

EXPLAINING THE EVIDENCE FOR REFORM SERIES

PAPER 1: UNDERSTANDING THE EMPLOYMENT ECOSYSTEM FOR PEOPLE WITH INTELLECTUAL DISABILITY

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HEADLINES:

- A bifurcated system of 'open' and 'supported employment' has been established since 1986, via the *Disability Services Act 1986*, and has directed those with higher support needs to ADEs.
- Recent changes, via NDIS, mean high level supports (i.e. beyond reasonable adjustment) are now available in all workplaces, disrupting the segregated system of open and supported employment services.
- The current Commonwealth employment support system is based on criteria that restricts entry to employment supports based on 'work capacity', i.e. number of hours able to be worked per week. This system means those most in need of employment support are routinely ineligible for it via a range of Commonwealth labour market programs.
- Work capacity is linked to notions of productivity and used to justify payment of sub minimum wages. It is not clear if adequate training, supports, adaptations and productivity have been provided, as required by law, to enable maximum productivity.
- The NDIS has altered the way supported employment is funded and where it can be funded, enabling all workplaces (not just ADEs) to offer supported employment.
- As an individualized funding mechanism, NDIS funding is not able to be used to compensate for the inaccessible design features of mainstream activities such as vocational training, secondary school work experience programs or active labour market programs, meaning these remain poorly designed or exclusionary for people with intellectual disability.
- The market of providers has not responded to a clear market gap by initiating evidence-based employment supports for people with intellectual disability.
- There are overlapping systems and services of employment-related supports including schools, TAFEs, Commonwealth labour market programs (such as DES), the NDIS, and other employment services. These largely do not offer relevant employment supports for people with intellectual disability.

INTRODUCTION

Policy has a significant impact on the experiences and outcomes of people with intellectual disability in relation to employment. The Department of Social Services, Supported Employment Consultations with stakeholders in 2017/2018 identified that

Well-designed policy and processes were considered the most important element that supports or contributes to good employment outcomes in supported employment (DSS, 2018, p.33).

The following outlines some of the key components of the employment policy landscape relating to the employment of intellectual disability in Australia, and their impacts.

OVERARCHING DISABILITY POLICY FRAMEWORK

Commonwealth and State policies since 2008 have broadly echoed the United Nations Convention on the Rights of Persons with Disability (CRPD), and its assertion of the rights of people with disability to lives of inclusion on an equal basis with others, including in the area of employment (Article 27). The right to employment is available to all people with disability regardless of the nature or extent of disability. The *National Disability Insurance Scheme Act, 2013*, likewise includes Objects and Principles that promote ‘full inclusion’ and participation in mainstream employment (Commonwealth of Australia, 2013).

However, these aspirations have not been enabled by more targeted policies and programs relating to the employment of people with disability which have been dubbed ‘incoherent’ and ‘misaligned with the rights of people with disability’ and the overarching policy objectives of full inclusion (AFDO, 2018, p.3).

THE CONSTRUCTION OF A DIVIDED SYSTEM OF EMPLOYMENT EXPECTATIONS AND EMPLOYMENT SERVICES FOR PEOPLE WITH DISABILITY

In 1986, the *Disability Services Act* (Commonwealth of Australia, 1987) established two broad types of employment services for people with disability, open and supported employment services, essentially enshrining a bifurcated model where only some people with disability were supported into open employment. As described by Cheng et al. (2018):

Open employment services provide assistance for job seekers with disabilities to obtain and maintain their employment in the regular workforce through specialist support from outside of the employee’s workplace (p. 318 citing Anderson, Psychogios, & Golley, 2000).

Open employment supports in Australia originally broadly aligned with approaches called ‘supported employment’ in international contexts, with the aim of a ‘real job for regular wages in an integrated setting alongside employees without disability’ (Cheng et al., 2018, p. 318) through the provision of a range of supports prior to and post employment. Open employment services for people with disability are now primarily delivered by Disability Employment Services, funded by the Commonwealth government and administered by the Department of Social Services. In recent decades, the narrowing of the types of supports funded within open employment services for people with disability has meant that they now compare poorly with international literature on ‘supported employment’ approaches for people with disability.

The *Disability Services Act* also established the second category of employment services, called ‘supported employment services’ for those people who are ‘unlikely’ to gain competitive employment at or above the award wage:

supported employment services means services to support the paid employment of persons with disabilities, being persons:

- (a) for whom competitive employment at or above the relevant award wage is unlikely; and
- (b) who, because of their disabilities, need substantial ongoing support to obtain

or retain paid employment (Commonwealth of Australia, 1987, Part 11, Div 1, 7.).

Unfortunately, this posits the view that people with high support needs will be unable to work in open employment and positions the provision of high levels of employment supports as only applied to those unlikely to gain competitive (open) employment and only available in specialist supported employment services (later called Australian Disability Enterprises [ADEs]). Unintentionally, this definition has reinforced segregation rather than the inclusion and integration of people with disability envisaged within the Objects of the Act. Until recently, supported employment services have been provided in settings such as ‘sheltered workshops, enclaves or work crews’ (Cheng et al., 2018, p. 318), called Australian Disability Enterprises (ADEs) (since 2009), and funded by the Commonwealth government. Funding arrangements for ADEs have been changing since the advent of the National Disability Insurance Scheme (NDIS) where funding has been shifting from ‘case based’ funding to ADEs to individualised funding to purchase employment supports within the funding packages of NDIS participants. Recent changes have enabled participants to utilise ‘supports in employment’ funding in services other than ADEs, though the market of service providers for this is yet to emerge. Further information about ADEs is available in Paper 4.

In 2012, the changes to be brought about by the NDIS were forecast by the Commonwealth government and an independent Advisory Council. In this context, it was proposed that ‘supported employment’ should be redefined simply as ‘ongoing support’ and that the ‘barriers between the terms “open” and “supported” employment for people with disability who need ongoing support to find and maintain work’ be removed (FaHCSIA, n.d., p.6).

Regardless of these changes to funding, current policy ‘presumes that people with intellectual and multiple disabilities are largely unable to work in open employment settings’ (AFDO, 2018, p. 13). Underpinning the design of employment services funded by the Commonwealth have been assumptions about ‘independent workers’ in open employment defined as needing only limited or short term supports (DSS, 2017).

COMMONWEALTH EMPLOYMENT SERVICES SYSTEM

Australian Commonwealth governments have adopted Active Labour Market Programs (ALMPs) as the main mechanism of support to enter open employment for unemployed people receiving income supports. ALMPs target the jobseeker and largely focus on job search effectiveness, work readiness via work experience and on-the-job training, wage subsidies paid to employers or public sector job creation, and formal education and training (Borland, 2014). In Australia, employment services are administered by a range of different Commonwealth government departments (for example, Department of Social Services [DSS], Department of Education, Skills and Employment [DESE], and the National Indigenous Australians Agency [NIAA]) and delivered by a market of for-profit and not-for-profit providers (OECD, 2017). While people with disability are very likely to be part of the wider cohorts targeted by these services (Immervoll et al., 2019), the primary ‘specialist’ employment service for people with disability is the Disability Employment Service (DES), discussed later.

In addition to the suite of marketized employment services, since 2015/16 the Commonwealth government offers a centralised information hub for disability employment known as ‘JobAccess’. The service comprises:

- The JobAccess Website (www.jobaccess.gov.au);
- the Telephone Advice line;

- the Employment Assistance Fund (EAF);
- the Complaints Resolution and Referral Service (CRRS);
- the National Disability Abuse and Neglect Hotline; and
- the National Disability Recruitment Coordinator (NDRC).

While the JobAccess service is valued by employers, employment service providers and job seekers, noted gaps have been identified in the delivery of accessible and relevant information to people with disability, supporting people with disability to find work, and supporting employers to create vacancies and actually hire people with disability (Colmar Brunton, 2019). There is no evidence that JobAccess has been designed to encompass the needs of people with intellectual disability or those who employ them.

PROVIDERS OF EMPLOYMENT SERVICES

The Commonwealth ALMP system is comprised of a national market of providers including: 39 for jobactive, 46 for the Community Development Program (CDP) and 110 for DES (two thirds of these are not for profit) (BCG, 2020a), with the largest five DES providers having 42% of market share (BCG, 2020b).

DES is the main 'specialist' employment service for people with disability seeking open employment, who have a work capacity of between 8 and 30 hours per week.

Support offered by DES providers may include career advice, assistance to prepare resumes and job applications, job readiness skills training (e.g. interview skills, searching and applying for work), identifying appropriate education and training courses, as well as supporting employers and jobseekers to access wage subsidies or implement workplace modifications (Olney et al., 2022, p.167, quoting DSS, 2018).

DES has two service elements:

1. Disability Management Services (DMS) is for job seekers with disability, injury or health condition who need assistance to find a job and occasional support to keep a job; and
2. Employment Support Services (ESS) that provides assistance to people with permanent disability and who need regular, ongoing support to keep a job (Productivity Commission, 2020, p.15:41).

In 2020-21, 176,274 people with disability used the 'Disability Management Services' aspect of DES, and 223,607 used the Employment Support Services of DES, at a total cost of more than \$786M for DES (Productivity Commission, 2022).

In the supported employment arena, the exact number of ADEs in Australia is difficult to determine since the Disability Services National Minimum Data Set ceased in 2019 (Productivity Commission, 2021), and the use of the term 'Australian Disability Enterprise' is no longer required since the cessation of funding from DSS. It is estimated that there are around 152 main organisational entities operating approximately 477 commercial outlets in Australia, formerly funded as ADEs (see Paper 4 for more details). In 2017, people with intellectual disability comprised 70-75% of the ADE workforce (DSS, 2018), and in 2020, the NDIA reported that NDIS participants with an intellectual disability over 25 years of age were predominantly employed in ADEs (70%) if employed (NDIA, 2020).

Overall, evidence has consistently indicated that the market system has not worked for people with disability. Disability Employment Services have seen a decrease in already poor outcomes between

2018 (when the last reforms were implemented) and 2020 (Devine et al., 2021; BCG, 2020b). The most recent review has attributed this poor performance to 'limited disability expertise and labour market specialisation of DES providers' as well as system complexity and the compliance and monitoring roles of DES within the income support system (Devine et al., 2021, p. 3). Recommendations from the DES review (BCG, 2020b) forecast further narrowing of access to DES by people with disability, thereby reducing options for employment support. This further alienates people with disability from relevant and appropriate employment supports, as those cast out of the DES system would be cast into the mainstream active labour market programs which remain poorly designed and ill-suited to the needs of people with disability, with evidence showing that 'job-seekers with disabilities feel less well-supported within the mainstream employment program' (Devine et al., 2021, p. 11) and mainstream programs not being designed to be accessible to people with disability (Wilson et al., 2021).

WAGES, PENSIONS AND 'WORK CAPACITY' ASSESSMENT

Wage and pension arrangements, particularly for people with intellectual disability, have functioned to reinforce the bifurcated thinking about employment opportunities and supports. Within the Commonwealth labour market system there are usually two levels of eligibility, eligibility for income support and eligibility to employment supports, linked to income support type. The Commonwealth uses three types of eligibility testing and streaming for applicants entering employment services and supports:

- Job Seeking Classification Instrument (JSCI),
- Employment Services Assessment (ESAt),
- Job Capacity Assessment (JCA), i.e. number of hours able to be worked each week.

Based on these assessments, access to Commonwealth-funded employment supports is determined by a complex set of cascading eligibility criteria including:

- type of income support benefit (related to capacity to work, i.e. number of hours per week)
- mutual obligation requirements (applied variably depending on type of eligibility for Disability Support Pension)
- cohort factors specific to each type of active labour market program / employment service
- which employment service is then identified as the primary 'gateway' for the recipient, (such as jobactive), which then enables or closes off access to further employment services (Wilson et al., 2021).

The range and number of employment service types available via the Commonwealth diminishes with lower levels of assessed work capacity and is automatically narrowed by becoming a Disability Support Pension recipient (who, to be eligible, are unable to work more than 15 hours per week). Those assessed as able to work less than 8 hours per week are only eligible for ADE employment services or to fund other services from their NDIS package if they have employment related funding allocated. People working less than 8 hours per week, and employers who employ them, are also not eligible for the Commonwealth's Employment Assistance Fund (via JobAccess). Criteria that restricts entry to employment supports based on number of hours worked per week is likely to mean that those most in need of employment support are routinely ineligible for it.

As at June 2021, there were approximately 753,000 recipients of Disability Support Pension (Productivity Commission, 2022). People with intellectual disability are manifestly entitled to

Disability Support Pension (DSP) as income support. While the 1991 Disability Reform Package enabled those receiving the DSP to supplement the pension with part time work (Cheng et al. 2018), work is currently capped at 30 hours per week and income support payments diminish on a pro rata basis commensurate with wage income. Critiques are frequently made of the way the DSP functions to disincentivise employment, particularly open or full wage employment. This is made more complex by different rules that apply to work in ADE settings. Hours of work limits for DSP recipients are not applied to work in ADEs (and data shows that a substantial proportion of people on DSP working in ADEs work more than 30 hours per week though are paid a pro rata wage) and those on DSP are exempt from periodic eligibility reviews if working in an ADE or receiving a supported wage (NDIA, 2020).

Notions of work 'capacity' align with notions of 'competency' and 'productivity' leading to a system of legalised 'subminimum wages' (the term used in the United States) comprised of pro rata wages applied to people assessed as having reduced productivity. The Supported Wage System (SWS), established in 1994, is one of several pro rata or productivity based wage systems in operation, all based on diverse assessments of productivity and/or competency. The SWS 'allowed employers to pay a pro-rata wage to workers unable to work at full productivity, based on an independently assessed productivity rate' (Cheng et al., 2017, p. 318). Supported wages can be paid in both open and supported employment. The Supported Wage System (SWS) is the mechanism used in open employment, and

applies to employees with disability and who have a reduced work capacity. If an employee is covered by an award or registered agreement, a supported wage can only be paid if the award or agreement has SWS provisions. Where an award or agreement has SWS provisions, an eligible employee is entitled to a percentage of the minimum pay rate for their classification, depending on their assessed work capacity (NDIA, 2020, p.4).

Where employees are not covered by an award or national agreement, the national minimum wage or a pro rate wage for assessed work capacity is paid. The wage floor in such circumstances is \$95 per week (Fair Work Commission, n.d).

Pro rata wages have also been a feature of supported employment (ADEs). The Supported Employment Services Award (SESA) 2002 is the current award for supported employment,

it covers most Australian Disability Enterprises (ADEs). The Award allows ADEs to pay pro-rata wages to eligible workers with disability, calculated using an approved wage assessment tool (DSS, 2018, p. 40).

The SWS can also be used under the SESA under certain conditions (DES, 2021). DSS reported in 2018 that there were then 29 different wage assessment tools in the Award. The SESA provides a wage floor of 12.5% of the relevant minimum wage for the appropriate classification (Fair Work Commission, n.d). The Draft Determination of the Fair Work Commission (2022) in reviewing the SESA 2020, identifies the lowest hourly rate for the lowest pay grade to be \$4.75, or for those subject to the Supported Wage System, \$2.75 per hour (Fair Work Commission, 2022).

This significantly low level of wage has been an ongoing source of critique of ADEs, where pro rata wages are common. As noted by the Association for Employees with a Disability (AED) in its recent submission to the Fair Work Commission:

Disabled ADE employees are the lowest paid in the modern award system, lower even than those covered by the second special national minimum wage ... [which] reinforces a social status which is incompatible with the human rights of the employees... The outcome is an inferior form of workforce participation (AED, 2022, p. 9, 10).

Pro rate wages have largely been seen as being co-dependent on employees also being in receipt of DSP (though receipt of DSP is not a formal requirement of the SWS). In recent times, there has been discussion about different models to provide a 'living' or 'fair' wage linked to ideas such as universal basic income, and a restructuring of the DSP for workers with low 'productivity' to become a form of wage subsidy to support the payment of award or minimum wage levels (AFDO, 2018; DSS, 2018).

Any kind of allocation of wage, income support or employment service based on assessment of work capacity is underpinned by concepts of 'capacity', 'competency' and 'productivity'. These have received significant scholarly and legal debate. International literature related to efficacy of models to support the employment of people with disability has critiqued these approaches as aligned to a biomedical model of disability (based on decontextualised assessments of physical and cognitive function linked to diagnosis). Internationally, and in Australia, there has been a level of critique of de-contextualised, predictive work capacity assessments (for example, AFDO, 2018; Dyson, Brown, Canobi, 2016). International commentators overwhelmingly endorse a biopsychosocial approach.

This distinguishes between the impairment (i.e. the 'problem in body function or structure'), and the 'restrictions' to participation in employment that are the result of the combination of the impairment with other individual factors and broader environmental and social factors (WHO, 2002, p. 10) (Wilson et al., 2021, p.21).

The biopsychosocial approach focuses assessment on 'identifying the wide diversity of factors restricting work participation' (Wilson et al. 2021, p.21), rather than locating 'capacity' in the impairments of the individual. Using a human rights lens then requires the remediation of these barriers through provision of accommodations/adjustments and supports.

Of importance in the CRPD, is that all people with disability, regardless of type and severity, have the same entitlements to employment and should be offered sufficient supports and adaptations to achieve it (Wilson et al., 2021, p. 21, citing Harpur et al., 2017).

The biopsychosocial approach fundamentally reshapes the way 'work capacity' is understood and requires a wide range of employment supports to be offered to all people with disability to best address the barriers to work experienced by the individual.

This focus on the provision of necessary adaptations and supports is consistent with Australia's *Disability Discrimination Act 1992*, which requires reasonable adjustments to be provided. The *Guide for SWS* identifies that provision of reasonable adjustments is required by law and that:

Sometimes reasonable adjustments require more than modifications to the physical working environment. The manner in which reasonable adjustments are made will vary according to the needs of the employee with disability, the nature of the job, the physical setting, and the knowledge of people in the workplace. The provision of an appropriate modification to the workplace could mean the difference between a 60 per cent level of assessed productivity and an 80 per cent

level (DES, 2021b., p. 16).

Similarly, an assessment of productivity should only occur after the worker with disability has received 'specialised on-the-job training' over a suitable period of time relevant to the learning needs of the individual (DES, 2021b). The assessment of productivity should also assess the adequacy of job/task customization to match the strengths of the individual (DES, 2021b). In this context, training, supports, adaptations and productivity are inextricably linked to ensure the worker with disability has the opportunity to maximise productivity (and salary scale) within the parameters of the inherent requirements of the job.

This has particular implications for the NDIS as the NDIS is now also a funder of various forms of employment and capacity building support. Case studies (presented in Paper 5) highlight the difficulty of obtaining timely and adequate levels of NDIS approved funding to enable the employee with disability to acquire competency and maximise productivity on-the-job. This potentially impacts, and limits, their assessed productivity and impacts their wages. In one instance, the employee with disability had been able to increase his level of assessed productivity following inclusion of NDIS funded supports, but these supports were not expected to be continuously funded, potentially affecting his ongoing wage level.

While supported wages have been a feature of supported employment in ADEs, they are also used in open employment. In practice, there is no public data about the number of supported wages approved in Australia each year, nor the extent to which the level of reasonable adjustments, support and training were adequate to maximise productivity. As discussed, numerous parties have responsibilities to ensure supports and adjustments have been provided including JobAccess (EAF), the employer, employment support providers (such as DES or ADEs), and NDIS, but there is no documentation about how these responsibilities co-exist or interact to best effect for the employee with disability.

Supported or pro rata wage systems have complex rationales, with an ill-defined and often invisible responsibility of all parties to build the maximum productivity of the employee with disability. It has been argued that a better targeting of policy response would be investment in the skill development and support of people with disability to attain work and be productive, rather than in managing sub minimum wage systems that reinforce discrimination based on negative assumptions about people with disability (Burchardt & McKnight, 2003). This has also been a policy position of the Commonwealth government in times past, when a purpose for specialised employment supports was envisaged as 'maximising wage outcomes' (FaHCSIA, n.d, p. 7).

OVERLAPPING SYSTEMS

While 'People with disability have the same right of access to mainstream services as all Australians, consistent with the goals of the new *Australia's Disability Strategy (ADS)*' (Productivity Commission, 2022), they are rarely well catered for within them. The biopsychosocial approach provides a useful frame to understand the important role of a wide array of service systems in the pathway of people with disability into employment. Even leaving aside systems associated with barriers to employment like health, housing or transport, a plethora of systems and services remain which provide noted complexity for people with disability and their supporters. For example, for young people with intellectual disability moving from school to post-school economic participation, the systems with which they engage include the income support system (DSP), the NDIS, state/territory-funded secondary education and TAFE, Commonwealth active labour market programs including DES,

NDIS-funded service providers such as School Leaver Employment Support (SLES) providers and ADEs, and disability services (Crosbie, 2022).

NDIS

Because many people with intellectual disability are not eligible for Commonwealth ALMPs, they are reliant on NDIS funding to purchase employment supports. This places significant impost on both the scheme as well as on participants. Consultations highlight that many NDIS participants are not well equipped or informed to know what to ask for in their plans in relation to employment, nor do planners sufficiently prioritise employment. As a result, employment goals have been missing from plans, and there have been delays in having this rectified (DSS, 2018). These factors contribute to the poor record of NDIS in supporting employment outcomes of people with disability. As a result, the NDIS has instituted a target of 30% of participants of working age to gain meaningful employment (Olney et al., 2022). Currently, this target has not been met. As Table 1 shows, while young people under 25 experience somewhat increased employment outcomes for a period following engagement with NDIS, those over 25 experience diminishing employment outcomes over time.

Table 1: Employment status of NDIS participants entry vs 4 years as NDIS participant (NDIA, 2020)

| | 15-24 years | 25+ years |
|---|--|-----------|
| TOTAL % of NDIS participants with a paid job on entry (of those entering 1 July 2016 – 31 Dec 2020) | 17% | 21% |
| Employment status categories (on entry) | % of people with paid job (on entry to Scheme) in each category | |
| In open employment, at full award wages | 51% | 47% |
| In open employment, at less than full award wages | 12% | 8% |
| In ADEs | 27% | 36% |
| In self-employment | 1% | 7% |
| Employment status change after 4 years in NDIS | | |
| % of change in employment status | ↑ 12% | ↓ 4% |

Within these results, people with intellectual disability comprise 19.6% of NDIS participants (and people with Autism, 32.5%), and employment outcomes for people with intellectual disability are largely within ADEs.

As an individualised funding system, the NDIS offers funding to support employment that can only be used by an individual to purchase employment supports from a market.

The NDIS has significantly changed the way many employment interventions are funded and delivered by offering individualised funds to NDIS funded participants that they can choose to use at a range of providers. A review of the NDIS registered provider lists available through the NDIA’s website shows several thousand providers registered to provide assistance to access and maintain employment or deliver specialised employment support (Brown and Mallet, 2021, p.22).

Despite this lengthy list of employment providers, there is little understanding of what supports are available to purchase and research identifies a gap in the availability of a market of employment support providers for people with intellectual disability (Crosbie, 2022) (see Paper 2).

The NDIS offers both ‘core’ and ‘capacity building’ funding in the area of employment supports. The NDIS has actively tried to influence the market of providers by both instituting a funding item for

School Leaver Employment Supports (SLES) and by changing the way 'supports in employment' (core) can be used. As described by Olney et al. (2022):

the NDIA has adjusted how it funds employment-related supports. From July 2020, NDIS funding for core-funded employment supports became more flexible for participants requiring ongoing and/or frequent support to succeed at work, including on-site workplace support. These changes to the pricing model give NDIS participants scope to use supports to develop foundation skills for work, and to access supports in a wider range of employment settings, effectively bridging the long-standing divide between supported and open employment (NDIA, [2020a](#)). NDIS participants can also access supports to build their capacity towards future employment from the age of 14 (NDIA, [2020a](#)). It should be noted, however, that the NDIS does not fund skills development or workplace accommodations that would normally be funded by other government programs, employers, or DES (Olney et al., 2022, p.166).

Core supports in employment encompasses 'day-to-day assistance in the workplace to maintain employment', whereas Capacity Building employment supports include employment-related assessment and counselling; workplace assistance; and school leaver employment supports (NDIA, 2021, p.3). On face value, and in practice, the interface between NDIS funded employment supports and other employment supports with similar focus is unclear. For example, in the arena of employment-related assessment, this can potentially be supported via DES, ADEs, JobAccess and Employment Assistance Fund, and NDIS funded supports.

With the withdrawal of DSS block funding from ADEs, NDIS funding is the primary Commonwealth government income source (via ADE employees) for ADEs. As Olney et al. (2022) identify, enabling the use of 'supports in employment' funding by individuals in both open and supported workplaces, overcomes the divide between them as both then become environments into which employment supports can be delivered. The NDIA explains that participants can now

use these supports in any workplace they choose, including government and non-government organisations, an ADE, social enterprises, micro-businesses, or in self-employment or a family run business (NDIA, <https://www.ndis.gov.au/understanding/supports-funded-ndis/supports-employment>).

In this sense, both open employment and historic ADE settings have the potential to be settings for 'supported employment'. This fundamental shift is yet to be reflected in legislation such as the *Disability Services Act 1986*, as now a much wider range of employment services can offer supports in employment in diverse settings, meaning that these settings all become venues of 'supported employment', as all workplaces should be to meet CRPD obligations. In this context, NDIS employment support funding potentially pays for supports and adjustments beyond what is considered 'reasonable adjustment' within the Disability Discrimination Act, opening up a wider range of employment opportunities to people who 'need substantial ongoing support to obtain or retain paid employment' (Disability Services Act, Commonwealth of Australia, 1987, Part 11, Div 1, 7.). However, it is not clear which market of providers will offer this level and type of employment supports outside of ADE settings.

The NDIS has a complicated and complicating relationship with other systems and services that contribute to or support the goal of increased employment of people with disability, particularly DES.

As discussed above, NDIS core ‘supports in employment’ provide funding that potentially bridges a gap in DES services, that is, by providing a level of ongoing support in the workplace beyond that which DES ESS can provide. Similarly, NDIS capacity building supports, including workplace assistance, has overlap with DES supports. While the policy intent is that there is no overlap between systems, in practice it is not clear to providers, employers or NDIS participants.

DES is also positioned by the NDIS as the end point of NDIS ‘capacity building’ employment supports (Olney et al, 2022). For example, DES is viewed by the NDIS as the main pathway beyond SLES (funded via NDIS capacity building employment support) and into which SLES feeds. This framing is particularly problematic for people with intellectual disability or high support needs, given the eligibility barrier for DES is a minimum work capacity of 8 hours per week and DES has been found to be largely inadequate for people with intellectual disability (BCG, 2020b; Inclusion Australia, 2022).

While the interface between DES and the NDIS is an especially obvious one, the role of NDIS in relation to other areas of employment support has also been noted (Crosbie, 2022). Individualised funding cannot easily be used to bridge or compensate for the inaccessible design features of mainstream activities such as vocational training, secondary school work experience programs or active labour market programs. Crosbie (2022) reports multiple informants identifying this as a barrier to employment for people with intellectual disability.

Policy interface issues mean that these systems, including DES, could not be ‘topped up’ by specialised intellectual disability supports funded by the NDIS. For example, a support worker can easily be purchased to undertake an activity of daily living (using NDIS funding), but individualised funding cannot be used to top up the minimal supports available within the DES system by purchasing specialised intellectual disability supports. Essentially, the individualised funding of people with intellectual disability is of little use in existing government labour market programs. Overall, the available individualised funding cannot be used to mediate these systems and customise them to suit young people with intellectual disability (Crosbie, 2022, p.284).

Further, individualised funding cannot easily be converted into employer/workplace capacity building activities where effort is best collectivised across jobseekers and employers. It also cannot be used to support strategies to overcome structural barriers to employment, such as supporting regional networks of employers to enhance capacity for inclusive employment. As explained by one research participant, ‘you can’t use individualised funding to buy a job’ (CEO of employer capacity building organisation) (Crosbie, 2022, p.295).

Overall, individualised funding is not a feature of the broader employment support ecosystem, and as such it is difficult to unlock its value in enhancing current inadequate employment services for the benefit of people with intellectual disability. The market of providers has not responded to a clear market gap by initiating evidence-based employment supports for people with intellectual disability, and the NDIS has, to date, not acted to compel or incentivise them to do so (BCG, 2020b; Crosbie, 2022).

STATES/TERRITORIES

The National Disability Agreement makes State and Territory governments responsible for the provision of specialist disability services (not transferred to the NDIS), except disability employment

services (Productivity Commission, 2022). However, to a large extent, specialist disability services have been transferred from States and Territories to the National Disability Insurance Scheme. Given this, the primary role of States and Territories in terms of supporting the employment of people with disability is via the provision of core services such as secondary schools and vocational education and training.

Schools have been shown to be the 'primary providers of early economic participation activities and transition supports in Australia' (Crosbie, 2022, p.293). Schools are responsible for both work experience programs and for early careers counselling, though have not delivered suitable supports and outcomes for young people with intellectual disability (Crosbie, 2022). Families and young people want increased employment support via schools including: careers counselling from age 14 (linked to a 'discovery' process); detailed and evolving school to work transition planning; expanded opportunities for work experience and paid work whilst at school; and expanded linkages into a wider range of economic participation options post school (DSS, 2018; Crosbie, 2022). However, the interfaces between these activities (provided to varying degrees in schools) with NDIS employment funding and DES have been a source of confusion. In the main, young people with intellectual disability have not been well supported in relation to employment and transition planning whilst at school, and schools have reinforced pathways into ADEs or non-employment activities (Meltzer et al., 2016; Crosbie, 2022).

In their review of disability employment programs, Brown and Mallet identified 24 (16%) programs funded by State and Territory governments, with QLD and Victoria being the only states to operate state-based employment services that included people with disability. Of those run by Victoria, five programs targeted people with intellectual disability including an internship program (for university students), a micro enterprise program, a public service recruitment program, and two online vocational programs. In addition, Victoria funds a grants program (Jobs Victoria Innovation Fund) to enable innovation in employment support. Other States and Territories had a small set of programs, primarily focused on public service recruitment (Brown and Mallet, 2021).

While work integrated training programs have been a feature of evidence based employment supports for people with intellectual disability, delivery of these has been sporadic in Australia. Ticket to Work, a philanthropically funded program, works in partnership with schools, training providers and employers around Australia to deliver School Based Apprenticeships and Traineeships to people with disability in some locations (Wakeford and Waugh, 2014). Similarly, there are several examples of TAFEs, employers and providers working together to deliver work-integrated learning opportunities such as the Integrated Practical Placement program between a TAFE, an employment provider (disability organisation), and a State-run children's hospital (White et al., 2019). However, while these programs highlight the potential to collaborate across State-based services (such as schools and TAFEs), these types of employment support programs are not common.

COMMUNITY BASED

There is a wide range of activity in the provision of employment support programs funded by a variety of philanthropic, state/territory and Commonwealth government funding. A major source of funding has been the Information, Linkages and Capacity Building (ILC) program of the DSS (previously the NDIS), providing \$ 36,014,589 between 2019 and 2021, to fund 54 economic participation programs for people with disability, largely created and delivered by the not for profit sector. Of the 54 ILC-funded projects, only 19% explicitly targeted people with intellectual disability (Qian-Khoo et al., 2021). These are further discussed in Paper 2.

Brown and Mallet (2021) identify an additional number of employment programs for people with disability funded by corporates or philanthropics including:

- Eight initiatives that were funded by private sector corporations, either as in-house programs (e.g. ANZ Spectrum program (AU_52), CrownAbility ... or via a corporate partnership/donation (e.g. RACV, ANZ).
- Eight that operated a fee-for-service model (e.g. the Australian Network on Disability's (AND) initiatives ...)
- Seven initiatives funded in part or wholly by philanthropic foundations (with the Paul Ramsay Foundation notable in the space for disability employment) (e.g. Ticket to Work ...).
- Six initiatives funded via social enterprise revenue (either wholly or in part) (e.g. Vanguard Laundry Service...).
- Three initiatives were initially funded through research grants (e.g. Orygen's Individual Vocational and Educational Support Trial (INVEST) (Brown and Mallet, 2021, p.29).

While overall this suggests a range of activity, it is ad hoc, often short term, and with poor geographic and cohort coverage. Crosbie's research (2022) highlights that individuals with intellectual disability were often lucky to be located near an initiative or to hear about it through their networks.

IMPLICATIONS

The ecosystem of employment supports for people with disability is complex. It extends from early secondary school (at the age of 14) through transition from school, and then throughout life encompassing changing circumstances and individual choices. Multiple systems overlap though there is no coordinating mechanism across them.

People with intellectual disability have been largely locked out of Commonwealth funded labour market services due to work capacity assessments. The *Disability Services Act 1986* envisioned their primary support being provided through ADEs and this has largely occurred with most people with intellectual disability, if employed, being employed in this sector. The NDIS has recently disrupted this by enabling NDIS funded employment supports to be used in any employment setting. Linked to this has been the cessation of case-based funding to ADEs. Together, this offers opportunities for change.

While supports in employment can now be provided in any setting (via the NDIS), there remains a lack of employment services relevant to people with intellectual disability (to be discussed in Paper 2). The NDIS, as an individualised funding mechanism, is not easily utilised to access the sorts of employment supports people with intellectual disability need, in tandem with the systems in which other supports are provided. States and Territories have largely not provided these supports, and other sources of funding have not prioritised this group.

In order to realise the opportunities afforded by the changing notion of 'supported employment contexts', now applying also to open employment, legislative and policy change needs to align understandings of the right to employment of people with intellectual disability in all settings, linked to a similar right of access to all employment supports and services. In this reconceptualization, existing notions of 'work capacity' need to be replaced by assessments of supports and adjustments required, with funded mechanisms to link to appropriate support services to provide them. As described by AFDO:

Supported employment recognises the capacity of people with disability to work with the right ongoing supports in a variety of settings that include open

(mainstream) employment, mobile crews, social enterprises and small businesses (AFDO, 2018, p. 4).

The current employment ecosystem is not designed to deliver this to people with intellectual disability.

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