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Submission for a temporary exemption under the Disability Discrimination Act for a period of 3 years, to allow for the consideration, establishment and implementation of alternative wage setting arrangements for people with a disability in supported employment – the BSWAT decision.

Submitted by Mary Walsh – Independent Parent/Advocate on behalf of families/workers/worker committees – Australian Disability Enterprises

I was the duly appointed representative who tabled the necessary authorities to the AIRC on behalf of Australian Business Services (now called Australian Disability Enterprises) workers, their family carers and worker committees. This was for the industrial matter that established the Business Services Wages Assessment Tool (BSWAT) as a Government and sector approved industrial implement for appropriate assessment of wage entitlements for business service workers

Therefore, I now request this submission be treated as representative of that sector. Time and lack of resources do not allow me to visit Australia's disability enterprises – as I did 10 years ago – but the issue has not changed. Given time, and the tax-payer resources available to proponents promoting the closure of disability enterprises unless they use the Supported Wage System (SWS) or Open Employment, then I would be able to obtain the same representative authority which enabled me – despite the industrial challenge of the NCID – to be part of the industrial process which approved the BSWAT – at that time.

I do not have that time, and I do not have those resources – which were independent funds provided by families and carers – at that time. But the need by family/carers/workers to protect their RIGHT OF CHOICE from the ideological agendas of supposedly representative tax-payer funded National Peak Bodies still remains. Now the legal ramifications of the Federal Court FCAFC192 decision must ensure the protection of that right of choice and a wage assessment tool that is not deemed to be discriminatory.

Many people worked very hard, with the best will in the world to produce, the now discriminatory BSWAT. It took many years and left the sector better placed to move forward. There is little doubt that it will take every bit of 3 years, and will require a lot of good-will and co-operation from all parties, to develop an alternative and non-discriminatory wage assessment tool.

For your consideration

1. **The BSWAT is an industrial tool, established in the Industrial Court, under industrial legislation.**

2. **It was the result of extensive consultation and trialling at several sites – prior to its adaptation and approval – by relevant members of that industrial sector – irrespective of the nature of those enterprises – and contrary to the claims of some.**

3. **That consultation involved Unions and advocates charged with protecting the rights of workers. That included Mary Walsh as an independent worker/family advocate.**

4. **An argument by certain proponents that disability enterprises do not provide "real jobs" should have been tested on the floor of business services – with the workers and their representatives – BEFORE this matter was determined in a Federal Court.**

5. **The value, or otherwise, of whether disability enterprises provide "REAL" jobs is surely a matter for the workers and/or their family carers- not a subjective by-stander, who refuses to meet their taxpayer-funded representative charter and consult with the vast body of those said workers.**

6. **This process is called industrial disputation – which would have re-examined the issues with the BSWAT – and how they should be best addressed – in the interests of ALL parties.**

7. **Tax-payers fund a National Peak Body to represent ALL people with Intellectual Disability – and their family carers. There appears to be no evidence that any such consultation has occurred.**

8. **The majority of workers in Australian Disability Enterprises have an intellectual disability, which has varying degrees of capacity – and lack of capacity.**

9. **The majority of Australian Disability Enterprises are Not-for-Profits, and are run by Boards of Management. These Boards, many of whom are volunteers, have strict fiduciary obligations under corporate/association laws – which legally forbid trading if insolvency issues are known to the Boards.**

10. **Whilst providing the necessary employment criteria for a "normal" business – these enterprises are built around a niche market that is created to meet the social and personal needs of its employees.**

11. **This is the direct opposite to private enterprise, which finds a market and then "hires and fires" to get the best staff to increase turn-over ("productivity"), corporate profits and meet shareholder or ownership financial goals.**

12. **"Normal" staff recruitment and capacity is based on productivity, competency and wage negotiation or awards.**

13. **Appropriate grievance mechanisms are in place to deal with worker disputation.**

14. **If we argue for "normalisation" of the work-place for workers in disability enterprises – who do not have "legal competency" – then appropriate safe-guards need to be put in place.**

15. **The BSWAT is the product of that safeguard and that due process, which gained its industrial approval. Whilst this result might, now, be ruled "discriminatory" – the process which introduced it, was and is, both legitimate and "non-discriminatory". Accordingly, the process for re-evaluation should be both industrial and consultative – within the worker/family carer environment – and that due process takes time.**

16. **No one involved in that initial BSWAT process ever thought the product of that process was perfect. We all acknowledged it would need "tweaking" over time.**

17. **The nature of wage resolution to meet the DDA standards of disability enterprises should consider other welfare benefits as a normal business would consider levies, allowances, penalty rates and the like. This is not possible because the subsidisation is from the Federal Government. Churning paperwork between Centrelink, the worker and the family carer, benefits no one and creates an extra mountain of paper-work for all parties. The end result is that it is simply an exercise shifting dollars from Treasury to the disability sector – and back again. This adds yet another layer of paper-work requirements for all. And who will do that paper-work? It will not be the worker who is "legally incompetent". It adds another layer of management and support requirements for either the service provider or the parent/carer. All of this additional impost – just so the NCID and campaigners can say the "rights" of a worker to a minimum wage (or none at all – if the service closes) have been protected and are now non-discriminatory – using standard industrial criteria.**

18. **The loss of a disability enterprise income – irrespective of the amount – means the worker is no longer a "worker" and must pay up to 4 times that amount (in my son's example) to access a State Government day service – if one can be obtained.**

19. **We understand that the wage assessment tool, whatever it ends up being, will probably not meet the DDA standards, if it contains a "competency" component. If this whole thing is about "normalising" work opportunities – why would we change the criteria to "productivity" only.?**

20. **It is discriminatory for people with limited intellectual capacity to have their basic wage calculated on "productivity" only. Robots are productive and business is increasingly removing the human face from "back-of-house" services and, more recently, from front-line services (i.e. self-serve check-outs, air-line check-ins etc). Workers in disability enterprises are primarily – PEOPLE – with varying capacity, or lack-of-capacity, support needs. They are not machines. This is <u>not</u> about churning out product, and oiling machines. It <u>is</u> about creating jobs for people who would, otherwise, be sitting at home feeling isolated. They can't just hop in their car and go and see a friend/mate.**

21. **Disability enterprises are people-focussed – why would we not adopt a competency component that recognises their personal capacity – limited though it might sometimes be? Even the smallest income increase, based on improved competency, provides personal self- esteem. You see, it isn't ALL about the money.**

22. **On the very basis of Human Rights – is it not discriminatory to the majority – to remove an option of choice because of the demands of the minority – whatever the merits, or otherwise, of those "demands" might be.?**

The mantra of the Human Rights Commission is *"everyone, everywhere, everyday".* **The loss of a business enterprise wage income – because a service is forced to close – based on "rights" should never be about** *"some-one"* **whose individual circumstances have been used to dictate the rights of** *"everyone"* **–** ***who then becomes personally, socially and financially disadvantaged if they lose their job and have to live with the consequences*** *"everywhere, everyday"* **– for the rest of their days.**

Families and workers now live in fear of losing their "jobs", their social contacts, outings and camaraderie Many of these workers have little understanding of the real value of money. It's about dignity, self-esteem, and some funds for the extras that make life a little better

……..It's about the right of choice – for "*everyone, everywhere everyday"* **– not** *"someone, everywhere, everyday***……..**

Please consider the needs of the majority and give "*everyone, everywhere, everyday*" the opportunity to continue working in their job of choice by:-

1. **Granting the temporary extension sought**
2. **Issuing an injunction to prevent further claims and suspend existing ones.**
3. **Ensuring that an appropriate consultation process – that includes family carers in a comprehensive committee situation – as part of**
4. **Working collaboratively to develop a wage assessment tool, which does NOT involve "churning" between Centrelink, worker and provider – with the accompanying extra work-load of form-filling and hassle – just to satisfy an ideal of rights.**

We all aspire to the ideal –but live in the real world where "real jobs" are determined by the "real people" ."*Everyone"* **should not have to pay the price for** *"someone"*

.....And that's what disability enterprises, their workers, families and carers are facing at the moment……..

Thank you for considering these issues.

Note: This submission includes the following files and emails:-

1. NCID letter by Mary Walsh
2. Personal file – Rashika/Tony's story.
3. Brief CV –Mary Walsh – submitter.
4. Email – Professor McCallum, copy – Graeme Innes (follow-up to International Conference on Employment)
5. Email – Bill Hunt – permission for use granted.