department of Family and Community Services. As usual, I remind witnesses that the giving of evidence to the committee is protected by parliamentary privilege. However, the giving of false or misleading evidence may constitute a contempt of the Senate. You will also not be required to answer questions on advice you may have given in the formulation of policy nor to express a personal opinion on matters of policy. The committee has before it your submission. Do you wish to make any alterations to that submission?

Ms Mallise—No.

CHAIR—I invite you therefore to make an opening statement, and senators will no doubt have some questions for you after that.

Ms Mallise—Thank you for the opportunity to present at today's hearing. Our submission provides full and extensive coverage of our response to many of the issues. I will simply provide an overview here. The Department of Family and Community Services supports the passage of this legislation and believes that it offers a significant advance in disability employment service quality. The development of the proposed system has been a highly consultative process, with consumer and industry representatives involved throughout. The proposed system has also been trialled and found to be effective as a way of measuring compliance against the disability services standards. The proposed system provides an internationally recognised accreditation and certification system, improving greatly on the current system. The proposed system also provides for services to pay fair wages, using a transparent assessment mechanism, and ensures that services cannot use incapacity to pay as an excuse not to pay those appropriate wages. As recognised, this will be a significant challenge to many in the sector.

The three-year implementation period proposed would allow for Business Services in particular to get the necessary mechanisms in place to enable them to meet the high levels of quality required by the new system, including wages. It is important to recognise, I think, that the proposed system is an integral plank in a broader reform agenda for the disability employment system. The other components that are being developed in concert with this proposed quality assurance system include establishing an independent eligibility assessment and referral process; trialling the linking of funding to individual needs and outcomes; and contestability for rehab. So it is important to realise that this is not a single thing moving forward by itself; it is in actual fact part of a concerted reform agenda, building each and every one of them upon each other. In order to achieve this and to assist Business Services move forward, there are a number of complementary strategies that are designed to enable them to both improve their business skills and prepare them for the future.

In addition, I would just like to note and respond to some of the claims made within some of the submissions received by the committee. The recommendations of the evaluation of the supported wage system did not actually recommend applying the system to Business Services. It certainly noted that the department should modify guidelines and associated mechanisms to enable the adoption of SWS in Business Services, quite clearly noting that the system would require modification. It also noted that the assessment process was seen to have relevance and application but that other elements were seen to require modification before they could be applied; and, in summary, it recommended that consideration should be given to the potential application of the existing system or a modified version—and that was my own emphasis there.

In relation to one of the other initiatives that is part of the reform agenda—the case based funding trial—it is unfair to say that funds that were set aside for people with disabilities have been used to decrease dole queues. Job seekers with a disability are now referred to the most appropriate service for their need, either mainstream services provided by the Job Network or specialist disability employment services. They are referred there regardless of their income support type. Prior to this, eligibility for the DSP—the disability support pension—was actually used as a proxy for the need for specialised assistance. This approach failed to provide appropriate services for people with a disability receiving those other types of income support, or those without income support, particularly school leavers and people with psychiatric disabilities.

It is important to note that the number of people with high support needs receiving disability employment assistance actually increased by nearly 14 per cent between 1998 and 2000, rising from 16,134 clients to 18,357. It is also important to note that people with an intellectual disability are very well represented in that

case based funding trial. They make up 27 per cent of participants in the trial, which is actually nearly three times their representation within the DSP population itself.

The report into different wage assessment tools that has been raised today was not actually tailor-made by the department to say that no one tool is suitable. It was prepared by an independent consultant selected by the department through an open tender process.

Finally, the proposed system is not based on an ISO system. The system is based on the disability service standards, and the ISO is only relevant in relation to ensuring the competency and impartiality of the auditing bodies. We are happy to take questions.

Senator ALLISON—Are you surprised that there is such opposition to this legislation? What went wrong with the consultation process, such that we have a situation where significant numbers who have been involved in the process are disaffected by it?

Ms Mallise—Certainly along the way there were lots of people involved and we got good agreement to a number of the steps and stages. I guess that towards the end it became clear that the National Caucus of Disability Consumer Associations itself was not satisfied with the way the KPIs were progressing. It was really right at the end of the two-year development period, facing the last couple of months, that those real concerns were brought to our attention.

Senator ALLISON—Do you see any problem with KPIs being disallowable instruments?

Ms Mallise—No, I do not think there is any. We cannot see any impediments to that being done, if that would help progress the bill.

Senator ALLISON—What about the suggestion that the KPIs, the standard 9 employment conditions, allow a host of loopholes for discrimination and exploitation in employment?

Ms Mallise—There are two ways you can look at trying to achieve one aim of getting the fair wage system. We could, as suggested by the National Caucus of Disability Consumer Associations, actually name a specific tool to achieve that, or we could come at it from a different angle—which is the way the KPIs have been developed—that actually sets out some very clear steps that say that fair wages will be paid by using a certain sort of assessment tool and that no-one can use incapacity to pay as a reason not to pay. So, rather than stating a single tool, I believe we have probably found the same outcome through a narrowing of the gateway rather than—

Senator CHRIS EVANS—Can I interrupt there? Don't your current guidelines say well-meaning things like that, too, though? Haven't we been saying that for 20 years?

Ms Mallise—They do not actually specify that. For section 13 services at the moment, they do not have to pay an award based wage.

Senator CHRIS EVANS—No, but you are not making them do that. You are saying about 'fair' wages and the fact that incapacity to pay is not an argument.

Ms Mallise—I am sorry. It included award based wages at the front of that sentence. So in the KPIs, yes, there is a need for it to be an award based wage.

Senator CHRIS EVANS—I did not mean to interrupt your sentence. I will come back and ask you what that means after Senator Allison has finished.

Senator ALLISON—Go ahead.

Senator CHRIS EVANS—What does 'award based wage' mean, then?

Ms Mallise—It means a wage based on an award system that exists that is appropriate to the sector or the industry that is involved or an industrial agreement that has been established.

Senator CHRIS EVANS—What does 'based on' mean?

Ms Mallise—I guess the word 'based' simply recognises that possibly, in a number of circumstances, people will not be eligible for full award wages.

Senator CHRIS EVANS—But don't we come back to the central question then: how do you determine the percentage of the award? To be honest, I want to cut through all the words. What are you saying about how wages will be set? It seems to me, quite frankly, that the words are pretty flowery and pretty loose and a statement of good intentions—and I understand that. But the criticism is that we are not really nailing down what we are saying about this issue. I suppose I want you to respond.

Ms Mallise—Yes. Perhaps one of the reasons why we have not actually named the supported wage system as a tool is that we recognise it has benefits but it needs improvement and modification. I think that we are actually looking to do work that would create and modify a tool so that it would be eligible and approved for use in both sectors—say, having a single tool that would cover open employment services and Business

Services. So we are not suggesting that it would necessarily not be the supported wage system; we are just not in a position at this stage to describe that as 'the tool'.

Senator CHRIS EVANS—But haven't you been trialling this for the last couple of years? I will play devil's advocate. I get the sense that you have decided to duck the issue—that is the feeling I get—and we have put it off again as being too hard. I understand why and I understand all the pressures and the lobbies and the different viewpoints. But am I wrong in assuming that you have just ducked the issue?

Mr McCormick—I do not think we have ducked the issue. I think in the descriptions we have gone as close as possible to, and we even referred to the good practices wage guide—I think I got those words in the right order. We have tried to describe the prerequisites for a tool like SWS in there without specifying SWS. We have done that mainly because, as you have heard before, it is recognised that SWS does need modification but we do not have that modification tool now.

Ms Mallise—Yet.

Mr McCormick—So we cannot specify that tool until we have the modifications. We have tried to say that we need an independent transparent tool so that, if you are going to pay less than award wages, you need to pay pro rata wages based on this tool. By making it transparent—and I think we have made it quite clear in the policy intent; it is part of our attachment—we are hoping that we are moving down towards real wages for real work, irrespective of any agreement now in place.

Senator CHRIS EVANS—Didn't Brian Howe say that in 1986 or thereabouts?

Mr McCormick—Sorry, Senator, I do not know.

Senator CHRIS EVANS—I am sorry, but there is a sense of *deja vu* about the debate; that is all.

Ms Mallise—Yes. It has certainly been a very tricky issue for both governments.

Senator CHRIS EVANS—I am trying to play devil's advocate to nail you on whether we are making real progress. Or have we really decided that it is all too hard, the groups have not come to an agreement and so we are actually putting it off again?

Ms Mallise—At the moment part of the reason it is a bit hard is that we have three levels within our service types that you can move between and towards, and it is that progression between the different levels of service that has been slow. This new model, by actually articulating that there is one standard level which you meet or you do not meet, makes it quite clear-cut that you either will be meeting it and you will be paying those wages or you will not be getting Commonwealth funding, thank you very much. That is quite clear in the proposed system: either you are in or you are out—you are providing a quality service, you are paying wages, or you are actually no longer part of the Commonwealth-funded employment system. I think that is a significant improvement. We have had sunset clauses in this legislation that have moved and said that you do not have to do that anymore. The transitional movement between the three levels has been a real impediment. Actually stating that you only have one level is very firm, very clear. We are being fair to say that it will take you three years. Some in the sector would say that that is not long enough because suddenly they have realised, 'We're not going to get funding.'

Senator CHRIS EVANS—But the crunch issue then is what tool you use, and you cannot tell me what that is. So it is almost like the missing ingredient, the thing that actually determines whether the objectives—

Ms Mallise—Yes, and part of that is around timing, and part of it is that we have reviewed the supported wage system recently to try and get a handle on that and to get some leads on whether or not we can move the system. You have to think about two things, I guess. One of the things is actually using the whole supported wage system—which is actually different from simply using the supported wage assessment tool. There are two quite different options and deals for a government there. Using the supported wage system tool, or one based on that and modified for use in Business Services, is probably the path that we are looking at and suggesting within progressing the legislation. To look at actually implementing the supported wage system holus-bolus across the business service sector is a major decision for any government to take, by virtue of the numbers involved and the scope. At the moment, we have about 2,000 or 2,500 people in the supported wage system and we have allocated around \$3 million for that this year. We are looking within the entire disability employment sector at having around 50,000 consumers now. Through the Australians Working Together package, there will be another 20,000 places coming on board over the next four years. So it is actually translating a system that is currently working at around that sort of level into a much bigger market.

Senator CHRIS EVANS—You are not saying that they are all in closed employment, though?

Ms Mallise—Not at all, no. We have around 15,000 people in Business Services, and the rest are in open employment settings.

Senator CHRIS EVANS—How many of the new places will be in closed employment?

Ms Mallise—Business Services do not have access to growth funding.

Senator CHRIS EVANS—I knew that was the case. I just was not sure whether there had been any decision taken on those new places. I guess I am asking that question.

Ms Mallise—For the new places, the decisions are due to come on line in, I think, July next year. I know there is a steering committee meeting this week—a lovely bureaucratic thing to do. So that is beginning to look at where they will all go and how they will be allocated out. There have been no decisions taken on that at all yet.

Senator CHRIS EVANS—Are Business Services eligible for those places or not? I know there is this definite thing about growth funding, so I am asking the specific question in relation to those new places.

Ms Mallise—Because that is not in my area, I would be uncomfortable providing you with information that might mislead.

Senator CHRIS EVANS—Would you take that on notice for me?

Ms Mallise—I surely can.

Senator CHRIS EVANS—You refer to the meeting where the working party made this decision. I assume that there is no disagreement that the National Caucus members were not participating in that meeting?

Ms Mallise—No.

Mr McCormick—No.

Ms Mallise—Just for your information, the working group is chaired by Ian Spicer, who is also chair of the National Disability Advisory Council. He is a parent of a person with disability and a well-regarded businessman. There are three National Caucus representatives, two ACROD representatives, one representative of ACE—the Association for Competitive Employment—one representative of CRS Australia and a representative of the disability services review panels that currently exist to monitor the standards. So there are three National Caucus representatives, three industry representatives, a rehab provider and an independent DSP member.

Senator CHRIS EVANS—The dire warnings in the conclusion about ‘lost opportunities if the bill is not passed this week, et cetera’ seemed a little heavy-handed, to be honest.

Ms Mallise—A bit heavy-handed for the department, perhaps. I guess we have been looking at this as part of the overall reform agenda. It is an important part for us to get in place in order for the other parts to build on and have a quite clear, firm, set path over the next three years. Perhaps it may have been a bit over the top, and that may have been Sunday night when you were looking at it.

Mr McCormick—I think we had also built up an expectation, especially amongst service providers, that, ‘This change is coming and you must start preparing for this change.’ If we do not go ahead or provide a delay, some of the criticisms we are getting are, ‘You haven’t changed so far. This proposal has been made in the past and we still haven’t had to do anything about it.’

Ms Mallise—Because it has been part of this broader reform agenda, we have been really pushing that it is happening. You can see every part of it is moving forward in this direction. I guess the risk for us all is that the sector has been winding up, gearing up and getting ready and may view it as just another delay in the change process that, as we know, has been a lengthy one.

Senator CHRIS EVANS—And it is your intention, if the legislation is passed, to introduce the system from 1 January.

Ms Mallise—That is right. We would start registering services in December, start getting people on board and start certifying.

Mr McCormick—The original timetable was 1 July this year, but we were still unable to get consensus on the KPIs for standards 5 and 9. It was extended for another six months and basically there was no change. There was not a surprise about the lack of consensus, but I think all efforts have been made to try to gain consensus amongst the working groups.

Senator CHRIS EVANS—So what is the process now for determining key performance indicators 5 and 9? Who will make that decision?

Mr McCormick—I think the minister will.

Ms Mallise—Yes, the minister was certainly looking for consensus or an agreed position before she would sign off on those. I guess it will be up to her at this stage to consider where to from here.

Senator CHRIS EVANS—But in terms of the legislation and that decision, they are unrelated in the sense that that is a separate process the minister has to approve? Obviously the legislation empowers the process—

Ms Mallise—Yes, the flow-down effect.

Senator CHRIS EVANS—but what is the time frame then for the minister? Would she have to approve that by 1 January for you to have met that deadline?

Ms Mallise—Should the legislation be passed?

Senator CHRIS EVANS—Yes.

Ms Mallise—Yes, that is correct.

Senator CHRIS EVANS—So if the legislation is passed, the minister has between the passage of the legislation and 1 January to gazette—or what do you do with these things—the disallowable instruments?

Mr McCormick—Yes, gazette the disallowable instruments.

Senator CHRIS EVANS—I understand that they are not currently disallowable instruments, are they?

Ms Mallise—No. The disallowable instrument would give the minister the power to sign and develop—I cannot remember the exact words—the key performance indicators; that is all.

Senator CHRIS EVANS—Can we go back a step? I am not sure that I followed that. If the bill as it now stands is passed, what is the process for approval of the standards and the key performance indicators?

Mr McCormick—It is my understanding that they would be tabled as a disallowable instrument—

Ms Mallise—The standards would be.

Mr McCormick—Do you mean consensus leading up to that point?

Senator CHRIS EVANS—No. What are the other legislative regulatory steps, whatever the content and however the minister comes to her view about what should be in the content? As I understood it, they are not disallowable instruments now and the National Caucus of Disability Consumer Associations was suggesting as one of the amendments that they be made disallowable instruments. But I want to understand it: if the bill as it is currently framed is passed, what process follows in terms of setting those standards in a legal regulatory sense, not how the minister makes up her mind?

Mr McCormick—Under the current legislation, I think at 5A, there is a stipulation that the minister must approve key performance indicators with the standards. So for the standards to be tabled as a disallowable instrument, there must be key performance indicators approved.

Senator CHRIS EVANS—Apparently only the standards are a disallowable instrument.

Ms Mallise—That is correct.

Senator CHRIS EVANS—What obligations are there to publish the key performance indicators?

Mr McCormick—The intention was to have it in guidelines that consultation with the disability sector must occur before the minister makes a decision on the key performance indicators.

Ms Mallise—And then they would just be promulgated widely.

Senator CHRIS EVANS—But you are saying she has to do that at the same time she approves the standards?

Mr McCormick—In the first case, yes, because the legislation specifies that, with any change to the standards or with the introduction of new standards, key performance indicators must be attached. So in this first instance when they are putting up the standards, there must also be key performance indicators.

Senator CHRIS EVANS—So if we pass the bill, sometime between 1 October and 1 January she would have to do that and the consultation process would have to occur within that period. It is a pretty tight time line anyway, isn't it?

Mr McCormick—We would have argued that the consultation process has taken place.

Senator CHRIS EVANS—And consensus has emerged?

Mr McCormick—No, not consensus. This is a decision. If we cannot reach consensus amongst the sector, then a decision is going to have to be made on which way to go.

Senator CHRIS EVANS—Thanks for that.

Ms Mallise—Senator Denman, I want to provide further advice on a question you asked earlier about how that survey was actually undertaken. We have just checked and found that, of the clients who participated, 68 per cent of them were questioned alone and 32 per cent of them were asked the questions with support, which was either a family member, worker support or an advocate.

Senator DENMAN—Did those 68 per cent who were questioned alone have answers given to them to choose from?

Ms Mallise—I do not know that. It was run by the Productivity Commission, so it was not actually one of our reports. I could find that out for you though.

Senator DENMAN—I would be very interested to know.

Ms Mallise—We will take that on notice for you.

Senator DENMAN—Thanks.

CHAIR—Thank you very much for your attendance today. I declare the meeting closed.

Committee adjourned at 5.14 p.m.