



Australian Federation of Disability Organisations

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Senator Troeth
Chair, Senate Standing Committee on
Employment, Workplace Relations
and Education
Via email to: EET.Sen@aph.gov.au

Dear Senator Troeth

Inquiry into the Social Security Amendment (2007 Measures No. 2) Bill 2007

The Australian Federation of Disability Organisations (AFDO) is the peak body of organisations of people with disability in Australia. Our mission is to champion the rights of people with disability.

We thank the Committee for this opportunity to make a submission to the Inquiry. The extremely short time frame between the Bill's introduction and the close of submissions for this Inquiry means that our submission is necessarily brief.

Our comments relate to three provisions of the Bill:

- 1) providing the Minister with the ability to make guidelines regarding the determination of a person's capacity to work;
- 2) updating the terms in the impairment tables in Schedule 1B of the *Social Security Act 1991*; and
- 3) allowing smoother transfers from one payment to another, where the Secretary has decided the person should be transferred and removing the need for a claim for the new payment.

Yours sincerely

Graham Douglas-Meyer
Chair

Introducing Ministerial Guidelines for Job Capacity Assessments and Replacing 'medical officers' with 'assessors'

These provisions of the Bill together enact the Government's intention to reinforce the role of job capacity providers in the 2007-2008 Federal Budget.

In the experience of AFDO members, the job capacity assessment system has proven unequal to the task of accurately and sensitively assessing the work capacity of many people with disability. People with low incidence conditions, and people whose impairments are not visible have been inappropriately assessed by people with poor knowledge or appreciation of the impact of their condition on their capacity to work, the supports they need to work and the range of work that they can realistically undertake. The climate in which assessments are being undertaken is characterised by an unrealistic faith in the power of work to heal disability and a belief that there is no barrier that cannot be addressed through an intervention. This is illustrated in the decision of the Administrative Appeals Tribunal in *Ilka; Secretary, Department of Employment and Workplace Relations and [2006] AATA 828 (29 September 2006)*.

The form that [the assessor] was completing next required him to consider "appropriate interventions ... that will address the barriers identified ..." That seems to us to assume that there can never be a "barrier" that is not capable of being addressed by appropriate interventions, an assumption that must be fundamentally flawed. Reference to the "Assessment Codes Supplement", tendered by the Secretary to aid our understanding of the assessment process, appears to us to confirm that the process proceeds upon this assumption.

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We observe, in that regard, that someone in Mrs Ilka's position, who has been out of the workforce for many years, may well benefit from courses that provide present day skills. But the physical limitations, the endurance limitations, the manual dexterity limitations, chronic pain and mobility restrictions will remain even after such training.

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This tendency to focus upon the best of Mrs Ilka's capacities without full regard to even reported limitations and qualifications result in [the assessor] presenting a somewhat more optimistic picture than we think is warranted.

While this decision is from 2006, reports received from AFDO indicate that the problems it illustrates remain.

Assessments of impairment and work capacity are extremely complex and highly contested. The Parliament has in the *Social Security Act* made clear its expectations of who will be deemed eligible for the Disability Support Pension and Partial Capacity payments and has left it to the Department to provide detailed guidance on what this means in practice. The Parliament can be confident that the Departmental interpretation of the Act is consistent with its intentions through the safeguard of the appeals system – the Social Security Appeals Tribunal and the Administrative Appeals Tribunal. AFDO can see no reason to change from this system. If the Government wishes to provide more detail about the conduct and interpretation of work capacity assessments, this should be provided in the *Social Security Act* and not left to a disallowable instrument.

In the absence of this scrutiny we cannot be assured that the measures contained in the Bill will not simply entrench the factors that are currently leading to many poor and inadequate work capacity assessments.

AFDO also does not support the proposed changes relating to the determination of medical impairment ratings. We understand that the current system provides the potential for a more comprehensive assessment that includes the views of both the medical officer and the work capacity assessor. The proposed legislation removes this possibility.

Timelimits on the transfer of people between payments

The ability for the Secretary to transfer people between payments is an important safeguard for the many people with disability who fall between the cracks in our Social Security system. AFDO can see no reason to place a time limit on this.