

Chapter 2

Consultation and testing

2.1 As discussed in Chapter 1, the government announced in the 2009-10 federal budget its intention to review and update the impairment tables used to assess an individual's capacity to work and therefore their eligibility for the disability support pension (DSP). The goal of the review was to ensure the impairment tables 'are consistent with contemporary medical and rehabilitation practice'.¹

2.2 The review process included: the establishment of an advisory committee; consideration of submissions from interested parties; the development of draft revised impairment tables by the advisory committee; and the subsequent testing and analysis of the draft revised impairment tables.²

2.3 During this inquiry, various witnesses voiced concerns regarding the consultation undertaken as part of the review of the impairment tables, the adequacy of the testing of the draft revised impairment tables and the timeframe allowed for consultation on, and implementation of, the changes.

Consultation

2.4 As part of its reform of the DSP eligibility requirements and assessment process, the government established in 2010 an advisory committee to seek 'the opinion of expert medical and allied health professionals and key disability stakeholders'.³ To this end, the advisory committee comprised government representatives (from the Departments of Families, Housing, Community Services and Indigenous Affairs; Education, Employment and Workplace Relations, and Veterans' Affairs, as well as Centrelink and CRS Australia)⁴ and representatives from various disability and medical organisations, including: National Disability Services; the

1 Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), *Review of the Tables for the Assessment of Work-related Impairment for Disability Support Pension*, available: http://www.fahcsia.gov.au/sa/disability/payments/Pages/review_dsp_impairment_table.aspx (accessed 24 August 2011).

2 FaHCSIA, *Review of the Tables for the Assessment of Work-related Impairment for Disability Support Pension*, available: http://www.fahcsia.gov.au/sa/disability/payments/Pages/review_dsp_impairment_table.aspx (accessed 24 August 2011).

3 FaHCSIA, *Review of the Tables for the Assessment of Work-related Impairment for Disability Support Pension*, available: http://www.fahcsia.gov.au/sa/disability/payments/Pages/review_dsp_impairment_table.aspx (accessed 8 September 2011).

4 CRS Australia is a provider of disability employment and assessment services, and part of the Department of Human Services.

Australian Federation of Disability Organisations (AFDO); the National People with Disabilities and Carers Council; and the Mental Health Council of Australia (MHCA).⁵ The full membership of the advisory committee can be found at Appendix 3.

2.5 The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) explained that membership of the advisory committee was a decision for the minister, based on a proposal developed by the department.⁶

2.6 A separate advisory group, the DSP Advisory Group, has since been established by the department:

The Disability Support Pension (DSP) Advisory Group will work with Government on the implementation of DSP changes including providing advice on:-

- Implementation of the 2010-11 'More Efficient and Accurate Assessments for DSP and Employment Services' Budget measure;
- Implementation of revised impairment tables (review of impairment tables was announced as part of the 2009-10 Better and Fairer Assessments measure); and
- Implementation of the 2011-12 'Building Australia's Future Workforce' DSP Budget measures.⁷

2.7 The membership of the DSP Advisory Group is at Appendix 4.⁸

2.8 The broader consultation process undertaken by FaHCSIA was also described for the committee:

When the government made the decision to undertake the review of the tables, it requested that an advisory committee be established, and we certainly did that, with quite a broad membership. In addition, for broader stakeholder consultation and engagement, some 75 organisations were invited to participate in a consultative process through a secure govdex website, and they could also provide additional submissions should they wish to. I note that less than a third of the 75 participants in the govdex secure website did provide a submission in the construction and review of the new tables.

Notwithstanding that, FaHCSIA is continuing to consult with stakeholders on the revised impairment tables. For example, we are in ongoing discussions with the National Council on Intellectual Disability and a number of pain-management groups. We are also holding workshops for

5 FaHCSIA, *Advisory Committee Membership*, tabled 6 September 2011.

6 Ms Sharon Rose, Acting Group Manager, Disability and Carers Group, FaHCSIA, *Proof Committee Hansard*, 6 September 2011, p. 51.

7 FaHCSIA, *answer to question on notice*, 6 September 2011 (received 9 September 2011).

8 FaHCSIA, *answer to question on notice*, 6 September 2011 (received 9 September 2011).

stakeholders to enable them to provide feedback and raise issues about the revised tables. For those who cannot attend the workshops personally, we have also provided the option of teleconference contact. The schedule for introduction of the disallowable instrument in which the tables will be located is the end of November this year, and all feedback gathered in the ongoing consultative process will be considered in finalising the disallowable instruments.⁹

2.9 Numerous submitters and witnesses expressed concern regarding the consultation process. Concerns included the limited ability of members of the advisory committee to discuss the advisory committee's deliberations due to confidentiality requirements, as well as ongoing consultation following the release of the draft revised impairment tables.

2.10 The Australian Federation of Disability Organisations (AFDO) participated in the advisory committee but felt:

...that this does not amount to adequate consultation with what is a very diverse sector. One voice—especially when countered by medical expertise—cannot be said to represent all views of the lived experience of disability, especially when the committee's proceedings are strictly confidential. Without the ability to speak openly about proceedings, any representative is seriously curtailed in their ability to consult well.¹⁰

2.11 Mr Frank Quinlan, Chief Executive Officer of the MHCA, also voiced concerns:

One of the Mental Health Council staff was involved in the small committee that was involved in the review of the tables, although they are not able to appear today...We are concerned, though, that there seems to have been inadequate consultation and testing of the proposed changes. Notwithstanding the right direction of the philosophy, it seems to us that there has been only a very short trial, and only on small numbers, of the impact of these possible changes on the real world of disability support pension entitlement.¹¹

2.12 Other submitters and witnesses also raised the issue of consultation following release of the draft revised impairment tables, particularly the workshops by invitation conducted by FaHCSIA.¹²

9 Ms Serena Wilson, Deputy Secretary, FaHCSIA, *Proof Committee Hansard*, 6 September 2011, p. 46.

10 Australian Federation of Disability Organisations (AFDO), *Submission 8*, p. 2.

11 Mr Frank Quinlan, Chief Executive Officer, Mental Health Council of Australia (MHCA), *Proof Committee Hansard*, 5 September 2011, p. 1.

12 Ms Leah Hobson, Acting Chief Executive Officer, AFDO, *Proof Committee Hansard*, 6 September 2011, pp 1 and 5, and Ms Sharon Rose, Acting Group Manager, Disability and Carers Group, FaHCSIA, *Proof Committee Hansard*, 6 September 2011, p. 47.

2.13 Mr Gerard Thomas, Policy and Media Officer for the National Welfare Rights Network (NWRN) explained the NWRN had not yet met with FaHCSIA following the release of the draft revised tables.¹³ Mr Thomas went on to indicate the NWRN would be participating in the department's workshops but was critical of the limited scope of these:

We think that these two-hour consultations are clearly not sufficient. We understand that they are workshops. We would hope that they will lead to changes but our experience is that this is a bit of going through the motions. We would like to think that there is a further capacity to change the impairment tables after these workshops but, clearly, two hours does not cut the mustard for a whole lot of people to engage in that process in a useful way. We are pleased it is happening and we have encouraged the department to expand them.¹⁴

2.14 AFDO was similarly displeased with the workshops:

We are now at a phase where the government is starting to consult on the draft impairment tables that have been produced by that committee, and the consultation process is again less than satisfactory. They are doing four consultations in four eastern-state cities. Those consultations are going to run for a couple of hours each.

...

So from our perspective that process is less than ideal. We would certainly like to see government taking more opportunities to come to us before they begin consultations with people with disability to understand our particular needs and for us to get a sense of the context in which they are operating rather than coming back to them and saying, 'This has been an issue for us,' and finding out they have had some particular constraints at their end or some things that they need to balance out. It is much easier if there is some dialogue from the start.¹⁵

2.15 Mr Pattison from the National Council on Intellectual Disability (NCID) was concerned that the level of consultation was not proportional to the likely outcomes of the reforms:

I also think that maybe not enough thought was given in entering into the revision of the impairment table, regarding exactly what sorts of outcomes were going to be achieved. Part of it is our fault because we were led to believe at the very beginning that the review was not going to be a major review; it was simply going to be about looking at it. What actually happened is that it became a major review in terms of trying to match it

13 Mr Gerard Thomas, Policy and Media Officer, National Welfare Rights Network (NWRN), *Proof Committee Hansard*, 6 September 2011, p. 28.

14 Mr Gerard Thomas, Policy and Media Officer, NWRN, *Proof Committee Hansard*, 6 September 2011, p. 28.

15 Ms Leah Hobson, Acting Chief Executive Officer, AFDO, *Proof Committee Hansard*, 6 September 2011, pp 1–2.

with the ICF, the International Classification of Functioning, Disability and Health. If we had better information around that we probably would have had conversations or discussions a lot earlier than we did, making the assumption that there would be little change around the intellectual disability or the intellectual functioning table, because we would know that there would be some problems in terms of the ICF and intellectual disability in particular.¹⁶

2.16 In response to these claims, Ms Sharon Rose, Acting Group Manager, Disability and Carers Group, FaHCSIA provided an explanation regarding the workshops:

The reason for that was that there was a recommendation from the advisory committee that we contact all of those organisations that Ms Wilson has just mentioned and offer them the opportunity to attend a workshop. The responses that we got were centred more around the eastern states. In fact, I think we only got one response from WA, so we did not go and set up a workshop for two or three people. But we are willing and we have said that we are happy to have teleconferences with people from these areas if they wish to do so. They are not excluded because of that. If we find out that the message has gone out and there are other people who wish to participate then we can amend that schedule.

...

The purpose of the workshops is to talk through the tables and to let people know how the advisory committee came to the decisions that they did in terms of the number of tables and the process that was gone through so that people could raise any issues that they have about them.¹⁷

2.17 Ms Serena Wilson, Deputy Secretary, FaHCSIA went on:

There were 75 organisations invited to attend. I guess it was based on the experience of those who have been interested in these issues in the past. That is how we formulate these invitation lists. But I take your point that going forward we could certainly consider a more open process. There was no intention to lock anybody out; it was just who we thought would be likely to be interested from our understanding of the stakeholder groups with whom we have normal and ongoing contact on these issues. They represent either disability-specific or medical-specific organisations as well as practitioner groups.¹⁸

16 Mr Mark Pattison, Executive Director, National Council on Intellectual Disability (NCID), *Proof Committee Hansard*, 6 September 2011, p. 31.

17 Ms Sharon Rose, Acting Group Manager, Disability and Carers Group, FaHCSIA, *Proof Committee Hansard*, 6 September 2011, p. 47.

18 Ms Serena Wilson, Deputy Secretary, FaHCSIA, *Proof Committee Hansard*, 6 September 2011, p. 47.

Testing the draft revised impairment tables

2.18 As part of the review of the impairment tables, the advisory committee developed and tested draft revised impairment tables. The testing was conducted by job capacity assessors (JCAs) from March to June 2011 in Victoria.¹⁹ The tests were of the application of the draft revised tables on new DSP claimants.²⁰

2.19 The testing process involved:

- comparative testing against the current tables: each DSP claim was assessed under both the current and draft revised tables;
- inter-assessor reliability testing: for some of the case reviews and where the claimant gave permission, the claim was independently rated by a different assessor under the draft revised tables;
- targeted case file reviews to ensure representation of less common medical conditions; and
- assessor feedback on the ease of use, perceived accuracy and appropriateness of the draft revised tables.²¹

2.20 FaHCSIA further explained the testing for the committee:

We asked CRS and Centrelink to trial the tables in the normal course of their assessments for DSP over that period. So in a sense those numbers are representative of what the types of claims were that would have been coming to those offices. We did say that we would try to cover all of the tables, but given the time frames that we had, we wanted to just try and use a representative sample of claims.

...

Effectively, what the trial was looking at was whether there were any perverse outcomes from the new tables. It was part of the process. When the advisory committee had developed new tables, they were happy and satisfied with them and were happy to present them as they were, but we wanted to give them a level of assurance that there was not anything strikingly wrong with them. So we had agreed that we would test the tables first and report back to them on the results of the testing so they could see what happened.

...

19 FaHCSIA, *Advisory Committee Final Report: Review of the Tables for the Assessment of Work-related Impairment for Disability Support Pension*, 30 June 2011, available: http://www.fahcsia.gov.au/sa/disability/payments/Documents/dsp_impairment_tbls_final_rpt.pdf (accessed 9 September 2011), pp iii and 27.

20 Ms Sharon Rose, Acting Group Manager, Disability and Carers Group, FaHCSIA, *Proof Committee Hansard*, 6 September 2011, p. 60.

21 Taylor Fry Pty Ltd, *Department of Families, Housing, Community Services and Indigenous Affairs: Analysis of the testing of draft impairment tables*, 22 June 2011, p. 4.

It was usability testing. That is the term we would cover the testing process with. It tested whether they were usable by a wide range of assessors, whether they produced the sorts of results that would be anticipated with the updating of the tables, whether they provided iterated reliability, what the outcome was when you had two people using the tables, what the results were versus the old tables. It was seeing how they operated in practice.²²

2.21 Following testing of the draft revised impairment tables, the department commissioned Taylor Fry Pty Ltd to 'get an independent view of the results of those trials'.²³ Taylor Fry examined 215 assessment results, of which 35 were assessed by two different assessors using the draft revised impairment tables.²⁴

2.22 Taylor Fry summarised the results of their analysis:

- the draft revised tables led to a downward revision in impairment ratings and in eligibility for DSP: 41 per cent of formerly eligible applicants became ineligible for DSP (with an estimated range of 36 to 45 per cent, meaning that between a third and a half of future DSP claimants may be ineligible).
- 21 per cent of DSP claimants whose future job capacity was found to be less than 15 hours were assessed as ineligible for DSP under the draft revised tables.
- for individual conditions, movements were generally downwards; that is, the number of points attributed to the condition (the severity of the condition) using the draft revised tables was generally lower than the number of points attributed to the condition using the current tables. Taylor Fry found 'there is some variation among ratings decreases between assessor qualification and revised table'.²⁵
- with respect to inter-assessor reliability, Taylor Fry concluded there was 'a significant amount of disagreement between assessments of the same person, with a difference of 35 per cent in some cases'.²⁶

22 Ms Sharon Rose, Acting Group Manager, Disability and Carers Group, FaHCSIA, *Proof Committee Hansard*, 6 September 2011, p. 51; Mr Andrew Hatch, Section Manager, Disability and Carers Payments Policy Branch, FaHCSIA, *Proof Committee Hansard*, 6 September 2011, p. 51; and Ms Serena Wilson, Deputy Secretary, FaHCSIA, *Proof Committee Hansard*, 6 September 2011, p. 51.

23 Ms Sharon Rose, Acting Group Manager, Disability and Carers Group, FaHCSIA, *Proof Committee Hansard*, 6 September 2011, p. 51.

24 FaHCSIA, *Advisory Committee Final Report: Review of the Tables for the Assessment of Work-related Impairment for Disability Support Pension*, 30 June 2011, available: http://www.fahcsia.gov.au/sa/disability/payments/Documents/dsp_impairment_tbls_final_rpt.pdf (accessed 9 September 2011), p. iii.

25 Taylor Fry Pty Ltd, *Department of Families, Housing, Community Services and Indigenous Affairs: Analysis of the testing of draft impairment tables*, 22 June 2011, p. 21.

26 Taylor Fry Pty Ltd, *Department of Families, Housing, Community Services and Indigenous Affairs: Analysis of the testing of draft impairment tables*, 22 June 2011, p. 22.

2.23 Numerous submitters questioned the adequacy of the testing, particularly the limited scope of the testing, both in terms of the single geographic location in which testing occurred as well as the total number of assessments analysed.²⁷

2.24 Ms Leah Hobson of AFDO and Ms Sue Egan, Executive Director of Physical Disability Australia (PDA) suggested the testing process had not adequately captured people with a disability living in regional areas.²⁸ Ms Hobson was also concerned that non-English speakers and Aboriginal and Torres Strait Islander people with a disability had not been included in the testing:

We also feel that the trials did not necessarily capture the needs of people from non-English-speaking background or from Aboriginal and Torres Strait Islander heritage. We are particularly concerned about that because the introduction to the draft tables suggests that cultural background should not be taken into account as a consideration when assessing somebody under the new tables. But there is no way to say that that is irrelevant unless you have actually tested and checked against those particular population groups. So we are quite concerned about that as well.²⁹

2.25 The Taylor Fry analysis showed significant divergence between assessments under the current DSP impairment tables as compared to the draft revised tables. The analysis suggested in many cases there will be a significant downward shift in the level of severity attributed to an individual condition, and therefore an associated reduction in the number of people with a disability eligible for DSP.

2.26 The committee notes the department's advice that the draft revised impairment tables 'will be applied to current DSP recipients if they are required to undergo a medical review'³⁰ and that approximately 2.2 per cent of DSP recipients undergo such a review each year:

I would note that medical reviews are undertaken on only a very small proportion of the DSP population. Some 2.2 per cent in 2010-11 had medical reviews—around 18,100 customers of 818,500 customers.³¹

27 Ms Leah Hobson, Acting Chief Executive Officer, AFDO, *Proof Committee Hansard*, 6 September 2011, p. 2; Ms Sue Egan, Executive Director, Physical Disability Australia (PDA), *Proof Committee Hansard*, 6 September 2011, pp 8–9; NCID, *Submission 3*, p. 7; and NWRN, *Submission 7*, pp 12–13.

28 Ms Leah Hobson, Acting Chief Executive Officer, AFDO, *Proof Committee Hansard*, 6 September 2011, p. 2 and Ms Sue Egan, Executive Director, PDA, *Proof Committee Hansard*, 6 September 2011, pp 8–9.

29 Ms Leah Hobson, Acting Chief Executive Officer, AFDO, *Proof Committee Hansard*, 6 September 2011, p. 2.

30 Ms Serena Wilson, Deputy Secretary, FaHCSIA, *Proof Committee Hansard*, 6 September 2011, p. 44.

31 Ms Serena Wilson, Deputy Secretary, FaHCSIA, *Proof Committee Hansard*, 6 September 2011, p. 44.

2.27 The committee is concerned that the approximately 18 000 current DSP recipients who may undergo medical review each year following implementation of the revised tables may be unaware the revised tables will apply to them and, given the analysis by Taylor Fry, some of these DSP recipients may become ineligible for DSP following medical review.

2.28 The committee asked the department why the draft revised impairment tables had not been tested on current DSP recipients. FaHCSIA responded:

We wanted to replicate what would happen when they were applied and new claimants would come through the door. In addition, we did not want to call an existing DSP recipient in and make them anxious about the possibility of losing their payment as they may see it. Those were the two main reasons.³²

2.29 On this basis, it is the view of the committee that the government should build on the consultation process it has put in place, maintaining engagement with stakeholders and DSP recipients during implementation. The government needs to find ways to expand consultation and evaluation of the revised impairment tables. In particular, current DSP recipients should be appropriately informed about the potential impact of the draft revised impairment tables when a medical review is conducted.

Recommendation 1

2.30 The committee recommends the government find ways to expand consultation and evaluation of the revised impairment tables. This should include information for current DSP recipients about the potential impact of the tables when a medical review is conducted.

2.31 The committee is also concerned about inter-assessor reliability and the up to 35 per cent difference between assessments conducted by different assessors demonstrated in the Taylor Fry analysis. Such a degree of disagreement between different assessors using the draft revised impairment tables will introduce additional uncertainty, and for a DSP claimant, anxiety to the process for determining a claimant's eligibility for DSP.

2.32 With respect to ongoing quality assurance and inter-assessor reliability, the committee was surprised to learn that the last time the current impairment tables were checked for inter-assessor reliability was in 1993.³³ The committee suggests in the future, inter-assessor reliability is checked regularly and routinely by FaHCSIA as part of the department's ongoing quality assurance mechanisms.

32 Ms Sharon Rose, Acting Group Manager, Disability and Carers Group, FaHCSIA, *Proof Committee Hansard*, 6 September 2011, p. 60.

33 Mr Andrew Hatch, Section Manager, Disability and Carers Payments Policy Branch, FaHCSIA, *Proof Committee Hansard*, 6 September 2011, p. 55 and Ms Serena Wilson, Deputy Secretary, FaHCSIA, *Proof Committee Hansard*, 6 September 2011, p. 55.

Recommendation 2

2.33 The committee recommends that inter-assessor reliability using the disability support pension impairment tables is checked regularly by the Department of Families, Housing, Community Services and Indigenous Affairs as part of the department's quality assurance mechanisms.

2.34 The committee understands that significant policy reform can create anxiety about the possibility of unintended consequences. It is particularly important to be vigilant in this case, given the vulnerability of the cohort involved.

2.35 The committee notes that the Advisory Group that reviewed the draft impairment tables recommended that there be a comprehensive review of their implementation in 18 months. Such a timing of the first review was supported by National Welfare Rights Network³⁴ and National Council on Intellectual Disability.³⁵

2.36 As well as this formal review, the committee recognises that the department will be closely monitoring the implementation of the new tables. In addition, it understands that the DSP Advisory Group will work with the government on the implementation of the DSP changes and the need for any changes to the system.

34 Mr Thomas, National Welfare Rights Network, *Proof Committee Hansard*, 6 September 2011, p. 24.

35 Mr Pattison, National Council on Intellectual Disability, *Proof Committee Hansard*, 6 September 2011, p. 32.