Submission: The administration and purchasing of Disability Employment Services in Australia

Committee Secretary
Senate Education, Employment and Workplace Relations Committees
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Sir,

As a long-term recipient of disability employment services, the notion that there is much of a market in operation is laughable. Service providers themselves are either heavily subsidised, or entirely funded by public money. A market should be comprised of willing buyers and sellers of goods and services, with "the invisible hand of the market" (to use Adam Smith's phrase) determining which entrepreneurs survived in business, because they had the products and services people wanted.

Equally, with compulsion from Government, via its agent Centrelink, the exact form of the "willingness" coming from many service recipients (buyers) is questionable. In the end, what I think you see is the "bureaucratic fist of government trying to determine individual outcomes". I recommend that the Committee consult Professor Julian Disney, as he conducted a review of the Social Security Compliance System a short while ago. Attending a consultation meeting in Sydney, one learnt much about the complex internal reporting processes that exists for all service providers already.

Adding to this my own experiences as an individual, making appeals to Centrelink and ultimately, the Social Security Appeals Tribunal (SSAT) for the restoration of my part disability pension,[1] there is the overwhelming impression that the welfare and employment training systems have coalesced into a bureaucratic Alcatraz.[2] It does not matter how minor the matter might be, Centrelink will still want its prescribed activity reports on Christmas Eve,[3] while an unemployed person's failure to attend a meeting or

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[1] See Appendix 1, pp. 11-40; these pages incorporate my appeal to the SSAT and my second submission to Disney Review. I draw these documents to your attention and suggest that much of the activity in the disability employment sector is just that – activity. Whether this "activity" has much to do with (or can claim much credit for) unemployed people gaining meaningful work, is highly debatable.

[2] Alcatraz Island is an island in San Francisco Bay, which was a prison for many years. It is in this context that the reference is used. See http://en.wikipedia.org/wiki/Alcatraz_Island as at 20 September 2011

[3] *See* Appendix 1, pp. 3-4; here I relate my experience of submitting a *Newstart* report in December 2009. The point of raising it with the Disney Review is exactly the same as why one seeks to raise it with the Committee now. In particular, I wrote:

> Why do we ask so much of the unemployed, as well as other disadvantaged groups in our society? Is it some sick joke on those who are mentally ill, have limited literacy, education or family support networks? In my own situation, one often felt you needed a secretary to manage all the forms and letters coming from Centrelink, not to mention drafting responses by a specified date, lest a payment be cancelled. How do people who are desperately ill, or have limited literacy cope with all of this? The short answer is: many do not.

interview will bring about the imposition of financial penalties, but no corresponding consequences for the an employment agent who fails to deliver on a promised paid position.[4] The Government's apparent preference for Memorandums of Understanding (MoU's) over legally binding arrangements should make us question the real motives behind the stated policy aim of seeing disabled people employed. Again, these words, contained in the Ministerial response I received, are telling:

> It is important that employers are not discouraged from seeking to employ people with disability by requiring them to be penalized if their fluctuating business concerns cause them to cease a planned recruitment process.[5]

I leave it to the Committee to determine how genuine the policy of employing people with disabilities is, whether it is from the perspective of industry or government. For my part, I can proudly assert that I am in open employment. My contract was signed between me and my employer; there was no third party. While happy to acknowledge that my disability employment agent initially introduced me to my current employer some years ago,[6] I nonetheless have concerns about the system of disability employment, as it exists.

Even when people with disabilities are employed, if they happen to be "employed" in a Special Business Enterprise (SBE), then should this be seen as 'employment'? Income to the individual is capped to ensure their retention of the disability pension and, SBE 'businesses' themselves are heavily subsidised by government.[7] The Australian taxpayer

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> The Review should view this question, not only from the perspective of welfare recipients, but the cost of overall public administration. For example, does it really benefit the Australian taxpayer to have government offices open on Christmas Eve and staff on overtime, just to maintain a payment and reporting cycle? I suggest not, but in the rhetorical flurry of stopping 'welfare bludging' and 'social security fraud' practical and pragmatic questions are not asked.

[4] If the Government is serious about substantial reform, it should insist that there be privity and contractual enforceability between service providers and clients, allowing clients to take action against services for a failure to deliver on undertakings. It would also be appropriate for Government to ban the use of Memoranda of Understanding. These unenforceable documents blight administrative law and are a scourge of public policy. In my own experience, these memoranda are both unreliable and can expose the truly 'marginal nature' of disability employment. Refer to Appendix 3, pp. 6-7; here I specifically quote a letter I received from Alison Durbin (Assistant Secretary, Disability Employment Services Branch), on behalf of the then Minister for Employment. Ms. Durbin wrote:

> The MOUs are designed to articulate the available services required by each employer to assist them hire people with disability. Legal contracts are not used because it would be unlikely that employers would risk facing penalty in the case that they had to defer or stop a recruitment process.
>
> It is important that employers are not discouraged from seeking to employ people with disability by requiring them to be penalized if their fluctuating business concerns cause them to cease a planned recruitment process.

[5] Ibid

[6] Refer to Appendix 2, p.3, where I acknowledge the agent's role in my employment and specifically, the placement which ultimately allowed me to qualify as a solicitor

[7] See generally, Appendix 3, pp. 4-8; in my second submission to then Fair Pay Commission I aimed to show (largely thanks to the Commission's own Discussion Paper) that the Supported Wage Scheme (SWS) and associated SBEs were more about welfare than work.

is the one losing out, but the impression left from all this subsidised activity largely obscures that 'inconvenient truth' from view. It was this concern that led me to raise the structure of disability employment schemes (many run by charitable not-for-profits) with the Henry Tax Review.[8] Equally, while many not-for-profit organisations undoubtedly do much good work, for how long must they hold tax free status, be allowed to seek government grants for their works and (for the purposes of this inquiry) have their employment enterprises subsidised?

In short, there should be nothing for effective, efficient and economically viable operators to worry about in having 80 or even 100 percent of contracts go to a proper market tender.[9] Personally, I welcome the idea of people with disabilities and their service providers becoming part of a real market, rather than a contrived, government regulated and subsidised cottage industry. This would also bring a level of accountability which has been lacking and, which all the documents appended to this submission, have been pushing for. It would also hopefully stop those who were truly too unwell being cajoled into 'work'; I found the ACROD example most distressing.[10]

Sadly, when it comes to disability services, government always seems to be front and centre, as supplier, regulator and funding source. While I acknowledge that there have been some moves towards individualised funding (rather than bloc funding) and the use of more market-oriented terminology, I am less convinced that the move in language has been matched by comparable changes in service delivery or design; or in the ideological/psychological approach of those providing services. The Productivity Commission's proposed National Disability Insurance (NDIS) is the clearest contemporary example of something which its authors inferred was an innovative reform,[11] which turned out to be a recommendation for "just another bureaucracy".[12]

In regard to the inquiry, the terms of reference are in many ways too narrow to look at the entire system in a "root and branch fashion" (though this desperately needs to be done). For the time being though, I recommend:

1. Moving to a fully competitive, market-orientated tender process;
2. Limiting the number of times any one disability employment service can apply for government funding, thus requiring them to make their business model economically sustainable;

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[8] See ibid., pp. 1-3

[9] And if concerns emerged about undue industry consolidation or monopolization, then such matters should be referred to the Australian Competition and Consumer Commission.

[10] *See* Appendix 3, p.4

[11] Productivity Commission 2011, *Disability Care and Support*, Report no. 54, Canberra, *Overview booklet,* p.2 (Main points) http://www.pc.gov.au/__data/assets/pdf_file/0014/111272/disability-support-overview-booklet.pdf as at 25 September 2011

[12] My final submission to the Productivity Commission, here included as Appendix 4, expressed my disappointment at the missed opportunities, and if anything, only hardened my resolve never to part of the scheme. With disability employment arrangements, you do not have the same option – if you are unemployed you must be registered with an employment agent.

3. Allowing service recipients and staff to move between providers, by ensuring the contracts of both become negotiable when a service is entering a tender process. A worthwhile provider should be able to convince preferred staff to stay, and with them, clients;
4. Allow funding to go directly to the employment services client, as in similar self-direct care arrangements emerging in personal care services;
5. Allow clients to direct funding to preferred staff in their chosen services, thus allowing the best staff to be rewarded, while forcing services to be truly responsive to their clientele.

Yours faithfully,

Adam Johnston

25 September 2011

The terms of reference are specified in section 42ZA of the Social Security (Administration) Act 1999, inserted by the Social Security Legislation Amendment (Employment Services Reform) Act 2009
s42ZA Review of impact of compliance regime

Prof Julian Disney
Chairman
Job Seeker Compliance Review
PO Box 113
Darlinghurst, NSW 1300
Or email: **jscr@franklin.org.au**

Dear Prof Disney and Review Panel Members

I write to you as a 36 year old part-Disability Pensioner, who is confined to a wheelchair, who also works part time and, is a Solicitor. You might wonder why I have made a point of telling you all of those very specific details at the outset of my submission. The reason is simply that the situation to be related to you relies on all of these facts. The conclusion the Review will be invited to draw by the end is that the compliance review has created work; for Centrelink staff, employment agents and alleged 'clients' of both: that is, people like me.

What sort of "work"?

However, the work created has not been fulfilling or rewarding. It has been 'paperwork' of the worst kind. If it was not faxing the fortnightly activity and income statements to the local Centrelink Office, then it is emailing the fortnightly figures from my pay sheet to Centrelink's mainframe. Some would say that such accountability was necessary, if I or anyone else is going to be in receipt of public money. While this is true to an extent, it is arguable that 'accountability' is not necessarily the only public interest test that should be applied to the compliance regime. Perhaps an equally applicable tool would be a cost/benefit analysis? In short, I recommend that the Review do some econometric research as to whether the compliance system costs more to administer than it returns in revenue recovered from fraudulent claimants? If it costs more to run than it returns in recouped funds, then it should be discontinued.

Equally, we need to ask (even if we find a positive return) whether there is still a real public interest being served in maintaining the compliance system. This is because there is no shortage of evidence of its negative impact on many people. For example, in 2009 journalist Adele Horin wrote a telling article about how Centrelink operates. A witty headline writer had declared 'You'll work like a dog to keep Centrelink happy', possibly in the mistaken belief that this was an ironic turn of phrase. Under this, Ms Horin had written in part:

> I have vivid memories of a young man I interviewed who had had his unemployment benefit stopped for eight weeks. Even though he had been

> reduced to sleeping on the streets, he held onto a neat folder containing copies of every job application he had ever made, and all written responses, as well as every piece of correspondence from Centrelink filed in individual plastic envelopes. I marvelled at his orderly habits in stark contrast to the chaotic jumble on my desk. But even he had slipped up in the end, transgressing some rule or other.[1]

When people are reduced to this you have to wonder about the true objective of the compliance system? I put it to the Review that one of the true (if undisclosed) aims of the Social Security system is to cost shift; this shift is to move as many needy people from the Government welfare system to the non-government charitable sector. There is clear evidence that this happens. Ms Horin has written elsewhere:

> Mutual obligation, with its myriad rules, is creating an underclass of alienated, impoverished, and homeless young people. It has led to an explosion in the numbers of unemployed people [who are] docked a part or all of their unemployment benefit for minor infringements of burgeoning regulations. Increasing numbers of young unemployed people are turning to charity.[2]

Call your lawyer

From my own experience, one should increasingly avoid dealing directly with Centrelink without a lawyer being present. Any misstatement or absence of a 'required' document can terminate a payment or delay an application process. For example, when an employment contact concluded mid last year, I applied for restoration of my disability pension (DSP). This was initially denied, on the basis that I had worked for two years and, due to legislative reforms, my application had missed a time limit for consideration under 'grandfathered' rules. It was therefore necessary for me to make an entirely new application for DSP, despite the fact that I had been a recipient of DSP since the age of 16 and, my cerebral palsy is a lifelong condition.[3] Centrelink further insisted on new medical reports from my GP and that I undergo a job capacity assessment, as well as provide copies of bank statements and statements relating to any other 'assets' I held.

Of course, none of this could be done via mail, email or telephone; I was required to attend my local Centrelink office – twice by taxi and once with the assistance of my mother. She was required to be absent from work for half a day to help me sort through, with a Centrelink staff member, our financial arrangements. As with many families, bank accounts and the like are held jointly and, I needed Mum's assistance to pick through the detail when advising Centrelink.

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[1] Adele Horin, *You'll work like a dog to make Centrelink happy*, January 31, 2009 <http://www.brisbanetimes.com.au/news/opinion/youll-work-like-a-dog-to-make-centrelink-happy/2009/01/30/1232818724404.html> as at 10 June 2010

[2] Adele Horin, *Sydney Morning Herald*, 26 May 2001, cited in Peter J Crawford, *Captive of the System! Why Governments fail to deliver on their promises – and what to do about it*, Richmond Ventures Pty Ltd © 2003, p.110

[3] For example, see the Spastic Centre of NSW, *What is cerebral palsy?*, <http://www.thespasticcentre.org.au/about_cp/what_is_cp.htm> as at 19 June 2010

Again, while it is arguable that the Government and community are entitled to ask that eligibility criteria be applied, little thought seems to be given to the time and energy these processes take and, the emotional, physical and financial impact on all parties. Furthermore, when conducting financial assessments, Centrelink may well be questioning many people with disabilities on a subject they deal with rarely. In my case, my parents have dealt with many financial matters on my behalf throughout my life, partly due to the physical difficulties involved with getting me to a bank; not to mention the personal safety issues of me withdrawing money from an automatic teller machine[4] and the authentication and privacy concerns surrounding internet banking.

My travel costs to and from the Centrelink office were never reimbursed; fortune had it that one remained eligible for the State taxi transport subsidy scheme, while my mother worked and I had some cash to draw on from the last period of employment.

Additionally, while going through the DSP appeal process, I was deemed eligible for *Newstart*, though it does not surprise me that many people lose this meagre sum, owing to a range of minor breaches. Only persistence, a fax machine and a dash of white hot rage helped me maintain the *Newstart* allowance. Even on Christmas Eve 2009, I could be found faxing the fortnightly report to my local Centrelink office in Brookvale NSW. Admittedly, some staff members were there too, as I had a number of conversations with Louise concerning my documentation.

There are many who will not be so fortunate, nor be as persistent. They will not have the benefit of my legal training, and as demonstrated above, many will suffer extreme hardship including homelessness. And, it is not that my legal training will guarantee me a job (it does not); rather, I am better equipped to handle the demands of the Social Security compliance system and am readily able to access appeal and complaint mechanisms. From personal experience in disability advocacy/lobbying, as well as professional experience working as a complaints handler for Ombudsman offices, many people respond unfavourably to the suggestion that they need to write a formal letter of complaint to an agency seeking a review. They either see it as an appeal which will be summarily dismissed, are intimidated by the thought of making a complaint, or are so tired of the whole administrative process they choose 'not to bother' making a complaint. Underlying all of this, there is a noticeable lack of faith or trust in all levels of government.

Is this *really* in the public interest?

There is also the question of cost and difficulty. Why do we ask so much of the unemployed, as well as other disadvantaged groups in our society? Is it some sick joke on those who are mentally ill, have limited literacy, education or family support networks?

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[4] Given my level of incapacity, I am nervous about using automatic tellers and handling money in an open, public environment. I would be an easy physical target, regardless of the machine's safety or anti-fraud mechanisms; for example, see <http://www.automatedtellermachine.net/search/label/ATM%20Safety> as at 19 June 2010

In my own situation, one often felt you needed a secretary to manage all the forms and letters coming from Centrelink, not to mention drafting responses by a specified date, lest a payment be cancelled. How do people who are desperately ill, or have limited literacy cope with all of this? The short answer is: many do not.

The Review should view this question, not only from the perspective of welfare recipients, but the cost of overall public administration. For example, does it really benefit the Australia taxpayer to have government offices open on Christmas Eve and staff on overtime, just to maintain a payment and reporting cycle? I suggest not, but in the rhetorical flurry of stopping 'welfare bludging' and 'social security fraud' practical and pragmatic questions are not asked.

My own case, which must have cost the bureaucracy hundreds of thousands of dollars in man hours over half a year, in a dispute Centrelink ultimately lost, should stand as an example of why reform is urgently needed. While this will not be the situation for many people, part of the fun of any problem I encounter with government is making the complaint. So when my DSP application was refused, on the basis that one was not sufficiently disabled, I immediately appealed. The Authorised Review Officer (ARO) upheld the original decision, finding that I was capable of work based on the capacity test; conveniently for the department, the test relies on my theoretical capacity for work, not the availability of *actual* work, nor whether any of my applications to that point had led to job offers.

I fought Centrelink, and I won

Appealing the decision before the Social Security Appeals Tribunal (SSAT), I drew to the Tribunal's attention several technical legal issues concerning the ARO's assessment of my case and, asked whether she had appropriately exercised her discretion in my case; my submission contained in Appendix 1. Not that much of this was necessary because when I appeared before the Tribunal, one of their principal findings was that I was clearly disabled and that the original capacity assessment was wrong. They said at paragraph 33 of their ruling:

> The Tribunal considers that the Job Capacity Assessor has incorrectly rated the loss of function of Mr Johnston's upper limbs. The Tribunal observed at the hearing that Mr Johnston had a marked loss of function of both arms and hands. He can only manipulate objects within close proximity and has diminished strength and fine motor skills. The Tribunal does not agree with the Job Capacity Assessor's finding that Mr Johnston had 'mild to moderate interference with hand function'. The Tribunal considers Mr Johnston has a 'major' loss of function in relation to both upper limbs.[5]

In their opinion, I met the criteria for payment. The ARO's ruling was set aside and I was awarded the DSP, plus backdated payments from the time of my initial application.

[5] Social Security Appeals Tribunal (SSAT) Reference S236090, 20 January 2010, p. 6. (Refer to Appendix 2 (c) and note Appendices 2 (a) and (b))

While personally elated with the outcome, there are several issues this review should keep in mind. This process had taken in excess of six months to complete. It had certainly required me to write multiple letters and required the time and efforts of many others, including my mother, my GP and my employment agent (who provided evidence for my SSAT appeal). Centrelink officers had been required to read and review my file, while the SSAT adjourned to consider points of law before making its final decision.

From my perspective, I noticed that the initial Assessment Officer's "assessment" of me was a very quick affair – a half to three quarter hour meeting at most. This mainly focused on previous work history, my studies and, job seeking efforts (as I was then unemployed). At no time did she do even the most rudimentary of physical examinations (i.e.: a test of basic reflexes). This may well be explained by the fact that my Assessor was a psychologist,[6] not a medical doctor or even a paramedic. I raised this, along with my estimation of my Assessor's age (a woman whom I felt was younger than me), with the Tribunal. The Tribunal members indicated that concerns over Assessors ages, experience and resulting competence were not new and, I was not the first to raise such issues.

Other questionable elements of the Centrelink internal process revolved around the ARO herself. As I recall, we had two conversations by phone – one where I was invited to put my case (and did) and a second where she advised me of her decision and, the options I had for appeal. While these were pleasant and constructive conversations, they nonetheless involved a single agency carrying out two contradictory functions – on the one hand providing social welfare payments and, on the other, ruling on eligibility. This function necessarily carries the imputation of revenue protection. The Review should ask whether assessment and payment functions should be more than notionally and physically separate, but legislatively and organisationally separate. Additionally, one could question the real bona fides of a paper only review, where the reviewer did not formally examine me, but rather had my complaint alongside Centrelink's documentation, the key part of which was a flawed capacity assessment which was dismissed by the SSAT on their physical observation of me.

"We will never surrender…."

When Centrelink was established, it was supposed to streamline and simplify benefit payments. I do not think this has happened; Centrelink is an administrative giant with significant coercive powers. Unless you show a near Churchillian resolve, you may well find yourself on the wrong payment or with no payment at all. Had I accepted the ARO's ruling I would have remained on *Newstart* instead of the applicable DSP.

My experience only makes me reflect on the suffering caused to a single mother and her family, as the then Department of Social Security was constantly withdrawing and repaying her Family Payment (FP). This was because her ex-husband was a very irregular payer of Child Support (CS). Thus, when arrears were paid, the Department immediately moved to claw back FP overpayments. While this may have made administrative sense, it

[6] I inquired as to her background

left the claimant with a very uncertain income stream. Assessing this desperate situation as a case study for a report I compiled as an intern for the Department of the Senate in 1996,[7] I made a number of recommendations.

Principally, I was concerned that the department give vulnerable families certainty, by maintaining consistent FP instalments, regardless of whether an ex-husband had made payments. Ideally, the department should have seen the sense of providing the mother in my case study with a steady income, while taking it own action to recoup CS arrears from the ex-spouse. As things stood, the lady struggled to budget from week to week, because FP and CS payment weeks did not coincide, even when the CS was paid. When CS was paid, usually in the form arrears, the department clawed back FP. In a constituency complainant to a Senator, the mother stated that there were weeks she was left without money for food or bills.

A lack of reform

Little seems to have been learnt in the 14 years since I wrote that report. Indeed, if anything has happened, it is that things are worse. The quotations above from Ms Horin should exemplify this, while my own SSAT case should underline the time and expense wasted in maintaining a complex compliance system. Furthermore, we should not look at the Social Security compliance system in isolation from the tax system. For many Australians, much of what they pay in tax is returned to them in the subsidies and welfare benefits the compliance system has to monitor. We should eliminate tax and welfare churn, by making significant reforms to our tax system. I told the *Henry Tax Review* that:

> (The) review of the taxation system should:
> 1. Abolish allowable deductions while raising the tax thresholds to compensate taxpayers for the loss of the deductions. This has been advocated for some time by the head of Access Economics, Geoff Carmody.[8] I particularly like the idea because it would excuse many people (including me) from filing a tax return;
> 2. Set the top marginal tax rate at 30%, matching the corporate rate and, thus minimising the incidence of tax avoidance, as you take away the incentive to "hide" assets in companies.[9]
> 3. Act to make the Medicare levy a less regressive and unfair tax, particularly on those with low incomes.[10]

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[7] *See generally,* Adam Johnston, *An SOS to the DSS: Reform the FP*, Research report (Australian National Internship Program (Australian National University)), Item S 909.09 RES (Copy 1) MAIN-ANALS N10039129 INLIBRARY, Parliament House Library, Canberra 1996 <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=;db=;group=;holdingType=;id=;orderBy=alphaAss;page=;query=(Dataset%3Apartypol,lcatalog,jrnart,jrnart88%20SearchCategory_Phrase%3A%22library%22)%20Journal_Phrase%3A%22no%22;querytype=;rec=14;resCount=> as at 15 June 2010

[8] *See* Geoff Carmody, *Tax Cuts or Tax Reform: Which? For Whom*?, Address to the National Press Club, 5 April 2006, p. 2, p. 7 <http://accesseconomics.com.au/publicationsreports/getreport.php?report=70&id=79> as at 17 June 2010

[9] *See* ibid., p.3

[10] *See* generally, Adam Johnston, *Henry Tax Review Submission* <http://taxreview.treasury.gov.au/content/submissions/pre_14_november_2008/Adam_Johnston.pdf> as at 17 June 2010

The submission went on to highlight Mr. Carmody's analysis as to why taxes like the Medicare levy are regressive and, my recommendations for reform. Therefore, it is not necessary to repeat myself, beyond specifically drawing the Review's attention the cost to individual's privacy thanks to compliance demands. While appreciating that the Australian Tax Office, Centrelink and other agencies have extensive confidentiality and privacy controls in place, such measures can and are breached. Making these points in a submission to the Australian Law Reform Commission's *Review of Privacy,* I highlighted a number of publicised privacy breaches of client's privacy by staff of Centrelink.[11] Later in the same submission I put my principal concern this way:

> (W)e need to ask Treasury, Centrelink and the Australian Tax Office in particular, why they need to collect so much data or administer so many tax refunds or income transfers in the first place? As demonstrated earlier, no less than the Head of Access Economics says a lot of this activity is not only unnecessary, but generates inequities, especially for those on low incomes. Furthermore, when the Tax Office tries to recoup lost revenue, a combination of limited resources and insufficient records (sometimes held by other authorities) can make such attempts laughable.[12]
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> Under such circumstances, I recommend that it would be far more productive to reduce the incidence of tax and transfers, rather than try to recoup lost revenue.[13]

For all of the reasons outlined above, it greatly disappoints me that the Government took a few select items from the *Henry Review* and the whole tax debate is now consumed by the question of the mining tax. As a part time worker with a disability, who has a part pension, the mining tax is only one of many issues that I believe should be publicly debated. The tax and welfare churn never seems to receive the attention it deserves. Yet it is this churn that demands the existence of the costly compliance system at the heart of this review. It is the same compliance system that demands I hand over vast amounts of personal data to government. As a result, agencies like Centrelink will try to micro-manage vast areas of my life and activities, which is most unwelcome. As I have told the *National Human Rights Consultation* headed by Father Frank Brennan:

> (A)s someone with a physical disability, I have at many times in my life found myself being case managed to within an inch of insanity. For example, while it might have been very generous of the taxpayer to partially fund my transport expenses while undertaking undergraduate study, via the Commonwealth Rehabilitation Service (CRS), the level of influence this gave CRS caseworkers

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[11] *See* Adam Johnston, *Submission: Issues Paper 31 – Review of Privacy*, 31 December 2006, p. 2 <http://www.health.gov.au/internet/main/publishing.nsf/Content/eHealth-002/$FILE/002_Adam%20Johnston%20pt%202_21-07-09.pdf> as at 19 June 2010

[12] *See* John Garnaut, *Crooked investors dodging tax hit-list*, Sydney Morning Herald, December 28, 2006, <http://www.smh.com.au/news/national/crooked-investors-dodging-tax-hitlist/2006/12/27/1166895361425.html> at 31 December 2006

[13] Johnston, above n 11, p. 6

> over the nature and direction of my studies was incredible. At one point CRS raised queries over my subject selection 24 hours before I was to enrol, while on another occasion a case officer insisted that I produce a full subject plan covering the entire life of my undergraduate study. The document was produced, but I contacted the Dean of Students who advised it was unrealistic to plan so far ahead; the University could not guarantee staff and subject availability, beyond what was offered that year. I requested that she put that in writing to the CRS.
>
> While, on one level, these problems are minor and were ultimately resolved, they demonstrate how willing government is to intervene in the day to day life of individual citizens.[14]

This was one example in a wider argument about the nature of government having changed. Specifically:

> Section 51 of the Commonwealth Constitution speaks in terms of the provision of 'peace, order and good government'[15] and while there are other sections referring to pensions and benefits, I suggest that many of our Founders would struggle to comprehend many legal developments of the modern day. And I am not making the old States Rights argument about the centralisation of power in Canberra; rather, it is a question of a notable change of focus of regulators and politicians. From peace, order and good government we have moved to protection, obedience and good behaviour.[16]

This is how I perceive the Job Seeker Compliance/welfare system today. It is forever checking up on me, or wanting fortnightly income reports and the like. It chases me for every last dollar of an overpayment, but takes up to six months to accept that I was not paid appropriately. And I and many others are just supposed to accept this?

Stop the churn and let us earn

It is my dissatisfaction with the whole process that makes me say to you that your Review must deal with the tax and welfare churn. Instead of taxing people on lower to middle incomes only to return the money as welfare, let people keep the income themselves. This will allow government to dismantle much of the costly compliance system, which as I suggest above can be very intrusive and a real threat to personal privacy. It is also changing the nature of government, where we arguably no longer live in a liberal democracy where government is limited by law. Rather, the nature of the legislation being enacted can give bureaucrats sweeping discretions to intervene in the lives of individuals.[17] This was a point made some years ago by the Victorian Attorney General,

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[14] *Key Consultation Questions* by Adam Johnston (submission) 10 April 2009, pp. 1 -2 <http://www.health.gov.au/internet/main/publishing.nsf/Content/eHealth2-010/$FILE/010_Adam%20Johnston%20pt2_31-12-09.doc> as at 22 May 2010

[15] And the State Constitutions would use similar language

[16] *Key Consultation Questions* ,above n 14, p. 2

[17] And it is to be wondered whether all these interventions are truly lawful. While the SSAT members assured me the ARO's actions were lawful (if based on an erroneous assessment) I noted that the Social

when he addressed the Centenary Sitting of the High Court in Melbourne. He told their Honours:

> In our defence of the rule of the law, we must also be alert to, and alarmed by, attempts to bypass judicial scrutiny, whether it be via privative clauses or the more insidious trend towards unenforceable guidelines. In my view, any suggestion that an Executive's "non-binding guidelines" be accepted as authoritative is dangerous terrain. Yet it is increasingly the case that we are asked the accept the legitimacy of such guidelines, whether it be in Industrial Relations, decisions concerning grants of Legal Aid, or more poignantly in the immigration area.[18]

This is also true in the Job Seeker Compliance system, where unenforceable Memorandums of Understandings (MoU's) are used between job agencies and potential employers, but the relationship between an unemployed person, their agent and Centrelink is legally enforceable. There is a fundamental lack of just and equitable treatment between parties, if employers can squib on the memoranda they enter without fear of penalty.[19] Meanwhile, job seekers must always fear the application of a penalty for non-compliance. The Review should insist that employers and employment agents meet performance standards and, are appropriately penalized when they hold out a job offer which is not ultimately delivered to an unemployed person.

Conclusion

In summary, I recommend that the Review:

1. Conduct econometric research as to whether the compliance system costs more to administer than it returns in revenue recovered from fraudulent claimants;
2. Ensure that such studies put a value on the time and effort which must be expended by all Centrelink clients, their families, advocates and agents etcetera, in meeting compliance demands;

Security Act vests most powers directly in the Secretary. Therefore, when looking to Section 23 regarding an Officer, I queried how officers obtained delegated authority, when the Act fails to clearly provide the Secretary with a power of delegation.

[18] The Hon. Rob Hulls MP, Ceremonial - *Special Sitting at Melbourne - Centenary of High Court of Australia* [2003] HCATrans 406 (6 October 2003) Last Updated: 25 November 2003, [2003] HCATrans 406,<http://www.austlii.edu.au/cgi-bin/sinodisp/au/other/HCATrans/2003/406.html?stem=0&synonyms=0&query=^%20high%20court%20centenary> as at 20 June 2010

[19] *See* Johnston, above n 11, pp. 6 -7. Also note Appendix 3, particularly pages 10 – 11. While the document is concerned with the proposal for a National Disability Insurance Scheme, I took the opportunity to draw some parallels with various schemes which allegedly "employ" people with disabilities. When you consider that many of the "employees" are paid only a nominal amount so as to retain pension entitlements, while many of the "businesses" are reliant on government subsidies, it is difficult to conclude that this is an arrangement that moves people from welfare to work. If anything, the taxpayer is paying twice; the pension to the employee and the subsidy to the business.

3. Ensure the same studies include the cost of maintaining the SSAT and other appeal infrastructure;
4. Conduct research as to the true cost to the taxpayer of subsidised wage schemes and, how many of these actually lead to economically sustainable employment (i.e.: employment not subsidised by the taxpayer);
5. Call on the Government to proceed to far greater tax reform, to stop the inefficient 'tax and welfare churn'
6. Call on the Government to cease its use of unenforceable MoU's in relation to employers and employment agents. If a job seekers' "obligations" are enforceable, all other parties should be held to enforceable outcomes;
7. Consider the abolition of Centrelink, so that assessment and payment functions are more than notionally and physically separate, but legislatively and organisationally separate (i.e.: in the hands of different authorities).

Yours faithfully,

Adam Johnston

Appendix 1

To: Social Security Appeals Tribunal
From: Adam Johnston
Date: 4/11/09
Subject: Reasons for Appeal

The Authorised Review Officer has relied principally on Section 94(2) of the Act in rejecting my application. The language of the section does not use those two words which are most readily used to identify whether an officer must arbitrarily apply a standard (as in the word "shall"), or has discretion to choose a range of options (as in the word "may"). Rather, the section uses the word "is", which is what I seek to have the SSAT address.

"Is" appears to be a word which invites some level of discretionary behaviour, as it can be used in past, present and future tenses. For example, Black's Law Dictionary states that:

'…The word, although normally referring to the present, often has a future meaning, but is not synonymous with "shall have been". It may however, have a past significance, as in the sense of "has been"…'[20]

Given that the phrase is not synonymous with shall, I submit that there exists some discretion for the ARO to have ruled in my favour. I also submit that she dismissed too readily other grounds of my appeal, without specifying which point of time she was taking "is" from, and the rationale for selecting that point in time. As such, I presented evidence in my appeal letter of 17 September 2009, including the fact that the Law Society locum registrar had advised me there was little work available now, or in the foreseeable future.

Centrelink may respond that the section does not allow consideration of such matters. If the phrase used in the legislation was "shall" I would agree; but this is not the case as the operative word is "is". Therefore, as "is" is not synonymous with "shall", it was open to look at past, present or future inability to work, including matters which the ARO may have (incorrectly) considered to be completed excluded. Again, the use of the word "is" permits a discretion which can potentially be exercised in my favour.

I seek to have the SSAT:
1. Set aside the ARO's decision
2. Restore the Disability Support Pension, including back pay from 1 July 2009.

Yours faithfully,

_____

Adam Johnston

[20] Joseph R Nolan and Jacqueline M. Nolan-Haley, Black's Law Dictionary, 6th ed., West Publishing Co., 1990, p.830

Appendix 2a

HSBC Centre, Level 20, 580 George Street Sydney, 2000
(GPO Box 9943 Sydney, 2001)
Phone: (02) 9202 3400 Free Call: 1800 011140
Fax: (02) 9202 3499 E-mail: sydney@ssat.gov.au

Social Security Appeals Tribunal

20 January 2010
Reference Number: S236090
Case Manager: Veronica Farrell

Mr Adam David Johnston
35 Woolrych Crescent
DAVIDSON 2085

Dear Mr Johnston

YOUR DECISION IS ENCLOSED

Your appeal has been decided and a copy of the written decision is enclosed. We have also sent a copy of this decision to Centrelink. A decision summary follows.

1. Payment Type: Disability Support Pension
   Decision Under Review: Rejection
   SSAT Decision: Set Aside

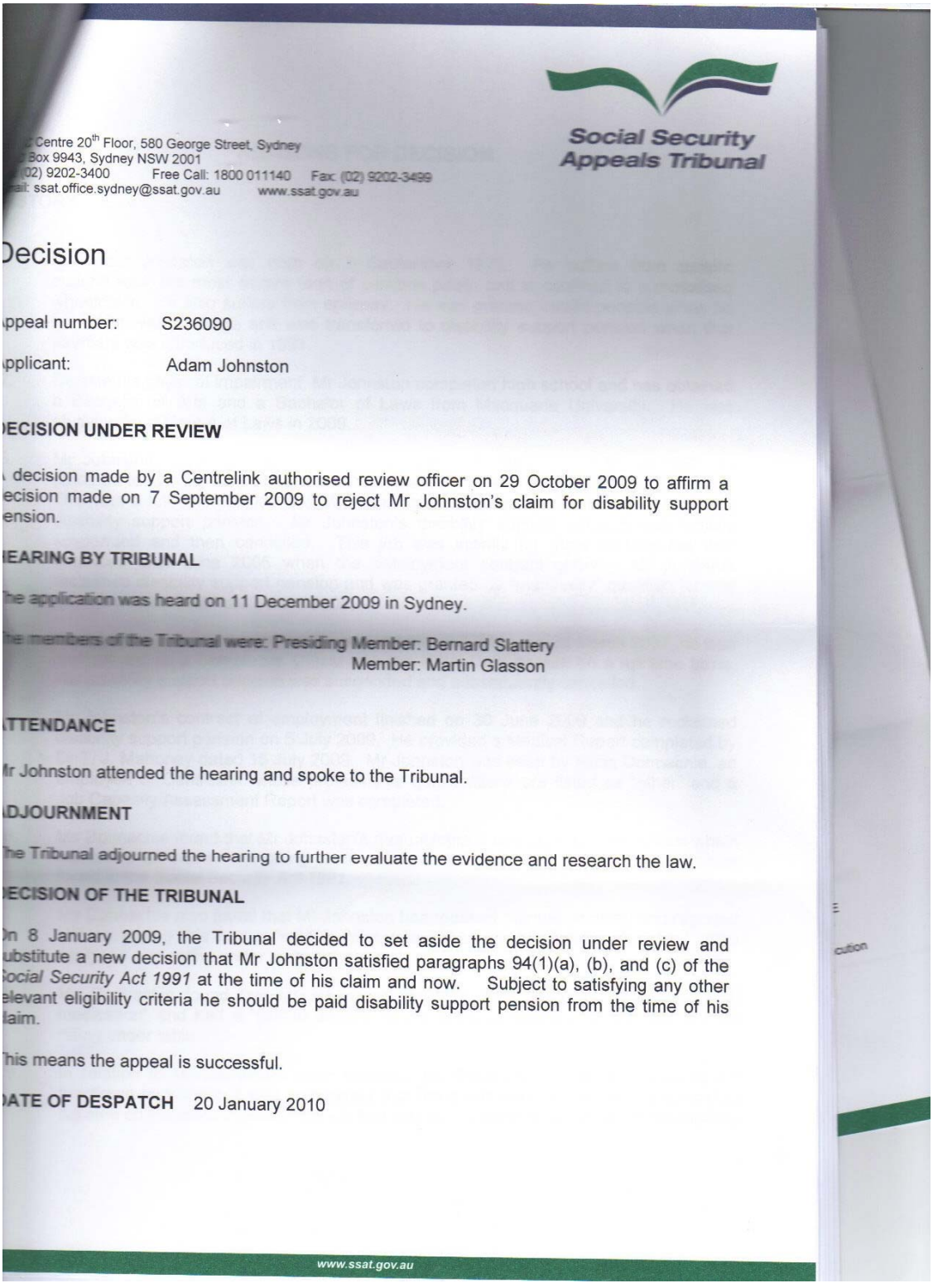
If you have any questions about when the decision will come into effect, please contact your local Centrelink office.

Centrelink must accept the Tribunal's decision, unless it appeals to the Administrative Appeals Tribunal (AAT).

You also have a further right of appeal to the AAT if you disagree with our decision. Information about how to appeal to the AAT is enclosed. An AAT appeal must be lodged within 28 days of receipt of the SSAT decision.

Yours sincerely

Catherine Cudmore
Business Manager



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Social Security Appeals Tribunal

Decision

Appeal number: S236090

Applicant: Adam Johnston

DECISION UNDER REVIEW

A decision made by a Centrelink authorised review officer on 29 October 2009 to affirm a decision made on 7 September 2009 to reject Mr Johnston's claim for disability support pension.

HEARING BY TRIBUNAL

The application was heard on 11 December 2009 in Sydney.

The members of the Tribunal were: Presiding Member: Bernard Slattery
Member: Martin Glasson

ATTENDANCE

Mr Johnston attended the hearing and spoke to the Tribunal.

ADJOURNMENT

The Tribunal adjourned the hearing to further evaluate the evidence and research the law.

DECISION OF THE TRIBUNAL

On 8 January 2009, the Tribunal decided to set aside the decision under review and substitute a new decision that Mr Johnston satisfied paragraphs 94(1)(a), (b), and (c) of the *Social Security Act 1991* at the time of his claim and now. Subject to satisfying any other relevant eligibility criteria he should be paid disability support pension from the time of his claim.

This means the appeal is successful.

DATE OF DESPATCH 20 January 2010

below under the heading "Application of the Law and Reasons".

2. For reasons that will be discussed further below, the Tribunal considers the NSW Ombudsman to be an exemplary employer. As will be further discussed below, this finding is also significant in determining how the law should be applied in Mr Johnston's case.

33. The Tribunal considers that the Job Capacity Assessor has incorrectly rated the loss of function of Mr Johnston's upper limbs. The Tribunal observed at the hearing that Mr Johnston had a marked loss of function of both arms and hands. He can only manipulate objects within close proximity and has diminished strength and fine motor skills. The Tribunal does not agree with the Job Capacity Assessor's finding that Mr Johnston has a "mild to moderate interference with hand function". The Tribunal considers that Mr Johnston has a "major" loss of function in relation to both upper limbs.

34. Mr Johnston's epilepsy is now well controlled by medication following a seizure in February 2009.

35. After the hearing Mr Johnston advised the Tribunal's case manager that he had been re-employed by the NSW Ombudsman. He provided a letter dated 11 December 2009 that he was to be employed on a part time basis for seven hours each Monday. A start date is not identified. This employment would last until 30 June 2010 "unless [Mr Johnston's] services are dispensed with before this date…" . This offer of employment was subject to certain preliminary matters being satisfied. This letter has been copied and placed on the Centrelink file.

36. Amongst the documentation provided by Mr Johnston there is a letter dated 9 December 2009 from Warren Chapman of the Sydney Employment Development Service which relevantly states the following:

I am writing in support of Mr Johnston's appeal regarding disability support pension. Adam has been a member of the Spastic Centre all his life.

He was born with Spastic Quadriplegia (Cerebral Palsy) which is a permanent condition affecting:

- His lower limbs unable to walk and he needs to use a wheelchair for mobility.

- Hand function with reduced manual dexterity and fine motor movements making it difficult for Adam to write and typing can be tiring.

- Speech – even though he is quite articulate his voice volume can be quite low making it difficult to hear [him] sometimes.

Adam has also suffered from Epilepsy, although controlled he can have seizures.

Cerebral Palsy can be a degenerative disease in the fact that aging occurs prematurely due to the body having to cope with the [effects] of this condition.

Even though Mr Johnston has professional qualifications and has worked during the past 2 or 3 years it is his physical barriers that make it extremely difficult for him to obtain a job. Both Mr Johnston and my organisation have sent numerous applications and made contact with prospective employers without any avail. The law profession is a very tight labour market at the moment and coupled with a significant disability Mr Johnston's ability to obtain full time work is very limited.

The other issue for him is the nature of his disability which affects his ability to work full time.

THE PRODUCTIVITY COMMISSION
DISABILITY CARE AND SUPPORT INQUIRY

Response to the Issues Paper

Dear Commissioners,

Introduction

I have received your email with the link to the attached *Issues Paper* and the submissions already received. But, quite frankly, if additional services and new funding were going to 'fix' the problem of unmet need, this would have happened a long time ago. At 36, life with cerebral palsy has taught me a number of things. Most importantly, no new government engineered "system" or "program" is going to make my life better. You will note that throughout my commentary to the Commission, there will be references to papers and submissions I have written elsewhere. This is because, while the body undertaking the inquiry changes, the issues surrounding disability policy never change that much.

A reform of substance would be the broad retreat of government bureaucrats from the lives of individuals; you might think this a highly unreasonable request, but as a disabled person one can often feel overwhelmed and overrun by social workers and others in the 'welfare industry'. My family has found this in relation to parts of the Ageing and Disability and Homecare Department of NSW (AHAC). Several years ago, we responded to a newspaper advertisement to become part of a pilot scheme called the Attendant Care Program. (ACP) This was targeted at people with disabilities and their carers/parents, particularly as both groups age. After our initial inquiry in 2007, we did not hear much until late 2008.

My experience

As John Farnham[21] once sang: 'Well, it seemed liked a good idea, at the time!' The first c(Name suppressed)ge with the ACP was to maintain my current ADHC funded Homecare Services. I have been a Homecare client since 1987, and have a very stable group of regular Homecare attendants. Particularly given that I have current, regular, employment, experienced, reliable early morning care is essential. This is to allow me to meet a specific, wheelchair accessible bus, to take me into the city. Managers of the ACP (who were also officers of ADHC) insisted that I had to progressively forgo all current arrangements to be part of the ACP scheme. In an email to me dated 1 April 2009, the Acting Program Manager of the ACP Unit, (Name suppressed) wrote in part:

> Whilst both programs are administered by the Department, the funding is different. Although Home Care are not an approved provider for the Attendant Care Program, clients with a lengthy existing relationship with Home Care are able to select them as a provider if the branch is willing and has capacity.

[21] *See* generally http://en.wikipedia.org/wiki/John_Farnham as at 19 May 2010

> However, the reason we encourage clients to select a provider from the list is because Home Care are not able to be as flexible with services as other providers due to their policies and the fact that they are the provider for both the High Need Pool and HACC clients, which means their resources are stretched to capacity. The approved providers listed under the Attendant Care Program are able to be more flexible. The program overall is also more flexible and the ability to bank hours will assist you when you travel. You are able to use one-off funding and these banked hours to assist you when travelling and we encourage clients to discuss possible future plans when meeting with providers to ensure that they will be able to meet their needs.[22]

To be fair, I understand the need to meet criteria and conditions for service delivery. Furthermore, the matter was concluded satisfactory; my Homecare service has been maintained. My point in quoting the above paragraph is to show what 'flexibility' means in practise. Flexibility is often the client's flexibility to contort their life (and that of their family's) to meet an agency's or program's selection criteria. Even where there are identified features a recipient seeks,[23] there are other parts of a package which come along that are about as welcome as the fox in your cook pen.

In my case, it was a round of meetings and assessments, which at times saw Mum and I reorganising our work and other commitments, to meet ACP demands. There was also the speed which our attendant care provider wanted to rearrange large parts of our lives. We had only suggested, for example, that we *might* be in the market for a second hand van. This was to permit me to travel with Mum, without the need for me to get out of my wheelchair and transfer to a car seat.

Suddenly, we received emails about various vans for sale and advice that a funding application needed to be made, within certain timeframes. Again, we found that we were being asked to dance to the 'service provider's tune' and make decisions that suited their schedules. I now make even greater use of Wheelchair Accessible Taxis (WATs) than I did prior to my experience with the ACP and, my mother and I will persist with the chair to car transfer for as long as we both feel able to do so.

This should lead the Commission to consider several points. Firstly, you should examine very closely the financial costs of a system, such as the one you propose.[24] It would not appear that you are intending to sweep multiple programs away, but rather overlaying a new scheme on existing infrastructure. While acknowledging that the *Issues Paper* says

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[22] *See* RE: My application for Attendant Care, **Sent:** Wednesday, 1 April 2009 10:35 AM by (Name suppressed)

[23] My mother and I were seeking to plan for our future, in a time when she is less physically able to manage my needs and/or my needs were placing undue strain on her health. We always felt that this was "in the future" and that we were the ones with the ability to call for more support when we needed it.

[24] *See* Productivity Commission, *Disability Care and Support: The key questions*, May 2010, p.4 (Diagram: The main aspects of any system) <http://www.pc.gov.au/__data/assets/pdf_file/0008/98027/key-questions.pdf> at 18 May 2010

the Government aims to rethink current funding and support arrangements,[25] the diagram belies an all too familiar gauntlet of 'gatekeepers' and eligibility criteria. It would be worthwhile for the Commission to undertake some economic modelling as to administrative costs and time taken with applications, processing and assessment. My case should stand as an example of the inefficiencies in a system, whereby the recipient of funding declines to proceed with available, additional funding. This is because dealing with my own current personal circumstances and arrangements (i.e.: continuing to be transported either in a standard vehicle or using more WAT's) is currently easier and less emotionally taxing, than engaging with the bureaucrats of the ACP.

In making its inquiries, the Commission should not hesitate to both critique and be critical of both the government-run and non-government welfare/social services sector. In my experience with the ACP, it seemed assumed that recipients and their families would automatically be grateful for any service package produced (even if it didn't meet an individual's stated needs).

For example, I recall taking a telephone call early last year, at work, from my ACP service provider. She had just had a conversation with my mother, which ended badly. In short, the enquiry revolved around whether we intended staying with the ACP; the question ending with a reminder of the funding on offer. I quickly explained to her that the terms of my staying were clear: both my mother and I had one clear message from the beginning – whatever else happened we wished to retain our Homecare service. This was the one thing that, up until Ms (Name suppressed)'s intervention, was specifically refused. Therefore, I advised that I was very dissatisfied with the ACP initiative and, was prepared to leave the program. Thereupon started the provider's blackmail argument, which was that I had 'failed to consider my mother's future needs' by unilaterally exiting the program.

These comments fitted a pattern of behaviour engaged in by the provider, when it became clear to her that we were not going to say "Yes" to everything she suggested, nor be managed to her funding timeframes. At times when it suited the ACP provider, I was the client; at other times it was my mother. It never seemed to occur to her that the first thing a mother and son would do, was to check with each other as to what had been said to us. A less than subtle 'divide and conquer' strategy failed. After I told the provider that I thought she was little more than a bully (to which she claimed deep offence) putting down the phone only made it ring again. It was Mum, in a very distressed state, after also having been interrupted at work by a call from the ACP provider. From then on, we decided I would be the only contact point for ACP, and that would be by email.

It has been about a year since direct contact; ACP funds my Homecare service and otherwise stays out of our way. Ironically, and perhaps sadly, this is the way Mum and I prefer it. It is sad, because I did have hopes for the ACP providing a *Minder*[26] style

[25] *See* Productivity Commission, *Disability Care and Support: Issues Paper*, May 2010, p.3 (Figure 2: Key design elements of a disability care and support scheme)
<http://www.pc.gov.au/__data/assets/pdf_file/0007/98026/issues.pdf> at 18 May 2010
[26] *See* http://en.wikipedia.org/wiki/Minder_(TV_series) as at 18 May 2010

relationship – a 'Terry' to my disabled/incapacitated 'Arthur Daley', though I would claim far better scruples than Arthur ever had.

What was produced was the same as any government-run program. It resulted in lots of paperwork, including medical and Occupational Health and Safety (OH&S) assessments, along with an alleged requirement to change service providers. As shown by Ms (Name suppressed)'s comments, while this was presented as being for my benefit, it also served internal departmental objectives about 'which bucket of money' my service was funded by. It was also clearly an attempt to allow an overstretched Homecare service to shed clients to other providers. Ironically, the ACP funding was still provided by ADHC, a State Government department.

This is one of the greatest ironies of modern government. It will go to great lengths to adopt the language of the markets, turn citizens into 'clients' and tell you how much 'choice' you are receiving. Funny then, how this market is shackled by the same sort of government red tape that Sir Humphrey Appleby[27] would be proud of. Furthermore, it would appear that the suite of 'choices' a 'client' is invited to make conveniently suits the administrative arrangements of the service provider.

- *Recommendation 1: Freedom of choice must mean a service recipient's freedom of choice, not the convenience of the service provider.*

Occupational Health and Stupidity

Part of my problem was that we also initially asked for a carer to take me to a fortnightly evening meeting and, then for that person to put me to bed on the return home. This lasted for about two services, until we heard from the service provider that it could not continue. The issue: there was some pushing and shoving of me in and out of cars, as well as the need to lift my legs into bed. All of these things my mother has been doing since I was born, and into my adult life. Bring in a third party and, government regulation can complicate the most mundane aspects of daily life.

While OH&S may have started with the best of intentions, it has become an administrative scourge in the workplace, operating much like a plague of locusts on a wheat farm. The resolution of the question about how to lift my legs into bed required yet another occupation therapist's assessment. This resulted in a recommendation that a large hoist be installed in my house, simply to lift me in and out of bed. While this would be provided by a State-run program, Physical Aides for Disabled People (PADP), this required another application and placement on yet another waiting list.

Ultimately, Mum and I decided that asking the ACP to handle a fortnightly appointment was more than the scheme could cope with. Besides, we did not want another large piece of equipment to gather dust in our house, nor pander to the needs of a (male) carer who

[27] Sir Humphrey Appleby (http://en.wikipedia.org/wiki/Humphrey_Appleby) was played by the late Sir Nigel Hawthorne (http://en.wikipedia.org/wiki/Nigel_Hawthorne) at 19 May 2010

seemed reluctant to lift anything heavier than a bed sheet. We also suspended the PADP application until further notice.

The reason for telling these stories is threefold. Firstly, I want to emphasise that having the Federal and/or State Governments set up another 'system' will simply repeat all the mistakes and bureaucratic processes outlined above. And it should be remembered that for all the discussion above, all the assessments and all the administrative man hours, the ACP is yet to deliver one new or enhanced service I can use. Nowhere in this debate have we put a value on people's time; either those who will be applying under a disability care and support scheme, or those who will have to administer it. In my case, the ACP represented many largely wasted (and highly stressful) hours.

Furthermore, unless the Productivity Commission is prepared to put a cap on both the number of administrative staff to run a disability care and support agency, as well as limits on the percentage of funds to be expended on governance, executive remuneration and consultancies, then millions of dollars could disappear in fees and commissions. We have seen many examples of waste and mismanagement in other Government programs, such as the current Federal school building scheme.[28] Examples such as these should be informing our thinking about whether it is even appropriate to establish a new central body?

Questions should also be raised over the competency and motives of some involved in any national disability care and support scheme. Reflecting on my ACP experience, I became convinced that the provider was having growing difficulties understanding her "unhappy customer". Becoming increasingly shrill with me was never going to work though; I knew I could do far more damage to her Community Care organisation by leaving it, than she could ever do to me. After all, my presence brought funding, which was what, in my view lay at the heart of her concern about my potential departure. Expressing apparent concern for my mother's future health and wellbeing (and insinuating that I was being recklessly indifferent) never blinded me to what was really at stake.

- *Recommendation 2: The Productivity Commission should put a cap on both the number of administrative staff to run a disability care and support agency, as well as limits on the percentage of funds to be expended on governance, executive remuneration and consultancies.*

[28] *See* for example *Opposition slams Rudd revolution 'waste'*, Justine Ferrari, *The Australian,* March 16, 2010 12:00AM <http://www.theaustralian.com.au/news/nation/opposition-slams-rudd-revolution-waste/story-e6frg6nf-1225841121512> as at 20 May 2010; also see *Bureaucracy eats third of school funds*, Justine Ferrari, Education writer, *The Australian,* May 22, 2010 12:00AM, <http://www.theaustralian.com.au/news/nation/bureaucracy-eats-third-of-school-funds/story-e6frg6nf-1225869810507> at 22 May 2010

Where to from here?

At this point, you might be wondering what I am seeking from this inquiry? Initially, it is important for the Productivity Commission to remember its focus on productivity, as opposed and distinguished from welfare. Reading through your *Issues Paper* dismayed me somewhat, in the 'front and centre' role you give to government.[29] Individualised funding will be little more than rhetoric, unless we are prepared to allow people with disabilities and their families to spend at least some time living outside the regulatory *Leviathan*[30] under which care and support services are currently delivered. This is a point I attempted to make to the *National Human Rights Consultation* headed by Father Frank Brennan last year, when, highlighting my university studies as an example, I said:

> (A)s someone with a physical disability, I have at many times in my life found myself being case managed to within an inch of insanity. For example, while it might have been very generous of the taxpayer to partially fund my transport expenses while undertaking undergraduate study, via the Commonwealth Rehabilitation Service (CRS), the level of influence this gave CRS caseworkers over the nature and direction of my studies was incredible. At one point CRS raised queries over my subject selection 24 hours before I was to enrol, while on another occasion a case officer insisted that I produce a full subject plan covering the entire life of my undergraduate study. The document was produced, but I contacted the Dean of Students who advised it was unrealistic to plan so far ahead; the University could not guarantee staff and subject availability, beyond what was offered that year. I requested that she put that in writing to the CRS.
>
> While, on one level, these problems are minor and were ultimately resolved, they demonstrate how willing government is to intervene in the day to day life of individual citizens.[31]

I fear similar outcomes in relation to a national disability care and support scheme. This is particularly if as suggested, a single agency could 'act as the fund holder and overall decision maker'.[32] Such a structure should be recognised as both having the appearance and the reality of an inherent conflict of interest. It is not hard to foresee a scenario where a poor budgetary outcome may press the agency into applying their eligibility criteria more exactingly one year than in this next, thus leading to claims of bias and the perception of decisions not being made on their merits.

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[29] For example, your *Issues* Paper states on page 24 that 'even where individualised funding (and personalised care) might be the dominant basis for decision-making in a new scheme, inevitably service providers and governments will continue to play a major role (determining who is eligible, funding rules, promoting innovation, quality assurance and so on).'

[30] *Leviathan* by Thomas Hobbes <http://publicliterature.org/pdf/lvthn10.pdf> as at 22 May 2010; A more easily read version can be found courtesy of Adelaide University's e-books collection <http://ebooks.adelaide.edu.au/h/hobbes/thomas/h68l/complete.html> at 22 May 2010

[31] *Key Consultation Questions* by Adam Johnston (submission) 10 April 2009, pp. 1 -2 <http://www.health.gov.au/internet/main/publishing.nsf/Content/eHealth2-010/$FILE/010_Adam%20Johnston%20pt2_31-12-09.doc> as at 22 May 2010

[32] *Issues Paper*, p. 40

This should not occur; rather, there should be no single agency and no immediate move to replace current services. In my submission to the Commission's *Review of Mutual Recognition Schemes*, I argued that States and Territories implementing new programs, incentives or concessions in the welfare sector (or any other area of policy) should be required to ensure the scheme's interoperability between jurisdictions '*before* a measure is introduced, in an attempt to avoid costly amendment or duplication of regulations post facto'.[33] In the same submission, I related the story of approximately four years of lobbying it took to achieve interstate reciprocity for State-based taxi transport subsidy schemes, amongst other complexities of dealing with government.

It is because of these experiences, alongside the ACP's recent attempt to smother me with case management[34] that makes me reticent about a government initiated long term disability care and support authority. We only need to look as far as the earlier cited school building initiative, to have concern about public sector governance and management. Equally, for an example of a government stuff-up in relation to disability services, look to my submission to your inquiry into *Government Cost Recovery.*

In that submission I related how the formerly State-based Continence Aids Assistance Scheme (CAAS) was reorganised on a national level with a single contractor. When a consignment of supplies I ordered went missing, a complaint which turned into a Freedom of Information Application revealed multiple problems with the new arrangement and, a distinct lack of planning on the part of the Federal Government. In particular:

- For an arrangement that was supposed to represent value for money, it was surprising that pricing policies were not initially specified
- If the new contractor had little lead-time to make necessary arrangements, this situation tended to undermine the very claim of efficiency and value for money
- Further, if the contractor hadn't the resources in the first instance, I challenged whether the new arrangements really represented an improvement. State based mark-ups may have been removed, but a handling charge now existed for the return of incorrect goods
- Finally, one has to question the astuteness of a Department that concedes a failure to obtain 'appropriate legal and commercial contract advice'[35]

While conceding that my *Cost Recovery* submission is dated and the problems long resolved, you can still potentially draw a line between the CAAS reorganisation and contemporary government implementation blunders. This line is that implementation of

[33] *Submission: Review of Mutual Recognition Schemes* by Adam Johnston, 24 November 2008, p. 4 <http://www.pc.gov.au/__data/assets/pdf_file/0011/84494/subdr58.pdf> as at 22 May 2010

[34] My mother is a scientist who manages one laboratory and has established or accredited several others. I am a solicitor. Naturally, we cannot possibly be qualified to run our own lives.

[35] Submission to the Productivity Commission's *Cost Recovery Inquiry*, 6 May 2001 by Adam Johnston, p. 2 <http://www.pc.gov.au/__data/assets/pdf_file/0019/39340/subdr112.pdf> as at 23 May 2010.

new programs rarely seems to improve over time. A potential reason for this goes to the very nature of government itself, as identified by former civil servant Peter J. Crawford. In his book *Captive of the System,* Crawford states:

> (Government) agencies continue to concoct sets of guidelines, rules and protocols that they hope will aid them…They and we are destined to be disappointed, however, if these efforts simply lead to new rule-based management regimes to replace the old. This is part of a much broader phenomenon. At Commonwealth and State level, agencies and authorities continue to discharge similar roles, despite changes in governments and their goals. The names and the size of the agencies may have changed, or there may have been some interchange or repackaging of responsibilities, but the legal requirements, administrative procedures and programs often endure.[36]

The question which necessarily hangs over the *Issues Paper* is: why should a national disability care and support scheme be any different from the multitude of state or federal government programs in the disability sector, which have preceded it?

New thinking

Avoiding a repetition of mistakes of the past is essential, if this inquiry is to produce more than a series of 'motherhood statements' about 'how the community must better support people with disabilities and their families.' However, I see little in the *Issues Paper* that suggests anything other than a new institutional structure funded by the taxpayer.

My concern is only increased when you suggest that there might be mandatory contributions similar to superannuation, or a Medicare-style levy.[37] In a 1996 speech to the National Press Club, then Head of Access Economics Geoff Carmody demonstrated how regressive the Medicare Levy was and is still today. He said:

> For most of us, the Medicare Levy *is* a 1.5% 'flat tax' on all income: but not for all. You see, there are low income exemptions that are means tested and 'clawed back'. The basic 1.5% Medicare Levy applies to all taxable income when you earn more than $17,191. If you earn less than $15,903, there's no Levy. What about in between? Here, things turn nasty. Every *extra* dollar of income here means 20c in Medicare Levy. So the 1.5% Levy is really a 20% marginal tax for some poorer people. But there's more. The 20% Levy occurs where income tax is 15%. Here, the *effective* tax rate is really 35%.[38]

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[36] Crawford, Peter J, *Captive of the System! Why Governments fail to deliver on their promises – and what to do about it*, Richmond Ventures Pty Ltd © 2003, p.7

[37] *See Issues Paper*, pp. 36 - 37

[38] Carmody, Geoff, Tax Cuts or Tax Reform: Which? For Whom?, Address to the National Press Club, 5 April 2006, p. 3 <http://accesseconomics.com.au/publicationsreports/getreport.php?report=70&id=79> as at 23 May 2010

In proceeding down such a path of using the tax and transfer system, the Commission will invariably create anomalies and injustices, like the one identified by Mr Carmody. What you should aim to do is lift people, both out of financial poverty and dependence on government (which should be regarded as a form of 'civil poverty' where little of your life is free from bureaucratic interference, particularly if you are in receipt of welfare). The first thing that needs to be done is to liberalise the use of special disability trusts. This concept was first introduced by the former Howard Government. However, as I understand from seminars I have attended, and discussion with friends who have considered using such arrangements, the terms are that restrictive as to make the trusts economically and legally unviable for many people. Equally, as with everything else created by government, it was just 'too complex'.

Again, while the Government may have a legitimate claim to protect its revenue base, the trade-off in complexity of legal arrangements (and compliance costs) should be seriously considered. In much the same way as assessment and eligibility criteria caused stress but little satisfaction for me in the ACP, dealing with the tax and benefits system (sometimes simultaneously) is draining.

This was why I wrote to the Henry Tax Review[39] calling for an end to the churn of benefits and taxes. If long term disability care and support does anything positive, it should reduce (rather than increase) the cost in energy, money and time spent dealing with compliance issues.[40]

But this does not seem to be the case. In terms of disability care, the Productivity Commission seems wedded to 'agency models'. By this, I am referring to the fact that you ask a range of questions as to 'core formal services'.[41] Their very content demonstrates an impost of regulation and oversight. This is the antithesis of the hopes and expectations I had for the ACP. My ideal would have been:

- A relatively informal arrangement, with the simplest of terms;

[39] See generally Submission to the *Henry Tax Review* <http://taxreview.treasury.gov.au/content/submissions/pre_14_november_2008/Adam_Johnston.pdf> as at 24 May 2010

[40] Compliance can prove difficult, even for the Australian Taxation Office (ATO). Of late, we have seen the ATO send letters to taxpayers without refund cheques attached, blaming it on a new computer system. *See* for example, James Thomson, *Tax Office posts 140,000 tax refund letters – but fails to send the cheques*, Friday, 16 April 2010 11:32, <http://www.smartcompany.com.au/tax/20100416-tax-office-posts-140-000-tax-refund-letters-but-fails-to-send-the-cheques.html> as at 29 May 2010. Previously, there have been reported instances of the ATO not being able to initiate action for tax avoidance, due to poor or insufficient records, while agencies such as *Centrelink* have been criticised for misuse of data that they hold. I raised these issues in a submission to the Australian Law Reform Commission (go to <http://www.healthemergency.gov.au/internet/main/publishing.nsf/Content/eHealth-002/$FILE/002_Adam%20Johnston%20pt%202_21-07-09.pdf> and see pp. 5 – 6) where I suggest that it would be 'far more productive to reduce the incidence of tax and transfers, rather than try to recoup lost revenue'. Why not apply the same principle to people with disabilities and their families? Preparing a report which puts people in a better financial position, by arguing for a reduction in the tax-and-welfare-churn, will do more to ensure the long health and wellbeing of families with disabled relatives, than creating yet another public authority.

[41] *Issues Paper*, p. 25

- An option, as my needs change, for a carer to live with me. Under this arrangement, I would provide meals, lodgings and contribute to their other personal expenses, in exchange for them being my *Minder;*
- A minimum of official interference, in what is an essential an 'in kind' agreement.[42] This would have further reduced the need for formal employment 'time sheets' and associated paperwork.[43]
- An ability for true 'freedom of contract' to function, where elements such as OH&S could be traded for security of tenure and/or an increase in the *Minder's* wage (i.e.: danger money[44])

The reality was quite different. Had I not elected to use a Community Care provider (and retained Homecare's services), I would have been required to find, hire, roster and sign pay sheets for my own care staff. Here again, disabled people and their families end up being required to deal with the unintended consequences of a new government initiative like the ACP.

While some people with disabilities, their families and carers may want a formal structure, many of us will not. It would be beneficial therefore, if as much as is technically possible, people with disabilities[45] were taken out of the tax and transfer system. It does not serve us (or many other Australians) that well. A telling example is the case of disability employment.

- *Recommendation 3: Contracts between carers and people with disabilities should be as simple as possible, emphasising more of a 'semi-personal' rather than 'employment' relationship.*

A rent-seeker's paradise

Any examination of the disability employment sector will demonstrate that it is highly dependant on government subsidies. The specialist employment agents/brokers are

[42] This is a significant change in my thinking, even from when I wrote to the Howard Government's Working Party on the Needs of Sons and Daughters with Severe Disability (see Appendix 2). My experience with the ACP has so shaken my faith in the ability of government to act in either the individual's or the community's 'best interest' that any non-government solution is worth considering. Indeed, if what comes out of the Commission's inquiry is simply the creation of another bureaucracy, I would insist that people (even if potentially eligible) can 'opt out' of dealing with the agency and, are also not obliged to make financial contributions, if they choose not to use its services.

[43] The Commission should also take this comment as an answer to another question you ask. In particular, you ask on page 25 of the *Issues Paper* about the impact on current service providers of individualised funding. In many respects, this should not matter; if individuals wish to enter contracts for service with specific carers, then that should be a matter largely for the parties. If this causes some organisations to lose staff and close, then this is simply an example of the free market in operation. In my own case, the free market would have permitted me to retain the carers of my choice, without the resulting bureaucratic argument I described earlier.

[44] I do not believe however, that perceived OH&S risks are often risks or dangers. Rather, an army of assessors and regulators have slowed down production and added costs to business, having found a profitable outlet for their personal paranoia and called it OH&S.

[45] When using the term 'disability' my generally emphasis is on those with life long impairment.

funded by government and, if a worker is placed in a Special Business Enterprise (SBE or sheltered workshop), their "wage" is pegged to the Disability Support Pension. Add to this the fact that many of the businesses themselves will only be viable because of state subsidies, and you realise just how much money is circulating, but how little of it is really "new money" generated by a multiplier affect. Most of it is coming from the taxpayer and supporting a noticeable amount of administration.[46]

While appreciating that for some people, SBE's are a significant and necessary form of employment, social interaction and the like, my point in raising them as an issue is to have the Commission ask the question of sustainability. I do not believe taxpayer subsidised employment schemes are economically viable in the long-term. The same is likely to be true of a disability insurance scheme that is publicly funded. Particularly as Australia's population ages, we will not have the workers to fund such a mammoth transfer of funds to anything up to a quarter of the population; depending on how one defines 'disability'.[47]

Some would say you resolve that problem by increasing the number of taxpayers through immigration. However, as entrepreneur Dick Smith has pointed out, Australia's largely arid climate and limited water supply puts a natural cap (or *should* put such a cap) on the number of people who can live here.[48] I concur with Mr. Smith and, do not wish to see radical changes to our city skylines, leading to the same concentrated apartment style living they have to tolerate in places like Singapore.

A re-evaluation of Government's role

Just how much do we expect governments at all levels to do for us? My short answer is: far too much. Additionally, much of it puts unrealistic burdens on fellow Australians.

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[46] *See* my submission to the Fair Pay Commission 2006 Minimum Wage Determination <http://www.fwa.gov.au/sites/afpc2006wagereview/submissions/JohnstonASubmission2006.pdf> as at 26 May 2010; note my discussion of the complexities of dealing with the 'employment bureaucracy' from page 3. My view, expressed to the Fair Pay Commission was that 'despite having an (employment) agent, I still seem to do most of the faxing, email and printing of countless applications. While the agent might be able to throw some job notices your way which you might not otherwise know about, their involvement never seems to guarantee an interview or anything even close to that. Therefore, the Government needs to ask, particularly where the agents have access to public funding, whether these agents are actually adding any value to someone's employment-seeking activities'.

My second submission to the Fair Pay Commission (which was the Appendix to my *Henry Review* submission, beginning at page 4 of the document (http://taxreview.treasury.gov.au/content/submissions/pre_14_november_2008/Adam_Johnston.pdf) outlines my concerns with the current system, focusing on how much of what is produced is real, productive work, while 'we see that public money subsidies employment agencies placement activities. This is then often followed by the subsidisation of wages, also courtesy of the taxpayer. And this outcome is called "employment", despite the fact that vast amounts of taxpayers' money is being poured in at both ends of the system? (at page 6 of the document)

[47] *See Issues Paper*, p. 7 (Box 1)

[48] *See* for example, *Future Australians could face starvation: Dick Smith*, Posted Mon Jan 25, 2010 6:13am AEDT, Updated Mon Jan 25, 2010 10:30am AED, ABC News <http://www.abc.net.au/news/stories/2010/01/25/2800081.htm> as at 26 May 2010

They will pay tax, while many of us with disabilities (through no fault of our own) will have far more limited engagement with the workforce and the tax system.

Yet the psychology of much public policy and public debate seems to be: here is a problem; the government must do something about it. An American writer, Gregory Bresiger, put the case against this type of thinking very well, when he reflected on the last US presidential campaign. He wrote:

> When was the last time you heard Senator Obama or Senator McCain give a speech on the bloated public sector? Did Senator Clinton, in her recently concluded presidential bid, ever scold voters who constantly want the government to "give" them more and more services?
>
> These are rhetorical questions. Today our ruling parties tacitly agree that no government department can be eliminated, that major spending reductions are forbidden and that the spending spree must continue.
>
> Indeed, Democrats say little or nothing in the federal budget can be cut. The government must expand its responsibilities. It must provide health care and financial security for all. Also, there must be more spending for national security. Still, there is little serious discussion about what all this would cost.[49]

In my view accumulated administrative and growing care costs will make a disability insurance scheme unsustainable. For example, we have a model to look at when it comes to the Pharmaceutical Benefits Scheme. As a mechanism for making medicines generally accessible and affordable, as well as maintaining the health of those with long term conditions, the program has been successful. However, in 2002 the Commonwealth Government's first *Intergenerational Report* showed that the PBS had more that doubled its impact on revenues, as a percentage of Gross Domestic Product (GDP) in the 1990s.[50] Projections contained in the report showed this growth would continue, to the point where it was expected that the PBS was predicted to outstrip all other components of health spending by 2041-42, and do so by a significant margin.[51]

Nothing I know about disability or disability care makes me think that an insurance scheme would do anything other than accrue liabilities at an exponential rate. The cost of care will only grow, as people have come to expect that newly developed treatments and technologies will be applied to their ailments. As highlighted by Bresiger above, we have been brought up to expect such things. However, in my view, we are looking at the issue from the wrong perspective.

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[49] Bresiger, Gregory, *The Non-Issue That Should be an Issue*, Mises Daily Article, Thursday, July 03, 2008, <http://mises.org/daily/3020#ixzz0p22Ai9LI> as at 29 May 2010.
[50] Costello, The Hon. Peter, *Intergenerational Report 2002-03: 2002-03 Budget Paper No.5*, Commonwealth of Australia, 14 May 2002, 8 <http://www.treasury.gov.au/contentitem.asp?NavId=012&ContentID=378> as at 6 September 2005.
[51] *See* ibid, 9.

For as long as people look to government for solutions to their problems, we will be bound to the programs and initiatives the state designs. As I said at the beginning of this submission, it was interesting (though not surprising) how the choices I was originally asked to make as part of the ACP, were largely for the administrative convenience of the ACP provider and ADHC. Those who suggest a disability insurance scheme would be any different (or any better than current arrangements) should be pressed as to why?

Again, reform of substance will only come when we are prepared to move away from the current support and welfare structure. This should include removing what might be termed 'structural welfare' for charitable bodies. In my submission to the Senate's 2006 inquiry into the stem cell legislation, I called upon the Government to withdraw tax exemptions for religious organisations,[52] repeating this call more generally when commenting on amendments to the Federal Anti-Discrimination Act.[53]

In that submission I made clear my desire for disability to become a temporary feature of my life (it has been permanent thus far). A disability insurance scheme potentially locks one concept into public policy; that disability in whatever form, is a permanent part of the human condition. With the advance of science, this need not be the case. As such, while science's timeframe may not benefit me personally, it would be unreasonable to leave future generations with a large financial bill and, an agency which, in order to perpetuate itself and its own interests, drains resources away from efforts to ameliorate infirmity. This is one of my key concerns, which the Commission acknowledges when you state that '(there) may also be risks that characterising people with shorter-term core limitations as disabled might prolong recovery and rehabilitation'.[54]

- *Recommendation 4: Taxation reform needs to continue post the Henry Review. In particular, the amount of tax and welfare churn needs to be reduced (or eliminated), so that more people with disabilities can be lifted out of poverty/welfare dependence.*

Government: get out of the way

At the beginning of this submission, I expressed relief when my ACP service provider got the hint to 'stay out of my way,' as it were. In many ways, there are some times when

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[52] *See* my submission to the Community Affairs Committee '*Somatic Cell Nuclear Transfer (SCNT) and Related Research Amendment Bill 2006*' pp. 3 – 4, <http://www.aph.gov.au/Senate/committee/clac_ctte/completed_inquiries/2004-07/leg_response_lockhart_review/submissions/sub53.pdf> as at 29 May 2010

[53] *See* my submission to the Senate Standing Committee on Legal and Constitutional Affairs, *Inquiry into the Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008*, pp. 2 -3, <https://senate.aph.gov.au/submissions/comittees/viewdocument.aspx?id=52150cdb-cecf-4337-bb59-17c1497066c9> as at 29 May 2010. My submission to the *Henry Tax Review* made similar comments and, to his credit, Dr. Henry realised the 'leakage' from the charitable sector. The Review proposed a rise in the tax deductable threshold from $2 to $25 (Recommendation 13; *see* Henry Tax Review, *Chapter 12: List of recommendations*, <http://taxreview.treasury.gov.au/content/FinalReport.aspx?doc=html/publications/papers/Final_Report_Part_1/chapter_12.htm> as at 30 May 2010

[54] *Issues Paper*, p. 18

it would be appreciated if the whole apparatus of government would fall off a cliff. As stated earlier, in my submission to the *Human Rights Consultation* I referred to the frustration of being closely case managed. I went on to suggest that the nature of government and official scrutiny has changed. In particular, it appears to be significant that:

> Section 51 of the Commonwealth Constitution speaks in terms of the provision of 'peace, order and good government'[55] and while there are other sections referring to pensions and benefits, I suggest that many of our Founders would struggle to comprehend many legal developments of the modern day. And I am not making the old States Rights argument about the centralisation of power in Canberra; rather, it is a question of a notable change of focus of regulators and politicians. From peace, order and good government we have moved to protection, obedience and good behaviour.[56]

People with disabilities and their families already face a high level of administrative and compliance demands. There is a danger, particularly if the Commission recommends the creation of a central, publicly run insurance agency, that compliance will be even more complex. Equally, it is worth considering what might happen to the general insurance market, if a specialist government insurer comes along. A comparator might be the fall in the take up of private health insurance, which caused the Howard Government to introduce the private health insurance rebate. While the impact of a disability insurer will necessarily be smaller (as it involves a specific segment of the population), there will nonetheless be an effect. The Commission should do some modeling on this.

- *Recommendation 5: The Commission should research the potential economic distortions arising from establishing a single disability insurer. The Commission should also consider the potential disadvantages of creating a single agency and, the potential for that organisation to become a 'big bureaucratic bully'.*

Private actions

Nothing that the Commission recommends should inhibit initiatives people are undertaking in their own right. My submission to your *First Home Ownership Inquiry* highlighted the work of the Singleton Foundation, in providing stable, appropriately modified housing to people with disabilities.[57] While government is a partial funder, the focus is on the potential contribution of the person with disabilities and, the services and support they receive in return from the Foundation.

The fact that the government is a bit-player, rather than the central focus, is the element that attracted me to this model. Encouraging the private sector to provide goods, services and support should be an option in the Commission's deliberations. My personal

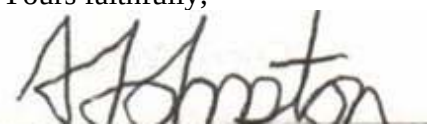
[55] And the State Constitutions would use similar language
[56] *Key Consultation Questions*, p. 2
[57] *See* my submission to the Productivity Commission's *First Home Ownership Inquiry*, pp. 3 – 4, <http://www.pc.gov.au/__data/assets/file/0008/56654/sub018.rtf> as at 30 May 2010

experience is that the public sector is significantly overstretched. This was underlined to me, particularly when trying to obtain accessible housing in order to take up a place in the Commonwealth Graduate Employment Scheme in Canberra a few years ago. Ultimately unsuccessful, I related some of my frustrations to the Commission's inquiry into *Mutual Recognition*, as well as a 2009 ACT Government consultation on service improvement.[58]

- *Recommendation 6: The Productivity Commission should askew any idea of creating a care agency which tries to 'cover the field' in relation to disability care and support. Rather, nothing that the Commission recommends should inhibit initiatives people are undertaking in their own right.*

If government is now overstretched, asking it for new services (or a new agency) is likely to leave many people significantly disappointed.

Yours faithfully,



Adam Johnston

May 30, 2010

[58] *See generally*, Appendix 3

Attachment 1

From: Adam Johnston [mailto:adamdj1@optusnet.com.au]
Sent: Thursday, 2 April 2009 9:58 PM
To: '(NAME SUPPRESSED)'
Cc: '(Name suppressed)'; '(Name suppressed)'; '(Name suppressed)l'; '(Name suppressed)'
Subject: FW: My application for Attendant Care

Dear (Name suppressed),

As a result of a conversation with (Name suppressed)l today, I make the following formal election:
Preferred Service Provider: Homecare NSW
Hours requested: Seven
Weekdays - 6am - 7am
Weekends - 1 hour per day, time in morning may vary as parties require

If there is any capacity for any other hours, this can be determined later.

Regards

Adam Johnston
(suppressed)

Libertas inaestimabilis res est - Liberty is a thing beyond all price.
(Corpus Iuris Civilis: Digesta) (Latin-English Phrase)

From: Adam Johnston [mailto:adamdj1@optusnet.com.au]
Sent: Wednesday, 1 April 2009 9:05 PM
To: '(NAME SUPPRESSED) (Name suppressed)'
Cc: '(Name suppressed)'; '(Name suppressed)'
Subject: RE: My application for Attendant Care

Dear (Name suppressed),

Thank you for your email.

Having read it, I do not know why anyone would go to such lengths to create parallel funding systems in the one agency. Regardless, I know exactly what I aim to get out of this process - if ACP can deliver, I'll sign up - if not, I won't.

1. Homecare

Under any circumstances, I intend to retain my current Homecare Service. This is explainable simply on the basis that it suits me and my current requirements, for a reliable hour service, particularly on weekdays when I work.

2. Other hours not taken by Homecare
Knowing Homecare as I do, I never expected it to take up the balance of hours. This was always going to be the role of "other agencies". As such, when I also found these hours could be banked, I identified the Armidale Conference as the kind of outing I would like to use the balance for.

Please advise of the possibility of such arrangements.

Regards

Adam Johnston
(suppressed)

Libertas inaestimabilis res est - Liberty is a thing beyond all price. (Corpus Iuris Civilis: Digesta) (Latin-English Phrase)

From: (NAME SUPPRESSED) (Name suppressed) [mailto: (Name suppressed)@dadhc.nsw.gov.au]
Sent: Wednesday, 1 April 2009 10:35 AM
To: adamdj1@optusnet.com.au
Cc: (Name suppressed)@dadhc.nsw.gov.au]; (Name suppressed)@dadhc.nsw.gov.au]
Subject: RE: My application for Attendant Care

Hi Adam

I have spoken to your mother on a number of occasions previously and also recently commenced discussions with (Name suppressed). I must clarify that you have not yet been approved, as your mother requested that you be allowed time to weigh your options. I had actually spoken with Jo-Anne last week and emailed her on Monday to advise that I was going to approve you for 20 hours of support per week. This would be based on the idea that you require personal care in the morning and the evening, as well as 3 hours of personal care support during the week if you are going out and 1 additional hour which could be saved or used flexibly. (Suppressed) previously advised that she is in regular contact with you and your mother and requested I direct correspondence to her so that she could meet with you and discuss your options.

Whilst both programs are administered by the Department, the funding is different. Although Home Care are not an approved provider for the Attendant Care Program, clients with a lengthy existing relationship with Home Care are able to select them as a

provider if the branch is willing and has capacity. However, the reason we encourage clients to select a provider from the list is because Home Care are not able to be as flexible with services as other providers due to their policies and the fact that they are the provider for both the High Need Pool and HACC clients, which means their resources are stretched to capacity. The approved providers listed under the Attendant Care Program are able to be more flexible. The program overall is also more flexible and the ability to bank hours will assist you when you travel. You are able to use one-off funding and these banked hours to assist you when travelling and we encourage clients to discuss possible future plans when meeting with providers to ensure that they will be able to meet their needs.

With Home Care it will not be possible for you to take one of your current care workers with you to Armidale due policies in place preventing this but you could request the Home Care branch that covers Armidale to provide staff to assist you. However, this is not guaranteed and it is unlikely that the branch will have staff to meet your needs on only a short-term basis as they are currently at capacity.

I have spoken with (Named suppressed), Service Centre Manager of Harbour North, previously and she has been unable to confirm whether or not they can take you on as an ACP client as the recommendation of your hours of service had not been finalised. She has requested the specific times of the day your service will be required to ensure she has staff who can cater for this. I have not been able to do this to date.
I understand your concerns and the decision about whether or not to remain with Home Care is your own. In this situation you must decide what is more important to you - the flexibility of services that other providers can offer you (that Home Care cannot) or maintaining your existing relationship with Home Care.

I will be submitting my recommendation of 20 hours support per week tomorrow for approval. You will receive a letter early next week offering you a place on our Attendant Care Program. If you do not wish to accept the offer you will need to contact this Unit and should you require services in the future, you will need to re-apply to our program (but as I have noted to your mother previously, there will be no guarantee that you will be prioritised and/or that we will have capacity to take you on). If you wish to accept the offer you will have four weeks to do so and nominate your chosen service provider. Unfortunately I am unable to delay your approval any longer as already we have been holding a place for you on ACP for three months to allow you and your mother time to make a decision.

If you wish to discuss any of the above information further, or any other matter, please don't hesitate to contact me.

Regards,

(Name suppressed)| A/ Program Manager Attendant Care and Physical Disability Unit **NSW Department of Ageing, Disability and Home Care**| ☎Phone 02 9374 3625| 🖷Fax 9374 3677 |✉ Level 5 83 Clarence St Sydney 2000

From: Adam Johnston [mailto:adamdj1@optusnet.com.au]
Sent: Tuesday, 31 March 2009 9:19 PM
To: HNP/ACP
Subject: My application for Attendant Care
Importance: High

Dear Sir,

I have recently been approved for the Attendant Care Program, but I must say my initial experience does not inspire any confidence.

My discussions have principally been with (Name suppressed) of Community Care Northern Beaches. She has advised that to take up my Attendant Care package I must forgo 20 years of Homecare Service, despite the fact that both programs come from the same department. Being happy to maintain Homecare and the approximate 7 hours a week that gives me in personal care, I will not agree to anything that does not preserve my current service.

Equally, I cannot see any impediment to me banking the balance of hours not used by Homecare for other purposes. For example, I had hoped to attend a conference in Armidale over several days in July, with attendant care support. The Guidelines available online would appear to make this possible, as they even consider the possibility of overseas travel. Therefore, I aim to bank hours to go to Armidale, but must tell the University I am coming, so that appropriate accommodation can be made available. Conference details are attached.

Can you please advise:
1. Whether the Attendant Care Program could provide me with a care worker for the purposes of going to Armidale in July?
2. Whether my current Homecare service will be preserved? Again, I will not agree to anything which does not guarantee this, in its current form.

Yours truly,

Adam Johnston
(suppressed)

Libertas inaestimabilis res est - Liberty is a thing beyond all price. (Corpus Iuris Civilis: Digesta) (Latin-English Phrase)

Security Statement

Submission 1b

35 Woolrych Crescent,
Davidson NSW 2085

Independent Review of the Job Seeker Compliance Framework
PO Box 113
Darlinghurst NSW 1300
or email: jscr@franklin.org.au

Dear Professor Disney,

After the Sydney consultation meeting, you encouraged participants to write submissions to the Review. While I have already provided you with one document, as a result of the meeting, it seems important to put a few additional comments on paper.

Firstly, from a job seeker's point of view, it was illuminating to hear from service providers about their difficulties dealing with the Department of Education and Workplace Relations (DEWR), as well as Centrelink. The service providers are looking for continued funding, which means they must sign job seekers up to contracts. These must be signed so an unemployed person continues to receive unemployment benefits, while the providers must sign them to meet Key Performance Indicators (KPI's). Both parties are in truth entering into "sham" contracts, which are being entered under duress and, are really to the benefit of 'silent partners'; namely, DEWR and Centrelink.

As a solicitor, I observe this to be a surreal arrangement, where niceties such as privity of contract are virtually non-existent, as the departments' audit individual client files and expect providers to notify them of client breaches, contact failures and the like. It then seems to be very much up to the discretion of Centrelink as to whether they do anything with the information received or not. My sense of the meeting was that there was a measure of provider frustration that they were required to provide such detail, without any reciprocal duty on Centrelink to report back to the provider or job seeker.

To that extent, I am sympathetic to the dilemmas faced by service providers. However, on another level, I am far from satisfied. Administration by virtue of "drop down boxes," Ministerial letters and confidential agency guidelines is completely unacceptable in a parliamentary democracy (or indeed, any form of democracy). The secret guidelines must be tabled as Regulations, the Ministerial letters tabled and, the algorisms on which the drop down boxes work also resolved into Regulations the Parliament can scrutinise effectively. After all, Parliament is supposed to be sovereign and, it should be capable of overseeing all Executive activity.

Significant parts of the Job Seeker Compliance Regime appear never to have been put before Parliament, which makes this Review all the more urgent. In my previous submission (on page 9 of that document) I highlighted my problems with unenforceable Memoranda between Government, employers and employment service providers. These left the job seeker with "suggestions" that a job offer "might" be made; more often than not there is no job in the offing, but the "activity" or appearance of looking for (nonexistent) work has been satisfied. While these arrangements may refer to the system

prior to the 2009 amendments, much of the same culture of 'activity for the sake of activity' permeates the current system. Much of it is activity that is of limited value, which in my experience has little to do with someone getting a job. For example, at the Consultation meeting, I related how Centrelink rang me to question my application for the *Newstart Allowance* in July 2009 because my contract with my employment service provider had expired. Neither I, nor my provider was aware of this, so we rapidly drew together a document via email, by the 24 hour lodgement deadline nominated by Centrelink.

For all the importance placed on this document by the compliance regime, I have not cited it since signing it sometime in July 2009. Its principal terms were that the parties aimed to place me in legal or paralegal work. While my employment provider introduced me to my current employer a number of years ago, my current job (commencing late last year) came independently of either my employment service provider/agent, or the compliance system. That is: I got it myself. My provider became relevant in their ability to assist my employer to make some adaptations to the workplace to accommodate me.

The compliance system can take none of the credit for my current employment. Ultimately, it is ridiculous to think that a system which seeks to check the minuscule detail of whether job seeker X attended an interview is doomed to be an administrative Goliath liable to trip on its own feet. Again, as I asked in my last submission, has anyone bothered to do a cost/benefit analysis of the Goliath?[59]

Equally, one disputes that penalties, fines or other reductions in payments necessarily turns the reluctant job seeker into the enthusiastic potential employee; indeed, it may harden their resolve to undermine employment efforts. I recall one participant at our consultation meeting relating the case of a person who continually moved address, who was listed on an employment provider's books, but had not been sighted by anyone for months. While the full facts of that particular case are unavailable, one thing that can be gleamed from this example is that determined individuals will always find ways to evade official processes. Further, it should be asked whether there is any real point in pursuing such people, given the time, effort and expense potentially involved.

In my own case, I have learned how to keep Centrelink off balance and my employment agent on agreeable terms – my terms. While on the *Newstart* allowance, one felt like you needed a secretary to deal with all the reporting obligations. By signing up to a variety of career websites from Career One to Job Genie and the like, I was able to partially curtail the administrative burden, by setting up multiple curriculum vitae's and cover letters, emailing them to public and private sector legal firms and government agencies around NSW and Australia.

Due to the practical, physical limitations of my disability, I knew that only a small fraction of the applications would ever be read and even fewer acted upon. But this is not the point: the compliance system demands activity, even if much of that activity produces no practical return, other that to allow me to complete an activity report to Centrelink.

[59] See previous submission, last modified 20/06/2010, p.1

Interestingly, Centrelink asked me to desist from faxing the reporting form along with the documentary evidence to show I had actually made the on-line applications; they only wanted their form. Such a system is obviously open to abuse, which makes me wonder whether employment or mere 'activity' (or what appears to be activity) is the true objective of the compliance regime? Certainly, you could argue (if you were sufficiently cynical) that one possible outcome from repetitive, on-line application key pushing is a repetitive strain injury (RSI) claim against the Commonwealth. It is the Commonwealth's compliance system which makes providers and job seekers churn through application and reporting processes, many of which are arguably of limited value. In my view, this element is indistinguishable in the pre or post 2009 arrangements; there is a lot of pointless paperwork in both. As stated, I made countless applications for jobs I knew I was never likely to get, simply to meet activity requirements.

For some people, ill health, disability or other misadventure will make it impossible for them to work. Perhaps, it would be a better application of time and public to take all the money we spend maintaining a compliance infrastructure which tries to make some disinterested and disinclined people forcibly seek employment and rather, spend it on those who are incapable of supporting themselves. I draw your attention to a useful report produced by the Australia Institute. *Missing Out*[60] discusses how many people who would be entitled to access pensions, concessions and other benefits fail to do so. While in some cases, people choose not to access benefits because of the perceived stigma, a recurring theme is the complexity of the application processes and many people's lack of confidence in knowing how to navigate through the system.[61] Much the same can be said of the Job Seeker Compliance regime and, while appreciating the limits of the Review's Terms of Reference, it is worth remembering that any unemployed job seeker deemed fit for work will be dealing with the welfare and job compliance systems *at the same time*.

Therefore, I do not find it surprising that people miss appointments and other key deadlines. As stated in my previous submission, it took all my legal knowledge and personal resolve to fight Centrelink for my entitlement to the Disability Support Pension, rather than the misnamed *Newstart* payment. This in itself brings up another issue: just because the Federal bureaucracy decided I should be classified as a "newly starting" job seeker did not make me any less disabled. Often in modern public policy, governed as it is by the sound bight and the 24 news cycle, a change of language is uncritically equated with a change of outcome. Similarly, while disability advocates and others will often seek to use the language of "challenges," "achievement" or "inspiration" when speaking in public about disability, taking off the rose tinted glasses and speaking plainly will allow us to acknowledge that less upbeat phrases like "pain", "suffering" and "problems" colour the lives of many people, including those with disabilities.[62]

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[60] *See* generally, David Baker, *Missing out, Unclaimed government assistance and concession benefits*, Policy Brief No. 14 May 2010, <https://www.tai.org.au/index.php?q=node%2F19&pubid=760&act=display> as at 1 July 2010

[61] *See* ibid., pp. 7-8 (Complexity and Means Testing) and pp. 16-23 (Awareness and confidence of people engaging with the system)

[62] *See* for example, my submission to the Senate's Review of the Disability Discrimination Act <https://senate.aph.gov.au/submissions/comittees/viewdocument.aspx?id=52150cdb-cecf-4337-bb59-17c1497066c9> as at 10 July 2010, where I argue that people with disabilities have either been seen as

This is not to say that people shouldn't look for work, even if they have ongoing medical conditions, or other potential impediments. What I query is the true value of the complex system of sanctions and incentives to impose official policy. Firstly, as I indicated at the consultation meeting, attending the gathering allowed me to hear (for the first time) the lexicon of nonsense which permeates service provider's reporting and record keeping obligations. Lewis Carroll's *Hunting of the Snark* looked like dull prose in comparison to 'the language of unemployment', with all its categories, subsets, connection failures and drop down boxes.

As a job seeker, while this was interesting, it was simultaneously irrelevant and irritating. On one level, the providers seemed to want to convince you, the Review Committee, of how much work they were doing. However, I really question how much value a lot of the providers' and DEWR's procedural gobbledegook is adding. At the consultation, reference was made to the various peaks and troughs in compliance. I also noted on your website various breakdowns as to the reasons for compliance failure and even a gender breakdown of the data. While all this information comes from compliance reporting, I question how much value all these statistics are really adding for providers or job seekers? Not much I suggest, when compared to the time and resources it must take to collate them.

This leads to another key question: why maintain the compliance system and who does it truly serve? The answer to the first question is partly an obvious one; both the Rudd and Howard Governments saw unemployment and the non-engagement of various welfare recipients in the job market as "passive welfare". As a result, phrases such as 'Work for the Dole' and 'Mutual Obligation' became standard phrases in the Australian political lexicon.

However, it may well have been an unintended consequence to develop a publicly funded cottage industry of employment service providers, looking to fulfil KPI's, principally so they can continue to be funded by government, or can put in a bid for the next round of tenders. In a similar vein, I would anticipate that Green Corps and similar 'Work for the Dole' schemes are entirely publicly funded. Thus, there is no new industry created and no lasting economic multiplier effect when the allocation of public funds runs out. Yet, we call it work and, it counts as compliance as far as the Job Seeker Compliance System is concerned.[63] What it really all amounts to is a mass public subsidy of activity and processes of limited economic value. While some of it may be defended as having a value in terms of people gaining social interaction, or there being an environmental benefit in a bush regeneration scheme, two things need to be asked.

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extremely needy or extremely courageous. These are polarised views which are not a good basis for public policy, as they are not an accurate representation of most people's lives.

[63] Much the same claim can be levelled at various Special Business Enterprises (Sheltered Workshops) in the disability sector. See my submission to the Productivity Commission's inquiry into Disability Care and Support <http://www.pc.gov.au/__data/assets/pdf_file/0009/99486/sub0055.pdf> pp. 10-11, as at 11 July 2010, beginning at the sub-heading "A rent seeker's paradise".

The first question is: why must government feel itself responsible for generating social activity for some people? Have we become that passive as individuals that we no longer organise informal activities for ourselves? Secondly, what is the per-head cost of a government (or government funded) program, as against a private sector equivalent? If examples like the *Building the Education Revolution* (BER) are any guide, government funded providers and programs could be unduly expensive. Ultimately, we should accept that those motivated to change their circumstances or improve their situation will find ways to do so. The compliance system appears to assume, by contrast, that official intervention and oversight is always necessary. While it avoids passive welfare, the system potentially creates passive individuals, content to have government (or a state agent, such as an employment service provider) organise their lives.

In my view, it would be simpler to say to unemployed persons that (unless they are deemed unfit to work) the taxpayer will support them for a fixed period – beyond that time, payments will taper off. Information could be provided as to employment services available, but ultimately it would be up to individuals as to what to do with such information. This avoids government and service administrators being entrapped in the detail of whether job seeker X attended meeting Y or interview Z. I really do not see scrutinising an individual to that level of detail as being the best use of public time or money. It represents the kind of 'case management' I loathe and, discussed at some length in my prior submission.[64]

In many respects, there are some disturbing though I would say accurate parallels with the Job Seeker Compliance system and, the concerns about bureaucratic central planning expressed by FA Hayek in his book *The Road to Serfdom.* While this is a seminal economic text of the 20th century, it also said much about individual liberty and democracy in a free market framework, as opposed to the control of socialism. In particular, Hayek wrote:

> It is entirely fallacious to argue that the great power exercised by a central planning board would be 'no greater than the power collectively exercised by private boards of directors'. There is, in a competitive society, nobody who can exercise even a fraction of the power which a socialist planning board would posses. To decentralize power is to reduce the absolute amount of power, and the competitive system is the only system designed to minimize the power exercised by man over man. Who can seriously doubt that the power which a millionaire, who may be my employer, has over me is very much less than that which the smallest bureaucrat possesses who wields the coercive power of the state and on whose discretion it depends how I am allowed to live and work?
>
> In every real sense a badly paid unskilled workman in this country has more freedom to shape his life than many an employer in Germany or a much better paid engineer or manager in Russia. If he wants to change his job or the place where he lives, if he wants to profess certain views or spend his leisure in a particular way, he faces no absolute impediments. There are no dangers to

[64] *See* my previous submission, pp. 7-8

> bodily security and freedom that confine him by brute force to the task and environment to which a superior has assigned him.
>
> Our generation has forgotten that the system of private property is the most important guarantee of freedom. It is only because the control of the means of production is divided among many people acting independently that we as individuals can decide what to do with ourselves. When all the means of production are vested in a single hand, whether it be nominally that of 'society' as a whole or that of a dictator, whoever exercises this control has complete power over us. In the hands of private individuals, what is called economic power can be an instrument of coercion, but it is never control over the whole life of a person. But when economic power is centralized as an instrument of political power it creates a degree of dependence scarcely distinguishable from slavery. It has been well said that, in a country where the sole employer is the state, opposition means death by slow starvation.[65]

I submit that reflecting on Hayek's words should give us cause to worry. Substitute 'central planning board' for DEWR and/or Centrelink. Then, in place of 'the smallest bureaucrat' insert 'employment service provider'. Next, consider all the rules, regulations and potential compliance breaches an unemployed person and, consider in Hayek's words, how much 'freedom [this person has] to shape his life. With the amount of official control exercised, I would answer: not much. It would appear that the Job Compliance System has sent us a long way down the *Road to Serfdom* without us even realising it.

I refuse to be treated as a serf (disabled or otherwise) of the bureaucratic state. Further, I recommend that the Job Seeker Compliance Regime be largely dismantled and, that benefits be provided to unemployed persons for a fixed period, before payments taper off.

Yours faithfully,

Adam Johnston

[65] Friedrich A. Hayek, *The Road to Serfdom: The condensed version of The Road to Serfdom by F. A. Hayek as it appeared in the April 1945 edition of Reader's Digest* <http://www.iea.org.uk/files/upld-publication43pdf?.pdf>, pp. 33-34, as at 11 July 2010

Dear Sir,

MINIMUM WAGE DETERMINATION

I am writing to the Fair Pay Commission's inquiry into the minimum wage as someone confined to a wheelchair by cerebral palsy, who has previous spent two years in paid, open employment and last year graduated from university, while also being admitted as a Solicitor. Currently unemployed and receiving the Disability Support Pension, I am learning the truth in the old adage "to get a job, you must have a job".

Finding a job

And, this is really, the first point that must be made. Finding a job is not simply a matter of applying for one, two, or two thousand positions. It is largely a matter of being in that indefinable "right place at the right time". For example, my first paid employment came out of my placement with an organisation for Practical Legal Training.[1] I was more than happy when the employer said they had a backlog of work and asked me to consider staying on.

No doubt, many unions, the Labor Party and others will rant at the Commission and tell you that it is completely unacceptable that I was a temporary employee who signed a contract. The other side of that was the inescapable fact that my contract was renewed multiple times, I was promoted in the organisation, and had the satisfaction of knowing that years of tertiary study were being usefully applied. As for my contractual arrangements, temporary status focuses you on fidelity and efficiency; loyalty which was well rewarded both financially, professionally and personally – it was one of my colleagues who moved my Admission before the Court, but budgetary cutbacks of the NSW State Labor Government which meant people, including me had to go.

While I was one of those, the handling of the transition allowed me to find alternative employment for a time. However, this not to say that finding or maintaining employment is easy. Particularly for someone with a disability, finding a job can be akin to Goldie Locks finding Baby Bear has a football team of siblings. Which bowl of porridge will be "just right"? This depends on an inexhaustible list of factors. These will vary for each individual, depending on the nature of their disability, and may or may not have much to do with the substantive nature of a job, but rather the physical, procedural and environmental factors. For example, when speaking to potential employers now, I not only ask about the availability of ramps, lifts and accessible toilets on their premises, but also:

- How does the organisation handle documents? This is important because unless I am handed documents in a physically sturdy, properly secured file, I will have great difficulty managing them myself;
- Does the organisation have any administrative assistants or secretaries? With my limited hand function, don't ask me to put anything in an envelope or get you a cup of coffee. It will take

[1] A program requiring several months experience as a paralegal, before admission as a Solicitor.

me hours and, you will probably have to ring the coffee out of my shirt;

- How close are the organisation's offices to public transport? Even if the answer to this is one of close proximity, I would still need to be concerned about the provision of ramps, guttering and the general state of the pavement. For all the money that is paid to local councils in rates,[2] it does not seem to lead to better curbing or guttering.

This is not to say that finding employment is impossible, but it should suggest that even the identification of a potential employer leads to the necessity to address numerous practical and logistical problems, like those outlined above. In particular, if the public transport routes and your place of work do not "coincide," finding regular, reliable Wheelchair Accessible Taxi (WAT) can present challenges. This is also a more expensive mode of transport than a bus or ferry, even with the 50% travel subsidy offered by State Transport Departments; a point of contention for many years.[3]

Tax and other disincentives

However, in many respects you do not have to be disabled to come across active disincentives to seeking and maintaining employment. Recently, Geoff Carmody, one of the founders of Access Economics, made a compelling call for wide-ranging tax reform, which would have seen a rise in the minimum tax bracket, abolition of most allowable deductions, along with a uniform rate of both personal and company tax.[4] Significantly, he also pointed out that Australia has an aggressively regressive flat tax, when he said:

> "…For most of us, the Medicare Levy *is* a 1.5% 'flat tax' on all income: but not for all. You see, there are low income exemptions that are means tested and 'clawed back'. The basic 1.5% Medicare Levy applies to all taxable income when you earn more than $17,191. If you earn less than $15,903, there's no Levy. What about in between? Here, things turn nasty. Every *extra* dollar of income here means 20c in Medicare Levy. So the 1.5% Levy is really a 20% marginal tax for some poorer people. But there's more. The 20% Levy occurs where income tax is 15%. Here, the *effective* tax rate is really 35%..."[5]

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[2] The NSW Government recent approved rate increases for many local government areas. My own council has increased its rates and also introduced an infrastructure levy. See Warringah Shire Council, *Warringah matters*, Winter 2006, available from the Council website at: http://www.warringah.nsw.gov.au/documents/WarringahMattersWinter06ScreenSmaller.pdf, p.2 (General Manager's Message). However, there are persistent questions over both the means some councils use to raise revenue *and* how they employ the money they raise. See, for example, Sherrill Nixon (Urban Affairs Editor), *Councils accused of using levies as cash cow*, Sydney Morning Herald, March 9, 2006, available at http://smh.com.au/news/national/councils-accused-of-using-levies-as-cash-cow/2006/03/08/1141701574233.html

[3] For example *see* Bjorn Nordin (Committee Secretary), *Concessions: Who Benefits?*, House of Representatives Standing Committee on Family and Community Affairs, Commonwealth of Australia, © 1997, p.88

[4] *See* Carmody, Geoff, Tax Cuts or Tax Reform: Which? For Whom?, Address to the National Press Club, 5 April 2006, pp.4-5

[5] Ibid, p.2

In this respect, the Commission needs to distinguish between nominal and actual pay rates. It is the latter which will determine whether many continue to attempt to seek work. I was always appalled, while in the workforce, that the value of half my working day seemed to go directly to Treasury coffers. And, despite my maintaining private health insurance, there was still the Medicare flat tax to be paid. Of course, one of the greatest points of contention about private health insurance is that of health funds seeking to raise premiums. If this was a matter for the Australian Competition and Consumer Commission to make a ruling on, rather than the Health Minister, then an element of the political controversy could be taken out of the debate on public health. Equally, if consumers could elect to take part of their Medicare Levy and put it in their own long-term health savings account, this could make providing for your own "health future" more attractive. This health savings account would operate much like Superannuation; you would save in times of health and productivity, for periods of extended illness. Of course, being able to start a health savings account would come at the expense of automatic access to the Medicare system.

I would be happy to make such a trade-off, in return for lower taxation. Meanwhile, the government could weight its health insurance rebate. This would mean that the lower your income, the greater the rebate for maintaining private health coverage. Indeed, a parallel might be drawn with the superannuation co-contribution scheme for low income earners. Furthermore, the proposal could be expanded to a part public/part private coverage mix. Where an individual was prepared to purchase some health services privately, but could not afford a complete package, they could still attract rebates and, where possible, referral by the public system to private service providers for the health needs they could not cover themselves. This sets up a definite reward system for those prepared to take control of their health, and take pressure off the public health system.

Employment bureaucracy

Another issue the Commission should be aware of is the incredible breadth of the "employment bureaucracy". By "employment bureaucracy" I am referring to the agents, consultants and brokers who supposedly "place" unemployed people with potential employers. While there would certainly be cases of successful placement,[6] there is also a lot of red tape and paper churning. In the last twelve months, I have filled in more forms, had interviews with "employment brokers" and, made so many on-line applications that my internet service provider has been sending me emails advising of my unusually high rate of connections to the internet per month.

There are several things I notice about this process; firstly, despite having an agent, I still seem to do most of the faxing, email and printing of countless applications. While the agent might be able to throw some job notices your way which you might not otherwise know about, their involvement never seems to guarantee an interview or anything even close to that. Therefore, the Government needs to ask, particularly where the agents have access to public funding, whether these agents are actually adding any value to someone's employment-seeking activities.[7]

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[6] My legal training placement referred to earlier, came through inquiries made by my employment agent.

[7] In the past, my agent has undertaken assessments of workplace environments, making adjustments to tables, doors and other physical aspects of my workplaces as necessary to allow me to function as an employee. Note however, these arrangements were made in the context of my having a position to fill.

An experience which sharpened such questions in my mind was a meeting with an employment broker a few months ago. The first thing that happened was that the broker rang me out of the blue, and wanted me to come to an interview in Liverpool. I had believed this meant Liverpool Street in the city of Sydney. As a disabled Sydney suburbanite who is reliant on taxi transport, it would have been ludicrous to go to Liverpool in western Sydney; but to my horror that was exactly what was being asked. This would have meant a taxi fare of several hundred dollars, which I urgently drew to the attention of my principal agent.

He managed to have one of the broker's representatives sent to his office in Chatswood. I arrived, only to find the broker would be half an hour late, due to his getting lost. As a result my taxi driver was waiting around for an additional half hour, which neither of us had planned. Fortunately, my agent agreed very quickly (no doubt encouraged by my increasingly dark mood) to pay the taxi fare, including the waiting time. Additionally, the meeting I attended amounted not to making arrangements for a job placement, but rather a general interview which *may* later have me considered by an employer. Furthermore, all the questions asked could have been given to me on paper, or sent via an email and, in any event, I could have forwarded to the broker any number of applications previously made to a wide variety of employers.

Again, one had to wonder about the value of the whole process. Therefore, I would recommend to the Commission that it examine the operation of employment agents very closely. My view is that these organisations should only receive government funding, when and if they can show that clients on their books have actually *found* work, which is then successfully retained. The employment agent should also have to demonstrate that they made a material contribution to the client gaining and maintaining the position. This will move the focus of many players in the "employment placement" market from generating activity to producing an outcome and, from administration to attainment. Indeed, my experience of agents, brokers and consultants leads me to reflect on an infamous line from *Yes Prime Minister*, where Sir Nigel Hawthorne's alter-ego Sir Humphrey Appleby exclaims: "Activity - the politician's substitute for achievement!"[8]

The Commission should, within the limits of its authority, seek further advice about the usefulness and efficiency of many employment agents. From my perspective, I expect that some time in the next year, *Centrelink* will review my Disability Support Pension and, I will probably be deemed capable of work. The result of this will be my placement on the rather ironically named *Newstart Allowance*. Is there really a "new start" for many people in the employment market, or simply a reduction in income?[9] No doubt, the *Centrelink* reassessment will be based on assessment of my disability and possibly, my work history. Prospects of 'survival' in an increasingly competitive job market may also need to be considered, given media comment that prospering in the modern workplace means:

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[8] *Yes Prime Minister – BBC Television.* Unfortunately, I cannot cite the exact episode.
[9] For example *see* AAP, *75,000 disabled pensioners 'to get less money'*, Sydney Morning Herald, August 23, 2005 - 2:31AM, available at http://smh.com.au/news/national/75000-disabled-pensioners-to-get-less-money/2005/08/23/1124562813487.html

"…(Employees) exaggerate their achievements and market themselves. They design a narrative about themselves crafted to appeal to their audience - the boss…A survey of 309 Australian workplaces last year by the Mercer consultancy…predicted an overall wage increase of 4.2 per cent for 2005, well ahead of the 2.6 per cent inflation rate - but only the cream of workers stood to gain, with huge pay rises, while the bulk of employees ate leftovers.

Ken Gilbert of Mercer says the trend reversed the way pay rises were traditionally awarded. "Previously companies [would] say we have a 4 per cent pay increase budget and we will pay that across the board, with a little bit left over for high performers, whereas now that budget will be given to high performers and what's left over will be paid across the board…"[10]

It is highly questionable whether many disabled people have prospects of 'marketing themselves' in this environment, given the omnipresent spectre of their disability. Having been an employee whose contract came to an end, I am currently only too well aware of the difficulties of re-entering the workforce. Equally, while it would be difficult to find evidence, I am sure that many employers, even though they collect 'diversity' information and claim they ascribe to certain policies, look at the prospect of actually hiring a disabled worker as something they could well do without.

The relevant Act places duties on them to make 'reasonable accommodations', while if everything goes wrong, an employer could fear ending up before Human Rights and Equal Opportunity Commission. This is not to mention health and safety issues, all of which may mean that in the end an employer says 'this is all very nice in theory, but I already deal with enough red tape, and there are plenty of other applicants'. And quite frankly, even though I am disabled, if I was hiring, the same rationale would be very persuasive. As such, even as a solicitor holding a law degree and an arts degree, I am aware that my employment prospects (even as I churn out the applications and regularly 'annoy' my employment agent) remain, at a very human level and beyond the persuasion of any statute, a question of whether someone is prepared to take a risk.

Conclusion

For all the above reasons, I recommend that the Commission look closely at the purchasing power of wages, when making its determination. Indeed, given my experience, I would suggest that the expense of trying to find a job should be a factor in benefit and/or low income calculations much like a "basket of goods" approach is used when calculating the Consumer Price Index.

In making its calculation, the Commission should also consider the question of whether the Australian economy has reached its full capacity, from an employment perspective. For example, on June 8th 2006, the Prime Minister released a statement indicating that the unemployment rate of less than 5 percent.[11] While this is unquestionably good news, it raises the question of how many more positions the

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[10] Delaney, Brigid, *The golden children in the age of individualism*, January 9, 2006, Sydney Morning Herald, available at http://smh.com.au/news/opinion/the-golden-children-in-the-age-of-individualism/2006/01/08/1136655084981.html

[11] *See* PM Info (info@pm.gov.au), *Unemployment Falls Below Five Per Cent*, 8 June 2006, available from http://www.pm.gov.au/news/emailList/newsSubscribe.cfm#subscribe

economy can produce at the moment.[12] In particular, those who might be seen as marginal to the jobs market (i.e.: the disabled and other similar groups) may not be advantaged by strong economic growth. After all, there will be others who are fitter, quicker and easier to employ, as I have discussed earlier.

Yours faithfully,

Adam Johnston

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[12] Once you take out of the unemployment figure those who are changing jobs, those who may have left the job market and those who are just "unemployable", you are probably getting close to full employment.

AFTS Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir,

In this submission, I wish to concentrate on the poorly constructed tax and transfer system, which sees many people on lower to middle incomes paying tax, only to have it returned by the Government in family tax benefits or some like payments. This "churning" of funds is wasteful and inefficient, but it is not as if many people (including myself) have failed to point this out to various governments in inquiry after inquiry. As someone who is in the paid workforce, I am often appalled that one works to lunchtime, propping up the Australian Taxation Office and the Medicare system (while maintaining my own private health insurance).

In short therefore, this review of the taxation system should:

1. Abolish allowable deductions while raising the tax thresholds to compensate taxpayers for the loss of the deductions. This has been advocated for some time by the head of Access Economics, Geoff Carmody.[1] I particularly like the idea because it would excuse many people (including me) from filing a tax return;
2. Set the top marginal tax rate at 30%, matching the corporate rate and, thus minimising the incidence of tax avoidance, as you take away the incentive to "hide" assets in companies.[2]
3. Act to make the Medicare levy a less regressive and unfair tax, particularly on those with low incomes. Again, as Mr Carmody said in the same speech:

> "…For most of us, the Medicare Levy *is* a 1.5% 'flat tax' on all income: but not for all. You see, there are low income exemptions that are means tested and 'clawed back'. The basic 1.5% Medicare Levy applies to all taxable income when you earn more than $17,191. If you earn less than $15,903, there's no Levy. What about in between? Here, things turn nasty. Every *extra* dollar of income here means 20c in Medicare Levy. So the 1.5% Levy is really a 20% marginal tax for some poorer people. But there's more. The 20% Levy occurs where income tax is 15%. Here, the *effective* tax rate is really 35%..."[3]

People should be able to retrieve what is in essence a fierce example of low-income 'bracket creep'. Elsewhere, I have advocated a part public/part private health care system, which would reward those on lower incomes for maintaining private health insurance, while allowing those who could not afford full private cover to still purchase some services from the private sector.[4] As part of the same reform, the Australian Competition and Consumer Commission should approve premium increases (not the Health Minister of the day, thus removing a partisan political element from the debate)[5] and people should be encouraged to have health savings accounts which operate in much the same way as superannuation.[6] Such accounts would lessen dependence on the Medicare system; I think a fundamental principle that should underlie any review of a taxation system should be that the system itself promotes self-reliance, independence and, a population that expects less *and wants less* from government. The component that would make such a change of

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[1] *See* Carmody, Geoff, Tax Cuts or Tax Reform: Which? For Whom?, Address to the National Press Club, 5 April 2006, p. 2, available at http://accesseconomics.com.au/publicationsreports/getreport.php?report=70&id=79 (p.7)
[2] *See* ibid., p.3
[3] Ibid., p.2
[4] *See generally,* Johnston, Adam, *Take Two Aspirins and Call for More Reform at http://www.onlineopinion.com.au/view.asp?article=6832*
[5] *See* my submission to the Fair Pay Commission's Minimum Wage Determination in 2006, at http://www.fairpay.gov.au/NR/rdonlyres/5E7F19D3-9DBA-4BA1-8364-688B058CCB97/0/JohnstonSubmission.pdf (p.3)
[6] *See* references cited for footnote 4 and footnote 5

thinking possible would be the Australian community seeing that less intervention from government meant more money in their pockets and more freedom of choice for individuals and their families.

But this is not the thinking being promoted by either the Rudd Labor Government or the Howard Liberal predecessor. Ironically, so-called 'welfare to work' programs demonstrate how difficult it is to have policy makers refrain from developing programs, which while claiming to give people dignity and independence, actually make them more reliant on government.

Welfare to Welfare

The Howard Government introduced phrases such as "mutual obligation" and "welfare to work" into the political and social lexicon of Australia. The former Government also abolished the centralised Commonwealth Employment Service (CES) and invited other agencies from the private and non-profit sector to bid for contacts to place unemployed people in work.

In principle, this should have been a boon for determined and resilient individuals. Unemployed people were no longer forced to register with one centralised agency in order to find work while on benefits; they could go to whichever placement agent suited them. Equally, the State made it clear that welfare payments were finite and would be cut if individuals failed to actively look for work.

But what happened? I contend that many employment agents and many of the workplaces they service actively perpetuate welfare, particularly when it comes to people with a disability, while calling the outcome work. The Government funds agents via the *Commonwealth State Territory Disability Agreement,*[7] based on factors including the number of job seekers on their books. While there may be bonuses for getting people into work, those with disabilities are often placed in jobs under a program called the Supported Wages Scheme.

This calculates the wages that a person is entitled to earn, based on the assumption that the bulk of a person's income will continue to be the taxpayer funded Disability Support Pension. Admittedly, we are also dealing with people who, due to their impairment, cannot fulfil all the requirements of a job. However, rather than let businesses and employees work out job-sharing arrangement or case-by-case pro rata arrangements, the Commission ordered a $64 per week increase in the Special Wage Scale[8] despite at least one disability advocacy group warning that such an across the board rise, unrelated to hours worked, would disadvantage those least able to compete in the job market. The example given is of a high needs individual who could only work a maximum of 8 hours a week.[9] This is $8 an hour for no productivity trade-off, but equally for all of the 3,500 employees' concerned[10] little advancement either, as their wage is still only a nominal amount designed to preserve their pension.

Therefore, is any of this really productive, useful and fulfilling work for any of the parties concerned? The Fair Pay Commission never actually appears to have asked that question in its 2006 or 2007 minimum wage determination, though the latter extended the applicability of the SWS and created a Special Federal Minimum wage. The extension brought an estimated 17,500 workers[11] into the scheme, which while giving them greater legislative protection in relation to minimum income, did little for their long term circumstances. This is because many of the businesses that people with disabilities work are in the charitable and non-profit sector, receiving all or part of their funding from the Commonwealth under the *Disability Services Act 1986.*[12]

In its 2007 determination, the Commission concluded that the impact of the Special Federal Minimum Wage and expansion of the SWS on the non-profit or "business services" (sheltered workshop) sector could not be established because the arrangements had not been in place long

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[7]*See* Australian Fair Pay Commission (AFPC), *Wage-Setting Decisions 2/2007, 3/2007, 4/2007 and Reasons for Decisions*, July 2007, © Commonwealth of Australia 2007, p.94
[8]AFPC, *Wage-Setting Decision and Reasons for Decision: October 2006*, © Commonwealth of Australia 2006, p.121
[9]*See* ibid., p.118
[10]*See* ibid., p.118
[11]*See* ibid., p.113
[12]*See* ibid

enough. However, the Government suggested that based on the limited feedback it had, that there was "no detrimental impact."[13] And, in many respects, why should there be: workers got a 'pay rise' and whatever happens, State and Federal Governments will be there to pay for it, regardless of whether you are an employment agent, a 'business service' or an 'employee'. Further, should the Commission's 'reforms' mean you lose your job, then you will still be entitled to your taxpayer-funded pension.

Is this welfare to work or welfare to more welfare? While the Special Federal Minimum Wage put a floor under earners, the system necessarily puts a pension-linked ceiling on wages and aspirations. Should workers with disabilities, their families or the wider taxpaying public be forced to accept this contrived system of subsidised wages and industries? Where will it end, and where is the incentive to introduce new capital and invest for business growth, if you are geared to look to the next government funding round to supply both income and employees. Where indeed is the honesty and integrity in calling any of this welfare to work?

Such engrained welfare dependence needs to be addressed by this taxation review. Unless policy makers begin to insist that 'business services' (sheltered workshops) are to operate as free standing businesses (minus government subsidies) there will continue to be a lot of hidden churning of taxation dollars, as many of the same dollars flow between the agent, the 'service' and the 'employee'.[14]

'Render unto Caesar'

My final recommendation to this review is that you should recommend that all charities and churches pay all State and Commonwealth taxes, or at the very least, those that would be applicable to a corporate body in Australia. I think it is the height of hypocrisy for large charities, trusts and Church groups to at once hold substantial assets on which next to no duties are paid, simply on the basis that a body is charitable or religious. These same bodies chastise governments regularly about a lack of social services, yet do not appear to see their failure to contribute to the Exchequer as in any way related.[15]

Yours faithfully,

Adam Johnston

October 6, 2008

[13] AFPC, *Wage-Setting Decisions*, July 2007, p.92

[14] *See* Appendix 1, which is my unpublished 2007 submission to the Fair Pay Commission on this issue

[15] *See* my earlier comments to a Senate inquiry, raising the matter of churches and taxation at http://www.aph.gov.au/Senate/committee/clac_ctte/completed_inquiries/2004-07/leg_response_lockhart_review/submissions/sub53.pdf (pp. 3-4)

Dear Sir,

"Find a job you like and you add five days to every week." - Jackson Brown (Life's Little Instruction Book)[1]

In writing this submission to your inquiry into the Minimum Wage, my first point is to indicate that since writing to you last year[2] my search for work continues; though this may soon be coming to a fruitful end. And, despite various disappointments in this long journey, the above quotation encapsulates what one hopes for from employment.

What is work?

As such, I am pleased to say that I have never been (nor would I ever agree to be) part of the Supported Wage Scheme. (SWS) This Commission and various disability lobbyists should decide whether they are really interested in letting people with disabilities work in an open employment market place, or whether by virtue of disability some people will always be considered marginal to the economy? In many respects, SWS sounds little the cousin of Australia's largely dismantled industrial tariff system of the last century. This is shown by the concession in your own Report where you say:

"…The minimum weekly payment for employees under the SWS system has historically been determined by reference to the income-test free threshold for the (Disability Support Pension) DSP…"[3]

This shows that SWS is not designed to facilitate people into economically sustainable work, as one of its key assumptions is that people remain part of the welfare system. It appears to ask employers to prop up activities which can be classified as work, but which in an open market would not be going business concerns. Furthermore, the perverse nature of the system was pointed out by ACROD when it advised the Commission that the system could actually be a barrier to employment.[4]

ACROD also used the example of a high needs individual who could only work a maximum of 8 hours a week. At just 1.6 hours per day, even as a person confined to a wheelchair, I am left wondering how such an outcome can truly benefit any party concerned. The work placement probably costs more to administer than it returns in productive output and, unless there was a particular personal affinity between employer and employee, it seems to suggest the system regards *the appearance* of work to be considerably more important than any realistic assessment of whether such activity is *actually* gainful employment. Equally, if someone is that sick or incapacitated that they can complete barely more than an hour's "work" a day, how did any competent assessment of their capacity conclude they should enter the workforce in the first place? And the employment bureaucracy does throw up

[1] Refer to http://www.just-quotes.com/daily_quotes.html
[2] *See* http://www.fairpay.gov.au/NR/rdonlyres/5E7F19D3-9DBA-4BA1-8364-688B058CCB97/0/JohnstonSubmission.pdf
[3] Australian Fair Pay Commission (AFPC), *Wage-Setting Decision and Reasons for Decision: October 2006*, © Commonwealth of Australia 2006, p.118
[4] *See* ibid

perverse decision making processes, such as the widely reported case last year of the young man desperately ill with leukemia who was told by *Centrelink* that he should be able to find work.[5]

Despite all of this, the Commission has retained and indeed expanded the SWS, given your decision to:

"…establish a new special Pay Scale that extends coverage of the SWS pro rata wages to preserved Pay Scales that do not currently provide for pro rata wage arrangements..."[6]

This perpetuates a system which does not appear to give many people any real chance of a genuine, rising income that would lead to anything close to self-sufficiency. I think this is unacceptable, and shows that not only must the system for disability employment change, but the whole rationale *for the system's existence must change.* Firstly, employment needs to be bona fide work that is economically sustainable and potentially leads to a career progression. Secondly, employment should be marked by a departure (be it immediate or progressive) from the welfare system. Thirdly, a more realistic view needs to be taken on not only who is capable of working, but also what employment truly constitutes.

In this respect, I draw your attention to comments made in my prior submission. In particular, I noted how the tax system can operate as a real disincentive to finding paid employment.[7] I reiterate these concerns and note that both Access Economics and the Australian Chamber of Commerce have been advocating simplifying the tax system, by closing loopholes and eliminating deductions.[8] I would happily give up tax deductions if I could earn more before being required to pay tax. The Commission's decision though, denies many people with disabilities the capacity to earn more. While you raise the SWS in dollar terms, it is still hinged to the DSP; this leaves the income of many disabled people largely a function of the welfare system, rather than the employment market. This perpetuates an unwieldy, complex and costly system of transfer payments from *Centrelink*, while the Commission keeps alive a certain aspect of the ghost of official centralised wage-fixing.

For as long as the DSP remains a key factor in the setting of income (note my reluctance to call it wages) for disabled people, many will remain socially and economically disadvantaged. This perpetuates not only that disadvantage, but the role of employment, welfare and other agencies, including the Commission itself. One of your goals should be to do yourself out of a job, by aiming to make decisions which are less prescriptive and, most importantly, uncouple welfare from wages policies. This will allow income to rise, in line with the ability, aptitude and determination found in the workforce. Then, more people with disabilities will truly be able to earn

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[5] *Centrelink admits cancer teen bungle*, August 9, 2006 - 10:09AM, Sydney Morning Herald, http://www.smh.com.au/news/national/cancer-teen-bungle/2006/08/09/1154802927858.html
[6] AFPC, op. cit., p.120
[7] *See* http://www.fairpay.gov.au/NR/rdonlyres/5E7F19D3-9DBA-4BA1-8364-688B058CCB97/0/JohnstonSubmission.pdf (pp.2-3)
[8] *See* John Garnaut, *How to pay less tax by giving up deductions*, Sydney Morning Herald, December 22, 2006, http://www.smh.com.au/articles/2006/12/21/1166290677335.html

wages, which would grow over time, placing people above the minimum wage. To achieve this, I believe the Commission must start by more directly and forcefully talking about the incidence and negative impact of taxation on wages and employment. In particular, the damaging effect of tax on low income earners and families continues to be widely reported and there is a wealth of information on this issue which the Commission should make ever greater use of.[9]

Employment agencies

You will also note from my prior submission that I was highly critical of employment agencies and the general "employment bureaucracy" which is visited upon the unemployed. It is often complex, slow, inefficient and counterproductive – indeed, media reports show that it can also be corrupted.[10] These institutions, often funded by large amounts of Government money are just as much part of the disability employment/wages "problem", as is your decision to maintain the SWS. Therefore, we see that public money subsidies employment agencies placement activities. This is then often followed by the subsidisation of wages, also courtesy of the taxpayer. And this outcome is called "employment", despite the fact that vast amounts of taxpayers' money is being poured in at both ends of the system?

Additionally, some agencies will call you into meetings, saying they have a "special arrangement" with a potential employer. I related to you a particular experience of this in my prior submission.[11] It is appropriate to now relate the outcome of this process – nothing. The agency with the supposed special relationship was Disability Works Australia (DWA) and the employer was the ACT Government. This relationship was so special that the ACT Government "suspended" its Graduate Program.[12] I complained to my employment agent, the ACT Government and the Federal Minister for Workforce Participation Dr Sharman Stone MP. Her Department advised that:

> "…In increasing the employment opportunities for people with disability DWA enters into Memoranda of Understanding (MOUs) with employers. The MOUs are designed to articulate the available services required by each employer to assist them hire people with disability. Legal contracts are not used because it would be unlikely that

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[9] For example *see* John Garnaut (Economics Correspondent), *Tax burden heaviest on working women*, Sydney Morning Herald, May 1 2006, http://www.smh.com.au/text/articles/2006/04/30/1146335611826.html; *See also* Peter Saunders, *A simpler tax system would benefit families*, The Newcastle Herald, 29 December 2006, http://www.cis.org.au/exechigh/exechigh.html - In particular, note Saunders' comments regarding the contradictions in Government policy regarding child welfare payments: "…The…desire to help working parents reduce the child-care cost burden is well-intentioned. But so is the road to Hell. Because pragmatic politicians have tried to please all the people all of the time, we already have a family tax system that is contradictory as well as complex. We give extra family payments to women who stay home, for example, but we counter this with child-care benefits for women who go out to work. Each set of parents pays for the others' benefits…" (my emphasis); *See generally* Geoff Carmody, *Tax Cuts or Tax Reform: Which? For Whom?, Address to the National Press Club*, 5 April 2006

[10] *See* Adele Horin, *Cash-poor job agencies have given ethics the sack: report*, Sydney Morning Herald, November 23 2006, http://www.smh.com.au/text/articles/2006/11/22/1163871481938.html

[11] *See* http://www.fairpay.gov.au/NR/rdonlyres/5E7F19D3-9DBA-4BA1-8364-688B058CCB97/0/JohnstonSubmission.pdf (pp.3-4)

[12] *See* letter from ACT Chief Minister Jon Stanhope MLA to Adam Johnston, dated 18 October 2006

employers would risk facing penalty in the case that they had to defer or stop a recruitment process.

It is important that employers are not discouraged from seeking to employ people with disability by requiring them to be penalized if their fluctuating business concerns cause them to cease a planned recruitment process. When an employer places a job vacancy into the public domain there is always the risk that the employer's will change and that the recruitment may have to be deferred or stopped…"[13]

While the Department's position is understandable to a point, there are several questions which need to be raised. The first is what preparatory investigations did DWA make to satisfy itself that the arrangement it had with the ACT Government was more than likely to be completed? Secondly, if the agency failed to make reasonable inquiries as to the bona fides of parties signing MoUs, why shouldn't it be held legally accountable for such failures? After all, there is much public money at stake.

Also, the use of MoUs is part of a worrying trend in public administration, highlighted by the Victorian Attorney-General the Hon. Rob Hulls MP in his speech before the Centennial Sitting of the High Court of Australia. Mr. Hulls said:

"…In our defence of the rule of the law, we must also be alert to, and alarmed by, attempts to bypass judicial scrutiny, whether it be via privative clauses or the more insidious trend towards unenforceable guidelines. In my view, any suggestion that an Executive's "non-binding guidelines" be accepted as authoritative is dangerous terrain. Yet it is increasingly the case that we are asked the accept the legitimacy of such guidelines, whether it be in Industrial Relations, decisions concerning grants of Legal Aid, or more poignantly in the immigration area…"[14]

MoUs are another form of unenforceable official "guideline" where parties can promise everything and get away with delivering absolutely nothing, just like DWA did in my case. This meant that I ultimately wasted time and energy on an employment process which came to nothing. Of course, I appreciate that there will be times when positions are dissolved or abandoned, but particularly in the public sector there should be some financial reckoning as to the cost of staging aborted recruitment processes, and Departments of State, as well as employment agents like DWA, should be required to hand back to Treasury money they spend on programs which are not completed.[15] The prospect of a financial penalty for a "failure to complete" should introduce a discipline in planning, assessment and execution, which is currently sadly lacking; and costing Australians uncounted millions in the meantime.

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[13] Letter from Alison Durbin (Assistant Secretary, Disability Employment Services Branch), to Adam Johnston, dated 24 November 2006

[14] The Hon. Rob Hulls MP, *Ceremonial - Special Sitting at Melbourne - Centenary of High Court of Australia [2003]* HCATrans 406 (6 October 2003) Last Updated: 25 November 2003, [2003] HCATrans 406, http://www.austlii.edu.au/cgi-bin/disp.pl/au/other/HCATrans/2003/406.html?query=%5e+high+court+centenary

[15] See letter from Rachel Bisa (HR Services – Recruitment People Management Branch), to Adam Johnston, dated 10 October 2006

As such, it was somewhat disappointing to learn recently that DWA's arrangement with the Commonwealth would continue – I do not think renewal was merited.

Yours faithfully,

_____

Adam Johnston
February 27, 2007

Dear Commissioners,

Only someone who has not actually been on the receiving end of the welfare state would dare call it an instance of civic altruism at work

Michael Ignatieff (Professor of Human Rights, Harvard)[1]

Introduction

The professor quoted above had a point and, it remains a very important point in my view. For all the alleged "change" that the Commission's Draft Report into *Disability Care and Support* (the Report) proposes, much looks the same and much remains unanswered. The first question to ask however is what the true underlying cost of proposals in the Report. The *Overview* document identifies the funding of a so-called National Disability Insurance Scheme (NDIS) "would amount to an annual $280 premium per Australian".[2] Add the $30 suggested for the National Injury Insurance Scheme (NIIS)[3] and you reach $310 per head.

The real costs

These per head of population figures are somewhat misleading, because the Commission itself concedes that the 280 figure is based on higher taxation or "cuts in existing lower-priority expenditure and higher taxes".[4] In one sentence, the Commission has indicated that the Commonwealth Government is being asked to take two politically 'fatal' steps; it must raise taxes and alienate some interests by deeming them 'lower priority,' even before it seeks an agreement with the States and Territories.

The other problem with the Commission's financial reckoning is that the per-head calculation fails to exclude those who are too young or too old to be in the workforce. Equally, Saunders states:

> In 1965, only 3% of working age adults depended on welfare payments as their main or sole source of income…Fewer than 5% received any income support at all…Today, one in six working age adults depend on welfare payments as their main or sole source of income. Welfare dependency has increased more than 500%.[5]

Thus, adding in the extensive numbers of working age people either partly or fully reliant on welfare,[6] the true impact on Australia's taxpaying workforce will be significantly

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[1] Cited in Peter Saunders, *Australia's Welfare Habit and how to kick it,* Duffy and Snellgrove and the Centre for Independent Studies, Sydney 2004, p.59

[2] Productivity Commission (2011), *Draft Report: Disability Care and Support – Overview and Recommendations,* Canberra, February 2011, p.29

[3] *See* ibid., p.36

[4] Ibid., p.29

[5] Saunders, above n 1, p.3

[6] I acknowledge that I am a part time employee and part disability pensioner. See my assessment of the disability welfare and employment systems at

greater than you suggest. As a result, I believe it to be incumbent upon the Productivity Commission to address itself more earnestly to the *real* economic impact on working Australians of these proposals. You go to some length to demonstrate the inefficiency of many existing taxes, drawing on the KPMG figures.[7] You further concede that a hypothecated tax is not preferred among economists within or outside Government. You observe:

> Treasury departments and tax economists often question the appropriateness of hypothecated taxes. In responding to proposals for taxes to be earmarked for environmental purposes, the 2010 Henry Tax Review remarked:
>
> > While [hypothecation] may promote public acceptance of a tax, it constrains the ways in which the government can allocate limited revenue between competing priorities. It can result in revenue being spent on hypothecated programs when it could have delivered greater social benefit if directed elsewhere, including through lowering existing taxes. (vol. 2, p. 355)[8]

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http://www.deewr.gov.au/Employment/ComplianceReview/Documents/AdamJohnstonSubReviewFinal.rtf as at 29 March 2011. In particular, note submission 1b, in which I state in part:

> *For all the importance placed on (the employment contract with the job agency) by the compliance regime, I have not cited it since signing it sometime in July 2009. Its principal terms were that the parties aimed to place me in legal or paralegal work. While my employment provider introduced me to my current employer a number of years ago, my current job (commencing late last year) came independently of either my employment service provider/agent, or the compliance system. That is: I got it myself. My provider became relevant in their ability to assist my employer to make some adaptations to the workplace to accommodate me.*
>
> *The compliance system can take none of the credit for my current employment. Ultimately, it is ridiculous to think that a system which seeks to check the minuscule detail of whether job seeker X attended an interview is (not) doomed to be an administrative Goliath liable to trip on its own feet. Again, as I asked in my last submission, has anyone bothered to do a cost/benefit analysis of the Goliath?*
>
> *Equally, one disputes that penalties, fines or other reductions in payments necessarily turns the reluctant job seeker into the enthusiastic potential employee; indeed, it may harden their resolve to undermine employment efforts. I recall one participant at our consultation meeting relating the case of a person who continually moved address, who was listed on an employment provider's books, but had not been sighted by anyone for months. While the full facts of that particular case are unavailable, one thing that can be gleamed from this example is that determined individuals will always find ways to evade official processes. Further, it should be asked whether there is any real point in pursuing such people, given the time, effort and expense potentially involved.*

I would submit that the NDIS and NIIS are likely to be 'administrative Goliath's' similar to the Job Seeker Compliance Regime.

[7] *See Source: Commission calculations; KPMG Econtech 2010, CGE Analysis of the Current Tax System, Report to the Australian Treasury; ABS 2010, Taxation Revenue, Australia, 2008-09, Cat. No. 5506.0,* cited in Productivity Commission (2011), *Draft Report: Disability Care and Support – Draft Report*, Vol. 2, February 2011, pp. 12.19-12.20 (111-112 of 398)

[8] Ibid., p.12.12 (104 of 398)

Additionally, the Commission also admits that "any new hypothecated tax would be swimming against the tide of the (Henry) review's proposed (simplified) tax policy".[9] Compound this with the fact that your net cost for the NDIS involves a $3 billion margin for error[10] and the fact that you are yet to nominate a figure for the so-called "buffer",[11] and the creditability of the whole concept seems to come into question. In my view, the Commission needs to look very carefully at just how 'deliverable' the NDIS and NIIS really are.

Agency 'capture'

I further note that the Commission is now openly and repeatedly using the phrase 'National Disability Insurance Scheme' in what is an investigation about 'Disability Care and Support'. While acknowledging that the concept of an NDIS was raised in the 2009 Report *The Way Forward - A New Disability Policy Framework for Australia*[12] the Commission's ready use of the same phrase could easily lead to the impression that the Government's independent economic adviser being 'captured' by some of the activists and lobbyists.

My impression of the clear majority of submissions sent in response to the *Discussion Paper* (based on the sample I read) was that most people were in support of an Insurance Scheme. While accepting that one is advancing a minority opinion, my recommendation to the Commission is that any new scheme be voluntary. This is because, when considering what the Commission is allegedly 'offering', in many respects it retains the worst elements of the current State-based support systems and imposes them nationwide. Most notably, the National Disability Insurance Agency (NDIA) and the NGO 'service providers' who will seek referrals from it will still be staffed by many of the same caseworkers, social workers, physiotherapists and occupational therapists who staff current arrangements.

The same old system, renamed and reorganised

If you refer to my prior submissions to this Inquiry,[13] you will realise that for many of us, dealing with these caseworkers/agents is not the innocuous partnership the Commission may like to suggest when you say:

> Direct assistance will also be provided to people with a disability through better advice and support from case managers. This will help consumers make good informed choices, as well as better understanding their rights and how to

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[9] Ibid., p.12.14 (106 of 398)
[10] *See* ibid., p.14.25 (211 of 398)
[11] *See* ibid, p.14.24 (210 of 389)
[12] *See* The Disability Investment Group, *The Way Forward - A New Disability Policy Framework for Australia,* Commonwealth of Australia, 2009, pp. 15-29 http://www.fahcsia.gov.au/sa/disability/pubs/policy/way_forward/Documents/dig_report_19oct09.pdf as at 27 March 2011
[13] *See generally* http://www.pc.gov.au/__data/assets/pdf_file/0009/99486/sub0055.pdf and http://www.pc.gov.au/__data/assets/pdf_file/0016/100726/sub0186.pdf as at 5 April 2011

> exercise them, as well as the standard of support they should expect from service providers.[14]

The caveats on this statement are numerous. Firstly, the Commission makes clear that these case workers will be officers of the NDIA.[15] You also make clear that there will be an extensive process of assessment and evaluation of an individual's disabilities. More specifically, your description of the central agency's role in this is:

> The assessment would not be 'rubber stamped' (by NDIA). Prior to making budgetary decisions, the (NDIA) would confirm that the particular assessment followed the appropriate protocol, and was consistent with the 'benchmark' range of assessed needs for other people with similar characteristics. Deviations outside the norm would need to be justified. That means the agency would detect assessments before people got their individual package.[16]

Even if you were to role out the NDIS progressively, the Commission has by necessity created a bureaucratic bottleneck of assessments. Further, the concept of a disability 'norm' is a fallacy. In terms of my condition of cerebral palsy, my own life experience and meeting others similarly afflicted, tells me there is no 'Norm'. I know of people who were born at a similarly premature term to me; others were born at near full term. The spectrum of cerebral palsy trauma that results cannot be fully predicted or explained. The impact on people's lives and families are equally variable, and many elements would not render themselves easily to a statistical table. One is certain this true of many other conditions as well.

Furthermore, you must by necessity create long waiting times, if NDIA is going to have a robust and credible assessment review process. Much like the 'Work for the Dole' scheme and other similar programs, the burden of documenting activities and meeting other criteria for the NDIA, is likely to be too much for many people to endure. While a percentage will be (to use a classic Australian idiom) 'bludgers', many will lack literacy skills, be chronically ill, be homeless, or have a combination of these factors impacting on their lives.

In 2009, journalist Adele Horin wrote a telling article about how Centrelink operates. A witty headline writer had declared 'You'll work like a dog to keep Centrelink happy', possibly in the mistaken belief that this was an ironic turn of phrase. Under this, Ms Horin had written in part:

> I have vivid memories of a young man I interviewed who had had his unemployment benefit stopped for eight weeks. Even though he had been reduced to sleeping on the streets, he held onto a neat folder containing copies of every job application he had ever made, and all written responses, as well as every piece of correspondence from Centrelink filed in individual plastic

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[14] *See* Productivity Commission (2011), *Report, Vol. 1,* above n 7, p.8.27 (373 of 398)
[15] *See* ibid., *Vol. 1,* Box 7.1, p.7.14 (306 of 398)
[16] Productivity Commission (2011), *Overview,* above n 2, p.19

> envelopes. I marvelled at his orderly habits in stark contrast to the chaotic jumble on my desk. But even he had slipped up in the end, transgressing some rule or other.[17]

When people are reduced to this you have to wonder about the true objective of the compliance system? I asked Professor Disney and his Independent Review of the Social Security Compliance System to consider whether the true (if undisclosed) aims of the Social Security system is to cost shift; this shift is to move as many needy people from the Government welfare system to the non-government charitable sector. There is clear evidence that this happens. Ms Horin has written elsewhere:

> Mutual obligation, with its myriad rules, is creating an underclass of alienated, impoverished, and homeless young people. It has led to an explosion in the numbers of unemployed people [who are] docked a part or all of their unemployment benefit for minor infringements of burgeoning regulations. Increasing numbers of young unemployed people are turning to charity.[18]

Much the same could happen to people with disabilities, as they wait for the NDIA to endorse assessments. Many could potentially decide in desperation that they cannot wait any longer. And it would not be as if the case officers or regional managers will be effective advocates for people with disabilities who are in growing distress. The case officers are contracted to or officials of, NDIA and, as such *'He who pays the piper calls the tune.'*[19] For the Commission to seriously suggest that the NDIS or NDIA is about "giving people power and choice"[20] is therefore laughable on many levels.

Who is really in control?

The *Overview* makes very clear just how far 'choice' will go. The Commission states that people will be able to cash out some amounts for discretionary spending, but "would have to spend on and attend agreed therapies".[21] While this might, on the face of it, sound reasonable, it inherently maintains the vasal and serf connection between many people with disabilities and a coterie of 'alleged' experts. For example, from my own experience, physiotherapy, but for the fact that it is deemed a 'therapy,' could be more accurately described as a painful instance of assault, sometimes occasioning actually bodily harm.

Equally, one would question the short, medium and long term benefits of many interventions urged by a range of professionals over a number of years. Indeed, some of

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[17] Adele Horin, *You'll work like a dog to make Centrelink happy,* January 31, 2009 <http://www.brisbanetimes.com.au/news/opinion/youll-work-like-a-dog-to-make-centrelink-happy/2009/01/30/1232818724404.html> as at 10 June 2010

[18] Adele Horin, *Sydney Morning Herald,* 26 May 2001, cited in Peter J Crawford, *Captive of the System! Why Governments fail to deliver on their promises – and what to do about it,* Richmond Ventures Pty Ltd © 2003, p.110

[19] *See* http://idioms.thefreedictionary.com/He+who+pays+the+piper+calls+the+tune as at 6 April 2011

[20] Productivity Commission (2011), *Overview,* above n 2, p.25

[21] Ibid, p.26

these have left me with greater pain and incapacity.[22] Yet, the Commission appears reluctant to step away from the model of therapist/case worker knows best. This is despite your acknowledgement that "(mandatory) certification effectively compels (some people) to pay for something they do not actually want".[23] And, a fellow submitter could not have put it more plainly to you, when she said:

> I never ask anybody I employ if they have got any training in disability because it doesn't matter to me. I'm one of the people who talk to the person; it's their attitude. Do they speak to my son? Do they acknowledge he exists? Do they have the right sense of social justice? That comes first. I can teach them how to work with Jackson. I can do that, and everybody — this whole individual thing, you know, it doesn't matter if you get somebody with 15 certificates in disability, you still have to teach them about your person, because they all have their idiosyncrasies. (Sally Richards, trans., p. 402)[24]

In my view, the negative impact of 'professionalism' is not only that it increases costs, but also that it could be acting as a pseudo-tariff wall protecting current disability service providers. It is noteworthy for example, that the Northcott Society (amongst others) told the Commission that workers in the sector should hold a Certificate III as a minimum.[25]

Applying such a standard might admittedly have some benefits in assuring service consistency and quality, but it also helps to maintain the current government and non-government service providers in place. I anticipate that this will be the case, particularly when the NDIA makes referrals to services. Who are they likely to make referrals to, other than those agencies already established in the sector? This is unfortunate, because it will be an impediment to real reform, unless the NDIA makes a deliberate decision (at least initially) to preference smaller operators and/or sole proprietors. Indeed, it would be

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[22] For example see my 2006 submission my submission to the Senate Community Affairs Committee inquiry into the *Somatic Cell Nuclear Transfer (SCNT) and Related Research Amendment Bill 2006,* http://www.aph.gov.au/Senate/committee/clac_ctte/completed_inquiries/2004-07/leg_response_lockhart_review/submissions/sub53.pdf as at 7 April 2011. In support of expanding stem cell research, I argued in part:

> *I have an image of in my mind of a car in a mechanic's garage, covered from bumper to bumper with defect notices from the Roads and Traffic Authority (RTA); the car is my body, the mechanic my surgeon and the garage a hospital, while the RTA is the recurring cost and inconvenience of my disability.*
>
> *Furthermore, the additional "rub" for not only me as the patient, but my family and friends is the cost and inconvenience of my hospitalisation, the length and difficulty of recuperation and, the knowledge that not all procedures will have lasting long-term benefits. Indeed, extended recuperation has at times accentuated a loss of muscular strength and tone, while some muscular tension released by surgery will re-tighten over succeeding years. After all, orthopaedic surgery can only deal with the outward manifestations of spasticity, such as tight muscles. It cannot deal with the cellular, neural and nerve damage which lies at the heart of the condition. Cellular regeneration and replacement can strike at the heart of my condition and that of many others.*

[23] Productivity Commission (2011), *Report,* Vol. 2, p.13.44 (184 of 398)
[24] Ibid., p.13.43 (183 of 398)
[25] *See* ibid., p. 13.44 (184 of 398)

appropriate to make provisions so that disabled persons and their families could "poach" preferred care attendants, therapists and other advisors from current service providers, with their individualised funding.

The resulting pressure on providers would be a true catalyst for freedom of choice and structural reform in the sector. It would hopefully also dilute the power of therapists and NDIA assessors. After all, if services faced the dual risks of not only losing a client's funding, but staff as well, then the constant refrain of "You must wait for the assessment" would be used much more judiciously than it is now. For individuals and families, this would provide an important element of structural leverage over service providers which we have never had before, as well as providing us with a good measure of freedom to challenge the coterie of assessment and therapy 'experts'.[26]

Truly making life easier

In my preferred model, the only two functions an NDIA would have are the ability to make referrals and, take complaints. Regrettably, under the Commission's model, a number of key, related functions, like access to Medicare and Centrelink pensions would remain outside the proposal.[27] While understanding this from a practical and legal point of view (as the NDIS is principally focused on State-based services), it is nonetheless regrettable that planners have missed yet another opportunity to create a "single point of access" portal for all services. It is not as if such proposals lack for discussion, research or design. For example, the Commonwealth Ombudsman has written:

> One option is for agencies that work closely together to set up a special joint complaint handling unit to liaise with clients and investigate matters—a 'one stop shop' approach. Staff of the unit can be authorised to resolve matters on behalf of all the agencies involved, or to refer more complex or sensitive matters to the appropriate line area.
>
> A second option is to set up a central contact point for all complaints. This may be little more than a phone number, mail box or web address. Upon receipt, complaints can be filtered to identify those requiring referral to an agency for a further response or investigation. It will be likely that many complaints can be

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[26] The courts have also struggled for some time with the question of how to handle expert witnesses. *See* for example, The Hon Justice Peter McClellan, *Contemporary Challenges for the Justice System – Expert Evidence,* Australian Lawyers' Alliance Medical Law Conference 2007 http://www.ipc.nsw.gov.au/lawlink/supreme_court/ll_sc.nsf/pages/SCO_mcclellan200707 as at 27 March 2011.

The Commission's *Draft Report* is sharply critical of the legal system for its complexity and long timelines, variability in awards and the like. Some of these criticisms are no doubt merited. However, if the response is to simply dismiss any opinion deemed not to be 'expert' (which is the experience of many individuals and families) and to take damages/compensation claims to another forum called the NDIA, what has really been achieved? In my opinion, the problem has simply been relocated, not changed or improved. I again insist that there can be no other outcome, for so long as a case worker or therapist continues to play a significant role.

[27] *See* Productivity Commission (2011), *Overview,* above n 2, pp. 22-24

> dealt with promptly, either at the initial contact point or after referral to an agency, especially if the complaint is in the nature of a request for information or clarification.[28]

The value of the 'one stop shop' approach has also been recognised internationally, with the House of Commons Public Administration Select Committee calling on the UK Government in 2008:

> (To) explore providing a single point of contact for impartial information about complaints to Government and public services-"Public Services Direct". This service would act as a "one stop shop" for complaints about public services.
>
> In the Committee's view complaints should be handled effectively at the earliest possible point, not least because this is cheaper for all concerned. The Committee says there appears to be a systemic problem with first-tier complaint handling by government organisations and is "disturbed" that so many complaint reviewers described a poor standard of complaint handling.[29]

Why should this concept be limited to complaint handling? As someone with a disability, navigating the 'service merry-go-round' can be both time consuming and tiring. A body which acted as a referral and general advice 'clearinghouse' would be much more useful (and less intimidating) to me than a NDIA 'King Kong'.

Service delivery

When I look at the NDIS and NDIA, Medicare (and its attendant difficulties) echoes loudly. Medicare provides 'universal' coverage; the NDIS proposal does the same thing.[30] While the NDIS has three tiers, the Commission should consider developing strict rules for capping and limiting activities at tier one.

Failure in this area could lead Tier One and Two become an unmanageable 'honey pot,' attracting spin doctors, advertisers and advocates. Promotion and awareness to the community as a whole could become as poorly targeted (and costly) as benefits for non-urgent, less complex medical interventions and pharmaceutical prescriptions. The perverse outcome of subsidising GP appointments, medical tests and minor ailments according to Dr. Jeremy Sammut is a draining of resources away from more complex medical/hospital based care. He says:

> (When) individuals are paying for only 12% of the cost from their own pockets, it is impossible to tell how many billions of dollars are being wasted on millions

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[28] Commonwealth Ombudsman, *Fact Sheet 7: Complaint handling: multiple agencies,* April 2009, http://www.ombudsman.gov.au/docs/fact-sheets/onlineFactSheet7_multi-agency.pdf as at 9 April 2011

[29] www.parliament.uk Press Notice 25, Session 2007-08, *PASC calls for one stop shop to make it easier for people to complain about public services,* 24 March 2008, http://www.parliament.uk/business/committees/committees-archive/public-administration-select-committee/pasc0708pn25/ as at 9 April 2011

[30] *See* Productivity Commission, *Overview,* above n 2, p.11

> of unnecessary consultations and tests. What the total cost of Medicare therefore does not measure is the waste (unnecessary use of services by patients), over-servicing (by doctors, including outright fraud), and opportunity cost (misallocation of resources and forgone hospital care) that high expenditure on the (Medical Benefits Scheme) MBS involves.[31]

If you are determined to proceed with an NDIS, learning the historic lessons of Medicare are essential, to prevent the size and cost of the scheme ballooning uncontrollably. I recommend that the Commission abandon Tier One, on the basis that it is the non-essential element.

Equally, drawing on Sammut's work, Tier Two referral work does not necessarily have to be a State-run monopoly, and neither should the NDIS cover marginal needs. Furthermore, people should be encouraged to use self-insurance, in part because this is a demonstrative exercise of personal choice and responsibility. It is also worth remembering the rationale for Australia's first Government-run health insurance initiative. As Sammut explains it:

> The National Health Scheme was put in place in the early 1950s by the federal Coalition government led by Liberal Party Prime Minister Robert Menzies and Country Party Deputy Prime Minister and Health Minister Dr Earle Page, a former medical practitioner. The scheme was designed to offer a minimum level of protection for those who genuinely could not pay for their own health care, while requiring those who could afford to help themselves to take out private insurance as a condition of receiving government financial assistance with health costs. It was also designed to ensure that federal health spending was used in a manner that kept insurance coverage high, while supporting the financing of state government-run public hospitals.[32]

Self-help or rationing limited resources seems to be a near impossible argument for contemporary politicians and policy makers to sustain. Yet with the complexity and cost of care increasing, this is arguably an even more important reason for people to maintain private insurance. However, if the introduction of the Private Health Insurance Rebate was any guide, many were no longer prepared to self insure for medical needs (unless the Government subsidised it).

Dr. Sammut effectively argues that Australia moved from a mutualised to a socialised health system.[33] My concern is that the disability sector, which is already heavily dependent on public money, would advocate for something which increased that reliance and call it a reform. As my previous submissions made clear, one has often been more than a little disturbed by official/welfare interventions (read: bureaucratic molestations at

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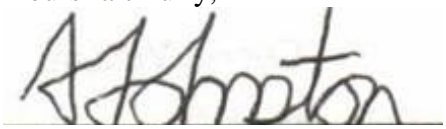
[31] Dr Jeremy Sammut, *How! not how much: Medicare spending and health resource allocation in Australia,* Centre for Independent Studies, 2011, p.11 http://www.cis.org.au/images/stories/policy-monographs/pm-114.pdf as at 6 April 2011
[32] Ibid., p.5
[33] *See* ibid

times when I am feeling less that charitable about an agency) in my life. From a practical point of view, should I be obliged to enter a contract with the NDIA in order to receive a support service, my thinking will turn to whether this was a form of civil conscription, prohibited by Section 51(xxiiiA) of the *Constitution.* Professor Cheryl Saunders states that the prohibition "is a little mysterious".[34] She argues it prevents the Commonwealth directing doctors as to how they will provide care.[35] While acknowledging that the Commonwealth has a general insurance power under Section 51(xiv), Saunders states that this "enables insurance law to be uniform".[36] Whether this section was ever meant to allow the Commonwealth to prescribe a particular form of insurance for a particular group of people, is not clear.

I look forward to addressing these and other issues with the Commission.

Yours faithfully,



Adam Johnston
April 10, 2011

[34] Cheryl Saunders, *The Australian Constitution (Annotated),* 2nd ed., 1997, The Constitutional Centenary Foundation, p.53
[35] *See* ibid
[36] Ibid, p.51