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

24 October 2013

Dear Australian Human Rights Commission,

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

Barwon *Dis*Ability Resource Council (BDRC) advocates for people with disability, their families and carers living in Geelong, Surf Coast, Queenscliff (Barwon) as well as Bacchus Marsh and Golden Plains in Victoria.

BDRC has operated in the region for nearly 40 years, and its mission statement is "Promoting rights, social and economic inclusion for all". We believe we should be considered an interested party in this exemption application because we advocate for the rights and interests of people with disabilities who are affected by the low wages paid by Australian Disability Enterprises (ADEs) and have done so for many years, on an individual and systemic level.

BDRC 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). BDRC believes 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.

BDRC supports the Supported Wage System (SWS), a suitable option that already exists. We are aware of one ADE in the Barwon region that uses the SWS for its workers, and does not use BSWAT. We have worked with these workers who are satisfied with their award wages and can more than satisfactorily carry out the duties of their position under the SWS tool. We firmly believe that other ADEs in our region can move across to using SWS and that an exemption is therefore not needed.

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

The above example of an ADE in our region paying award wages under the SWS, contrasts greatly with workers with similar capacity, who work for less than \$3 per hour in other ADEs in our region. The workers on the lowest wages certainly believe their fundamental human rights have

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

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

been denied, and will be denied further by the granting of this exemption. They have long demanded equal pay for work of equal value, and want this outcome in the very near future, not after a 3 year exemption.

The DDA also aims to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law³

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

There was much local media coverage of the “BSWAT decision” and there is an expectation in our local community that people with disabilities will be paid fairly for their work. Many in the community were not aware of the huge disparity between wages of workers with and without disabilities. BDRC raised this at a G21 (Geelong Region Alliance of government, business and community organisations) forum held last year and many at the forum were surprised that workers were paid so poorly, and that the system that allowed this, still existed in this day and age.

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.

BDRC also supports the submission of our peak body, DANA – Disability Advocacy Network Australia.

We thank you for the opportunity to make this submission – please contact me if you require any further information.

Yours sincerely,


Carol Okai,

Executive Officer,

Barwon *DIS*Ability Resource Council

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

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