



**Australian Federation of  
Disability Organisations**

# **Disability Support Pension: The Impact of Institutional Abuse and Neglect on People with Disability**

**Part A: Submission to the Senate Inquiry on the Purpose, intent and  
adequacy of the Disability Support Pension**

**September 2021**

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# Acknowledgements

This Submission has been compiled by the Australian Federation of Disability Organisations (AFDO), the Disability Resources Centre (DRC), and People with Disabilities WA (PWDWA). We would like to thank the organisations and individuals who have contributed information, personal stories, and case studies to assist in the writing of this Submission.

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# Acknowledgment of Country

AFDO acknowledges Aboriginal and Torres Strait Islander people as the traditional custodians of the land on which we stand, recognising their continuing connection to land, waters, and community. From our head office in Melbourne, we pay our respects to the Bunurong Boon Wurrung and Wurundjeri Woi Wurrung peoples of the Eastern Kulin Nation and to their Elders past, present, and emerging.

# Contributions

- First Nations Deaf Australians from Far North Queensland
- People with disability from around Australia
- AFDO Technical Experts on Social Security Working Group
- Associate Professor Karen Soldatic from Western Sydney University
- Professor Dina Bowman from the Brotherhood of St Laurence
- Economic Justice Australia
- Victoria Legal Aid
- Disability Advocacy Network of Australia
- Deafness Forum
- DeafBlind Australia

## **AFDO Endorsements of Organisational Submissions to DSP Senate Inquiry**

AFDO would like to highlight and endorse the Submissions of the following organisations to the Community Affairs Standing Committee Inquiry into the Purpose, intent, and adequacy of the Disability Support Pension (DSP):

- Economic Justice Australia
- Victoria Legal Aid
- Darwin Community Legal Centre
- Social Security Rights Victoria
- Western Sydney University

# About AFDO

Since 2003, the Australian Federation of Disability Organisations (AFDO), a Disabled People's Organisation (DPO) and Disability Representative Organisation (DRO), has been the recognised national peak organisation in the disability sector, along with its disability specific members, representing people with disability. AFDO's mission is to champion the rights of people with disability in Australia and support them to participate fully in Australian life.

Our member organisations represent disability specific communities with a total reach of over 3.8 million Australians.

AFDO continues to provide a strong, trusted, independent voice for the disability sector on national policy, inquiries, submissions, systemic advocacy and advisory on government initiatives with the Federal and State/Territory governments.

We work to develop a community where people with disability can participate in all aspects of social, economic, political, and cultural life. This includes genuine participation in mainstream community life, the development of respectful and valued relationships, social and economic participation, and the opportunity to contribute as valued citizens.

## Our vision

That all people with disability must be involved equally in all aspects of social, economic, political, and cultural life.

## Our mission

Using the strength of our membership-based organisations to harness the collective power of uniting people with disability to change society into a community where everyone is equal.

## Our strategic objectives

To represent the united voice of our members and people with disability in national initiatives and policy debate.

To enhance the profile, respect, and reputation of AFDO through our members.

To build the capacity and sustainability of AFDO and our members.

To foster strong collaboration and engagement between our members and stakeholders.

To enhance AFDO's connection and influence in international disability initiatives, particularly in the Asia Pacific region, through policy, advocacy, and engagement.

# Our members

## Full members:

- Arts Access Australia
- Autism Aspergers Advocacy Australia
- Blind Citizens Australia
- Brain Injury Australia
- Deaf Australia
- Deafblind Australia
- Deafness Forum Australia
- Down Syndrome Australia
- Disability Advocacy Network Australia
- Disability Justice Australia
- Disability Resources Centre
- Enhanced Lifestyles
- National Mental Health Consumer and Carer Forum (NMHCCF)
- People with Disability WA
- People with Disabilities ACT
- Polio Australia
- Physical Disability Australia
- Women with Disabilities Victoria
- Women with Disabilities ACT

## Associate members:

- AED Legal Centre
- All Means All
- Amaze
- Aspergers Victoria
- Disability Advocacy and Complaints Service of South Australia (DACSSA)
- Disability Law Queensland
- Leadership Plus
- National Organisation for Fetal Alcohol Spectrum Disorder (NOFASD)
- Star Victoria Inv
- TASC National Limited
- Youth Disability Advocacy Service (YDAS)



# Glossary

- **Age Pension (AP):** the primary income support payment for people who have reached Age Pension age.
- **Convention on the Rights of Persons with Disabilities (CRPD):** international human rights treaty of the UN intended to protect the rights of people with disability.
- **Disability Employment Service (DES):** employment service providers (ESPs) that support people with disability in finding work.
- **Disability Medical Assessment (DMA):** an assessment conducted by a government-contracted Doctor (GCD) to determine whether an individual qualifies for DSP.
- **Disability Support Pension (DSP):** a means-tested income support payment for people with disability aged 16 and over (but under Age Pension age) who have reduced capacity to work; the primary income support payment for people with disability.
- **Employment Service Provider (ESP):** agencies contracted by the Australian Government to assist individuals in finding employment.
- **Fully diagnosed, treated, and stabilised:** A condition is fully stabilised if:
  - either the person has undertaken reasonable treatment for the condition and any further reasonable treatment is unlikely to result in significant functional improvement to a level enabling the person to undertake work in the next two years; or
  - the person has not undertaken reasonable treatment for the condition and: significant functional improvement to a level enabling the person to undertake work in the next two years is not expected to result, even if the person undertakes reasonable treatment; or there is a medical or other compelling reason for the person not to undertake reasonable treatment.
- **Government-Contracted Doctor (GCD):** registered and licensed medical practitioner contracted by Services Australia to conduct Disability Medical Assessments (DMAs).
- **Impairment Tables:** an instrument used to assess the degree to which an individual's disability or medical condition affects their ability to function.
- **International Covenant on Economic, Social and Cultural Rights (ICESCR):** a multilateral treaty adopted by the UN General Assembly in 1966 that guarantees economic, social, and cultural human rights.
- **Job Capacity Assessment (JCA):** a comprehensive assessment of an individual's level of functional impairment and work capacity.

- **Jobseeker Payment (JSP):** the working age payment that replaced Newstart Allowance (NSA) from 20 March 2020; an income support payment that provides financial assistance to people aged 22 years to Age Pension age who have capacity to work now or in the near future and are able to meet mutual obligation requirements.
- **jobactive:** network of organisations contracted by the Department of Education, Skills, and Employment (DESE) to deliver employment services to unemployed jobseekers receiving income support.
- **Mutual obligations:** requirements and tasks that individuals are obliged to undertake while receiving income support.
- **National Disability Insurance Scheme (NDIS):** federal scheme that provides support to eligible people with intellectual, physical, sensory, cognitive, and psychosocial disability.
- **Partial Capacity to Work (PCW):** a person has a partial capacity to work if their impairment prevents them from working at least 30 hours per week at the relevant minimum wage or above, independently of a program of support (POS), within the next two years.
- **Program of Support (POS):** a program delivered through an employment service provider (ESP) that is designed to help people to prepare for, find, and retain employment.
- **Services Australia:** formerly the Department of Human Services, an executive agency of the Australian Government that is responsible for providing income support.
- **Treating Doctor's Report (TDR):** a guided questionnaire that a treating doctor could complete which collected information needed to address all the eligibility requirements for the Disability Support Pension (DSP). Time spent completing this report was claimable by a doctor under Medicare by claiming a double appointment.
- **Youth Allowance:** an income support payment for individuals aged 24 or younger who are students or completing an apprenticeship; or those aged 21 or younger and looking for work.

# Executive Summary

## Introduction

In this Submission to the Senate Inquiry into the Disability Support Pension, AFDO contends that the Disability Support Pension (DSP) application and review processes serve as a vehicle for systemic harm, wherein the power of the Australian Government is leveraged against some of the most vulnerable people with disability. It is our view, in line with international human rights law, that DSP is a crucial mechanism to protect the right to an adequate standard of living, social protection, and social participation that should not be only considered as welfare or income support. DSP should be available and accessible to all people with disability who require it, enabling them to have economic security and participate fully in community life. This Submission will outline the systemic failures of DSP as it currently exists and the institutional harms that are inflicted on people with disability as a result.

## Background discussion and framework

AFDO acknowledges the commitment of the Department of Social Services and Services Australia staff and recognise that the issues identified in this Submission are systemic. AFDO alleges that the six experiences of harm identified in this Submission constitute institutional abuse and neglect and are serious human rights violations. AFDO outlines eight key principles that should be adopted to ensure delivery of DSP that is consistent with Australia's international human rights obligations.

In order to demonstrate why these experiences constitute institutional abuse and neglect, we explore the consequences for people with disability of being denied access to DSP. Beyond the additional expenses associated with disability and subsequent reduced standard of living, people with disability unable to access support are forced into a position of social, economic, and cultural vulnerability. We refer to the social model of disability to enable understanding of how societal factors contribute to the experience of being disabled and explore the specific experiences of First Nations Australians with disability, who encounter multiple and intersecting inequalities when trying to access DSP.

## What causes harm – six discrete experiences

This Submission identifies six discrete experiences in DSP application and review processes that have the potential to inflict systemic harm on people with disability. These include:

### The Onerous and Burdensome Nature of Proving Disability

When applying for DSP, the onus is placed on individuals with disability to demonstrate that they are sufficiently disabled and thus entitled to support. This process has been made increasingly more difficult due to a series of legislative changes introduced over the past two decades.

### [Inadequate Accessibility for People Who Are Deaf When Interacting with Centrelink About DSP](#)

The experiences of Deaf Australians in attempting to access DSP exemplify the lack of attention paid to accessibility.

### [Navigating Centrelink Processes](#)

Many Centrelink processes present additional barriers to people with disability attempting to access DSP. In particular, there is concern about the Impairment Tables, Programs of Support, Job Capacity Assessments, and Disability Medical Assessments.

### [The Impact of Ineligibility and Partial Capacity to Work](#)

Being deemed ineligible for DSP has serious consequences for people with disability, as is explored in detail in the report 'Dead Ends: How our Social Security System Fails People with Partial Capacity to Work'.

### [The Experience of Making Complaints and Seeking Reviews](#)

Though people with disability have the legislative right to make complaints and seek reviews of decisions made in regard to their DSP application, this process is both stressful and inaccessible, often resulting in negative health impacts and a failure to achieve economic security.

### [The Experience of Administrative Justice at the AAT](#)

People with disability have the right to appeal Centrelink's decision to reject their DSP application to the Administrative Appeals Tribunal. This is a two-stage process and can be legally complex. The process is adversarial and places people with disability at an immediate disadvantage. There is insufficient legal support for people with disability to press their case before the AAT, noting that the Secretary has legal representation before the AAT. The approach taken is contrary to the objects of the AAT Act, and Australia's obligations under international law.

## **Conclusion**

The systemic flaws and resulting harms outlined in this Submission are in many ways not unique to DSP and are experienced by other social security payments. In making this critique, AFDO submits that the Australian Government should undertake a comprehensive review of the entire social security system bring it in line with our human rights obligations and best practice. A robust social support system is a prerequisite for a healthy democratic society in which all individuals are supported and enabled to live full and dignified lives.

# Recommendations<sup>1</sup>

## 1. General.

- 1.1. The Australian Government should continue to provide access through wealth transfer for people with disabilities via the mechanism of the Disability Support Pension.
- 1.2. All people with disability who need the Disability Support Pension should have access to the Disability Support Pension.
- 1.3. The eligibility criteria for the Disability Support Pension must be brought in line with the social model of disability that underpins the *CRPD*; that is, the criteria must account for disabling barriers in society, not merely medical assessments of the impact of impairments on functional capacity.
- 1.4. The recommendation made by the Special Rapporteur on Disability that financial support for the extra costs associated with disability should be uncoupled from unemployment benefits - in order to encourage participation in employment without withholding necessary social protection - should be explored.<sup>2</sup> While the NDIS moves some way towards this approach, Australia's social protection system should ensure that all people with disability can access government assistance for disability-related costs regardless of eligibility.
- 1.5. Establish an independent body to review and set all social security rates as a way of ensuring that payments are sufficient to enable all people to live with dignity and to fully participate in community, social, and economic life.
- 1.6. Undertake a comprehensive review of the social security system as a whole, including a targeted review of the partial capacity to work (PCW) issue.
- 1.7. People with disability and lived experience of the Disability Support Pension should have a representative mechanism whereby they provide policy and lived experience advice to the Department of Social Services and Services Australia at either the Ministerial level or the Departmental Secretary level. There is currently no direct representation of people with disability and lived experience of the Disability Support Pension to these key decision-makers.
- 1.8. Reinstate the Treating Doctor's Report and enable completion of the mandatory Treating Doctor's Report to be billable under Medicare, with a Medicare item number introduced for report completion.
- 1.9. Develop a set of Publicly Available Standards regarding the length of time taken to process a claim for the Disability Support Pension and to complete a review of decisions made in regard to a claim. Implement a timeframe of three months

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<sup>1</sup> Some recommendations have been taken with permission from the work of Karen Soldatic, Economic Justice Australia (EJA), Social Security Rights Victoria (SSRV), and Darwin Community Legal Centre.

<sup>2</sup> UN General Assembly 2015.

maximum to determine Disability Support Pension eligibility.

- 1.10. Reinstate regular publicly available reporting on all aspects of the Disability Support Pension including claims and reviews.
- 1.11. Increase the Disability Support Pension by a minimum of \$107 per week to bring the standard of living of households with members with disability in line with the standard of living of similar households without an adult with disability.<sup>3</sup>

## 2. Regarding First Nations Australians.

- 2.1. The Department of Social Services and Services Australia should continue to address intersecting barriers - such as poor service provision in remote areas, lack of cultural and linguistic accessibility, and discrimination - which impede the access of Aboriginal and Torres Strait Islander people with disability to the Disability Support Pension.
- 2.2. Publish accessible data regarding the number of Indigenous applicants who seek Administrative Appeals Tribunal review of Disability Support Pension-related Centrelink decisions – including at the second review stage. This would be consistent with Australia’s obligation under article 31 of the *CRPD* to not only collect statistical data to be able to devise policies to give effect to the Convention,<sup>4</sup> but also to disseminate disaggregated data and ensure it can be accessed by people with disability.<sup>5</sup>
- 2.3. Design, develop, and implement a First Nations strategy to increase access to the Disability Support Pension by First Nations Australians with disability living in both urban and rural or remote communities.
- 2.4. The Department of Social Services and Services Australia should work with key national First Nations Agencies, such as National Aboriginal Community Controlled Health Organisations (NACCHO) and First People’s Disability Network, to develop cultural protocols that frame access to Disability Support Pension policy and process.
- 2.5. Implement the recommendations from the Commonwealth Ombudsman’s 2016 report *Accessibility of the Disability Support Pension for Remote Indigenous Australians*.<sup>6</sup>
- 2.6. Services Australia to implement a practice standard that requires Remote Community Teams when visiting First Nations Communities to have planned and budgeted for the provision of access to Auslan interpreters and/or Aboriginal Sign Language interpreters.
- 2.7. Services Australia should develop targeted actions for implementation of the Indigenous Servicing Strategy toward enhancing access to social security entitlements for people in remote communities, focusing on people with

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<sup>3</sup> Li et al. 2019.

<sup>4</sup> UN 2006, art 31(1).

<sup>5</sup> UN 2006, art 31(2)-(3).

<sup>6</sup> Neave 2016.

disability and carers. Actions should be informed by consultations with NACCHO, disability advocacy services working with remote communities, and community legal centres providing advice and advocacy to people in remote communities. Actions should include:

- 2.7.1. A substantial boost to funding for Services Australia Remote Servicing Teams, ensuring that each Team has delegates with expertise on the Disability Support Pension.
  - 2.7.2. Development of structures to support effective liaison between Services Australia, the Department of Education, Skills, and Employment, and Employment Services Providers operating in remote communities.
  - 2.7.3. Development of processes to ensure that people with disability known to be vulnerable and at risk of dropping out of the system are actively assisted, connected with local community supports and legal help, and, where appropriate, supported in claiming the Disability Support Pension.
- 2.8. Develop highly targeted information and resources for Aboriginal and Torres Strait Islander peoples living with disability and their informal and formal care and support networks, including design features so that they are easily identifiable.

### **3. Regarding the onerous and burdensome nature of proving disability.**

- 3.1. Align the eligibility criteria for the Disability Support Pension in line with Australia's Human Rights obligations under article 28 of the *CRPD* - as elaborated by the Special Rapporteur on Disability<sup>7</sup> - in order to ensure that the right of people with disability to social protection is upheld.
- 3.2. Simplify the Disability Support Pension application form.
- 3.3. Amend Part 6 of the Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011 ("Impairment Tables") to remove references to "fully" as a qualifier to "diagnosed", "treated", and "stabilised". That is, a person's disability must only be diagnosed, treated, and stabilised.
- 3.4. For the process to allow the acceptance individuals with fluctuating illness and conditions, particularly while in treatment, onto Disability Support Pension. If deemed necessary, review recipients' eligibility in a timeframe designated by, and in collaboration with, their treating specialist and other health professionals.
- 3.5. Services Australia staff should make direct contact with individuals who have requested Disability Support Pension application information and documentation. This contact could confirm that individuals have received the relevant paperwork for their application or serve to remind applicants of

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<sup>7</sup> UN General Assembly 2015.

appointments during the assessment process of the application.

- 3.6. Services Australia staff should be readily available for face-to-face contact with applicants to clarify information and answer questions, including via remote video conferencing if requested.
- 3.7. Implement a better resourced telephone system to reduce the current wait times being experienced.
- 3.8. Services Australia should undertake individualised assessment of applicants to identify other potential areas where support may be required, and where a need for support is identified, refer applicants immediately to the appropriate services to ensure individual wellbeing.
- 3.9. Exempt individuals with disability applying for Disability Support Pension who have been placed on the Jobseeker Payment whilst awaiting the outcome of their application from mutual obligations, including reporting conditional activities.

#### **4. Regarding issues of accessibility.**

- 4.1. Undertake a comprehensive review of the accessibility needs of people with disability, including First Nations Australians who are Deaf, in their interactions with Services Australia regarding Disability Support Pension.
- 4.2. The Department of Social Services and Services Australia should work with the Deaf community, First Nations Deaf Australians, National Deaf Agencies, and Disability Representative Organisations to address the shortfall of interpreters available to provide interpreting services for Deaf Australians when interacting with Services Australia regarding the Disability Support Pension.
- 4.3. The Department of Social Services and Services Australia should work with the National Disability Insurance Agency, Deaf Australians on the Disability Support Pension, National Deaf Agencies, and Disability Representative Organisations to develop a protocol that allows the use of NDIS plans and funds for access to Auslan interpreters and Aboriginal sign language interpreters when interacting with Services Australia regarding the Disability Support Pension.
- 4.4. Develop a range of resources with plain language, Easy English, and clear process instructions explaining how to apply for the Disability Support Pension. This should include helplines or services for potential applicants to contact for more information without excessive waiting periods in disability accessible formats, provided in a range of Aboriginal languages, community languages, Auslan, and braille or screen reader appropriate formats to ensure that First Nations Australians, Deaf Australians, and culturally and linguistically diverse communities have full access to this information.
- 4.5. Develop targeted information resources on Disability Support Pension eligibility criteria for people with disability in accessible formats that consider barriers experienced by people with particular impairments.

- 4.6. Implement access to real-time captioning and on-demand captions and interpreters across Services Australia shopfronts.

## 5. Regarding navigating the application process.

- 5.1. Employ people with disability in Services Australia, including in shopfronts, to provide information and support in accessing that information for Disability Support Pension applicants.
- 5.2. Employ more Indigenous specialised staff and social workers to support First Nations Disability Support Pension applicants through the process.
- 5.3. Expand the list of responsible practitioners who can submit qualifying evidence to include:
  - Remote area nurses
  - Non-clinical psychologists
  - Social workers
  - Mental health social workers
  - Mental health peer support workers
  - AOD case managers
  - Remote area police and community police officers
  - Remote area shire officers
  - Land council rangers
  - Remote area Traditional Owners
  - Remote area school principals and teachers

## 6. Regarding the impact of ineligibility.

- 6.1. Implement a measurement of poverty in the context of the Disability Support Pension.
- 6.2. Implement the recommendations from the report *Dead Ends: How our Social Security System Fails People with Partial Capacity to Work*.<sup>8</sup>
- 6.3. In the current review of the Impairment Tables, include a mechanism whereby people with disability are directly included as a fourth stream of consultation.
- 6.4. Amend section 94 of the *Social Security Act* so as to remove the Program of Support requirement.
- 6.5. Offer comprehensive outcome information and support for applicants following an unsuccessful claim for Disability Support Pension.

## 7. Regarding making complaints and seeking reviews of decisions.

- 7.1. Provide access to independent, individual disability advocacy for people with disability applying for the Disability Support Pension.

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<sup>8</sup> Forthcoming.

- 7.2. Provide clear information on internal review processes, and access to independent, individual disability advocacy support and legal services to seek an internal review of the rejection of a DSP application.
- 7.3. When notifying applicants of unsuccessful outcomes, provide comprehensive reasons for the decision so that advocates and lawyers can provide further information and informed guidance to their clients going forward about the most appropriate option(s) based on their circumstances.
- 7.4. Immediately provide unsuccessful applicants with information and referrals to key community legal services and other support agencies that may be able to assist them in understanding their options following an unsuccessful Disability Support Pension claim.
- 7.5. Actively provide unsuccessful applicants with referrals to appropriate services that can provide financial information and assistance, particularly with regards to potential payments to which they may be entitled, and guidance on how to access and apply for other appropriate financial assistance and payments.

## **8. Regarding the experience of administrative justice at the AAT.**

- 8.1. Review the AAT's Practice Directions regarding the assistance of self-represented applicants with disability to ensure that all applicants are able to access justice on an equal basis with others.
- 8.2. People with disability seeking review of Services Australia decisions should be provided with access to funded legal representation, as is the case for review of NDIS decisions.
- 8.3. Further consultation with people with disability regarding the AAT review process should occur. The application process for review of a Disability Support Pension-related Centrelink decision may better reflect the applicants' needs if people with disability are consulted about the way information and support should be provided.
- 8.4. Provide disability-specific training to lawyers, AAT Registry staff, and Tribunal Members regarding how they can effectively assist people with disability.

# Australia's Commitment to the Social Contract

AFDO acknowledges that both the Department of Social Services (DSS) and Services Australia are comprised of dedicated individuals who work to deliver services and support to people with disability. Our Submission has no intention of demonising these hard-working individuals; rather, we hope to demonstrate that the problems with the Disability Support Pension (DSP) are of systemic origin, with the harm described being directly caused by institutional policies and processes. We recognise the Australian Government's commitment to upholding the social contract through providing support to people with disability, as enshrined in *the International Covenant on Economic, Social and Cultural Rights (ICESCR)* and the *Convention on the Rights of Persons with Disabilities (CRPD)*. It is our hope that the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability can serve as an opportunity to improve DSP through resolving the systemic issues we describe in this Submission.

As a prelude to this Submission, we wish to highlight some recent examples of beneficial policy and practice delivered by DSS and Services Australia. The advent of the COVID-19 pandemic in early 2020 presented a major threat to our already-stressed social security system. In meeting this unprecedented challenge, the Federal Government implemented several positive changes that deserve recognition. One such example is the Coronavirus Supplement, which was delivered from 20 March 2020 to 31 March 2021. The Supplement granted an additional \$550 per fortnight for new and existing recipients of income support payments including Jobseeker, effectively doubling the full Jobseeker allowance. Further, from 27 April 2020, the eligibility criteria for Jobseeker and Youth Allowance were expanded, enabling more individuals to access income support.<sup>9</sup> Another example of effective and beneficial policy is the JobKeeper Payment, which supported businesses significantly affected by the pandemic. Operating from 30 March 2020 to 28 March 2021, the Payment was made directly to eligible businesses and not-for-profits to cover the cost of employee wages, enabling more Australians to remain in employment.<sup>10</sup>

Now in the second year of the pandemic, the Government continues to honour its commitment to supporting Australians in need. AFDO welcomed the recent announcement in June 2021 of the COVID-19 Disaster Payment; a lump sum payment for those who have lost work or income as a result of a COVID-19 lockdown. Similarly, the Pandemic Leave Disaster Payment provides individuals who have been directed to self-isolate or quarantine with a lump sum payment of \$1,500 for each 14-day period of isolation, quarantine, or caring for a person with COVID-19.<sup>11</sup> In these unprecedented times, AFDO recognises and applauds how the Australian Government has acted to support its citizens.

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<sup>9</sup> Mills 2020.

<sup>10</sup> Australian Government 2021.

<sup>11</sup> Klapdor 2021.

It is in the spirit of these reforms that AFDO presents this Submission on institutional abuse and neglect as regards DSP. AFDO recognises the Government's ongoing commitment to providing income support to people with disability, and the important work being done by staff of DSS and Services Australia. In highlighting the systemic failures of DSP and the harm this causes to people with disability, our hope is to establish a productive dialogue with the goal of moving towards an income support system that is both fairer and more effective.

# Why DSP Eligibility and Review Processes Constitute Institutional Abuse and Neglect

People with disability, their representative organisations, and disability advocates remain extremely concerned about the social, economic, and cultural impact that interacting with Centrelink DSP policy and process is having on people with disability. The Australian Government has created a system so complex and burdensome that people with disability often experience trauma and adverse health outcomes while simply trying to access what should be guaranteed social supports, with many being denied altogether.

Australia is a party to *the International Covenant on Economic, Social and Cultural Rights (ICESCR)* and the *Convention on the Rights of Persons with Disabilities (CRPD)*. Under articles 9 and 28 of these instruments respectively, the Australian Government is obliged to ensure that all persons with disabilities have access to social security, social protection, and an adequate standard of living.<sup>12</sup> Australia's social security system is crucial to the realisation of this right, particularly through the payment of DSP to people who cannot realise economic security through paid work participation.

Access to this form of income support is especially crucial due to the inaccessibility of meaningful, secure, and appropriately remunerated employment for many people with disability in Australia. Even more fundamentally, the provision of adequate, accessible, and disability-specific social security is necessary for the reduction and alleviation of poverty and promotion of the social inclusion and participation of persons with disability in Australia.<sup>13</sup> AFDO is concerned that changes to DSP and wider social security system in recent decades have led to the exclusion of many people with disability from access to essential social security.

For the purposes of this Submission, six discrete experiences have been identified that cause institutional harm to individuals with disability – and in doing so, present systemic barriers – throughout the application and review processes of DSP:

1. The onerous and burdensome nature of proving one's disability.
2. Inadequate accessibility, as exemplified in the experiences of people who are Deaf.
3. Navigating DSP application processes.

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<sup>12</sup> United Nations 2006; UN General Assembly 1966; see page 23 for a more detailed discussion of the relevant international and domestic legislation.

<sup>13</sup> UNCESCR 2008; UN General Assembly 2015.

4. The impact of ineligibility and Partial Capacity to Work (PCW).
5. Making complaints and seeking reviews of decisions.
6. The experience of administrative justice at the AAT.

AFDO alleges these harms constitute institutional abuse and neglect. In making this claim, AFDO would highlight the first principle in AFDO's *8 Key Principles for a Sustainable DSP*,<sup>14</sup> which states that:

*All persons have a human right to social security and social protection. The right to social security is also a core right of national citizenship in Australia that has long been embedded in legislation and government policy.*

Per the *ICESCR*, the right to social security may only be limited “for the purpose of promoting the general welfare in a democratic society”, with any limitations being “proportional” and “the least restrictive alternative... available”, as well as “of limited duration” and “subject to review”.<sup>15</sup> The *ICESCR* explicitly states that any retrogressive measures, that is, measures that “reduce the extent to which an economic, social, and cultural right is guaranteed”, must be adequately justified.<sup>16</sup> As this Submission will demonstrate through close examination of the six points of harm identified above, DSP in its current form is highly restricted and difficult to access beyond what could be reasonably considered justified, and thus the Australian Government is failing in its duty to uphold the human rights of people with disability.

In demonstrating the extent of this neglect, we would draw on the Disability Royal Commission's definition:

*Neglect includes physical or emotional neglect, passive neglect or wilful deprivation. Neglect can be a single significant incident or a systemic issue that involves depriving a person with disability of the basic necessities of life such as food, drink, shelter, access, mobility, clothing, education, medical care and treatment.*<sup>17</sup>

AFDO submits that the failure of the Australian Government to provide adequate and accessible support to people with disability represents a wilful deprivation of basic life

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<sup>14</sup> See page 28.

<sup>15</sup> UN General Assembly 1966.

<sup>16</sup> UN General Assembly 1966.

<sup>17</sup> Australian Government 2021.

necessities. The harms described in this Submission constitute institutional abuse and neglect for a number of reasons, including:

- The scope and scale of the harm, including the number of people with disability affected (for example, 347,000 people with disability forced onto Jobseeker Payment as a result of a Partial Capacity to Work) and the length of time that an experience of harm may last.
- A lack of procedural fairness and arbitrariness of decision-making, leaving individuals feeling powerless and eroding their natural justice rights.
- The absence of the social model of disability in framing the policy and process of DSP eligibility and review and a reliance on an outdated and deficient medical model of disability.
- The negative consequences of being deemed ineligible for DSP, which has the potential to impact upon all spheres of life including the social, cultural, and economic.
- The negative psychological and emotional effects reported by people with disability as a result of the sustained process of questioning and denying their lived experience of disability.
- The absence of people with disability in the formalised advice regarding the development, implementation, and review of DSP eligibility and review policy and processes.
- That ineligibility for DSP leaves people with disability vulnerable to living in poverty due to a lack of real employment opportunities.
- The failure to provide accessible information and processes that would enable all individuals to understand and participate.

Once again, AFDO reiterates that this Submission is not intended as commentary regarding individuals who are employed by Services Australia or the Department of Social Services. This Submission points only to systemic policy and process issues and the impact they have on people with disability.

Nevertheless, AFDO takes the view that the emotional and psychological impact on individuals with disability is significant, systemic, and sustained. The impact, which AFDO alleges is abusive and neglectful, is institutional and affects entire populations of people with disability. The economic, social, and cultural costs for vulnerable Australians leave people with disability in a position of helplessness. This experience of institutional abuse and neglect breaks the social contract and presents a barrier to dignified participation in the life of the community.

# The Human Rights and Legislative Framework for DSP

## ***The Convention on the Rights of People with Disability (CRPD) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)***

Australia is a party to the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* and the *Convention on the Rights of Persons with Disabilities (CRPD)*. These instruments require the Australian Government to ensure that all people, including all people with disability, have access to social security, social protection, and an adequate standard of living.<sup>18</sup> These rights are universal, which means they must be available without discrimination based on disability, gender, race, national or ethnic origin, Indigenous or social origin, age, or other status. Australia's income support system is crucial to the realisation of the rights to social security and social protection. It has an important role in reducing and alleviating poverty and promoting social and economic wellbeing, inclusion, and participation. It is especially important in the context of both the disability-related extra costs faced by many people with disability in Australia, and the limited availability of meaningful, good quality, and accessible employment.<sup>19</sup>

## ***Article 28 Convention on the Rights of Persons with Disability (CRPD)***

Article 28 of the *CRPD* stipulates that people with disability have the right to “an adequate standard of living” and to “social protection”.<sup>20</sup> Under article 28, state parties to the *CRPD* – including Australia – must “take appropriate steps to safeguard and promote the realization” of these rights.<sup>21</sup> This imposes an obligation upon states to provide the necessary supports and services to people with disability. Notably, countries must “ensure access by persons with disability...to social protection programs”,<sup>22</sup> and ensure access to people with disability who are living in poverty to “assistance from the State with disability-related expenses”.<sup>23</sup>

According to Rosemary Kayess and Phillip French, these aspects of article 28 make the right to social protection “significantly broader than the traditional right to social security”.<sup>24</sup> Countries must progressively implement measures which ensure that individuals' rights to an adequate standard of living and to social protection are upheld.<sup>25</sup> However, article 28 also emphasises that these rights must be protected and promoted ‘without discrimination on the basis of disability’.<sup>26</sup> The requirement that countries do not discriminate in providing access to social protection and to an adequate standard of living must be immediately

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<sup>18</sup> UN General Assembly 1966, art. 9, 11; UN 2006, art. 28.

<sup>19</sup> UN General Assembly 2015; Li et al. 2019.

<sup>20</sup> UN 2006, art. 28 (1, 2).

<sup>21</sup> Ibid art. 28 (1, 2).

<sup>22</sup> Ibid art. 28 (2b).

<sup>23</sup> Ibid art. 28 (2c).

<sup>24</sup> Kayess & French 2008.

<sup>25</sup> Quinn 2009.

<sup>26</sup> UN 2006, art. 28 (1, 2).

enforced.<sup>27</sup> That is, in international law, Australia does not merely have to progress towards non-discrimination, but was obliged to refrain from discrimination as soon as the *CRPD* came into force.<sup>28</sup>

Article 28(2) is relevant to DSP, because DSP is a program which forms part of the Commonwealth-administered social security system. Further, article 28(1) is also implicated, as DSP may be essential to ensure an adequate standard of living for people with disabilities who are not receiving sufficient income through paid employment.

### **Article 13 *Convention on the Rights of Persons with Disability (CRPD)***

Article 13 of the *CRPD* is also relevant to the access and review processes surrounding DSP. Access to justice is a human right,<sup>29</sup> with justice being a comprehensive concept that includes people's access to the administration of justice systems, procedures, information, and locations.<sup>30</sup> A person cannot be fully integrated into society if they are not socially and legally included.<sup>31</sup>

Access to justice contributes to the realisation of other human rights and determines whether a person can enjoy their other rights.<sup>32</sup> Article 13 is closely linked to article 12, which provides for an equal recognition before the law.<sup>33</sup> As an example, if a person is discriminated against in the workplace but does not have access to justice, they cannot enforce their right to equality and non-discrimination. In the context of applying for DSP, a person who could not appeal the decision to reject their application would not have access to justice. In turn, this may have implications for the right to social protection under article 28.

The social model of disability that underpins the *CRPD* holds that societies must change to include persons with disabilities, including in terms of ensuring equal access to justice.<sup>34</sup> Hence, the *CRPD* creates a positive obligation on the part of states to provide access to justice. Reasonable adjustments may be necessary so that everyone can access the same services.

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<sup>27</sup> Quinn 2009.

<sup>28</sup> Ibid.

<sup>29</sup> Flynn 2016.

<sup>30</sup> Ortoleva 2011.

<sup>31</sup> Weller 2016.

<sup>32</sup> Arstein-Kerslake et al. 2018, 3; Ortoleva 2011, 285.

<sup>33</sup> Kayess & French 2008, 28-29.

<sup>34</sup> Weller 2016, 3.

## The Social Security Legislative Framework

In addition to these international agreements, Australia has put in place its own domestic legislation governing the administration of social security. The *Social Security Act 1991*<sup>35</sup> and the *Social Security (Administration) Act 1999*<sup>36</sup> govern entitlement to and administration of income support payments, providing the legislative basis for DSP. These legislative instruments are complemented by the *Guide to Social Security Law*<sup>37</sup> which serves as a lens through which the legislation is to be implemented, providing guidance to decision-makers. Social security provision falls under the remit of the Department of Social Services (DSS) and is administered by their executive agency Services Australia through the government program Centrelink.

DSP is meant to be the primary income support payment for Australians with disability who are unable to maintain full employment within the open labour market. First established in 1908 as the Invalid Pension, it was developed out of recognition that people with disability may not be able to participate fully in competitive employment and thus required ongoing income support. It remains a core component of Australia's social security system.

Administration of DSP has followed the broader trends seen in social security reform over the past few decades; namely, a strong push towards regulatory compliance and reducing expenditure through labour market activation. The original Invalid Pension distinguished between people with disability who were unable to work and were therefore entitled to support, and people with disability who, in spite of their impairment, had some capacity to support themselves. This distinction derives from the idea of the 'deserving' versus the 'undeserving' poor; a common trope that can be seen throughout the history of Australian welfare reform and that continues to be perpetuated today by political rhetoric promoting welfare-to-work policies and demonising recipients of income support as 'lazy' and 'work-shy'.

In 1991, the Invalid Pension was replaced with DSP in an attempt to reduce dependency on long-term income support and encourage labour market participation. Eligibility now included an assessment of an individual's functional capacity and the extent to which they could sustain full-time employment. This tightening of criteria further divided people with disability into two distinct classes - those who were 'severely disabled' and thus entitled to support, and those who were only 'partially disabled' and should be encouraged to find employment.<sup>38</sup> This shift to encouraging employment of people with disability was not accompanied by sufficient investment in active labour market policies, and so the structural barriers that hindered people with disability from finding and maintaining employment remain in place.<sup>39</sup>

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<sup>35</sup> *Social Security Act 1991*.

<sup>36</sup> *Social Security Administration Act 1999*.

<sup>37</sup> Australian Government 2021c.

<sup>38</sup> Soldatic & Pini 2012.

<sup>39</sup> Thornton et al. 2020.

From the year 2000 onwards, a series of reforms were introduced that severely restricted eligibility for DSP and resulted in “a major reduction in the standard of living” for Australians with disability.<sup>40</sup> In 2006, the Howard Government introduced its Welfare to Work reforms with the goal of increasing labour market participation of working-age recipients who were previously eligible for DSP, redirecting them to the general unemployment benefit Newstart Allowance (NSA). The work capacity for DSP was reduced from 30 hours to 15 hours, meaning that an applicant must be assessed as having a work capacity of less than 15 hours per week. Any applicant determined to have a partial capacity to work (PCW) of between 15 and 29 hours per week no longer qualified for DSP and instead would receive NSA.<sup>41</sup>

The Impairment Tables are a key legislative instrument used to determine eligibility for DSP and had remained largely unchanged since 1997. In 2011, the Impairment Tables underwent significant review, moving from a diagnosis-based assessment to a functional-based assessment of a person’s ability to work.<sup>42</sup> With the introduction of the new Impairment Tables on 1 January 2012, a number of significant policy changes ensued over the following years. In 2014-2015, reforms targeting young people implemented compulsory work participation. Eligibility reviews were introduced for DSP recipients under the age of 35 who had been granted DSP prior to the introduction of the revised Impairment Tables. Those assessed as having a work capacity of eight hours or more per week were now required to participate in job-hunting and training activities.

Another key change that occurred in 2015 was the removal of the Treating Doctor’s Report (TDR). Prior to this, all new DSP applicants were issued with a Centrelink medical report form to be completed by their treating health professional. The form included a range of questions concerning the individual’s diagnosis, treatment, clinical history, and the functional impact of their medical condition. The treating health professional could also include other medical evidence relevant to the claim. The TDR usually served as the key medical evidence considered by DHS when determining the outcome of an individual’s DSP claim. With the abolishment of the TDR, new DSP claimants could instead provide various kinds of primary medical evidence, such as hospital records or test results, to support their claim, which would then be assessed against this primary medical evidence. As will be discussed later in this Submission, the removal of the TDR has contributed to systemic barriers by making the DSP application process more difficult for both claimants and medical professionals.<sup>43</sup>

Alongside the removal of the TDR in January 2015, the Disability Medical Assessment (DMA) was also introduced. Prior to this, all DSP medical assessments had been conducted by Job Capacity Assessors (JCAs) employed by DHS, all of whom were health or allied health professionals.<sup>44</sup> The role of the JCA was to determine whether an individual

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<sup>40</sup> Li et al. 2019.

<sup>41</sup> Soldatic & Pini 2012.

<sup>42</sup> Thornton et al. 2020.

<sup>43</sup> Ibid.

<sup>44</sup> Soldatic & Fitts 2018.

claimant's medical condition had been fully diagnosed, treated, and stabilised, and to rate their degree of functional impairment. Generally, the JCA's opinion regarding an individual's medical eligibility for DSP was accepted by DHS. With this legislative change, all new DSP claimants under 35 years of age and living in metropolitan areas who had already been assessed as eligible by the JCA were required to undergo a second medical review – the DMA – conducted by a Government-Contracted Doctor (GCD). As with the removal of the TDR, the introduction of the DMA is considered to have needlessly complicated an already difficult application and assessment process.<sup>45</sup>

The cumulative impact of these legislative changes will be explored in greater detail throughout this Submission.

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<sup>45</sup> Thornton et al. 2020.

# Key Principles for a Fair and Reasonable DSP

1. All persons have a human right to social security and social protection. The right to social security is also a core right of national citizenship in Australia that has long been embedded in legislation and government policy (e.g., Invalid and Old-aged Pension Act, 1908).
2. The right to social security and social protection does not deny the right to work for persons with impairment/s and/or chronic condition/s but recognises that across the life course, persons with disability will require differing levels of socio-economic support to account for changes in personal circumstances and in the labour market.
3. Persons with disability who are unable to work or are limited in their capacity to work due to impairment, have a right to social protection and economic security. Mainstream unemployment benefits and income support payments are inappropriate and not fit for purpose as social security payments for persons with disability.
4. The assessment of disability social security eligibility needs to be fair, reasonable, and based upon an objective measure of need to ensure it is first, responsive to the individual and their circumstances, and second, does not generate hardship or greater economic insecurity.
5. Disability social security assessment processes should be undertaken by relevant medical and allied health professionals who have the required expertise in relation to the individual's impairment/s and chronic condition/s *alongside* the everyday impacts the impairment/s and/or chronic condition/s have over a period of time and the impacts of social barriers like stigma, discrimination, and inaccessibility of the labour market.
6. Personal information and evidence provided by the assessing medical and allied health professionals, and the individual concerned, remains protected under national privacy legislation, and cannot be shared nor drawn upon without the explicit permission of the individual concerned.
7. Disability social security assessment processes, procedures, and outcomes must be freely and readily available and distributed widely in inclusive, accessible formats and languages to ensure that all persons with disabilities, their support networks, and medical and allied health professional support networks are fully informed.
8. Responsible government department/s should publish regular and comprehensive de-identified data documenting the core demographic information of recipients alongside changes to regulations and guidelines to enable, first, the monitoring of impact of such changes, and second, to ensure that persons with disabilities and/or chronic conditions, medical and allied health professionals, and relevant organisations are fully informed at all times. These data should be in a form that allows for secondary analysis by independent parties

# The Cost of Disability

To understand the immensity of the social and economic impact of living on DSP it is first important to understand the 'cost' of disability.

*Life costs more for disabled people and their families, spending more on essential goods and services like; heating, insurance, equipment, and therapies. These extra costs mean disabled people have less money in their pocket than non-disabled people, or simply go without. The result is that disabled people are more likely to have a lower standard of living, even when they earn the same.*<sup>46</sup>

The cost of disability is defined as the inequality in the standard of living experienced by persons with disability and their families that arises from the interaction between the person's impairment and the barriers they and their family face in participating in society, rather than the cost of the disability itself.<sup>47</sup> The economic cost of disability for individuals with disability and their families is significant. In their report *The Disability Price Tag 2019*, Scope in the UK calculated the monthly cost of disability for a British adult to be over £1,000.<sup>48</sup>

Governments around the world have long understood the financial difficulties faced by people with disability and have structured social security benefits as income support to individuals with disability and families accordingly. The higher rate of DSP (\$952.70 per fortnight) is in recognition of the extra cost of disability, although people with disability and their representative organisations, as well as the National Centre for Social and Economic Modelling (NATSEM), would argue that to achieve the same standard of living as a household without an adult with disability, a household with an adult with disability requires an extra \$107 per fortnight over and above their net disposable income.<sup>49</sup>

The economic cost of disability is compounded by the social cost of disability. Whilst many people with disability experience poor economic outcomes, they face the social cost of disability that presents as exclusion to participation in a variety of opportunities, including:

- Education and skills development.
- Accessing and retaining employment.
- Career advancement and increased earning capacity.
- Improved standards of living.

Besides the difficulties people with disability face themselves, many barriers are also encountered by households who have a household member with disability.

Caregiving, lack of earning opportunities, and increased household expenses can push households with family members with disability into poverty and financial

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<sup>46</sup> John et al. 2019.

<sup>47</sup> Li et al. 2019.

<sup>48</sup> John et al. 2019.

<sup>49</sup> Li et al. 2019.

hardship. Links between disability and reduced access to schooling, employment, and income are clearly apparent in Australia. Findings from the 2015 Survey of Disability, Ageing and Carers (SDAC) by the Australian Bureau of Statistics (ABS) show a higher proportion of people with disability<sup>50</sup> of working age (aged 15–64 years) do not hold a post-school qualification<sup>51</sup> compared with people without disability (44 per cent vs. 36 per cent).<sup>52</sup> Notably, this proportion was much higher (71 per cent) among people with profound or severe limitations in core activities.<sup>53</sup> In terms of employment, 54 per cent of Australians without disability aged 15-64 years had a full-time job in 2015, but only 27 per cent of people with disability, decreasing to only eight per cent of people experiencing a profound or severe disability.<sup>54</sup>

Consequently, people with disability are at a much higher risk of falling into lower-income groups than people without disability. This has not only been observed for those of working age but also among the elderly, those aged 65 years and over.

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<sup>50</sup> In this survey, a person with disability is defined as the one reporting disability.

<sup>51</sup> Non-school qualifications refer to educational attainments other than pre-primary, primary or secondary educational qualifications.

<sup>52</sup> ABS 2016.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

# The Social, Economic, and Cultural Impact of Living on Income Support

Due to their experiences with the social security system, research suggests that people within the partial capacity to work (PCW) category experience high levels of social, emotional, and cultural vulnerability which places them at risk for secondary conditions, particularly in relation to the generation of distress associated with the eligibility assessment process, the economic insecurity of lower payments, and welfare conditionality.<sup>55</sup> Inadequate levels of income support significantly undermine a person's ability to maintain their physical wellbeing and create greater risks of food and housing insecurity, particularly for Aboriginal and Torres Strait Islander persons living with disability in rural and remote regions.<sup>56</sup>

To demonstrate these high levels of social, emotional, and cultural vulnerability, the National Centre for Social and Economic Modelling (NATSEM) at the University of Canberra used a Standard of Living (SoL) approach in their report *Inequalities in Standards of Living: Evidence of Improved Income Support for People with Disability*. The SoL is "estimated by creating a composite index based on a set of variables reflecting households' risk of financial insecurity and hardship... which is tailored towards the lower end of the income distribution where many households having members with disability are concentrated."<sup>57</sup>

In reference to Table 3 on the following page:

*All of these indicators are of concern, but of particular note, are the relatively high proportions of households with persons with disability who 'went without meals due to shortage of money', and who 'can't afford to have friends or family over for a meal once a month'. Over 88 per cent of households with a member with disability on Newstart said they were unable to save money most weeks, 73 per cent did not consider saving was a main emergency money source of HH, and 66 per cent indicated they couldn't afford a holiday away from home for at least 1 week a year. The proportion of households with a member with disability on DSP responding 'yes' to these three questions were 72 per cent, 59 per cent and 46 per cent respectively. Indigenous households with a family member on DSP are particularly at risk of being under financial stress. Seven of 10 households with an Aboriginal and Torres Strait Islander family member with a disability receiving DSP could not raise \$2,000 within a week. An estimated 40.8 per cent of Indigenous households with a family member on DSP ran out of money for basic living expenses in the last 12 months.<sup>58</sup>*

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<sup>55</sup> Soldatic et al. 2019.

<sup>56</sup> Ibid.

<sup>57</sup> Li et al. 2019.

<sup>58</sup> Ibid.

**Table 1. Response to SoL indicators**

Variable	All HHs (%)	DSP (%)	Indigenous DSP (%)	NSA (%)	AP (%)
Can't afford to buy new clothes most of the time	11.0	28.5	-	48.0	10.7
Can't afford to spend time on leisure or hobby activities	10.4	27.0	-	44.5	10.2
Can't afford a holiday away from home for at least 1 week a year	22.6	46.3	-	66.2	25.4
Can't afford to have a night out once a fortnight	16.6	39.0	-	54.8	18.1
Can't afford to have friends or family over for a meal once a month	7.3	23.6	-	27.7	9.0
Can't afford to have a special meal once a week	11.9	29.6	-	46.8	12.1
Couldn't pay fuel/telephone bill on time due to money shortage	9.7	18.9	26.8	31.4	4.8
Couldn't pay car registration/insurance on time due to shortage of money	3.9	7.7	10.2	13.0	0.6
Went without meals due to shortage of money	2.7	11.5	13.1	14.4	0.9
Couldn't heat or cool home due to shortage of money	2.3	5.9	5.5	14.8	1.8
Couldn't raise \$2000 within a week	13.2	37.5	71.0	43.4	13.6
Sought assistance from welfare/community organisations due to money shortage	2.6	10.7	23.0	16.6	2.1
Sought financial help from friends/family	7.0	14.3	34.7	29.1	2.4
Saving is not a main emergency money source of HH	33.3	59.3	-	73.0	28.5
HH standard of living worse than 2 years ago	23.7	34.7	-	54.7	26.2
Unable to save money most weeks	55.3	72.3	-	88.2	60.6

Source: Authors' calculations from the 2015–16 HES. Numbers in Table 3 are weighted to be representative for the Australian population. For Indigenous households data were sourced from the 2014-15 National Aboriginal and Torres Strait Islander Social Survey

 2 x higher than All HHs       ≥3 x higher than All HHs

An increasing body of research suggests that people on income support with the designation of PCW often forgo medical treatment, which can, in turn, lead to a deterioration of existing conditions or increase their chances of mild short-term illness or injury developing into a new long-term condition.<sup>59</sup> Moreover, people on income support often report the adverse mental health conditions they experience as a result of some of the stresses they incur from having to navigate the social security system, including the anxiety associated with meeting compliance requirements.<sup>60</sup> A recent study examining the health of DSP recipients found that, while only eight per cent of participants reported their

<sup>59</sup> Li et al. 2019.

<sup>60</sup> Soldatic et al. 2019.

primary disability as a psychological one, 48 per cent reported experiencing a mental health problem.<sup>61</sup>

Overall, people living on DSP have lower levels of physical, emotional, and social wellbeing.<sup>62</sup> For those with a PCW, who are more likely to be unemployed and who require a higher level of financial support, such issues are only likely to be further exacerbated. People with a PCW are not being supported to achieve economic empowerment and experience poorer financial, mental, and social outcomes.

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<sup>61</sup> Kiely & Butterworth 2013.

<sup>62</sup> Collie et al. 2019.

# Framing Income Support Payments Using the Social Model of Disability

The social model of disability emerged in the 1970s with the idea that disability arises not from the impairment itself, but from social factors experienced by people with disability, such as discrimination and marginalisation.<sup>63</sup> That is to say, the social model “emphasises that people are disabled by ‘disabling barriers’ which exist in society, rather than by their impairments”.<sup>64</sup> In doing so, the model highlights the critical need for society to change the way that it views disability.<sup>65</sup>

The activists and theorists who developed the social model also identified and critiqued dominant ideas around disability.<sup>66</sup> They argued that these ideas constituted a ‘medical model’ of disability, which focuses on a person’s condition as an inherent flaw that needs to be fixed.<sup>67</sup> As a result, the medical model pursues the treatment or cure of impairment<sup>68</sup> while ignoring the possibilities for social change which could facilitate the participation and empowerment of people with disability.<sup>69</sup>

The social model of disability underlies the *CRPD*, which emphasises that disability arises from impairments which “in interaction with various barriers may hinder... full and effective participation in society on an equal basis with others.”<sup>70</sup> In the *CRPD*, the social model forms the foundation for a new human rights model of disability, which not only recognises that social barriers contribute to disability but emphasises that people with disabilities are the subjects of human rights. Therefore, the social model informs the obligations set out in the *CRPD* and should be reflected in policies which affect the lives of people with disabilities.

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<sup>63</sup> Oliver 2013.

<sup>64</sup> Ibid.

<sup>65</sup> Haegele & Hodge 2016.

<sup>66</sup> Shakespeare 2013.

<sup>67</sup> Haegele and Hodge 2016, 194.

<sup>68</sup> Shakespeare 2013.

<sup>69</sup> Finkelstein 2001.

<sup>70</sup> UN 2006, art 1.

# The Experiences of First Nations Australians

Indigenous Australians experience twice the rate of disability as the non-Indigenous population,<sup>71</sup> and they encounter additional difficulties when navigating DSP claims system. Research suggests that significant support is needed for Indigenous people with disability to be able to understand the paperwork associated with their claim and attend required appointments.<sup>72</sup> Often, this support is provided by services who are not funded to carry out this work.

We note that the proportion of Aboriginal and Torres Strait Islanders living in rural and remote Australia is higher than the general population. This means that they are disproportionately impacted by issues affecting these populations, such as lack of access to medical professionals and treatment, increased cost of obtaining medical evidence, and reduced access to technology and services to complete the claims process. The current medical model approach also fails to consider Indigenous views of disability and the body, as well as the longstanding discrimination and abuse that has impacted Aboriginal and Torres Strait Islander engagement with mainstream health supports.

Indigenous Australians face additional barriers to gaining employment and desire greater flexibility in meeting their mutual obligations. Those who live in remote areas are required to participate in Community Development Programs (CDPs) as part of their mutual obligations. They cannot meet their mutual obligations through participating in training or education and must commence Work for the Dole immediately. Research in the Northern Territory found that in 2018, 94 per cent of people in the CDP were Indigenous.<sup>73</sup> This approach means that informal means of participation such as volunteering, and support to build capabilities, confidence, and networks, are not available. Failure to meet mutual obligations means being cut off from any form of income support, which, given the cost of living in remote and very remote areas, can lead to extreme poverty and further health and welfare decline.

In their article *Why Extended Time on Newstart is Unsuitable for Aboriginal and Torres Strait Islander Australians Living with a Disability*, Karen Soldatic and Michelle Fitts discuss the impact of colonisation on First Nations Australians with disability in the context of receiving DSP.

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<sup>71</sup> Soldatic & Fitts 2018.

<sup>72</sup> Ibid.

<sup>73</sup> APO NT 2019.

*For people living with a disability, Newstart Allowance further entrenches individuals in extreme poverty and disadvantage. There is growing acknowledgment that to significantly improve health equity, recognition of the social and historical context in which many Indigenous Australians still live is needed. Investigation of Indigenous peoples' perception of disability, colonialism, and racism towards Indigenous Australians, such as those of Hollinsworth (2013) and King, Brough, and Knox (2014), argue for the need to decolonise disability so that service providers recognise and integrate the historical context, cultural diversity, and impact of racism into their designs and practice with working with and supporting Indigenous peoples living with a disability. In the context of DSP, Hollinsworth (2013) suggests Indigenous Australians are left to choose between fulfilling the steps of the application to access DSP and necessary entitlements and supports with the effect of increasing their exposure to discrimination, or living in poverty with insufficient and poor-quality services, unable to meet their needs.<sup>74</sup>*

Soldatic and Fitts, who state that little or no research has been undertaken to understand the impact of DSP reforms on First Nations Australians with disability, elaborate on the impacts of the onerous and burdensome nature of the DSP application process, including the particularly significant impact of a partial capacity to work determination. Per their work:

- DSP application requirements and process creates a high level of distress for applicants.
- Indigenous applicants experience extensive wait times.
- Indigenous applicants “sort themselves out of” the application process.
- Indigenous applicants do not apply for DSP or require breaks from progressing the application until they are emotionally or financially able to due to the onerous nature of the process.<sup>75</sup>

Soldatic and Fitts also identify four main impacts for First Nations Australians with disability of being placed on the JobSeeker Payment:

- Living with severe financial hardship.
- Challenges complying with DSP application.
- Being financially penalised for not complying with payment conditions.
- Supporting community members to manage severe financial stress

A particular issue that has been raised repeatedly is access to and affordability of culturally safe medical assessments that enable people to prove their degree of impairment. As stories included in this Submission demonstrate, the cost, time, and expense of seeking out necessary medical evidence is prohibitive and serves as a key barrier to eligibility for DSP for many First Nations Australians.

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<sup>74</sup> Soldatic & Fitts 2019.

<sup>75</sup> Ibid.

In December 2016, the Commonwealth Ombudsman authored a report titled *Accessibility of the Disability Support Pension for Remote Indigenous Australians*, which found that Indigenous Australians, particularly those living on remote communities, had been unduly affected by DSP reforms:

*In our view, the existing guidelines identify a limited range of circumstances where people may have difficulty obtaining specialists reports, such as undiagnosed psychiatric and psychological conditions. They do not specifically address the broader needs of vulnerable claimants who do not necessarily have mental health conditions, or the unique barriers faced by Indigenous people living in remote areas in obtaining specialist reports.*

*We recommend that policies and procedures on referrals for a specialist assessment be reviewed to encourage greater use of them for vulnerable claimants. This should especially occur where the person is Indigenous, in a remote location and the medical evidence may not be adequate for the assessor to reach reasonable conclusions on functional impairment. Specialist assessments should be particularly encouraged in cases where DHS has not conducted, or cannot conduct, a face-to-face assessment. The use of these referrals should be monitored and evaluated. DHS should also review and further strengthen training to ensure that assessors consider a referral for a specialist assessment where appropriate and clearly reflect any enhancements to processes in the Operational Blueprint.<sup>76</sup>*

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<sup>76</sup> Neave 2016.

# What Causes Harm – The Onerous and Burdensome Nature of Proving Disability

The process of “proving” one’s disability and satisfying DSP eligibility criteria has become increasingly difficult over the past 15 years.<sup>77</sup> A series of incremental legislative changes have been introduced, purportedly to help people with disability to re-enter the workforce. Effectively, this updated legislation has tightened eligibility criteria and created work participation obligations. Key legislative changes include:

- 2006 – Decreasing the work capacity rule from 30 to 15 hours, meaning those with a Continuing Inability to Work over 15 hours were no longer eligible.
- 2011 – Introducing new Impairment Tables and a Program of Support (POS) requirement for individuals who received a rating of more than 20 points, but not on a single table.
- 2015 – Removing the Treating Doctor's Report (TDR) as a format to provide evidence. This report was a guided questionnaire that a treating doctor could complete which collected information needed to address all the eligibility requirements for DSP. Time spent completing this report was claimable by a doctor under Medicare.
- 2015 – Introduced Disability Medical Assessments (DMAs) for anyone not manifestly eligible.<sup>78</sup>

AFDO submits that this series of legislative changes has created unfair and unnecessary roadblocks, increasing the burden on the individual DSP applicant to an onerous level. Overwhelmingly, people with a disability tell us that they feel the process has been deliberately designed to restrict access to only those with the skills, time, and resources to jump through the various eligibility hoops. It is AFDO’s perspective that these legislative changes have resulted in an overtly legalistic and cumbersome process that relies heavily on a medical model of disability by requiring individuals to provide evidence of a severe level of impairment.

*“It’s almost a deliberate attempt to restrict it [DSP], they’re making it so difficult.”*

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<sup>77</sup> St Guillaume 2020.

<sup>78</sup> Collie et al. 2020.

These changes have also disproportionately affected people who are the most vulnerable, including:

- People who are, or have been, homeless.
- People with psychosocial disability.
- People in rural, regional, or remote areas.
- People with limited informal supports.
- People who are disengaged with formal services.
- Older people.
- People with chronic physical and pain syndromes.
- People with complex and highly variable health conditions.
- People with comorbidities that have a cumulative impact.
- Aboriginal and Torres Strait Islanders.<sup>79</sup>

In effect, it has become a system designed to keep people out, and in doing so has directly and indirectly caused harm to people with disability.

#### **Lara: Claiming DSP was a traumatic experience**

Lara has suffered from ME/CFS and associated conditions for ten years. She received Newstart Allowance (with medical exemptions) for two years before being successful in her application for DSP. She still currently receives DSP. The application process was extremely traumatic for Lara, resulting in ongoing anxiety and an overall negative impact on her health conditions.

Lara experienced difficulty in accessing appropriate specialists with ME/CFS experience, who were also willing and able to complete a supporting report accurately. This difficulty in access was compounded by the narrow timeframes for application.

Lara is grateful for the independence that DSP allows her, but also experiences constant anxiety from the fear of review (and potential loss of DSP) or being put onto the Cashless Debit Card (and the restrictions that would impose on her life). All of her energy goes into just getting through the day, and Lara finds the added mental and emotional burden of this anxiety to be crippling to her health.

This deliberate exclusion is made evident by the significant reduction in population in receipt of DSP that has occurred as a combined effect of the aforementioned legislative changes.<sup>80</sup> Alongside a concurrent increase in DSP rejection rates, AFDO has also seen increased numbers of people with a disability forced to subsist on other, lower, payments;

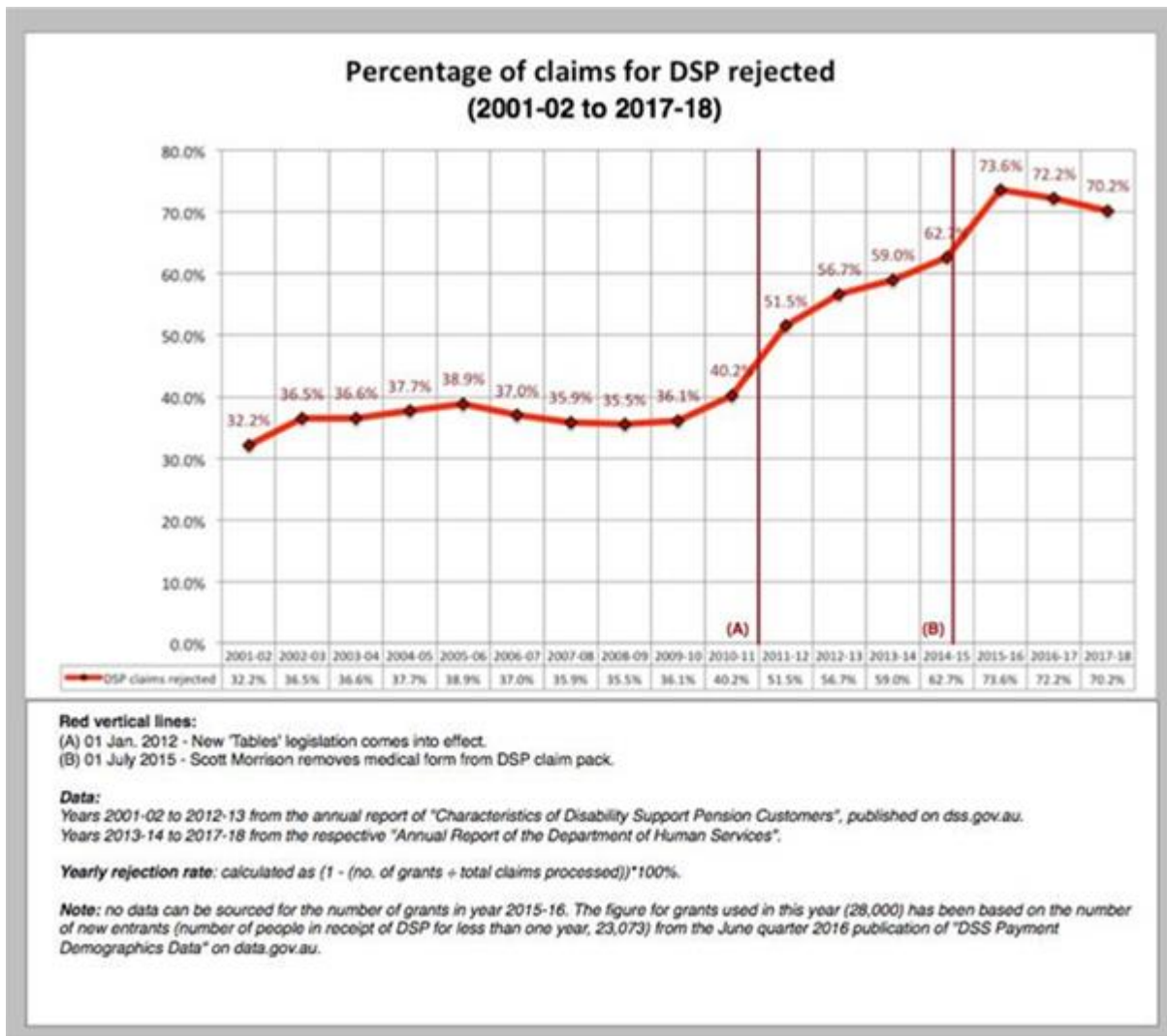
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<sup>79</sup> St Guillaume 2020; Soldatic & Fitts 2018.

<sup>80</sup> St Guillaume 2020.

primarily JobSeeker.<sup>81</sup> Between September 2012 and June 2018, the total number of DSP recipients declined, there was a reduction in the total number of people granted DSP, and there was an increase in the total proportion of applications rejected from approximately 40 per cent to over 70 per cent.<sup>82</sup> Figure 1 below outlines the rejection rate of DSP applicants during this period. There is a clear upward trend in the rejection rates and spikes after the key legislative changes were introduced in 2011 and 2015.

**Figure 1: Percentage of DSP Claims rejected 2001 – 2018.**



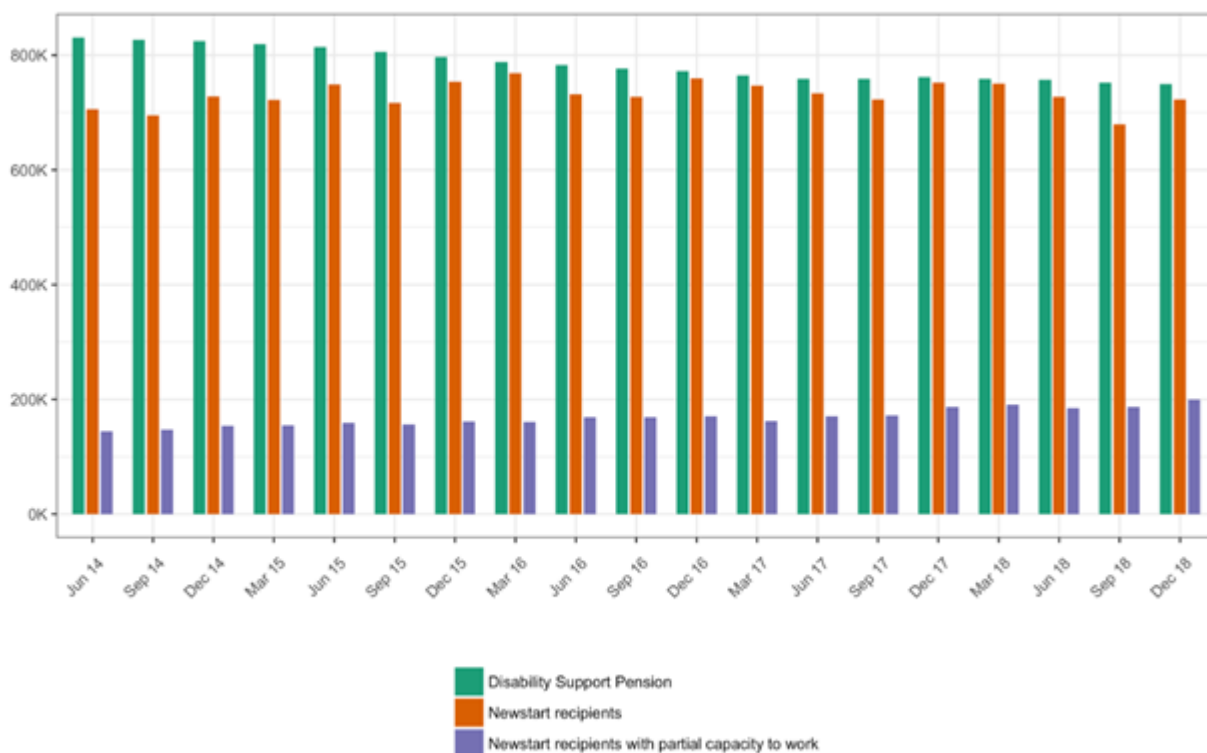
There was also a substantial increase in the number of people receiving JobSeeker payments with an impaired work capacity. Figure 2 shows the steady decline in the

<sup>81</sup> St Guillaume 2020.

<sup>82</sup> Collie et al. 2021.

number of DSP recipients from June 2014 to Dec 2018. It also shows a steady increase in the number of Newstart/JobSeeker recipients who have a partial capacity to work.

**Figure 2: From 2012 increase of persons with disability on Newstart Allowance.<sup>83</sup>**



The changes in DSP eligibility and work capacity requirements have also driven many young people to access the JobSeeker or Youth Allowances Payments instead, which provide substantially lower rates of pay than DSP.<sup>84</sup> Data obtained by Children and Young People with Disability Australia (CYDA) from the Department of Social Services (DSS) shows:

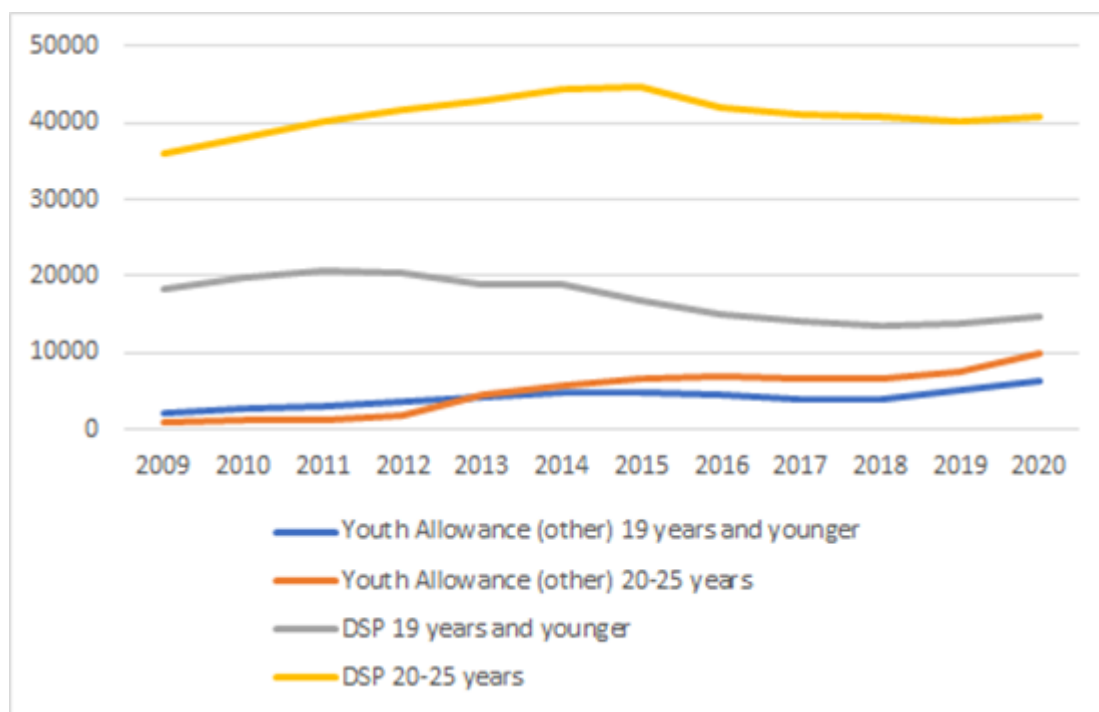
- The number of JobSeeker (formerly Newstart prior to 2020) recipients aged between 20 and 25 years with partial capacity to work has increased by 372.8 per cent in the decade from 2009, growing from 5,308 in 2009 to 25,096 in 2020.
- The number of Youth Allowance recipients under 19 years old with partial capacity to work has increased by 174.9 per cent, from 2,299 in 2009 to 6,319 in 2020.
- The number of Youth Allowance recipients aged between 20 and 25 years with partial capacity to work has increased by 970.3 per cent, from 936 in 2009 to 10,018 in 2020.

<sup>83</sup> Soldatic et al. 2021.

<sup>84</sup> SA 2021a.

- The number of DSP recipients under 19 years old has decreased by 20.4 per cent, from 18,414 in 2009 to 14,662 in 2020.
- The number of DSP recipients aged between 20 and 25 years has increased by 12.6 per cent, from 36,128 in 2009 compared to 40,690 in 2020.<sup>85</sup>

**Figure 3: Trends from 2009 to 2020 of Youth Allowance with partial capacity to work and Disability Support Pension recipients aged 19 years and younger and 20 to 25 years.<sup>86</sup>**



### Understanding the eligibility criteria

The first step in applying for DSP is understanding whether you are eligible to make a claim. Advocates often find that people seeking assistance with rejected claims do not understand the eligibility criteria.<sup>87</sup> In some cases, people with disability have only found out about the Program of Support (POS) requirement when they have appealed at the Administrative Appeals Tribunal (AAT). This is not surprising, however, as the qualification criteria for DSP is contained in three legislative instruments totalling 88 pages long. The layers of rules are complex and nuanced, and unless they are well understood, a person cannot ensure that they have all the evidence required to demonstrate their eligibility. While Services Australia has made some improvements to the information available on their website, it is still difficult to navigate, meaning critical information is easily missed.

<sup>85</sup> CYDA 2020.

<sup>86</sup> CYDA 2020.

<sup>87</sup> Collie et al. 2021.

The experience of many people with disability is that, even with access to all the necessary information, it remains complex, confusing, and utterly overwhelming.

### **John: Passed away while waiting for DSP**

John had terminal bowel cancer. When he was discharged from hospital, he had no income and fell behind in rent payments as he waited for his DSP application to be processed. As John's condition was considered a 'manifest impairment', he should have received DSP immediately. An Advocate assisted John with an application for Newstart to ensure he had some income. When John was told it would take up to two of the six months he had left to process his DSP application, he attempted suicide.

Two months after being discharged, John was in a vegetative state which Centrelink was advised of by his Social Worker. The Advocate advised the Social Worker to insist on a Manifest grant of DSP. The following week there was a request from Centrelink for John to attend a Job Capacity Assessment. The Centrelink Social Worker advised that the Manifest grant was still outstanding and that the Manager of DSP assessments had written a report that was still with the Quality Team.

John passed away 54 days after his DSP application was first lodged. Unfortunately, the Centrelink processing issues continued following John's death. Despite notifying Centrelink that he was deceased, Centrelink managed to continue paying DSP. On receipt of the Death Notice, Centrelink advised that John's estate would now have a debt to Centrelink due to overpayment.

### **Access to medical information**

As highlighted above, the current DSP application process places a heavy burden on the individual to collect the necessary raw medical evidence required to "prove" their disability status. Research conducted by the National Social Security Rights Network (NSSRN) found that 57 per cent of people surveyed had found it difficult or very difficult to obtain medical evidence for a DSP application.<sup>88</sup> Previously, people were able to have a TDR completed by their primary medical practitioner.<sup>89</sup> This report is now only available for persons overseas. The TDR collected all the required information needed to assess against the eligibility criteria in one easy-to-complete document, including information which pertained to ratings on the assessment table and a person's Continuing Inability to Work. It did not require medical practitioners to have in-depth knowledge of the eligibility criteria prior in order to provide evidence and ensured that all the relevant information was contained in one report. It has been reported that the largest non-medical reason given for

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<sup>88</sup> NSSRN 2018.

<sup>89</sup> SA 2015.

rejection of claims is the failure to supply the correct information.<sup>90</sup> It is not uncommon for reviews and appeals to be successful on the provision of information that would have previously been captured in the TDR.

### **Rebecca: Lack of access to medical assessment**

Rebecca was diagnosed with epilepsy, major depressive disorder, and anxiety. Rebecca experiences cognitive impairment and secondary anxiety and panic as a result of these conditions. Due to a lack of evidence from a neuropsychologist and lack of formal cognitive assessment, the cause of her cognitive difficulties was determined to be unknown, and therefore unable to be assessed by Centrelink in order to consider Rebecca for DSP.

### **Limited education and resources for Medical Professionals**

With the removal of the TDR, there is an expectation that both individuals applying for DSP and their medical professionals are able to understand and articulate the eligibility criteria. Since this change in policy, there has been an exponential growth in people needing advocacy support to provide medical evidence to claim DSP. Most medical professionals are not familiar with DSP eligibility criteria, and people with disability often lack confidence in their doctors' ability to provide the required evidence. People with disability are also concerned that medical professionals will not or are not able to allocate sufficient time to complete the work to the required standard. These fears are justified, as without significant guidance, medical professionals often do not provide all the evidence required for a person's application.

*"If you can get to a decent doctor who is prepared to sit and listen to you, it makes a big difference"*

*"Doctors have varying degrees of interest"*

Centrelink states that individuals can supply their own raw medical evidence and that there is no need to seek a report for the purposes of an application. However, the basic medical records that people have access to often do not contain the information required to demonstrate eligibility. In addition, if these records are older, or not specifically produced to address eligibility requirements, further records are then required. Experience shows us that submitting a purpose written report using the same language and terminology as the

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<sup>90</sup> Michael 2019.

eligibility criteria is far more successful than relying on Centrelink employees to interpret medical data. In many cases, advocacy organisations have a substitute 'TDR' that they provide a person with to make the report writing process as simple as possible for the medical professional. However, not all medical professionals have the time, capacity, or inclination to write an extensive report, and not all people with disability are aware of, or have access to, advocacy services.

Even when a treating medical professional has been provided with information on what evidence needs to be included in a report, the time taken to write a comprehensive report that sufficiently addresses all criteria is significant and is not something all medical professionals are able or willing to commit. This means that people with disability may still be rejected due to insufficient evidence. For example, their treating medical professional may recommend further treatment but fail to comment on the impact of this treatment on the person's function. For many people, further treatment is about managing the impact of the impairment or preventing further deterioration, rather than enabling them to return to the workforce. Additionally, medical professionals can be reluctant to say that a person's impairment is permanent, or that their function will not improve. This is an issue that disproportionately impacts young people with disability.

### **Collecting medical information**

For many individuals, the process of collecting the extensive evidence required for a DSP claim is long, expensive, and exhausting. The removal of the TDR means that they can no longer go to a single person to collect the information required, and instead are forced through an arduous process of endless appointments with multiple different medical professionals. Many people will give up before they even begin as the whole prospect seems too overwhelming.

### Jane: Took 3.5 years and 7 applications to access DSP

Jane lives with recurrent severe depression and applied for the Disability Support Pension six times in a three-year period. Jane was referred to a Disability Advocate through a Mental Health program supporting people to wellness. Her psychiatrist refused to provide written reports for Centrelink purposes; however, they kept her doctor up to date through correspondence. For DSP applications for a Mental Health impairment, a diagnosis must be made by a psychiatrist or clinical psychologist. It was not until Jane obtained a copy of the psychiatrist's report from her GP and a new DSP application was made that a successful outcome was achieved.

The secure income of DSP has significantly reduced Jane's distress, which in turn has helped improve her mental health. This stability has allowed Jane the capacity to attempt to build new friendships and participate in volunteering.

There are many people with a disability in the community who do not have a regular treating medical professional or access to a specialist. They may need to access medical records from multiple different medical practitioners. In the case of hospitals, this means going through a formal Freedom of Information (FOI) process. More often than not, considerable time and effort is needed to locate the relevant information, review it for completeness, and then identify what further evidence will still need to be collected. Depending on what evidence is available and how recent it is, this could mean needing further doctor appointments to collect additional evidence.

People who are homeless are an example of a cohort that rarely has access to comprehensive medical records. They often rely on travelling medical services or will visit the local GP in whichever area they currently happen to be located. In these cases, the barriers to access are multiplied:

- they must locate and collect evidence but may not know where it is.
- they may have to seek additional evidence with limited access to medical services.
- they may be rejected if their treating medical professional is not considered to know them well enough to provide evidence or comment on their prognosis.

Where further evidence may be required, people with disability often have to wait an inordinate amount of time before they are able to see the appropriate medical professional. This delay is exacerbated in rural and remote areas, where individuals may only have access to traveling medical professionals who visit their region every few months and already have long waitlists. If the required professional does not visit their area, they must then spend additional time and money traveling to a major population centre for an appointment. If further evidence is still required, then often people are placed back on

waitlists for an appointment before the health professional will review the report, if they even agree to providing further evidence.

*“If your GP doesn’t want to give evidence you need to start again and build a relationship with another GP”*

The cost of providing medical evidence has also increased, with many people having to pay to access information which serves as evidence of their disability. This includes obtaining reports from GPs and specialists, having reports amended to provide additional evidence, repeating scans or other tests, and payment for accessing private records under the Privacy Act. Previously, GPs could claim the costs of a TDR through a Medicare rebate, whereas now, individuals may have to pay upwards of \$200 for a thorough report from their GP. Additionally, those located in rural and regional areas may have to travel to metropolitan areas in order to attend both public and private appointments, adding the further expense of transport and accommodation. These are costs that can be difficult, if not impossible, to afford while living on a JobSeeker payment.

Another common experience reported is of Centrelink losing paperwork that has been physically handed into an office. Individuals who have been rejected will ask for a reason for the decision, only to find that key documents are missing from the Job Capacity Assessment (JCA). While those who are computer-literate can keep all their evidence together in an online claim, this process is still inaccessible for many people.

For people whose disability impacts upon their capacity to plan and organise, the system seems to purposely set them up to fail. This includes people with intellectual disabilities, psychosocial disabilities, those who are neurodiverse, and those living with chronic pain or fatigue. Evidence has demonstrated that where similar policies around the use of raw medical evidence have been implemented, they have been linked with adverse health outcomes.<sup>91</sup> Conclusions drawn from reviewing these policy changes have been that people with cognitive, intellectual, or psychological conditions may find it more difficult to manage the increased administrative burden, including gathering complex medical information.<sup>92</sup>

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<sup>91</sup> Collie et al. 2021.

<sup>92</sup> Ibid.

### **Candice: Living on Newstart and lack of support in gathering medical evidence**

Candice first applied for DSP three years ago. Whilst she has enjoyed working for most of her life, a long period in hospital due to kidney disease forced her to resign from her job. Candice has an intellectual disability, low literacy, and does not know how to use a computer. Candice was placed on a Program of Support with her only income being Newstart. This has been cancelled twice when hospital stays prevented her from reporting to the Disability Employment Service. Candice says that she has made a DSP claim which was rejected because she did not provide the right information. Her doctor provided a letter to explain the nature of her condition, but this was not considered suitable evidence. Candice does not understand why. She presented at a Disability Advocacy service for assistance and a new claim has commenced. Candice said that if someone had explained to her doctor what was needed it may have made things easier.

In failing to provide an accessible means of “proving” one’s disability, and, on the contrary, seemingly working to make that process as difficult as possible to effectively *prevent* access to what should be guaranteed social protections, AFDO submits that this constitutes another example of institutional abuse and neglect on the part of the Australian Government.

# What Causes Harm – Inadequate Accessibility for First Nations Deaf Australians When Interacting with Centrelink About DSP

AFDO is concerned that accessibility arrangements for Deaf Australians when interacting with Centrelink about DSP are inadequate. In particular, First Nations Deaf Australians in Far North Queensland are not receiving coordinated or sustained access to Auslan interpreters or Aboriginal sign language interpreters when interacting with Centrelink about DSP, which affects their ability to actively participate in DSP processes. This causes them considerable distress and leaves them in financial hardship, and in some situations has led to them living in poverty. First Nations Deaf Australians in Far North Queensland have also stated that when they interact with Centrelink, they are often treated differently due to the colour of their skin.

Ms Jody Barney is a Deaf Birri-Gubba/Urangan woman from Queensland who is the First Nations Disability Consultant for AFDO. Ms Barney raised with AFDO the experiences of First Nations Australians who are Deaf and the issue of inadequate accessibility when interacting with Centrelink about DSP, particularly the issue of access to Auslan interpreters or Aboriginal sign language interpreters. Through Ms Barney's networks with First Nations Deaf Australians in Far North Queensland, AFDO arranged a series of Zoom meetings to discuss three key issues:

1. Were First Nations Deaf Australians in Far North Queensland provided with access to Auslan interpreters or Aboriginal sign language interpreters when interacting with Centrelink about DSP?
2. What were the social, economic, and cultural impacts on First Nations Deaf Australians in Far North Queensland, their families, and communities as a result of inadequate accessibility to Auslan interpreters or Aboriginal sign language interpreters when interacting with Centrelink about DSP?
3. Were First Nations Deaf Australians in Far North Queensland treated differently when interacting with Centrelink about DSP because of the colour of their skin?

Ms Barney and AFDO considered it important for the voices of First Nations Deaf Australians in Far North Queensland to be heard directly, and so organised for direct-to-camera storytelling and gendered group conversations.

- Video 1 is of Alma Smith telling her DSP story.
- Video 2 is of Tressa Ovah telling her DSP story.
- Video 3 is a conversation with a group of First Nations Deaf Women from Far North Queensland.
- Video 4 is a conversation with a group of First Nations Deaf Men from Far North Queensland.

One of the key outcomes from AFDO's interaction with First Nations Deaf Australians in Far North Queensland was the discovery that those who are NDIS participants are using their NDIS Plans to fund their use of interpreters when interacting with Centrelink about DSP. First Nations Deaf Australians in Far North Queensland have stated that, where they have used NDIS Plan funds, their Centrelink DSP experience has improved immeasurably. First Nations Deaf Australians in Far North Queensland speak of improved certainty that interpreters will be available, as well as a higher quality of interpreting being provided because the interpreter knows the individual's story and is aware of the scope of interactions with Centrelink. This pragmatic 'work around' to the lack of access to interpreters cannot be lost as a possible option going forward.

At the same time, it has been long established and accepted that the Commonwealth Government is responsible for ensuring that Commonwealth agencies and the programs they administer – such as DSP – are fully accessible and that Government is responsible for any reasonable adjustments necessary. For people who are Deaf, that means that Services Australia is responsible for ensuring access to Auslan interpreters, so that interactions between Deaf Australians and Services Australia Centrelink staff are equitable and involve a common understanding of the subject of the interaction. This responsibility extends to other deaf languages such as Aboriginal signing. While many First Nations Australians who are deaf are fluent in Auslan, some First Nations Deaf Australians may need interpreters who are fluent in a particular Aboriginal signing language.

In terms of fulfilling this obligation to provide Auslan interpreters for people who are Deaf when interacting with Centrelink about DSP issues, it is important to understand that there are currently 30,000 Deaf Auslan users in Australia and they are serviced by only 257 accredited interpreters.<sup>93</sup> The significant deficit in the numbers of Auslan interpreters in the context of the overwhelming need for interpreting services means that when people who are Deaf interact with Centrelink about DSP, they are more than likely to do so without an accredited interpreter being available. As our case studies demonstrate, this can have direct negative consequences for Deaf people regarding sustaining their DSP.

The problem of the deficit between available accredited Auslan interpreters and the interpreting needs of people who are Deaf when they interact with Centrelink about DSP is independent of the universal obligations that Services Australia has to ensure equitable access to information for deaf people when interacting about DSP. The need to understand what has caused this numerical communication deficit and the obligation to participate in problem solving and solution setting stems directly from Services Australia's obligation to ensure that people who are deaf can equitably communicate about DSP with Centrelink. In partnership with people who are deaf, Services Australia is a key stakeholder in understanding the issues and participating in developing solutions to ensure equitable access to DSP information.

The lack of equitable access to information for people who are Deaf can have direct economic, social, and cultural impacts. For example, a person identified by an

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<sup>93</sup> ORIMA Research 2004.

ophthalmologist as being Deaf/Blind is entitled to the Blind DSP. Services Australia understanding the problem and participating in the solution may not bring about an immediate increase in Auslan interpreters, but it can help to ensure that equitable access to DSP information, such as pathways to particular income supports as described above, is provided. Part of Services Australia's obligation to understand and participate in problem solving regarding the shortage of interpreters is for Services Australia information distribution to be effective and accessible and to have information and access available in ways that limit the need for an interpreter.

For example, ensuring that Deaf people have access to easy-to-understand information in a range of communication formats regarding their income support rights and how those rights are applied to DSP policy and decision making for payments is one way in which information can be provided independently of interpreters. Another example would be to ensure that real time captioning is available in all Centrelink offices nationwide. A few years ago, NSW ran a trial of real time captioning which soon led to the availability of on-demand captions and interpreters in all NSW shopfronts. AFDO recommend this be extended to all Services Australia shopfronts.

AFDO believes the responsibility for providing access to Auslan interpreters or Aboriginal sign language interpreters when interacting with Centrelink about DSP remains that of Services Australia. However, the dearth of available interpreters compared to the interpreting needs of Australia's Deaf community may require consideration of alternative short-term and long-term solutions to this important problem.

# What Causes Harm - Navigating Centrelink Processes

## Navigating the Impairment Tables

The rules surrounding the Tables of Impairment present one of the most significant barriers to access experienced by people applying for DSP. Changes to the Tables of Impairment in 2011 meant that unless a person scored 20 points on a single Table, they would be required to complete a POS.<sup>94</sup> Many people struggle to prove they meet the 20-point criteria in a single category, and the decision to define a person as “severely impaired” only if they meet 20 points in one Table appears arbitrary. It fails to take into account the cumulative impact of two or more moderate impairments, and it is illogical to presume that people with impairments across multiple areas of function would have more capacity to find work. In practice, this means that an individual can accumulate upwards of 40 points across various Tables while still being obliged to meet the POS requirement. Overall, the Tables are confusing, poorly designed, and only allow for individuals to be assessed on conditions that are permanent; that is, they must be fully diagnosed, treated, and stabilised.<sup>95,96</sup>

### Mary: Complexity doesn't fit in Impairment Tables

Mary is diagnosed with mental health conditions and Autism Spectrum Disorder (ASD). It is difficult to know which condition primarily causes Mary's functional impairment. For example, due to Mary's ASD, she finds it difficult to engage in social interactions or understand social cues which causes her anxiety, which is then further exacerbated by her mental health symptoms. The complex interaction of her comorbidities is not able to be captured in the simplistic Impairment Tables. Mary's DSP claim was rejected, and she sought assistance from a Disability Advocate to appeal this decision. At the AAT, the Tribunal was evidently unprepared to deal with the complexity of her case. Further submissions were needed to investigate if both conditions should be assessed on the same Impairment Table. The Tribunal eventually accepted that both conditions could be rated on the Mental Health Table, however this was considered an inconsistent approach by some Tribunal members.

<sup>94</sup> Collie et al. 2020

<sup>95</sup> St Guillaume 2020; Fitts & Soldatic 2018

<sup>96</sup> A condition is considered “fully diagnosed” if a qualified health professional has confirmed a diagnosis, “fully treated” when a participant has completed all reasonable treatment including rehabilitation, and “fully stabilised” where, even with reasonable treatment, no significant improvement nor an ability to work in the next 2 years is expected (SA 2021c).

The Tables of Impairment set out very prescriptive circumstances for each of these three permanency criteria to be met. These criteria often represent a significant stumbling block for individuals. People have had their claims rejected in regard to permanency on the grounds of:

- Evidence being too old.
- Treating Medical Professional relationship being too short (disregarding historical evidence or lack of consistent treating health professionals).
- Inconsistent treatment recommendations between treating medical professionals.
- Where a person is currently undergoing treatment, the treating professional is unable to definitively say that function will not improve.
- Where a person has a medical condition unrelated to their application, they have not provided evidence of diagnosis and treatment.
- Decision-maker misinterpreting or failing to understand evidence provided.
- All possible treatments not being exhausted; for example, where treatment has been recommended but there are barriers preventing a person from undergoing it, or where Centrelink has recommended possible treatment to improve function/capacity to work.

The burden is thus placed on the individual to understand these complex criteria and then provide sufficient evidence, presented in the right language, in order to demonstrate the permanency of their condition. However, raw medical evidence does not always articulate the nuances of treatment and permanency, and there is a subjective nature to the definition of “fully treated”, including defining reasonable treatment. Many people feel as though Centrelink are looking for any small error, inconsistency, or ambiguity in their application so that they can deny a claim, even when it is clear that a person should meet the eligibility criteria. Decision-makers rarely seek clarifying information where any discrepancies are found. For example, where a Government Contracted Doctor’s (GCD) report makes a determination different to that of the person’s treating medical professional, Centrelink will often deny a claim. The onus is then on the individual to provide further evidence to refute the GCDs report. The knowledge that one small oversight or mistake could cost an individual their successful application has the potential to induce significant fear and anxiety, especially in those who may have already applied and had their claim rejected. The stress of this can often result in a worsening of the person's disability.

### Amanda: Living on savings as process “too stressful”

Amanda is 43 and currently lives on Workcover and Super income (totalling \$310 a week). Amanda has mental health and physical health issues. Amanda focused on her mental health issues in her DSP application as she has a good mental health team around her and was confident she could get the required supporting medical evidence with ease. It seemed she would achieve 20 points on one impairment table. Her physical health issues are complex and hard to quantify, but Amanda feels that they directly worsen her mental health. Amanda did not feel strong enough to include details of her physical illness in her DSP application as it would be too stressful to get sufficient supporting evidence.

Three months after lodging her DSP application, Amanda was given an appointment for a Job Capacity Assessment (JCA). She was worried as she did not know what this meeting would involve. She spoke to a Disability Advocate who explained what would happen and the types of questions that she would be asked. The opportunity to speak with the advocate alleviated some of the anxiety around attending the JCA.

In some cases, Centrelink has refused to consider evidence because they have nothing explicitly in writing that links an individual’s symptoms to a specific permanent impairment. Where a person has multiple disabilities, with not all of them meeting the permanency criteria, the Tables do not allow for the cumulative impact of all comorbidities to be considered when assigning points. These seemingly arbitrary decisions demonstrate an astounding lack of common sense and are, at best, an oversight; at worst, a deliberate attempt to deny people with disability their right to vital social protections.

The definition of ‘fully treated’ and determining what is considered ‘reasonable’ treatment can also prove a barrier for many. While Centrelink provides guidance on what can be considered reasonable treatment,<sup>97</sup> it is subjective, and does not support agency or bodily autonomy for people with a disability. For example, when talking about treatment being available at a location reasonably accessible at a reasonable cost, the Guidelines to the Rules for Applying the Impairment Tables (the Guidelines)<sup>98</sup> acknowledge that treatment may be prohibitively expensive, or only available in another country. They fail to take into account other potential barriers associated with treatment that may present, such as out-of-pocket costs for medication or transport, or the need to travel long distances to access required treatment for people living in rural and remote areas. In addition, JobSeeker base payments are so low that many people are forced to choose between attending treatment and meeting their basic necessities like food and rent. To comply with this criterion,

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<sup>97</sup> SA 2021b; DSS 2015.

<sup>98</sup> DSS 2015.

individuals are often obliged to take on debt, only further compounding the stress and anxiety they experience.

Reasonable treatment is also considered to be treatment that is low risk in nature. The Guidelines specify that a person may decide against treatment which has serious risks of unavoidable and significant side effects.<sup>99</sup> What may be considered significant side effects is not clarified and highly subjective. For example, a doctor may recommend a particular medication, but the individual feels that the side effects are not manageable and decides not to initiate or to cease treatment. That person would then need to sufficiently convince whoever assesses their application that the side effects were 'severe' enough to constitute a compelling reason not to pursue treatment. This was the case for a 26-year-old woman who declined to trial a drug that would put her into medical menopause. In her AAT appeal, Centrelink argued that her condition was not fully treated because she refused to trial the drug. AFDO submits that it is both incomprehensible and cruel that Centrelink thought it appropriate to force a 26-year-old woman to choose between having children in the future and accessing DSP. Thankfully, a Tribunal member recognised it was unreasonable to compel a young woman to undergo treatment that would prevent her from ever having children.

Furthermore, what is perceived as severe for one person may not necessarily be severe for another, potentially leading to that person's lived experience being dismissed or minimised. There is also the risk that people will continue with treatment with which they are uncomfortable due to the impression (and indeed, the reality) that they *must* comply in order to meet this criterion. As a result, people with a disability are denied agency over their medical decisions and ultimately their own bodies.

Where a person does not comply with reasonable treatment, Centrelink must be satisfied that the person lacks insight or judgement solely due to their impairment, and because of their impairment are unlikely to comply with treatment. Any reason for non-compliance that is not due to their impairment will not be considered a compelling reason.<sup>100</sup> Again, this Guideline is very subjective, and fails to consider the many intersecting issues a person may be experiencing. In one case, an individual's treating medical professional clearly outlined that his psychosocial disability and history of trauma made it extremely difficult for

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<sup>99</sup> DSS 2015.

<sup>100</sup> DSS 2015.

him to engage with treatment. The individual in question had been unable to maintain regular employment, had “fallen out” with his family, and was living in unstable accommodation. The medical professional was adamant that even if he engaged in treatment, his condition would not significantly improve within the next two years. Centrelink determined that the individual’s use of marijuana may have been a factor in his inability to engage and may impact upon the success of treatment. They recommended drug and alcohol rehabilitation, completely failing to acknowledge that his trauma and psychosocial disability would prevent the individual from being able to engage and that his drug use was a coping mechanism.

People with psychosocial disability, and those who have experienced previous trauma, have a particularly difficult time meeting the permanency criteria. These cohorts find it difficult to engage with supports and medical professionals long term, with many having difficulty participating in regular treatment and completing treatment plans. Consequently, they may lack a definitive diagnosis, have multiple inconsistent diagnoses, and will be unlikely to meet the rigid definition of fully treated and stabilised.

### **Shane: Sixth DSP application in five years finally successful**

Shane has lived with severe depression and accompanying mental health issues since being the victim of a crime several years ago. It was difficult for him to stay in employment as he had trouble leaving his home. He attempted to claim DSP five times over a period of four years. Due to concentration problems, Shane found that when Centrelink asked for more information, he became overwhelmed, especially when he believed he had already provided the information. It was very costly to obtain the medical evidence, and at times the applications had expired whilst waiting for a specialist appointment. Shane’s sixth application was successful, and he said this was because he had help completing the forms and someone went to the doctor with him to explain what was needed to support his claim. Shane hopes that now he has DSP he can move to safer accommodation and could volunteer in the community in some way

### **Review of the Impairment Tables**

AFDO brings to the Senate Committee’s attention the imminent review of the Impairment Tables by the DSS. This will be the first time that the significant changes made to the Impairment Tables are to be reviewed since their implementation in 2012. There has been much concern across the sector about the limited focus of the review on functionality of the Impairment Tables, rather than their impact. The review calls for submissions, but there has been no indication of other forms of consultation, especially with those particularly

affected by the Impairment Tables, such as people with psychosocial disability, people with chronic pain conditions, and First Nations Australians with disability. It is also critical that an independent advisory committee be appointed to guide the review. To ensure a robust review process, this committee must be comprised of people with clinical expertise in the different Impairment Tables, people with lived experience of disability, and their disability representative organisations (DROs). These processes are essential to ensuring the voices of people with disability are centred and that the full impact of the Impairment Tables can be understood.

One of the most concerning aspects of the current review of the Impairment Tables described the Department of Social Services as a “functional review”, is the lack of consultation with people with disability and lived experience of the disability support pension.

Currently the review of the Impairment Tables has three streams for consultation 1) Welfare and Disability Rights Organisations 2) Medical specialists 3) Internal stakeholders. AFDO raised the need for a fourth stream of consultation for people with disability and lived experience of DSP. Minister Ruston’s office and DSS agreed and a verbal proposal regarding consultation was discussed with Mr Andrew Seebach followed by a written proposal provided on the 23<sup>rd</sup> of July 2021

The Proposal included:

- One-to-one interviews with people with disability and psychosocial impairments on DSP eligibility and interaction with the Impairment Tables conducted by social researchers (tbc).
- Six 90-minute small focus groups inclusive of people who are deafblind, young people with disability, people with psychosocial impairments, First Nations Australians with disability, people with disability from culturally and linguistically diverse backgrounds, and women with disability.
- Social researchers to write the consultation report for DSS for the Review of the Impairment Tables.

On the 2<sup>nd</sup> of August, the Department of Social Services wrote to AFDO stating that it was not feasible to conduct the consultation process in the manner AFDO had proposed. Mr Seebach informed AFDO that:

- Since then, there has been no further conversations with DSS about a fourth stream of consultation for the Review of the Impairment Tables.

The absence in DSS and Services Australia of the Social Model of Disability in framing their understanding of the right to social protection, of which DSP is one example, is one

possible explanation for why the Review of the Impairment Tables in 2021 did not include consulting with the people who are the most directly affected by them.

In addition to the impact of legislative and policy barriers on people with disability, interactions with Centrelink and employment services often only further compound the harm and trauma experienced. It is clear that many Centrelink and employment service staff, even those who work in DES, lack a basic understanding of disability. This lack of understanding is problematic, given that people with disability are forced to interact with them as part of the claims process. Many people with disability report experiencing discrimination in these settings, often in the form of inappropriate or confronting questions or comments. In one example, a Centrelink staff member asked if a person's intellectual disability would “get better”.

## Attitudes

The attitudes displayed towards people with disability attempting to access DSP can also be concerning. There appears to be a perception among some Centrelink and employment service staff that people applying for DSP are simply lazy, work-shy, and seeking an “easy ride”.

*“You look normal, you look physically capable, go get a job!”*

In the case of younger applicants, staff may not believe it is possible for a young person to have a permanent disability. Comments by front desk staff, Job Capacity Assessors, Authorised Review Officers, and ESP staff reflect these perceptions, often lacking empathy and any real understanding of the reality of disability. In one example, a young person was told that they would “grow out” of their disability. Others have been told that they “weren’t trying hard enough”, or “weren’t disabled enough”. Encountering such ignorant and prejudiced attitudes when seeking help can be highly distressing for people with disability, especially when they desire to work but are unable to or are in a financially precarious position.

*“One throwaway comment by Centrelink staff or a doctor can be soul destroying. They [disability employment service providers] say that I'm lazy. Yeah, they do, they say, ‘Oh, you just don't want to find work, you're just lying. You're just making things up’, and I'm there proving that I do want to find work, I'm actually really motivated to find work. And then, I feel that they're actually not helping me find the work and I feel they're the ones who are getting the benefits financially and they're getting all of this*

*money from the Government to do their job, and I don't feel they're doing it well and it puts the burden and the pressure on me and other people around me and yeah, that's very difficult.”*

Centrelink staff are often unwilling, or unable, to take the time that may be needed to support someone whose disability impacts on their capacity to process and understand information, or who may require face-to-face interaction rather than accessing the enquiry line or online services. For example, despite clearly stating that help with forms can be found at a Service Centre, people with disability are routinely told that Centrelink staff do not assist with completing forms and that they need to go elsewhere. Furthermore, referrals to Centrelink social workers who may be able to provide further support are not always made. Many people with disability are already extremely vulnerable, and without support to navigate the required information or complete the complex application process, they are likely to fall through the gaps.

AFDO does acknowledge that there are some knowledgeable and compassionate individuals working in these spaces, but unfortunately, they are often few and far between. The reality is, many people with disability experience a lack of empathy on a daily basis when interacting with Centrelink and employment service providers. This lack of empathy further compounds the distress experienced by people with disability attempting to navigate these processes, particularly when receiving bad news about a claim or review. It is likely that many individuals, when confronted by such attitudes, will be discouraged from any further attempts to access DSP.

*“They [disability employment service providers] are not lenient at all. They force you to apply for so many jobs and if you have severe depression and really bad executive functioning and you have no energy to do anything at all because you just can't, they don't care. They are like, “No, you have to, otherwise we'll cut your payments,” and that obviously means you can't eat, you'll get kicked out of your house. And they don't care. And with Autism specifically, it's very routine-based, and if your routine's changed your whole world is turned upside down, and I have explained that to my job providers and they're like, ‘Oh, well, Centrelink say that if you can't do this on this day because you want to go and see one of your friends that's not a good enough reason,’ and I'm like, ‘Okay, but it's not just that’. And I think the employment service providers need so much education on the disabilities they claim to support because there's none. They just accuse you of not trying hard enough and I've actively had employment providers and their managers say to me that if I was really trying, I'd be applying for more than my threshold. And it felt so horrible, and I ended up crying.”*

## Access to Information

Issues with accessing information derive from both the lack of understanding from Centrelink staff about disability and DSP, as well as the inadequate tools and resources that are used to provide the information.

It is not unusual for Centrelink staff to provide conflicting information. Given that DSP eligibility criteria is already difficult to understand, this adds an additional layer of confusion for many people. Information as to why a particular decision has been made can also be minimal, or in some cases non-existent. For example, a person may be told that they were rejected as they did not receive 20 points on the Tables of Impairment. However, what may not be explained is that they could not be assigned any points because Centrelink was not satisfied that their condition was fully diagnosed, treated, and stabilised. If they then go to review, this may or may not be adequately explained by a Review Officer. A person may proceed all the way through to the AAT before they are directly given any substantial information as to what gaps are in their application.

In some cases, people seeking help are completely “brushed off” and told to look the information up online. While the Services Australia website meets technical specifications for the Web Content Accessibility Guidelines (WCAG) 2.0 level AA, and provides some features such as voice to text, this does not mean that it is accessible. Being able to easily navigate the website to find the relevant information, and having it communicated effectively, is just as important as being able to read the information on the screen. This is especially important for people with learning difficulties and cognitive impairments. AFDO note that there are no Easy English resources available through Services Australia on DSP. In fact, the overwhelming need for these resources has led to the not-for-profit sector having to spend time and resources to fill the gap.<sup>101</sup>

We also note that while there has been some attempt to provide explanations of terminology online, the DSP claim form still uses complex concepts and difficult words. Given how Centrelink staff refuse to help with forms, and do not understand the terminology themselves, we question how people applying for DSP are expected to complete the forms. Another concern is around the contents of some of the questions,

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<sup>101</sup> The ‘DSP and Me’ Easy English resource created by the Disability Resources Centre was funded by the Victorian Government Office for Disability with help from Social Security Rights Victoria.  
<https://drc.org.au/wp-content/uploads/2019/06/dsp-me-easy-english.pdf>

which could be considered invasive of others' privacy. For example, Question 36 asks for the details of anyone you are living with. It is not uncommon for younger people, or those forced to subsist on the significantly lower Newstart payment, to live in shared accommodations. If their housemates are not comfortable with their information being provided to Centrelink, this could deter a person from applying.

It is also a reality that not all people have internet access, or the level of computer literacy required to navigate the website and manage the online claims portal. While there may be a computer available to use at a Centrelink Office, this does not help individuals who need assistance to use it or cannot make it to the office in the first place. Some people may also find it difficult to maintain the level of concentration required to navigate online while in a busy Service Centre, and there are also concerns about privacy. The assumption that everyone has basic access to a computer and the internet was proven to be demonstrably false during the ongoing Covid-19 pandemic, with many individuals needing to access their NDIS funding to ensure they had tools to continue to access support remotely, such as the purchase of a laptop.

### **Peter: Access to Information**

Peter is now 51 years old and had worked his entire adult life in a career that he loved until the symptoms of Multiple Sclerosis (MS) made it impossible. He experienced significant shaking, pain, muscle weakness, incontinence issues, and progressive deafness. Peter uses a loaned hearing aid as he is unable to buy his own. Peter considered retraining, but ultimately had to accept this would not be possible due to the degenerative nature of MS, and so he applied for the Disability Support Pension. This application was rejected. Peter began the review process and immediately encountered significant delays in communication, not hearing anything for many months after initialising the review process. Peter felt unheard and found the process degrading. In one conversation, he was asked if he had arms and legs, and told that if he did, he was able work.

Eventually, an entire year after applying for DSP, Peter was sent to a Disability Employment Services (DES) Provider and advised that he needed to complete a Program of Support. This would mean an 18-month delay before Peter would be able to access DSP, while he suffers from a degenerative condition and has supporting evidence from his medical team to say that he is unable to work at all. The DES Provider advised Peter that they had taken him off their system because of his inability to work, but refused to provide any documentation for Centrelink, insisting that it's up to Centrelink to officially exit him from the program. Peter lives with his adult parents and relies on them heavily. He has found the entire application process, eligibility criteria, and appeals process confusing and overwhelming. Peter has sought support from family members with higher education and found that they also cannot understand the reasons for his rejection. Peter feels as though he has been treated with suspicion and contempt throughout the two years he's been trying to access DSP.

## Waiting times

The reality for many people is that their DSP journey can take years, often because of long waiting times and delays in processing applications and reviews. There is no set time frame for processing a DSP application. While Centrelink aims to have a review completed within 49 days, there is no legislated time frame, and the timeline is often not met. Centrelink staff tell people to be patient, but often cannot provide accurate information on the status of their application or review. Complaints do not always provide a resolution. In some extreme cases, people have waited over a year for their DSP claim to be processed, only to find out their claim has been rejected.

Where a person does not receive adequate information about why their DSP claim is rejected, they may inadvertently waste both time and resources appealing all the way to the AAT, only to be told that they need to seek more evidence and submit a new application. Especially frustrating is finding out that this information could have been provided by Centrelink from the beginning, saving the person time, stress, and money. For some people, the process is so traumatic that they need a significant amount of time to recover before making another attempt, with many simply giving up. For others, it takes so long that they may die while waiting for their outcome.

## **Paula: Long delays at Centrelink whilst living on Jobseeker**

Paula began experiencing horrific, disabling symptoms of Chronic Fatigue Syndrome (CFS) and Fibromyalgia in her twenties. She would sleep 20 hours a day whilst suffering from a vast array of symptoms that affected her daily functioning. Paula believed that, based on the eligibility criteria and the severity of her symptoms, she should clearly be eligible for DSP. Paula completed the application form to the best of her ability and included everything that she understood was needed.

When Paula sought updates on her application she was often dismissed, put on hold, and hung up on. Despite her limited physical functional capacity, Paula found face-to-face interactions easier, and would attend her local office for an update. At the Centrelink office, Paula was given inconsistent advice and was denied a specific case manager. Paula's application was rejected due to insufficient medical evidence after seven months of waiting. She appealed this decision with additional medical evidence. Her application was denied again nine months later as the additional evidence wasn't dated in the original application period.

Centrelink required Paula attend a job search provider in order to receive Newstart while her DSP application was processed. These providers recognised that Paula did not have the capacity to work and communicated this to Centrelink. During this time, Paula had to move back in with her parents as she couldn't afford to survive independently on Newstart.

The entire application and appeals process caused Paula significant stress and confusion, and she now experiences panic attacks when interacting with the Centrelink/DSP system. Although Paula was advised by Centrelink to reapply for DSP, the trauma of the first application posed a major barrier for her. Paula was eventually approved for DSP over two and a half years from the date of her first application. Paula believes that clear communication and correct advice from Centrelink regarding the application process would have drastically mitigated the resulting trauma and stress.

## **Job Capacity Assessments and Disability Medical Assessments**

Job Capacity Assessments (JCA) are required for anyone who does not meet Manifest eligibility. They are the tool Centrelink uses to review whether a person may meet medical eligibility and assess the Continued Inability to Work criteria. If the JCA determines that a person is potentially medically eligible, they are referred to a Government Contracted Doctor (GCD) for a Disability Medical Assessment. As part of this process, JCAs and GCDs have access to a person's medical information and reports and can liaise with treating doctors and other health professionals. Assessors have admitted to having limited time to read through information, conduct their assessment, and write their report. In our experience, this results in an assessment which may contain errors of fact, is not thorough, and/or lacks the nuance required to understand the impact of a person's disability. Additionally, it is the experience of disability advocacy organisations that JCAs will interpret medical evidence in unintended ways and make findings inconsistent with the medical evidence provided. In most cases, the Assessor does not contact the treating health professional to seek clarification and does not solicit further advice from the DHS Health

Professional Advisory Unit. The recent shift to phone assessments alongside GCDs' refusal to allow support persons to attend face-to-face sessions has made this experience even more alienating for people with disability.

Some individuals have been assessed by JCAs and GCDs who lack the necessary qualifications and experience to appropriately interpret medical evidence or understand the impact of multiple impairments. As an example, a person with a physical disability could be assessed by a psychologist. JCAs and GCDs have also made flippant and harmful comments to applicants during assessments, at times recommending inappropriate treatment options or unhelpful lifestyle advice.

### Program of Support (POS)

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#### **Tuan: Homelessness and mental illness make POS impossible**

Tuan lived with severe gout that significantly affected his upper and lower limbs and regularly caused him to be admitted to hospital. Due to the fluctuating nature of the condition, his impairments did not quite meet 20 points on a single Table. Tuan reported that he had attempted to attend a Program of Support in the past but was turned away. Centrelink notified Tuan that if he was able to present himself at a Centrelink office, he would be assigned a new job provider. However, due to his mental state, unstable accommodation (he was residing in a homeless shelter), and the severity of his physical conditions, Tuan was unable to follow the requirements and subsequently unable to participate in the POS. Tuan subsequently disengaged from support services.

POS requirements were introduced along with the updated Tables of Impairment in 2011. If a person scores the required minimum of 20 points under the Tables of Impairment, but not in a single table, they must then meet an additional requirement of completing a POS. To meet the POS requirement, a person must have completed or actively participated in a program of support for at least 18 months over the last three years or have met the exit requirements.<sup>102</sup>

The POS requirement is ostensibly a way for people with disability to test their capacity to work, with a view to determining what supports could be provided to help them enter paid employment. In reality, there is little evidence that it helps people to find and maintain open employment. What we do see is that most people who successfully complete the POS requirements are found eligible for DSP, with many more struggling to 'actively' participate

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<sup>102</sup> St Guillaume 2020.

for long enough to pass this hurdle.

### **Jake: DES providers won't release him from POS but recognise he is unable to work**

Jake experienced multiple vehicle accidents when he was younger, leaving him with chronic pain throughout his spine, neck and shoulders that has worsened over time. He is now 53. Jake also has dyslexia and requires additional support with written information. Jake worked his entire life in a range of industries including telecommunications up until his pain became worse and he was forced to stop working.

Jake attempted to work with his employer to make reasonable adjustments (such as working from home and ergonomic office equipment) so he could cope better, however, nothing seemed to work. Eventually, his employment broke down, and Jake applied for DSP in 2019 and was rejected. Jake didn't understand what Centrelink wanted from him, resulting in him feeling helpless and without support.

Jake appealed the decision and was self-represented at AAT1 and AAT2. When applying for the AAT2, he received no explanation about the process and had not received any accessible information about what is considered "fully diagnosed, treated, and stabilised". The lack of guidance and support at the AAT left Jake with no understanding of the process or the information required by Centrelink, and he could only rely on his own lived experience.

The AAT affirmed the original decision to not grant DSP. Jake remains on Jobseeker and is forced to fulfil a mutual obligation that exacerbates his health conditions and causes him physical pain. DES providers recognise that Jake is unable to work but can no longer accept his medical certificates. The DES providers have also refused to write letters to Centrelink, stating that he cannot participate in the POS, despite the acknowledgement of Jake's lack of capacity to work.

The Department of Social Services, in an answer to Senate Estimates Questions in May 2020, stated that the Government does not track participants in the Program of Support nor has there been any cost-benefit analysis of the effectiveness of the program. The Program of Support is unfair for people living with disability who have been assessed as unable to work more than 15 hours per week, as they must spend at least 18 months completing a work program. More than 50 per cent of people who are required to do the program fail to engage with the requirement and are refused DSP.

The POS is also ineffectual because the overwhelming majority of people assisted by Disability Employment Services do not find employment. For example, only 1.72 per cent of people in the caseload each month obtained employment for at least 26 weeks. Finally, the POS is costly because, for those who were able to meet this onerous hurdle and access DSP, the participant fees paid to Employment Service Providers (ESPs) who did not secure employment for those participants were between around \$3.5 and \$8million.

## Understanding the requirements

Many people who seek help from advocates, or who appeal the rejection of their DSP claim, have not heard of the POS. They are unaware that there is a requirement for them to engage with an Employment Service Provider (ESP). One study found that 83 per cent of respondents had not heard of POS when they submitted their claim for DSP.<sup>103</sup> In many cases, the POS requirement is not explained by Centrelink staff, and they fail to refer applicants through to an ESP. Some individuals may only become aware of the POS requirement at the external review stage of the AAT. Even when a person is linked with an ESP, they are still often unaware of the many rules which determine whether a person has 'actively' participated in a POS, in addition to the exemption and exit criteria.

## Active participation and exit

Many DSP applicants are unaware that periods of inactivity, such as being excused from participation on medical grounds, do not count as active participation. Additionally, a person must have engaged with a provider to be eligible for an exemption. This policy paradoxically results in those who are least able to participate in a POS due to their limited capacity being most likely to fail to complete the required 18 months of active participation. Many people with disability already struggle to attend their appointments, both due to the impact of their impairments and the financial cost of travel. The additional requirements of the POS only serve to place a further burden on those least able to bear it.

There is a mechanism available for a person to be exempted or exited early from a POS, however this is rarely utilised. There is no clear way to seek an exemption, and the onus is often placed on ESPs to exit a person. The criteria for exclusion or exit are complex, requiring an individual's permanent impairment to be the sole reason that they cannot complete the POS. It is difficult, bordering on impossible, to successfully argue this. Additionally, feedback from Disability Employment Service (DES) employees has been that management actively discourages the exiting of participants. In some cases, participants are specifically told by their case worker that, while they know there is nothing a POS can do for them, and they recognise the person's disability will prevent them from achieving employment, they still will not exit them. There is a clear conflict of interest present here for the DES, as exiting a person causes them a financial loss. In some cases, DES employees have stated that they would be putting their employment at risk if they exited

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<sup>103</sup> Collie et al. 2021.

participants. This creates high levels of frustration for people with disability, who once again feel like the system is designed to trap them in a cycle of poverty.

### **Jennifer: Several medical exemptions from Newstart requirements**

Jennifer experienced a workplace accident four-and-a-half years ago. English is Jennifer's second language, and she cannot read or write in her first language. She received insurance payments for two years to cover her loss of income after the accident, which were then cancelled after a medical review. Jennifer sought advice from Centrelink, was placed on Newstart, and joined an employment service. Applying for up to 20 jobs a week, Jennifer found that employers would send her home upon realising the extent of her injuries. Jennifer then received several three-month exemptions as she was in too much pain to work. Jennifer subsequently suffered anxiety, family problems, and was at risk of homelessness. In recent months, Jennifer's claim for DSP was successful, and she now hopes she can recover from this experience and that her future will be more secure.

# What Causes Harm - The Impact of Ineligibility and Partial Capacity to Work

Please refer to the report titled *Dead Ends: How our Social Security System Fails People with Partial Capacity to Work* authored by The Brotherhood of St Laurence, Western Sydney University, and the Australian Federation of Disability Organisations.<sup>104</sup>

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<sup>104</sup> Forthcoming.

# What Causes Harm – The Experience of Making Complaints and Seeking Reviews

Many people with disability are unaware that they have the right to appeal a Centrelink decision and there is a lack of support to assist them to do so. Applicants may lack the necessary health or stamina to challenge a decision. Information about complaints and how to go about seeking a review is also not always provided by Centrelink staff.

*“I didn’t know that I had the right to re-apply”*

## Review of Centrelink Decisions

Requesting a formal review of a decision can be a complicated process. Rejection letters from Centrelink state, in very fine print, that an individual can request an Authorised Review Officer (ARO) to review the decision, but do not provide any individualised information about why their claim specifically was rejected. They also fail to explain that a person can request an Explanation of the Decision. Without any explanation given as to why their claim has been rejected, it is difficult too for an individual to determine what additional evidence may be required to address any gaps in their initial application. In the majority of such cases, where an individual has not been informed of any omissions in their application, nor of the possibility of providing additional evidence to bolster their claim, there is little chance of the original decision being overturned.

Centrelink will often refer ARO requests first to a Subject Matter Expert (SME). If the SME upholds the original decision, it will then be passed on to an ARO for review. There is no reference to SMEs on the Services Australia website, nor any legislative requirement for a review to be assessed by both, as an SME should be an ARO with particular subject expertise. A decision made by either an ARO or SME is able to be appealed at the AAT. Given the high DSP rejection rate, AFDO questions how many SMEs’ decisions are overturned following the additional scrutiny of an ARO. This unnecessarily complex process seems designed only to further delay the decision to reject a claim. It takes substantial effort, including complaints to Centrelink, for a request for an Authorised Review to go straight to the ARO or for a formal decision to be made by a SME. Even where a review is sent directly to an ARO, it can still take an indefinite period of time before being assessed and decided upon. Centrelink staff do not provide updates on how long an individual should expect to wait, stating a lack of specific timeframes. Some people

report being told that their claim cannot be considered urgent as they are receiving JobSeeker and thus could not be experiencing financial hardship. On many occasions, it has taken a prompt from a Federal MP to see a review be processed within a six-month time frame. These delays add up over time, as outlined previously.

### **Sam: Felt judged and disrespected**

Sam has lived with psychosocial disability, PTSD, and chronic pain for most of her adult life. When the impacts of her disabilities were manageable, Sam studied at university and was working as a performer and artist. As she became older, her pain worsened and her mental health deteriorated, ultimately to the point that she was unable to work. Living in poverty and struggling to afford rent or necessities led Sam to apply for DSP in 2019. Sam submitted her DSP application with the support of her NDIS service providers and was eventually contacted by a Centrelink Assessor.

The Assessor informed Sam that they didn't have time to read the medical evidence before making the call and were in the process of printing the documentation. Without having read the supporting medical evidence, the Assessor did not have a true understanding of Sam's disabilities, and no insight into the impact that questions and statements might have on Sam. The Assessor suggested multiple inappropriate treatments and dismissed the copious amounts of attempted interventions and treatments detailed in Sam's medical evidence.

The Assessor ended the assessment by stating that the treatments that Sam had tried were irrelevant as they were just a check box exercise for her to get the pension. The Assessor claimed that Sam hadn't stuck with the treatments long enough to see any positive impact, and that if Sam was to live with friends instead of alone, she would be better as her friends could help her more.

Sam contacted her mental health team and a suicide hotline service as the interaction was too much to cope with without support. It took Sam three weeks to recover from the experience enough to be able to make a formal complaint to Centrelink. Sam expected that she would be assigned a new Assessor who would take the time to consider her medical evidence before passing judgement. When Sam rang Centrelink to follow up on the progress of her complaint, she was told the complaint was closed as they were not able to identify the original Assessor.

There is also considerable variation in how review decisions are communicated. While some decision letters provide detailed explanations as to why a decision was made, with relevant legislation, facts, and considerations explained; others merely cite a lack of evidence, with no information provided to assist the applicant and their doctors to understand the basis of the decision and determine what evidence may support a further appeal. Additionally, many AROs tend not to consider DSP eligibility in its entirety, dismissing an application as soon as one qualification criterion is not met. For example, if an applicant does not have 20 points on the Impairment Tables, the ARO will not consider or give information about inability to work. This leaves the person with no understanding of

other issues which may prove to be additional stumbling blocks if appealed to the AAT which can further delay claims.

## Complaints

As has already been addressed throughout this Submission, many people feel that their complaints are not being heard and are not effective in making change. Although Centrelink states that they will aim to have a complaint resolved within 10 working days, this is rarely the experience of people with disability. People may also complain to Centrelink staff only to later find out that their complaint was not formally recorded. When following up to find out what has happened with their complaint, they are then told they have no complaint on file and need to start over. Unfortunately, this is not an uncommon experience - lost paperwork and failure to record information, such as a formal complaint, happen so often that advocates advise people to proactively ask for Centrelink staff ID numbers and the contact log numbers. This decreases the likelihood of things going wrong, but also increases the burden on the individual to ensure that the system is doing the right thing.

### **Dave: Constant errors and delays before successful claim over a year later**

Dave is an Aboriginal man who applied for access to the Disability Support Pension. His first application was rejected. Dave requested an appeal but was given incorrect information about the process. He approached a Senator, after which he was referred to a Centrelink social worker. After much effort, follow-up, and distress, Dave finally resorted to completing a second DSP application approximately eight months later.

A Job Capacity Assessment was completed approximately a month after his application, and Dave was told that his DSP application would be processed within eight weeks. It was not. Dave contacted Centrelink on multiple occasions to enquire about the status of his DSP application and was told that his application was either 'on hold', 'suspended' or 'ongoing' during these contacts.

Dave sought help from an advocate. Approximately three months after the Job Capacity Assessment, Dave was verbally advised that his Job Capacity Assessment had not been sent to the right department and that it might take another nine months to process. Dave was finally found medically eligible for DSP within two weeks of this verbal advice. His benefit was backdated for five months - to the date the second application was sent in, rather than from the date of his first application more than a year prior.

Dave thinks, with all the stress the process has caused over the waiting period, that it was all too hard. He found the DSP processes frustrating and upsetting. The delays in his application meant that Dave had no income at the time of his father's death. When Dave approached Centrelink for assistance in expediting the process, he was asked to leave the building. Despite seeking, and receiving, assistance from a charity, Dave was unable to attend the funeral for his father.

# What Causes Harm - The Experience of Administrative Justice at the AAT

The Administrative Appeals Tribunal (AAT) is an independent tribunal for decisions made by Commonwealth services. The decision not to grant DSP, once it has been reviewed and upheld internally by an ARO or SME, can be appealed at the AAT.

The AAT process is a legal one and places individuals in an adversarial setting against Centrelink. The AAT member deciding on the outcome of an appeal is bound by legislation. This is not something that many people going into the AAT process understand properly. Many people go into the process believing that the AAT can 'right the wrongs' of the system, however this is not the case.

The AAT's process is both highly demanding and an unequal playing field. A person's disability, the reason they are at the AAT, can impact upon their ability to effectively take part in the process. They may be experiencing chronic pain or fatigue or have cognitive issues which make it difficult to concentrate and process information. Extreme stress, frustration, and anxiety may cause people to shut down, or become so overwhelmed that they cannot maintain control of their emotions. It is rare that a person with disability will have access to either legal representation or a disability advocate. Unlike the NDIS, there is no specific advocacy or legal funding available to assist people to appeal DSP decisions. This is despite the fact that in the 2019-20 financial year there were two-and-a-half times more DSP appeals lodged with the AAT than NDIS appeals.<sup>105</sup> Many legal services will not provide support unless they are certain that a person's evidence will meet the eligibility criteria. Centrelink, on the other hand, is equipped with resources and legal representation for every single case. Centrelink lawyers generally take a hostile approach, questioning the person's integrity and whether they even have a disability. They will leverage the power imbalance to evoke an emotional response from the person with a disability, which can shake their confidence and ability to articulate their argument. Many people report that going through the AAT process is a physically and mentally exhausting fight, leaving people so traumatised that even if told they have enough 'new' evidence to reapply, they will likely be hesitant to try again.

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<sup>105</sup> AAT 2020.

AFDO does wish to highlight the compassionate approach taken by some AAT members. In some cases, members have referred individuals to advocacy. They are also genuinely understanding of the struggles people face claiming DSP, and regret that their “hands are tied by a broken system”. Where a member has an understanding of disability, and takes a holistic approach, individuals find it easier to give information and Centrelink lawyers are more readily held to account for their behaviour.

Another issue impacting on the outcome of AAT appeals is the availability of evidence. As highlighted throughout this Submission, Centrelink systematically fails to provide people with the required information to make an informed decision about their DSP claim, including what additional evidence may be required. By the time a person presents to the AAT, a substantial amount of time may have passed since their initial application. New evidence is limited to a ‘qualifying period’ relating to the initial date of the claim.

The Disability Human Rights Clinic (DHRC) of Melbourne Law School was commissioned by AFDO to undertake a thematic analysis of AAT decisions involving claiming and reviewing DSP.<sup>106</sup> The purpose of this analysis was to determine to what extent DSP eligibility criteria, particularly as they are applied by the AAT when reviewing Centrelink decisions, may raise issues with regards to the provision of the *CRPD*. As has been discussed previously in this Submission, the *CRPD* is an international human rights treaty that serves to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”.<sup>107</sup> As a signatory to the treaty, Australia has accepted these obligations and must uphold the rights of people with disability as defined. In their thematic study, the DHRC analysed 45 AAT second review decisions in Victoria. Their analysis identified that both the reasoning of the Tribunal, and the underlying Australian social security law, reflect a reliance on the medical model of disability.<sup>108</sup> This is in stark contrast to the social model of disability underpinning the human rights framework of the *CRPD*, in which the effects of discrimination and marginalization are taken into account. The AAT adheres to and reproduces the medical model in multiple ways, including:

- Eligibility being dependent on an applicant’s condition being fully diagnosed, treated, and stabilised, leading to a high degree of reliance on medical evidence.

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<sup>106</sup> Ghita & Waters 2018.

<sup>107</sup> UN 2006, art. 1.

<sup>108</sup> Ghita & Waters 2018.

- Requiring that an individual has sought ‘reasonable treatment’ for their condition, which raises questions around applicants’ autonomy in choosing or refusing treatments.
- Failing to consider the social aspects of disability and how they may contribute to impairment, including social exclusion, marginalisation, and discrimination.

In addition to this centring of the medical model in DSP eligibility criteria, further questions were raised as to the extent to which DSP affords social protection and an adequate standard of living as required under article 28 of the CRPD.<sup>109</sup> The analysis found that DSP and its eligibility requirements:

- Fail to recognise and account for discrimination on the basis of disability, particularly in regard to finding and retaining employment.
- Fail to encourage inclusion and participation in employment by focusing on the individual rather than societal barriers.
- Fail to account for the extra costs associated with disability or to provide adequate social protections, leading to high rates of poverty among people with disability.

Another theme identified in the Report was that of justice and issues with legal representation, relating to article 13 of the CRPD.<sup>110</sup> These include:

- A confusing and inaccessible application and appeals process, wherein adequate accommodations are often not provided.
- Lack of access to qualified legal counsel and representation that can potentially influence the outcome of an individual’s claim.
- A long and arduous application and appeals process, with the average time from DSP application until AAT2 hearing being 658 days, and the average time from DSP application until publication of the reasons for the decision being 761 days.<sup>111</sup>

The report concludes that articles 13 and 28 of the *CRPD* are thus implicated by the eligibility requirements of DSP and the application of these requirements by the AAT.

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<sup>109</sup> UN 2006, art. 28; Ghita & Waters 2018.

<sup>110</sup> UN 2006, art. 13; Ghita & Waters 2018.

<sup>111</sup> Ghita & Waters 2018.

*“Ultimately, we recommend that DSP eligibility criteria and the AAT review process be re-evaluated in order to ensure compliance with Australia’s obligations under the CRPD.”<sup>112</sup>*

AFDO presents this to the Senate as additional evidence of how the Australian Government is failing to provide adequate social protections for people with disability, and thus perpetuating systemic abuse and neglect.

### **Ash: An incredibly dehumanising experience**

Ash suffers from a connective tissue disorder that causes her joints to be extremely hypermobile, resulting in premature wear and tear, chronic pain, and fatigue. As a result, she is no longer able to work in a typical workplace, mobilise independently, or participate in many social activities. This condition is significantly exacerbated by stress and anxiety. While applying and appealing for DSP, Ash accumulated debt from medication costs, seeking medical treatments, and obtaining reports.

Ash was initially advised by a Centrelink staff member to apply for Newstart with a medical exemption instead of applying for DSP. Her application for DSP was rejected based on a phone assessment that determined Ash to be capable of working more than 15 hours per week with unspecified interventions. Ash unsuccessfully appealed internally and then to the Authorised Review Officer. The Administrative Appeals Tribunal hearing was the first face-to-face assessment of Ash. They found that she met the eligibility criteria for DSP and found in her favour. Centrelink hired an external legal team to appeal this decision to the AAT General Division. Ash received assistance from Victoria Legal Aid in preparing for the second AAT hearing.

Initially, Centrelink accepted that Ash was fully diagnosed, but argued that she was not fully treated. In the second AAT hearing, they accepted that Ash was fully treated, but challenged her diagnosis. Both arguments would render Ash ineligible for DSP. The AAT dismissed this argument and affirmed their original decision, finding that Ash satisfied the criteria on the grounds of “chronic pain”.

The entire process of applying and appealing took over two and a half years. The process caused Ash significant stress and anxiety, subsequently worsening her disability. Centrelink still has the option to review Ash’s eligibility for DSP and potentially rescind the payment, resulting in lingering stress and anxiety. DSP allows Ash access to regular medication and consistent medical treatment, as well as providing stability and security in her living situation.

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<sup>112</sup> Ghita & Waters 2018, 40.

# Conclusion

The Disability Support Pension is a mechanism by which people with disability have the economic means to fund their social inclusion and participation in the life of the community and has been in existence in one form or another since 1947. It is imperative that it continues to function as a means of inclusion and not be seen as welfare or income support whilst people seek employment. AFDO believes that people with disability who need DSP should get DSP.

AFDO believes that currently, some people with disability experience harm when they come into contact with the existing policies and processes that frame eligibility to and review of the Disability Support Pension. AFDO believes that this harm constitutes institutional abuse and neglect because:

- The scope and scale of the harm, including the number of people with disability affected (347,000 people on the Jobseeker as a result of a partial capacity to work) and the length of time that an experience of harm may last.
- The lack of procedural fairness and arbitrariness of decision-making, leaving individuals feeling powerless and eroding their natural justice rights.
- The absence of the social model of disability in framing the policy and process of DSP eligibility and review and the reliance on an outdated and deficit medical model of disability.
- The negative consequences of being deemed ineligible, which has the potential to impact upon all spheres of life including the social, the cultural, and the economic.
- The fact that people with disability report psychological and emotional impacts resulting from a sustained process of questioning and denying the lived experience of their disability.
- The absence of people with disability in the formalised advice regarding the development, implementation and review of DSP eligibility and review policy and process.
- That ineligibility for DSP leaves people with disability vulnerable to living in poverty in the face of a lack of real employment opportunities.
- The failure to provide accessible information and processes that would enable all individuals to understand and participate.

As the Darwin Community Legal Centre state in their Submission to this Inquiry:

*It is our view that the Disability Support Pension is a bloated, byzantine, costly scheme. Demeaning to applicants, their families, health practitioners, Centrelink staff, and review officers. In practice, DSP does not result in outcomes that support disabled Australians, does not support increasing community access and participation, and does not support the Australian business community to engage people with disabilities in their workforce.<sup>113</sup>*

For all of these reasons, AFDO calls for a comprehensive review of the entire social security system.

August 31<sup>st</sup>, 2021.

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<sup>113</sup> Darwin Community Legal Centre.

## References

Australian Bureau of Statistics (ABS) (2016) *4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings, 2015*, Canberra: Commonwealth of Australia.

Administrative Appeals Tribunal (AAT) (2020) *Annual Report 2019-20*, Commonwealth of Australia, accessed 14 July 2021. <<http://www.aat.gov.au/about-the-aat/corporate-information/annual-reports>>

Aboriginal Peak Organisations Northern Territory (APO NT) (2019) Submission to Inquiry into the Adequacy of Newstart and related payments and alternative mechanisms to determine the level of income support payments in Australia, 30 September 2019, accessed 14 July 2021. <<http://www.amsant.org.au/apont/wp-content/uploads/2019/11/20190930-APO-NT-Submission-Newstart-Inquiry.pdf>>

Arstein-Kerslake, A., Maker, Y., Ireland, M. & Mawad, R. (2018) 'Research needs in access to justice for people with disability in Australia and New Zealand', Scoping Paper, Disability Access to Justice Research Consortium, February 2018. <<https://socialequity.unimelb.edu.au/news/latest/disability-access-to-justice-research-consortium-scoping-paper>>

Australian Government (2021a) *JobKeeper Payment*, The Treasury (Cth), viewed 27 August 2021. <<https://treasury.gov.au/coronavirus/jobkeeper>>

Australian Government (2021b) *Key Terms*, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, accessed 27 August 2021. <<https://disability.royalcommission.gov.au/about-royal-commission/key-terms>>

Australian Government (2021c) *Social Security Guide*, version 1.284, 9 August 2021, accessed 30 August 2021. <<https://guides.dss.gov.au/guide-social-security-law>>

Children and Young People with Disability Australia (CYDA) (2020) *Submission to the National Disability Strategy beyond 2020*, November 2020, accessed 14 July 2021. <<https://www.cyda.org.au/resources/details/238/national-disability-strategy-beyond-2020>>

Centre of Research Excellence in Disability and Health (CRE-DH) (2021) Research Report: Nature and extent of violence, abuse, neglect, and exploitation against people with disability in Australia, Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with a Disability, March 2021.

COAG Reform Council (2013) *Disability 2011-12: Comparing performance across Australia*, May 2013.

Collie A., Sheehan, L. & McAllister, A. (2019) *The Health of Disability Support Pension and Newstart Allowance Recipients: Analysis of National Health Survey Data*, Insurance Work and Health Group, School of Public Health and Preventive Medicine, Monash University.

Collie, A., Sheehan, L., & Lane, T. (2021) 'Changes in Access to Australian Disability Support Benefits During a Period of Social Welfare Reform', *Journal of Social Policy*, 1-23. doi:10.1017/S0047279420000732

Department of Social Services (DSS) (2015) 3.6.3.05 *Guidelines to the Rules for Applying the Impairment Tables*, accessed 14 July 2021. <<https://guides.dss.gov.au/guide-social-security-law/3/6/3/05>>

Economic Justice Australia (EJA) (2020) *Submission to DSS evaluation of the Revised Disability Support Pension (DSP) Assessment Process*, EJA.

Finkelstein, V. (2001) *The social model repossessed*, The Disability Studies Archive UK, Centre for Disability Studies, University of Leeds. <[www.leeds.ac.uk/disability-studies/archiveuk/archframe.htm](http://www.leeds.ac.uk/disability-studies/archiveuk/archframe.htm)>

Flynn, E. (2016) *Disabled Justice?: Access to justice and the UN Convention on the Rights of Persons with Disabilities*, London, New York: Routledge.

Ghita, E. & Waters, E. (2018) *Thematic Analysis of Administrative Appeals Tribunal (AAT) Decisions Involving Claiming and Reviewing the Disability Support Pension*, December 2018, Melbourne Law School, Victoria.

Haegele, J.A. & Samuel Hodge, S. (2016) 'Disability Discourse: Overview and Critiques of the Medical and Social Models', *Quest* 68(2): 193-194.

Henriques-Gomes, L. (2019) 'Man died of bowel cancer while waiting for disability support pension approval', *The Guardian*, 8 May 2019, accessed 14 July 2021. <<https://www.theguardian.com/australia-news/2019/may/08/man-died-of-bowel-cancer-while-waiting-for-disability-support-pension-approval>>

Kayess, R. & French, P. (2008) 'Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities', *Human Rights Law Review*, 8(1): 30.

Kiely K.M. & Butterworth, P. (2013) 'Social disadvantage and individual vulnerability: a longitudinal investigation of welfare receipt and mental health in Australia', *Australia and New Zealand Journal of Psychiatry*, 47(7): 654.

Klapdor, M. (2021) *Australian Government COVID-19 disaster payments: a quick guide*, Parliament of Australia, 4 August 2021, accessed 27 August 2021. <[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp2122/Quick\\_Guides/COVID-19DisasterPayments](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2122/Quick_Guides/COVID-19DisasterPayments)>

John, E., Thomas, G. & Touchet, A. (2019) *The Disability Price Tag 2019: Policy report*, SCOPE, accessed 30 August 2021. <<https://www.scope.org.uk/campaigns/extra-costs/disability-price-tag/>>

Li, J., Brown, L., La. H.N., Miranti, R., & Vidyattama, Y. (2019) *Inequalities in Standards of Living: Evidence for Improved Income Support for People with Disability*, NATSEM, Institute for Governance and Policy Analysis, University of Canberra.

Michael, L. (2019) 'Meet the woman who spent 22 months applying for the Disability Support Pension', *Probono Australia*, 18 July 2019, accessed 14 July 2021. <<https://probonoaustralia.com.au/news/2019/07/meet-the-woman-who-spent-22-months-applying-for-the-disability-support-pension/>>

Mills, N. (2020) 'Coronavirus: Am I eligible for Centrelink's Jobseeker payment and does my partner's income affect it?', *ABC News*, 25 March 2020, accessed 27 August 2021. <<https://www.abc.net.au/news/2020-03-25/coronavirus-can-i-get-centrelink-jobseeker-if-partner-has-a-job/12085164>>

National Social Security Rights Network (NSSRN) (2018) *NSSRN Member Survey: Client experiences of claiming for the Disability Support Pension*, January 2018, Sydney, NSW, accessed 14 July 2021. <<https://ejaustralia.org.au/wp/wp-content/uploads/2018/02/NSSRN-Report-DSP-SURVEY-RESULTS-2017-2018-01-31-FINAL.pdf>>

Neave, C. (2016) *Accessibility of Disability Support Pension for remote Indigenous Australians*, Commonwealth Ombudsman, Department of Human Services, Report No. 05, December 2016.

Oliver, M. (2013) 'The Social Model of Disability: thirty years on,' *Disability & Society*, 28(7): 1024.

ORIMA Research (2004) *Supply and Demand for Auslan Interpreters across Australia*, Report prepared for the Department of Family and Community Services, accessed 30 August 2021. <<https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/report-on-supply-and-demand-for-auslan-interpreters?HTML>>

Ortoleva, S. (2011) 'Inaccessible Justice: Human Rights, Persons with Disabilities and The Legal System', *ILSA Journal of International & Comparative Law*, 17(2): 281-284.

Quinn, G. (2009) 'A Short Guide to the United Nations Convention on the Rights of Persons with Disabilities', *European Yearbook of Disability Law*, 89(1): 111.

Services Australia (SA) (2015) *Social Security Guide: 3.6.2.10 Medical & other evidence for DSP Summary*, Australian Government, accessed 14 July 2021. <<https://guides.dss.gov.au/guide-social-security-law/3/6/2/10>>

Services Australia (SA) (2021a) *A guide to Australian Government Payments*, 1 April to 30 June 2021, accessed 14 July 2021. <<https://www.servicesaustralia.gov.au/sites/default/files/co029-2104v2.pdf>>

Services Australia (SA) (2021b) *Fully diagnosed, treated and stabilised*, Australian Government, accessed 14 July 2021. <<https://www.servicesaustralia.gov.au/individuals/services/centrelink/disability-support-pension/who-can-get-it/medical-rules/general-medical-rules/fully-diagnosed-treated-and-stabilised>>

Shakespeare, T. (2013) 'The Social Model of Disability', in L. J. Davis (ed.), *The Disability Studies Reader*, Routledge, 4th ed.: 214-215.

*Social Security (Administration) Act 1999 (Cth.)*

*Social Security Act 1991 (Cth.)*.

Soldatic, K. & Fitts, M. (2018) 'At what cost?' *Indigenous Australians' experiences of applying for disability income support (disability support pension)*, Western Sydney University: Sydney, NSW.

Soldatic, K. & Fitts, M. (2019) 'Why Extended Time on Newstart is Unsuitable for Aboriginal and Torres Strait Islander Australians Living with a Disability', *Journal of Australian Social Work*, 73(2): 191-203.

Soldatic, K., Fitts, M., Magee, L., & Thomas, G. (2019) *Submission 75: Adequacy of Newstart and related payments and alternative mechanism to determine the level of income support payments in Australia*, Senate Standing Committees on Community Affairs, accessed 14 July 2021.

<https://www.aph.gov.au/DocumentStore.ashx?id=06b9954c-b150-4dec-af96-9288aee2023d&subId=669152>

Soldatic, K. & Pini, B. (2012) 'Continuity or Change? Disability Policy and the Rudd Government', *Social Policy & Society*, 11(2): 183–196.

St Guillaume, L. (2020) *Newstart, poverty, disability and the national disability insurance scheme*, Whitlam Institute, Western Sydney University: Sydney, NSW.

Thornton, D., Bowman, D. & Mallet, S. (2020) *Safety net to poverty trap? The twentieth-century origins of Australia's uneven social security system*, Working Paper, September 2020, Fitzroy: Brotherhood of St Laurence.

United Nations (2006) *Convention on the Rights of Persons with Disabilities*, Treaty Series, vol. 2515, Dec. 2006.

UN Committee on Economic, Social and Cultural Rights (CESCR) (2008), *General Comment No. 19: The right to social security (Art. 9 of the Covenant)*, UN Doc E/C.12/GC/19, 4 February 2008.

UN General Assembly (2015) *Report of the Special Rapporteur on the rights of persons with disabilities*, 70th session, UN Doc A/70/297, 7 August 2015.

UN General Assembly (1966) *International Covenant on Economic, Social and Cultural Rights*, Treaty Series, vol. 993, 16 December 1966.

Vu, B., Khanam, R., Rahman, M. & Nghiem, S. (2020) 'The costs of disability in Australia: a hybrid panel-data examination', *Health Economics Review*, 10 (6): 1-10.  
doi: 10.1186/s13561-020-00264-1.

Weller, P. (2016) 'Legal Capacity and Access to Justice: The Right to Participation in the CRPD', *Laws* 5(1): 1-3.