



Australian Human Rights Commission
Level 3,
175 Pitt St
Sydney NSW 2000

To whom it may concern

**Submission on application for an exemption under the
*Disability Discrimination Act 1992 (Cth)***

The ACT Disability, Aged and Carer Advocacy Service (ADACAS), advocates for people with disability living in the ACT and surrounding region. Our client group includes individuals whose place of work is an ADE and who experience a range of issues and concerns with regard to their work.

ADACAS submits that the Australian Human Rights Commission should not grant the three year exemption from crucial sections of the *Disability Discrimination Act 1992 (Cth)* that is sought by the Department of Social Services (DSS). We believe that granting an exemption for the Commonwealth and Australian Disability Enterprises (ADEs) permitting the use of a wage assessment tool that was found in *Nojin & Prior v Commonwealth [2012] FCAFC 192* to operate in an unlawful and discriminatory manner towards people with intellectual disability, would be inconsistent with the objects of the *Disability Discrimination Act (or DDA)* and contrary to the advancement of the human rights of people with disabilities.

Article 27 (1)(b) of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) requires state parties to take appropriate steps, including through legislation, to protect the rights of persons with disabilities on an equal basis with others to equal remuneration for work of equal value. At the conclusion of its tenth session, the United Nations Committee on the Rights of Persons with Disabilities expressed concern that employees with disabilities in ADEs are still being paid wages based on the BSWAT and recommended its use be immediately discontinued.¹

The exemption and continued use of the BSWAT tool is not necessary or reasonable. People with disability experience many barriers to equal inclusion in society and the BSWAT is one of those barriers. It is not reasonable for the Australian Government to have this exemption when there are other assessment tools which are not similarly discriminatory already in use around Australia. That said, ADACAS believes that the significant work the Government proposes to undertake continues to be essential as reform of the ADE sector is urgently needed.

¹ Concluding observations on the Australia, adopted by the Committee at its tenth session 4/10/2013. CRPD/C/AUS/CO/1. 49-50.

Granting an exemption from disability discrimination law would be inconsistent with explicit statements of international human rights law and with the objects of the DDA itself. The DDA aims to eliminate, as far as possible, discrimination against persons on the ground of disability, including in the area of work.²

We advocate for individuals who are unable to obtain the amount and kind of work that they are seeking. They are given very little choice with regard to their work and are unable to seek alternative employment when they are unhappy with their workplace. This contrasts strongly with the rest of the population most of whom will have many employers and indeed numerous 'careers' during their working life.

The DDA also aims to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law³ ADACAS notes that a number of other processes are underway which focus on the right of people with disabilities to have equality under the law. To grant an exemption in this case would be to establish another instance of inequality under the law for people with disability.

The DDA aims to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.⁴ Recognising the right to fair wages in ADEs contributes to achievement of human rights and improved wellbeing and outcomes for people with disabilities generally.

Therefore, the advancement of DDA objects, of non-discrimination, equality before the law and promoting community recognition of fundamental rights, will necessarily be undermined by legitimising the continued use of the BSWAT for any period of time.

While the focus of your consideration is with regard to whether an exemption is given or not, there would be value in the Commission providing some guidance to the Government with regard to the process of reforming the ADE system. Issues such as the connection between wage rates and 'protecting the pension' provide an incentive to keep wages low which is completely contrary to the Governments broader policy objective regarding the contribution that people with disability can make to the Australian community and economy. Broader reform, including rules surrounding pensions needs to be included in this process. Unlinking the health care card from the pension would go some way to removing the incentive to keep wages low, recognising that many people with disability require the benefits of a health care card regardless of their employment status. The NDIS presents an opportunity for people who have traditionally been compelled to remain in ADEs to access the support that they need to participate in open employment.

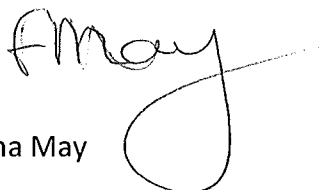
² *Disability Discrimination Act 1992* (Cth), Section 3(a)(i).

³ *Disability Discrimination Act 1992* (Cth), Section 3(b).

⁴ *Disability Discrimination Act 1992* (Cth), Section 3(c).

Thank you for the opportunity to provide input to this important case

Yours Sincerely

A handwritten signature in black ink that reads "Fiona May". The signature is written in a cursive style with a large, looping flourish at the end of the word "May".

Fiona May

CEO

25 October 2013