

Mary Walsh OAM,CPA, AIFS JP(Qual)
24 Scherer Bvd
Kepnock Q4670

As a parent and someone who has been an advocate for people with intellectual disability – for almost 50 years – the advocacy system and its framework is broken. It was broken 30 years ago – and remains broken at a time when it is critically needed to ensure that the NDIS allows for people, unable to exercise choice and control – without the support of families/carers - to be given a voice at the policy table.

This submission covers my own individual thoughts, based on my CURRENT experiences.

For the past 3 decades many Federal, State and Social reports have confirmed that families – especially families of those with moderate to severe intellectual disability and complex needs – have no voice. The best advocates of this marginalised group of people with a disability are, generally, their families – but - not only are they not being heard – those funded by Governments to represent them are failing in their obligation.

1. The current national dilemma for our family members working in Australian Disability Enterprises is an example of how the majority have been disadvantaged by funded advocacy. I live in Bundaberg – Wide Bay – which has one of the highest levels of disability, ageing, unemployment and social vulnerability in Australia. My local NDAP agency is PWDA (People with a Disability Australia) – a position which locals, including me, fought for – in excess of 20 years. As an advocate I can work with this local organisation on some matters – but we have to agree to disagree on the issue of our Australian Disability Enterprises. If I choose to represent our local workers – and their families - concerned by the threatened unviability of wage increases that could close their services – then I must do so at my own costs. I have never “worked” in disability. I have “lived” it. I am the wife and primary carer of my husband – a returned serviceman. Our disabled son is now deceased but we have 3 other children, 9 grandchildren and 5 great-grandchildren. We are on a part aged-service pension, but I also have considerable medical costs, myself. I remain committed and involved in ensuring that employment options for those with a disability include supported employment in an ADE (Australian Disability Enterprise) wherever individual needs confirm this is the best option for some individuals. My son worked in an ADE – it provided the dignity of work, social esteem, camaraderie and social inclusion with his peers and the wider community. The most basic human right is that of choice – and having the option of choice removed on the basis of ideology indicates how badly broken the system is. The advocacy system was broken during my son’s lifetime – and nothing has changed. I consider my contribution to be his legacy.

I am not a worker in an ADE – I do not have a disability – so my role is purely advocacy and, without it – the workers, their families and carers would have NO independent

representation whatsoever at the highest level of policy - because the level of their disability prevents their participation.

When approaching the Federal Government 2 years ago for some assistance with this personal cost – I was directed to Carers Australia and/or PWDA – as they were the direct advocacy agencies for people with intellectual disability, their families and carers.

The current ADE dilemma results from the failure of PWDA, AED Legal and the Unions to consult with the sector.

- (i) At no time did any of these advocacy parties confer with service providers, funding bodies or those most directly involved – the other workers and their families. Normal business process is that an industrial issue on the floor of the business – should be resolved between the employer and their industrial representation and/or advocate. This didn't happen – so the case of 2 workers (and this is no reflection on the merits or otherwise of the case) – determined the future of the other 9998 – with absolutely NO discussion with anyone else in the sector - whose interests also needed protecting.
- (ii) The end result was that all workers must transition from the (then) common wage assessment tool – the Business Services Wage Assessment Tool. Workers have now successfully transitioned to other legally and industrially legislated tools. However, the instigators of all the employment unrest have insisted that the only acceptable wage assessment tool should be the Supported Wage System - *which has the capacity to increase wages to such an extent that viability of these enterprises is threatened – and closures could result*
- (iii) Having successfully outlawed the BSWAT – at industrial level – those same funded advocates and the Unions have now given notice it is their intention to outlaw any tool that has a competency component. The industrially and legislatively approved tools in their sights are the Greenacres and the Skilsmaster tools. These are the ones to which most of the 8500 workers have transitioned. It seems obvious that their reasons are ideologically based as they insist that open employment – not supported employment – is preferable and any form of segregated employment – even that delivered by Not-for-Profits – should deliver award wages – or the equivalent there-of.

I have encountered the following problems in covering my personal costs of representing the workers, and their families at national policy level on the ADE issue

- PWDA and AED Legal – the funded advocacy providers who should be representing ALL workers, their families and carers - are the instigators of these actions and have access to the decision-makers. Their actions, without consultation with the sector, have totally removed the majority of ADE workers, their families and carers out of the decision-making processes. These workers state that the assessment tool – whatever it is – should be non-discriminatory and should ensure no loss of jobs in the sector. A job provides dignity,

economic and social participation – which are the core elements of the NDIS and all Federal legislation and standards. These workers need a voice – within the industrial realm to resolve the core of the matter. But, the funded advocacy organisations (PWDA & AED Legal) - supposedly representing all these workers - are hardly likely to fund me as an advocate for workers and families appealing against their non-consultative actions and the consequences there-of.

- My next alternative was to approach Carers Australia – who are not part of the NDAP list – as provided on your web-site. Carers Australia is a service provider – not an advocacy agency. They are well aware of the problem – because of the concerns raised by families and carers but, there are strict lines of separation between providers and advocacy. These are lines that the NDAP recognise – so where does one- re-draw those lines and remain true to their Mission Statement and Commonwealth funding guidelines.?

Service providers would probably happily assist with my personal costs with the issue I raise - but they can't because they are the employers and the needs of the workers must be independently represented – not be perceived to be compromised.

I am reasonably confident that Carers Australia might be able to assist but – my submission to this review is not for myself – but to show, by practical example, that the current system of advocacy – is not working.

My involvement in the industrial issues spans 20 years – so the advocacy program hasn't worked since 1995. That's 2 decades. On the cusp of the NDIS – advocacy needs to be re-designed to ensure that the most marginalised have a voice and that the voices of those who cannot self-advocate, their families and carers are not drowned out by those with more moderate or physical disability – and by funded advocacy, as is happening now.

This ideological anomaly in the use of advocacy - as confirmed by the Advocacy Review back in 1999 - has always existed and never been satisfactorily resolved. Even the recommendations in this formal Report were ignored and Minister Truss is well aware of the problems – his electorate is Wide Bay.

- *to assist people with severe disabilities to participate equitably in community life;*
- *to increase the knowledge and understanding of people with disabilities, their families and carers about the rights of people with disabilities;*
- *to improve communication between people with disabilities and other members of the community; and*
- *to recognise, value and include families and carers, wherever possible and appropriate, in the support system for people with disabilities.*

Recommendations 10 and 11: Focus and Broad Structure of the National Disability Advocacy Program

I have considered the discussion in the report relating to these two recommendations and have decided to deal with them together. Accordingly I have decided that:

The primary focus of the program is to be individual advocacy, with a small proportion of systemic advocacy.

Remaining Recommendations and Timing of Implementation

I have accepted the remaining recommendations without change. I am concerned, however, to ensure that work on the reform of the advocacy program in line with the recommendations of the report and my decisions on them generally should proceed swiftly.

In particular, I have decided that the recommendations in relation to data and performance measurement (Recommendations 4 and 5), and the recommendation in relation to a mechanism to represent the interests of families with people with disabilities (Recommendation 14) are to be implemented by no later than 1 July 2000.

The final report is to be distributed widely within the disability community, and will be made available as soon as possible in accessible formats, including braille, audio tape and disk, large print and a Plain English version.

I commend the report to all who are involved or have an interest in the delivery of advocacy assistance for people with disabilities.

WARREN TRUSS MP

Parliament House
Canberra

July 1999

I respect the right of anyone to have an alternative opinion and act in accordance with their opinions. But this should not extend to using funding to chase an ideology that is not consistent with the sector or majority opinion.

The public record confirms that, as a National Disability Advocacy Provider AED Legal is

**“FUNDED BY THE AUSTRALIAN GOVERNMENT
THROUGH THE DEPARTMENT OF FAMILIES,
HOUSING, COMMUNITY SERVICES AND
INDIGENOUS AFFAIRS”**



AED Legal Centre

Human Rights for
employees with a disability:

Does the justice system get it right?

Funded by the Australian Government through
the Department of Families, Housing, Community Services and Indigenous Affairs

It is possible that AED Legal have other sources of income that might be used to fund the ADE part of their advocacy commitment to people with a disability. If this is so – then one questions their commitment to the human rights of people with a disability in the ADE dispute. The most basic human right is that of choice. Some 10,000 workers, their families and carers have been denied that choice by the actions of two funded advocacy providers under the NDAP – no matter how they might try to justify that the funding of this industrial exercise might have come from alternative sources.

My submission accepts that every person with a disability and every issue affecting their life is entitled to be heard by decision-makers. That is the purpose of advocacy for those unable to self-advocate. No doubt AED Legal meet the guidelines of their funding as a National Disability Advocacy Provider – whatever that level of funding might be. My submission is designed to provide comparisons that prove discrimination, using advocacy, against a large cohort of people with disability, their families and carers. The public record is a critical part of making the case I present for a change in the existing Framework so, where necessary, I have used it to prove the current advocacy system is “broken”.

Equally, People with Disability Australia (PWDA) – as a funded advocacy provider – must meet the necessary criteria – whatever it is – and do so to the extent available on the public record

People with Disability Australia Incorporated

ABN: 98 879 981 198

Notes to the Financial Statements For the Year Ended 30 June 2015

Excerpt from Audited Financial
Statements - part Page 10 - available
on public web-site

2 Revenue

	2015	2014
	\$	\$
- Consultancy fees	26,100	69,593
- Donations	1,110	15,502
- Gain on disposal of fixed assets	-	50
- <u>Operating grants</u>	3,243,144	2,703,090
- Interest received	22,942	33,804
- Other projects income	74,176	-
- Rental income	67,469	-
- Other revenue	8,714	16,369
Total Revenue	3,443,655	2,838,408

3 Prior Year Adjustments

This represents the cost of leasehold improvements written off during the financial year ended 30 June 2014. This amount has now been recorded under property, plant and equipment.

4 Cash and Cash Equivalents

	2015	2014
	\$	\$
Cash at bank and in hand	179,998	705,837
Short-term bank deposits	53,834	52,327
	233,832	758,164

I am unable to find the level of funding provided by taxpayers for AED Legal. Neither am I able to determine – from the public record – the level of funding provided by taxpayers to PWDA, because the public record does not delineate the source of “operating grants” – as the audited financials confirm.

It is appropriate to quote from the AED Legal web-site their leading statement – which is encapsulated in the words of Sir Anthony Mason – *Former Chief-Justice – High Court of Australia*:-

“A first-class court system and a first-class legal profession is of no avail to a person who can’t afford to access them”.



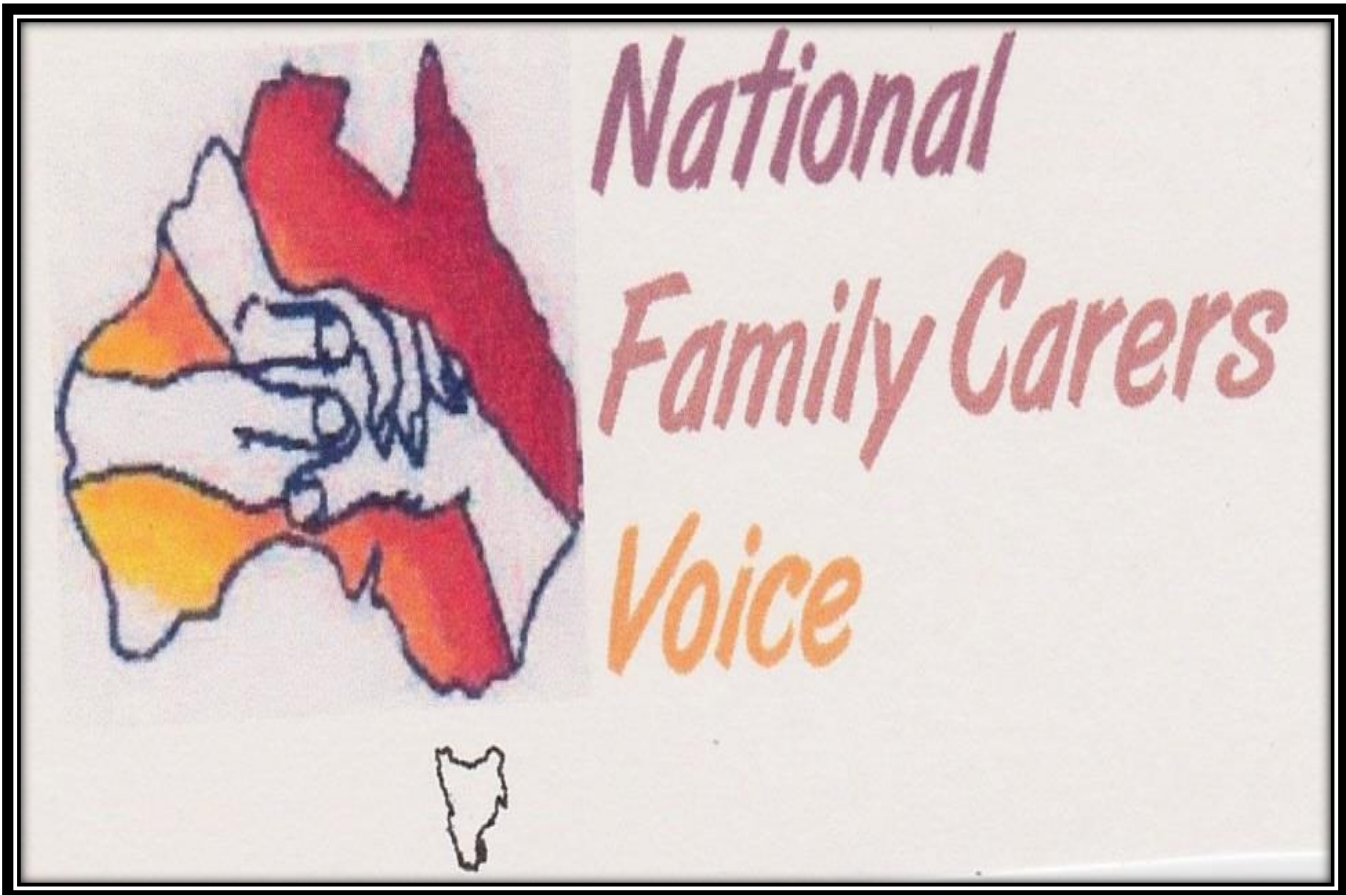
I would add

“or a person who is denied access on the grounds of ideology”.

As some-one who has been refused access to the taxpayer funded advocacy system – an irrefutable fact – at considerable personal disadvantage – and cost – I request this current Review ensure the new Framework is based on fact, access, equity and not ideology. My advocacy and this submission is for thousands of people with intellectual disability – especially moderate to severe, with complex needs – who have been deliberately excluded – for years. This is despite the Commonwealth Government having conducted numerous reviews that confirm this discrimination. Workers and families were represented before the AIRC – a decade ago – at our own cost. Again NCID (Funded advocacy) and AED Legal then represented the argument for the SWS tool – and nothing else. The current industrial action is simply a repeat of the same- with the

same funded players. I make no comment on the attached public document (*pages 8-10*) other than to state that the views of workers and families I represent are the same as Federal Government policy – and not as stated by this publicly funded advocacy provider in this public interview. I will defend, forever, their right to express their opinion – but, equally, will demand my right of reply.

My reply – as the Federal Government well knows is contained in this Federal Government Report – where I was a member of the National Family Carers Voice for 4 years.



This Family Voice was recommended – again – in 2005. It is desperately needed now

My submission focuses on employment because this one is the most blatant example of discrimination and injustice. I am, also currently dealing with issues of guardianship and accommodation where families are ignored, where the issue of rights has overtaken reality and those who cannot self-advocate are denied the choice and control that underpins the NDIS. Unless the Federal Government recognises the voice of advocacy from parents/families and carers – then the most vulnerable of our people will forever remain in the “too-hard basket – where they have been languishing for years.

I make no apology for my submission being “robust”. It’s factual and I trust the comments will be accepted with the passion and commitment I have tried to impart to decision-makers.

10/2/2015

What's fair pay for people with intellectual disabilities? - Background Briefing - ABC Radio National (Australian Broadcasting Corporation)

What's fair pay for people with intellectual disabilities?

[Download audio show transcript](#)

Sunday 28 September 2014 8:05AM ([view full episode](#))



IMAGE: DISABILITY ADVOCATES HAVE BEEN FIGHTING FOR BETTER WAGES FOR EMPLOYEES AT AUSTRALIAN DISABILITY ENTERPRISES WILL THEIR COURT VICTORY END UP THROWING THOUSANDS OUT OF WORK? (KIRBY HAMILTON)

*Thousands of disabled Australians earn just a few dollars an hour working at disability enterprises. A recent Federal Court decision will lead to higher wages, but some employers fear this will send them broke. Is this a cunning ploy to get out of paying more or are their fears justified? And some parents believe these jobs are worth a whole lot more to their children than a just a pay packet. So what is a fair wage? **Melinda James** reports.*



ABCRadioNational

Excerpt: The fair wage campaign that backfired

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There are thousands of—mainly intellectually—disabled employees in Australia getting

10/2/2015

What's fair pay for people with intellectual disabilities? - Background Briefing - ABC Radio National (Australian Broadcasting Corporation)

paid just a few dollars an hour. Some earn even less.

For more than a decade, disability advocates have been fighting for better wages for employees at Australian Disability Enterprises, formerly known as sheltered workshop: and in December 2012 they had a significant win in the Federal Court.

Gordon Prior, 61, is intellectually disabled and legally blind. He used to mow lawns at a disability enterprise in regional Victoria.

When his pay dropped from just over \$3 an hour to \$2.47 after a wage assessment, he took a complaint of discrimination to the federal court.

Lawyers acting for Gordon and another intellectually disabled man Michel Nojin argued that the government-owned system used to calculate their wage was unlawful and the full bench of the court agreed.

For Gordon, the legal victory is a proud achievement.

'Even though there were a few noses out of joint, it didn't worry me much. I've done the damage and I'm hoping something will come out of it,' he says.

The landmark decision directly affects 10,000 disabled workers, but it has the potential increase the wages of all 20,000 employees of Australian Disability Enterprises.

Mairisty Wilson, the solicitor who fought the case, thought the long campaign for better wages had been won.

'I thought it's over. All we have to do now is work out the compensation, the back pay for these workers—that was naive,' she says.

The commonwealth tried to appeal the decision in the High Court but failed. The government then applied to the Human Rights Commission for a three year exemption the Disability Discrimination Act in order to give disability enterprises time to transition to higher wages.

This article represents part of a larger *Background Briefing* investigation. Listen to Melinda James' full report on Sunday at 8.05 am or use the podcast links above after broadcast.

The commission gave the businesses one year to get their houses in order, a move that disappointed Wilson.

Disability enterprises are competing in very tough markets. They're not-for-profit organisations established specifically to employ people with severe disability, usually intellectual disability, and they're competing with low wage economies overseas

KEN BAKER, CHIEF EXECUTIVE, NATIONAL
DISABILITY SERVICES

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She says disability enterprises have known for years the system was unfair and they should now abide by the court's ruling.

'If it was Myer, if it was Coles, if we can't afford to pay the wages then we can't operate. A lot of us, if we went to the Fair Work Commission and said, "Oh look, we want to pay half the wages." Would we be allowed to do that? No of course not. So I don't see that there's any difference.'

There are 194 Australian Disability Enterprises or ADEs. The work they do—everything from packing boxes and mowing lawns, to washing sheets and preparing frozen meals—generates more than \$730 million each year. More than half of the ADEs make a loss each year, however. Many of the rest barely break even.

The peak body for ADEs is National Disability Services. Chief Executive Ken Baker knows any new regime will mean higher wages.

'We says disability enterprises are competing with cheap overseas labour and prisons for contracts, and are often doing work that could be automated.'

'Disability enterprises are competing in very tough markets. They're not-for-profit organisations established specifically to employ people with severe disability, usually intellectual disability, and they're competing with low wage economies overseas. They're barely breaking even, often they're making a loss so you know they're struggling to have the capacity to pay higher wages.'

According to Baker, it's important to note that almost all employees also receive the Disability Support Pension and their pay supplements their benefits. He also says the sector is battling an outdated stereotype of exploitative sheltered workshops.

'I know the people who run these organisations. I know the people who work in these organisations. They have a very strong commitment to the rights of people with disability. Where we disagree with some of the advocacy groups is how to give those rights practical effect.'

The government and Disability Enterprises Australia are scrambling to find a new way to assess wages that will withstand any future legal challenge before next April, the deadline set by the Human Rights Commission.

The federal government has announced a one-off grant of \$173 million over four years to tide the workplaces over while they figure out how to pay more and survive.

Advocates like Wilson, however, say that if disability enterprises can't survive paying a dollar an hour, it's clear the model is broken.

'What we should be doing is revamping the whole system, looking at more places in day programs,' she says. 'Because I go to many ADEs, they arrive in the morning and they sleep. They get woken up, they go and have morning tea and they sleep. They are not

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productive and they are not employees but they have a right to activities or a quality of life.'

Wilson believes the government should stop propping up disability enterprises and instead invest more in making mainstream employment the first and preferred option : people with an intellectual disability who can work, while those who aren't productive should be sent to publicly funded activity centres.

Ken Baker, however, thinks disability enterprises are providing real value.

'Some of them, their productivity really is very low. Their disability is very severe, but th want to work. My view is if they want to work and they gain the benefits of work which : not just wages: which are friendships, social networks, a sense of dignity, a sense of contributing to society; these are very important benefits and people should be entitled those benefits.'

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Credits

ReporterMelinda James

ResearcherAnna Whitfeld

Supervising ProducerLinda McGinness

Sound EngineerAndrei Shabunov

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Signed

Mary Walsh
Advocate