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A Strong Future for Supported Employment Discussion Paper Responses  
Department of Social Services  
Commonwealth of Australia

Via website: [engage.dss.gov.au](http://engage.dss.gov.au)

Dear Madam or Sir,

## **RESPONSE TO ENSURING A STRONG FUTURE FOR SUPPORTED EMPLOYMENT DISCUSSION PAPER BY THE DEPARTMENT OF SOCIAL SERVICES**

Australian Lawyers for Human Rights (ALHR) thanks the Department for the opportunity to provide this response in relation to the discussion paper "*Ensuring a strong future for supported employment*", (the discussion paper).

### **1. Australian Lawyers for Human Rights**

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

### **2. Summary**

ALHR commends the Department of Social Services for undertaking this review and for recognising a number of key themes related to the employment of individuals with disabilities, including recognising the differences between supported and open employment.

However, it is the view of the ALHR that the discussion paper understates the importance of recognising the human rights of individuals with disabilities and the employment rights that flow from the UN *Convention on the Rights of Persons with Disabilities* (CRPD).

ALHR calls on the Department to ensure that its strategy for the future of supported employment of individuals with disabilities is consistent with the principles and requirements of the CRPD, with particular consideration given to promoting the open employment of individuals with disabilities and creating awareness campaigns for employers and the broader public to end the stigmatisation and discrimination faced by persons with disabilities when seeking employment.

Respect for human dignity is a cornerstone of international human rights standards and is recognised as a core value of the CRPD. Yet Australia diminishes this principle through the limited inclusion of individuals with disabilities in open employment settings. Australia should

adopt inclusive employment which embraces core human rights principles such as respect for human dignity by reflecting and celebrating human diversity.

### 3. Article 27 CRPD – Work and Employment

ALHR strongly believes that Australian policy related to the employment of individuals with disabilities should adhere to international human rights law and standards.

In general terms, there is no hierarchy of human rights – they all represent different aspects of the concept of protection of the dignity of individual personhood. It is acknowledged that all human rights are equally valuable (the principle of indivisibility) and all should be protected together to the maximum possible (the principle of interdependence). All rights must be balanced where they conflict and must provide reasonable accommodation to other rights. A balance may need to be sought by reference to other human rights, to other rights such as property rights, and to other principles and considerations such as reasonableness or proportionality.

That said, this response focuses on Article 27 of the CRPD, which expresses the right to work and to employment. Under Article 27, individuals with disabilities have the right to work on an equal basis with all others. This means that:

- any employment must be freely chosen, and
- the work environment must be open, inclusive and accessible.

Under the Australian Government's international human rights obligations, as well as under domestic legislation such as the *Fair Work Act 2009*, the *Disability Discrimination Act 1992* and associated instruments:

- the Federal Government must promote the right to employment for individuals with disabilities and ensure that workplaces and hiring policies are free of discrimination;
- employers must provide equality of opportunity and provide equal remuneration for equal work; and
- individuals with disabilities must be free from harassment and have equal access to training and career advancement.

## 4. Response to Discussion Paper

This submission relates to the first of the questions raised in the discussion paper being: '*Are there any other principles which should guide the Government's policy direction for supported employment?*'

### 4.1 Desirability of Complying with Human Rights Norms

ALHR submits that Australian employment policy direction for supported employment would be enhanced by adhering to international human rights law and the universal standards enshrined therein.

Current Australian policy relating to the employment of individuals with disabilities is discriminatory because it violates human rights norms by treating individuals with disabilities on the basis of their disability, rather than addressing the various barriers in society which may hinder their full and effective participation in society on an equal basis with others. By focusing on their disability, the current policy effectively denies individuals with disabilities the right to exercise their choice of open employment

ALHR calls on the Department to reconsider the thrust of the discussion paper in light of the international human rights obligations guaranteed in the CRPD, and in particular, Article 27. Individuals with disabilities gain social and economic benefit from full and equal participation

in employment. To realise this benefit, the employment gap between individuals with disabilities and those without must be addressed and closed.

#### **4.2 Problems with Supported Employment as an end in itself**

ALHR is concerned with the Department's focus in the discussion paper on supported employment over open employment, and particularly with the lack of transition planning to enable people with disabilities to move from supported employment to open employment

Open employment is preferable over supported employment so as to allow individuals with disabilities to exercise the ability to build their capacity to work and to engage in the workforce in an equal manner.

Australia must move on from the 'sheltered workshop' type of employment of individuals with disabilities and ensure that those who aspire to work are supported to do so in open employment. This should include the removal of the various societal barriers that prevent the participation of individuals with disabilities in the open labour market on an equal basis with others.

#### **4.3 Importance of Supports**

Individuals with disabilities need choice and control over employment opportunities and the supports provided to them to engage in employment. Supports may include assistance with:

- building and improving work capacity,
- CV preparation,
- education and training,
- job interview skills,
- provision of clothing for interviews, and
- wage subsidies for employers of individuals with disabilities.

Supported employers should also have a role in providing appropriate supports in order to build employee capacity for transitioning into open employment.

#### **4.4 Lack of Economic Incentives**

Given that employment provides both social and economic benefits to the individuals and society, individuals with disabilities should be provided with an incentive to work.

The discussion paper states at page 12 that the average hourly rate for individuals with disabilities is \$5.61 per hour, with wages ranging from \$1.00 per hour to full award wage. This is unacceptable and in violation of international law, domestic law and basic standards of human dignity and decency. Furthermore, it is noted that the income test free area for the Disability Support Pension is \$168 per fortnight for singles and \$300 for couples. ALHR is confident that the Australian government can do much better than this in innovating a framework for positive employment engagement for people with disability.

It is the position of ALHR that the current minimum rate of pay for individuals with disabilities is profoundly demeaning and discriminatory, and must be increased from \$1.00 per hour, and that the income test free level should be raised to allow individuals with disabilities to more fully enjoy the fruits of their labour.

Moreover, there is strong evidence that demonstrates that women with disabilities bear a disproportionate burden of poverty and that women employed with disabilities experience significant and systemic discrimination (WWDA). Any changes in policies and programs that impact individuals with disabilities must respond specifically to the needs of women and recognise that "women with disabilities have a significantly high level of unmet need for services and support to enable them to live independently and with dignity in the community." (WWDA).

Given the high cost of housing and rent in most Australian cities, the above rates can only result in the Commonwealth needing to step in and subsidise individuals receiving such low pay.

#### 4.5 Further Investigation and Reform Required

ALHR is deeply concerned that the number of individuals with disabilities transitioning from supported employment to open employment is small, and that many who make the transition return to supported employment. The Department must engage with those who transition back to supported employment to learn why this is so. ALHR contends that the provision of sufficient supports and training, along with a safe and positive workplace culture that celebrates difference and the diversity of humanity, would reduce the number of individuals leaving open employment and transitioning back to supported employment.

ALHR submits that immediate reform needs to be made to Australian employment policy to align with Article 27 of the CRPD.

If you would like to discuss any aspect of this response, please contact Benedict Coyne, ALHR President, at: [president@alhr.org.au](mailto:president@alhr.org.au).

Yours Faithfully,

A handwritten signature in black ink, appearing to be 'BC' followed by a long, sweeping flourish.

Benedict Coyne

President

Australian Lawyers for Human Rights

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*Submission Contributor:*

Susan Peukert

Co-Chair, Disability Rights Subcommittee