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Date: Senate Community Affairs  
07 July 2021

Ms Apolline Kohen  
Acting Secretary  
Senate Community Affairs Reference Committee  
The Senate  
Parliament House  
CANBERRA

[Community.affairs.sen@aph.gov.au](mailto:Community.affairs.sen@aph.gov.au)

Dear Ms Kohen,

### **Inquiry into the Purpose, Intent and Adequacy of the Disability Support Pension**

I refer to your email of 19 May 2021.

The Legal Services Commission of South Australia (the Commission) is the State's largest legal assistance provider. We provide a range of services to the South Australian public including legal advice and education, and legal representation pursuant to grants of aid. In the previous financial year, 16% of our clients self-identified as having a disability.

Through its Access Services Branch the Commission provides a Your Story advisory service to South Australians with a disability wishing to participate in the Disability Royal Commission in a safe and informed manner. We also assist with a range of legal problems often experienced by people with disability. This year (2021) the Commission will launch a new Disability Information and Legal Assistance Service (DILA) that will provide legal information and advice to adults and young people with disability in South Australia. The new unit will be comprised of staff with specialist training and awareness of disability issues and will seek to build partnerships with peak disability organisations.

Regarding the terms of reference for this inquiry, I have consulted with legal advisers at the Commission who are experienced in this area and my response follows this letter. Thank you for the opportunity to provide comment.

Yours sincerely,

Gabrielle Z Canny  
Director



## Response to the Terms of Reference: Inquiry into the Purpose, Intent and Adequacy of the Disability Support Pension

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The Commission proposes to address terms of reference (b) and (c), as the remaining terms refer to matters outside the Commission's statutory functions.

(b) The purpose, intent and adequacy of the Disability Support Pension (DSP), with specific reference to the DSP eligibility criteria, assessment and determination, including the need for health assessments and medical evidence and the right to review and appeal.

The Commission provides information and advice and, on occasion, representation to claimants seeking to challenge application refusals in the Administrative Appeals Tribunal (the AAT). In the Commission's experience many appellants fail in their appeal due to difficulties, often caused by their disability, in understanding the pre-conditions for applying for a DSP.

For example, a person seeking to claim a medical exemption from undertaking a program of support can be unaware that the period of time (for which the medical exemption is sought) does not count towards the time spent on a program of support. Instead, it extends the Program of Support until such time as the person is medically fit to complete the full eighteen months program.

Similarly, a person will often apply for a DSP unaware that they must first complete the program of support in the three years prior to submitting an application for a DSP. Below is a case study illustrating the difficulties created by inadequate information and assistance at an early stage.

### **Case Study**

*Y was 61 years of age and had previously worked part-time as a medical receptionist but ceased working due to medical reasons. She lodged a DSP claim with the following disabilities: blindness in left eye (retinal detachment), atrial fibrillation, vertigo, sleep apnoea, osteoarthritis, hypertension, hyperparathyroidism and severe headaches.*

*Her DSP claim was rejected based on her impairment rating, and she sought an internal review. No information was provided to Y at this point regarding the compulsory program of support.*

*She was subsequently advised by the Department that the original decision was confirmed as she did not have an impairment rating of twenty points and therefore could not qualify for a DSP. Again, no information was provided to Y at this point regarding the compulsory program of support.*

*She then appealed to the AAT. At the AAT, the Tribunal confirmed the Department's decision regarding insufficient impairment points. It commented that, in any event, the outcome of the review in relation to Y's impairment rating would not alter her ineligibility for the DSP as she had not participated in a program of support prior to the DSP claim under review.*

The Commission submits that this appellant should have been specifically advised by the Department at the earliest possible stage of the requirement to complete the program of support. While individuals are entitled to exercise their appeal rights, it may be that the number of appeals could be reduced by providing accurate information to DSP claimants at the initial stage of their application.



## **Response to the Terms of Reference: Inquiry into the Purpose, Intent and Adequacy of the Disability Support Pension**

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(c) The purpose, intent and adequacy of the Disability Support Pension (DSP), with specific reference to the impact of geography, age and other characteristics on the number of people receiving the DSP.

The Commission has often dealt with clients suffering from a disability who are over sixty years of age but not yet old enough to qualify the aged pension. Such persons find themselves in a 'no man's land' where, because of their impairments and their age, they will never be able to obtain work and, as in the example above, are also unable to obtain a DSP if they cannot meet the criteria. They can only resort to Job Seeker until they can qualify for an aged pension. This is an unsatisfactory and distressing situation for many older, disabled persons.

The Commission submits that a lowered impairment rating should be implemented for older DSP applicants, for example those over the age of fifty-five. In addition, either a waiver of the need to participate in the program of support or a shorter participation period would benefit this group as they transition to the aged pension.

Overall, the Commission has found that inflexible criteria applied regardless of circumstance has led to unintended hardship for some DSP applicants. An independent analysis of Administrative Appeal Tribunal outcomes would greatly assist in identifying trends in DSP applications.

### **Conclusion**

The Commission submits that consideration should be given to establishing a requirement that potential applicants attend an appointment with a Centrelink representative, or a recognised advocacy organisation, prior to submission of an application for DSP.

The conduct of an independent analysis of Administrative Appeal Tribunal outcomes would assist greatly in identifying trends in DSP applications and areas where greater flexibility is required.

Lowering the impairment rating and other conditions for older DSP claimants would greatly benefit this disadvantaged group.