

**Australian
Human Rights
Commission**

31 August 2015

Mr Warren Pearson
Branch Manager,
BSWAT Employment Response Team
by email: warren.pearson@dss.gov.au

Dear Mr Pearson,

Temporary exemption – Business Services Wage Assessment Tool

I refer to my letter of 15 May 2015 and your response of 26 June 2015 in relation to the application for temporary exemption under section 55 of the *Disability Discrimination Act 1992* (DDA). I also refer to the recent proceedings in the Administrative Appeals Tribunal in relation to the exemption granted on 30 April 2015, *People with Disability Australia v Australian Human Rights Commission and Others 2015/2158*. The Commission seeks further information regarding the application.

Criteria set out in Commission guidelines

I note that my letter of May 2015 sought:

1. Detailed submissions as to how the application falls within the Commission Guidelines On Temporary Exemptions Under the Disability Discrimination Act, particularly the criteria set out on pages 3 and 4 of the guidelines (attached) and the issue of reasonableness.

I note your response did not deal with the issues set out in the guidelines and I would be obliged if you would provide full submissions as to:

- Why the exemption is necessary in the context of the DDA – this should deal with the issues in relation to s 47 of the DDA and 'direct compliance with an industrial instrument',
- How the exemption fits with the objects of the DDA, and
- The reasonableness of the exemption when balancing it against the discriminatory effect on employees.

Compliance with National Standards for Disability Services

In relation to the National Standards for Disability Services please indicate what if any consideration has been given to alternative mechanisms, such as amending the standards, to ensure ADEs are not in breach.

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I would be obliged if you would provide this additional information by 17 August 2015.


Financial Viability of ADEs

I also note your response indicated that:

The Department is providing funding to NDS to engage an independent consultancy to undertake a supported employment viability and productivity study to gain independent analysis of the impact on ADEs of adopting alternative wage assessment tools. NDS is due to report on this work in late-August 2015.

The Commission looks forward to receiving this information as soon as possible in order to enable it to make its decision as quickly as possible.

Yours sincerely,



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Legal

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