

# Workers with Disability

## Preamble

1. People with Disability have the same right as all Australians to secure, meaningful work, a living wage, a secure retirement, and to participate equally in social and economic opportunities.
2. Almost one in five Australians report having a disability. Despite being a significant proportion of the community People with Disability experience high levels of inequality and poverty, often as a direct consequence of exclusion from work and inadequate industrial protections in work.
3. Congress calls for the implementation of the recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. Government must work constructively with both workers and people with disability to implement the Commission's findings. More detail on which findings should be implemented as a matter of priority can be found in the 2024 NDIS Policy, Unemployment, sub-minimum wages, insecure work, discrimination, violence and harassment, minimal retirement incomes and high rates of poverty are entrenched and systemic for working People with Disability:
  - a. Only 53% are in paid employment, compared with 83% of workers without disability;
  - b. The unemployment rate is around twice that of workers without disability;
  - c. Workers with Disability have significantly lower wages than non-disabled counterparts, including where education levels are the same;
  - d. 45% live below the poverty line, compared to 27% of those without disability.
  - e. For those in work, bullying and harassment are far too frequent, with workers with a disability experiencing these realities at twice the rate of other workers.
  - f. Employees with a disability who work in supported employment are only entitled to a superannuation contribution of 9.5% or \$15 a week, whichever is greater.
4. These outcomes have changed little during the 25 years of operation of the Disability Discrimination Act 1992 (Cth), which has comprehensively failed to address systemic employment discrimination against People with Disability.
5. The Fair Work Act 2009 (Cth) has also failed to meet the employment needs and expectations of Workers with Disability, in particular failing to ensure the flexible working arrangements needed to participate in work on equal terms with non-disabled workers.
6. Changes to working conditions as a result of the COVID-19 pandemic demonstrate that many of the barriers to employment for people with disability, from flexible working hours to working from home, were erected by employers rather than a function of the roles. Congress calls on government at all levels to encourage this flexibility to continue after the threat of the pandemic subsides.
7. Congress remains committed to the National Disability Insurance Scheme (NDIS), to increase access to all facets of community life for People with Disability, including participation in work.
8. Congress notes, however, that the majority of People with Disability are not entitled to NDIS support, particularly those with disability as a result of mental ill-health. The NDIS is intended to provide services to 460,000 people, around 2% of the population, when almost one in five working age Australians has a disability. Some aspects of the federal government's NDIS rollout have eroded disability services that were provided and delivered by public sector departments in some states, such as Western Australia. In some cases, this has led to a gap in eligibility for services, a reduction in the quality of disability services, and the loss of a skilled workforce who had built trust with people with disability, their families and support networks.

9. Without systemic reform to discrimination and industrial relations laws, People with Disability will continue to face significant barriers to obtaining work, with the ongoing effects of inequality, exclusion and poverty.
10. Congress is committed to the removal of attitudinal, institutional and legislated barriers in the workplace relations and superannuation systems across all jurisdictions and levels of government in Australia that prevent Workers with Disability accessing their rights to equality in employment.

## Representing and organising workers with disability

11. Australian Unions are committed to ensuring that Workers with Disability have strong and effective union representation in the workplace.
12. Congress notes the training and guidance developed internationally, particularly in the United Kingdom, to build unions' capability to consult, organise and bargain with and on behalf of Workers with Disability.
13. Congress endorses development by the ACTU Institute of worker-focused disability awareness and inclusion training to assist Australian Unions to represent Workers with Disability more effectively, including in the areas of disability discrimination, flexible working arrangements, awards and bargaining, and Occupational Health & Safety.
14. Australian Unions commit to furthering disability equality through the improvement of awards and agreements, and by ensuring awards and agreements do not, directly or indirectly, create or entrench barriers to employment for Workers with Disability.

## A fairer supported wage system

15. Congress supports a fair transition to inclusive employment in consultation with people with disability and for a transition to full minimum wages for all workers with disability as soon as possible.
16. Congress opposes any reduction or suppression of wages of workers in supported wage settings and calls upon the Commonwealth Government to:
  - a. carry out meaningful consultation with Workers with Disability and their representatives in relation to any proposed review or replacement of wage assessment tools;
  - b. ensure Workers with Disability are no worse off through any changes to the Supported Wage System; and
  - c. provide the support needed for Workers with Disability, Australian Disability Enterprises and other employers to deliver a living wage and secure retirement to workers in supported wage settings.
17. Australian Unions will continue to campaign against discriminatory and arbitrary wage assessment tools being applied to workers in supported wage settings and to ensure that all workers have the right to meaningful and secure employment with legal wages.
18. While opportunities to work within the Supported Wage System are valued by many, under this system many workers continue to earn sub-minimum wages even when other social security supports are taken into consideration.
19. The unchanging unemployment rate of People with Disability also suggests supported wage settings have not been successful in enabling sufficient numbers of workers to grow their skills and progress to open employment opportunities, contributing to the entrenched and unacceptable rates of poverty experienced by People with Disability.
20. Congress notes movement in some jurisdictions in the United States away from segregated employment settings, and towards the elimination of sub-minimum wages for Workers with Disability.
21. Once in open employment, Workers with Disability also have greater opportunity to increase their wages through advancement, learn new skills, exercise choice and participate in their community than those in the supported wage system.

22. Congress calls for the elimination of the Disability Pay Gap, including elimination of productivity-based and sub-minimum wages for Workers with Disability in Australia, and the creation of more jobs for People with Disability in open and inclusive employment settings.
23. The NDIA has scrapped supported wages in the current round of bargaining - we welcome the news that supported wages provisions will be removed from the enterprise agreement and NDIA workers with disability will be employed at the full rate of pay. This shift recognises recommendations from the Royal Commission into Violence, Abuse and Exploitation of People with Disability in relation to the phasing out of supported wages.

## Disability support pension

24. Australian Unions call for an increase in the Disability Support Pension (DSP), to provide a living social wage for People with Disability that is above the poverty line.
25. If rejected, DSP applicants who are unable to find work are likely to receive JobSeeker instead. JobSeeker has requirements to attend Centrelink, apply for a predetermined number of positions (regardless of whether or not they are suitable for the person), and include penalties for alleged non-compliance. These conditions are onerous for people without disability; for People With Disability they can be exhausting and contribute to further depression, anxiety, and feelings of insecurity about housing, food, and capacity to meet financial obligations.
26. More than 25% of JobSeeker recipients have some form of disability. The allowance is manifestly inadequate as a safety net for any jobseeker, and is totally inadequate when the additional costs of living with disability are taken into consideration.
27. There is no evidence that determining People with Disability are capable of work and reducing their access to the DSP leads to more People with Disability obtaining paid work.
28. Congress opposes further cuts to social security allowances, pensions and programs needed by People with Disability to live with dignity and in security. Australian Unions are committed to ensuring that there is adequate support for People with disability, including DSP recipients, to enter the workforce.

## Disability leave

29. The National Employment Standards (NES) provide workers with minimum leave entitlements that support a fair and functional society, including annual, sick, parental, carers and compassionate leave.
30. But if you are a Worker with Disability , the NES only provide the right to request flexible working arrangements rather than a minimum disability leave entitlement, and the decision of the employer cannot be appealed.
31. Congress notes that a Disability Leave entitlement has been achieved through bargaining in the UK:
  - a. Disability Leave is paid leave for activities inherently associated with a workers' disability, for example to attend physical therapy or rehabilitation sessions.
  - b. Disability Leave is not sick leave. It recognises that disability and illness are not equivalent, and that Workers with Disability should not be forced to use annual or sick leave for routine maintenance of their well-being and fitness for work.
  - c. Disability Leave treats disability as a normal part of the human condition, which requires accommodation of flexible work to enable People with Disability to participate equally in work and the economy.
32. In particular, Workers with Disability should not be required to take annual leave or sick leave to attend NDIS planning meetings that are critical to ensuring there are adequate supports in place to maintain their employment.
33. Additionally, family and carers of people with disability are required to use significant leave in order to attend the large number of assisted appointments a person with a disability is required to make for their

work, daily living, NDIS and health requirements. Access to a universal amount of leave should be made available to family and carers of people with disability.

34. Congress supports the development by the ACTU of a discussion paper for consultation with Affiliates and the disability movement regarding the potential issues and benefits of a minimum entitlement to Disability Leave in Australia.

## Superannuation & income insurance

35. All workers need a secure retirement income. The UN Convention on the Rights of Persons with Disabilities recognises that people with disability have the right to equal access to retirement benefits and programmes.
36. Australia's age pension and superannuation systems are one of many safety nets supporting access for workers with disability, including being one of the few ways for workers with pre-existing conditions to get death, disability, and income protection insurance.
37. Many Workers with Disability in Australia earn low or sub-minimum wages and finish their working lives with nil or minimal superannuation.
38. When work is interrupted by injury and disability, superannuation payments are often significantly affected. There is no superannuation safety net for workers away from work for 12 months or more because they have acquired a disability. Superannuation payments generally cease during that period.
39. Workers often resort to accessing their superannuation to make changes to their home, car and other essentials to accommodate their new disability. This reduces their superannuation balance and, over time, they may use all of their superannuation to mitigate the impact of their disability on their life, leaving nothing at retirement.
40. The superannuation system requires reform to support Workers with Disability to achieve a secure retirement and, if they acquire a disability during their working lives, maintain their superannuation during the period in which they are adjusting to their new circumstances.
41. Many People with Disability are living longer and healthier lives and work to retirement age. Workers with Disability are as vulnerable to the diseases of ageing as any other worker, but are often subject to discrimination that prevents them obtaining income protection insurance through their superannuation.
42. While the Disability Discrimination Act generally makes it unlawful to discriminate on the basis of disability when providing insurance and superannuation, the Act contains a partial exemption for insurance and superannuation providers where exclusion of a person from coverage is based on actuarial or statistical data. The Act also contains a general defence which may apply to providers where not discriminating would cause them 'unjustifiable hardship'.
43. This often means Workers with Disability are unable to protect their and their families' income in the event of an illness or trauma that can happen to any member of the working population.
44. Congress calls upon the Federal government and superannuation funds to introduce non-discriminatory superannuation and insurance products for Workers with Disability and injured workers.

## Support for injured workers and workers with a disability in the workplace

45. Congress calls for the reduction of work-related injury, disability and deaths, and for fair rehabilitation, return to work and workers compensation for all workers, including Workers with Disability.
46. Workers with a disability and workers who have acquired a disability through injury are often targeted through restructures. The current high burden of proof for disability discrimination claims means that many workers are unable to prove they have been discriminated against.

47. Congress condemns the inconsistent treatment of injuries experienced in the workplace often not being considered a disability for the purposes of employment rights and responsibilities and therefore not gaining the protections of a disability.
48. Many workers with a disability struggle with accessing assistive technology or needed materials in the workplace. Consideration needs to be given to how access to these can be improved.

## The Royal Commission into Violence Abuse Neglect and Exploitation Of People With Disability and NDIS Review

49. The ACTU congress supports disability rights organisations to implement the reforms recommended by the Royal Commission Into Violence Abuse Neglect And Exploitation Of People With Disability and the NDIS Review, in order to make real and meaningful improvements to the lives of people with disability in Australia. More information regarding recommendations which should be prioritised by Government can be found in the 2024 NDIS policy.
50. ACTU Congress calls on the Australian Government to commit to the enactment of a Disability Rights Act (DRA) by 2025, to ratify international human rights principles into domestic Australian law. The ACTU Congress also supports the establishment of a new National Disability Commission as an independent statutory body under the Disability Rights Act by 2025.
51. Furthermore, Congress also supports the establishment of new governance arrangements for disability in the Australian Government, including the creation of a dedicated portfolio responsible for disability and carers policies and programs, separate from the Social Services portfolio.
52. Congress supports a move to inclusive housing in collaboration with people with disability. The government must ensure that the support workforce is consulted during this process.