

Department of Social Services: Quarterly Report to the Australian Human Rights Commission

Reporting period: 1 November 2014 August 2014 to 31 January 2015.

On the 29 April 2014, the Australian Human Rights Commission (AHRC) granted the Commonwealth and all Australian Disability Enterprises (ADEs) using or proposing to use the Business Services Wage Assessment Tool (BSWAT) an exemption for a 12-month period from the operation of sections 15, 24 and 29 of the *Disability Discrimination Act 1992* (the DDA). The exemption was granted to allow the payment of wages to ADE employees, based on current assessments already conducted with BSWAT, subject to the conditions for the Commonwealth outlined below. Progress against these conditions for the reporting period is provided as follows:

a) Take all necessary steps to transition from BSWAT to the Supported Wage System (SWS), or an alternative tool approved by the Fair Work Commission (FWC), as quickly as possible.

- As previously advised, the Department of Social Services (the Department) continues to provide information to the ADE sector on a range of implications arising from the findings of the Full Federal Court; the AHRC decision on 29 April 2014 to grant a 12-month exemption from the DDA to allow wages to supported employees to be paid based on an assessment of BSWAT; and proceedings before the FWC and the Federal Court. The main mechanisms used for this communication include disAbility e-news and departmental representation at National Disability Services' national and state forums.
- On 21 August 2014, the Government announced funding of \$173 million in part to develop and implement a new productivity-based wage tool, including new assessments, for use across the supported employment sector.
- The Department has been engaged in a conciliation process with relevant stakeholders in the FWC throughout November and December 2014 working on a new wage assessment tool to be used in supported employment.
 - The next meetings are scheduled for 16 February 2015 and 27 April 2015.
 - A number of ADEs have indicated that they are awaiting the outcome of this process before moving to other wage assessment tools.

b) Take all appropriate steps to ensure ADEs using or proposing to use BSWAT to conduct wage assessments immediately commence using the SWS, or an alternative tool approved by FWC, (other than BSWAT) to conduct new and outstanding wage assessments.

- As advised, the Commonwealth suspended BSWAT wage assessments for supported employees working in ADEs on 24 December 2012.

- There are 29 wage assessment tools currently listed in the *Supported Employment Services (SES) Award 2010*, not including BSWAT. Of the 29 tools, the Commonwealth administers only SWS.
- \$141 million has been allocated to the tapering supplementation of wage outcomes for people with disability in supported employment from 1 February 2015. These funds will be dispersed to ADEs to supplement workers' wages as transition to a new productivity-based tool occurs.
- The Department has Grant Agreement Managers (GAMS) who regularly engage with ADEs on a range of issues including monitoring and collection of ADE reported data in relation to transition to new wage arrangements
- ADEs are independent not-for-profit organisations, funded by the Australian Government to provide employment support to people with disability. While the Department can assist to facilitate transition to other wage assessment processes by providing policy levers and information, actual transition is dependent on each ADE.

c) Report to the Commission, on a quarterly basis during the exemption period, as to:

- i. The number of assessments conducted each quarter; and**
 - ii. The number of assessments still to be conducted.**
- Of the 29 wage assessment tools in the SES Award the Commonwealth only administers the SWS.
 - For the period from 1 November 2014 to 31 January 2015, there were 63 SWS assessments for 63 ADE employees, a decrease of 60 assessments compared to the August to November reporting period. While the cause of the decrease in assessments is unknown, it is likely related to the Christmas and summer holiday period.
 - These assessments were performed at six ADEs across New South Wales, Victoria, and Queensland.
 - Of the **109 organisations** previously using BSWAT:
 - 17 now have all workers assessed using a non-BSWAT tool;
 - 19 have an alternative tool identified and completed some non-BSWAT assessments;
 - 47 have an alternative tool identified and have yet to assess any workers;
 - 24 have not yet identified an alternative tool;
 - 2 have advised they are exiting supported employment.

This equates to the individual numbers below:

Number of supported employees who work at an ADE that had previously used BSWAT	Number of supported employees assessed under alternate tool	Number of supported employees yet to be assessed by alternate tool	Percentage of employees who have transitioned to new wage tool.
8534	2861	5673	32%

The above information is not held by the Department but has been reported by individual organisations to local Grant Agreement Managers.

- ADEs have provided the following feedback to the department in relation to transition:
 - It is unlikely that some ADEs will be transitioned to another wage assessment tool before the expiry of the AHRC exemption on 29 April 2015.
 - A number of ADEs identify a significant increase in wage costs as a barrier to moving to SWS. There are some delays with the SkillsMaster and Greenacre assessments at some ADEs who have purchased these tools due to the volume of work for the two businesses that own and provide training for these tools.
 - A number of ADEs expressed interest in the new productivity wage tool being developed in the Fair Work Commission.
 - The Department is in regular contact with ADEs to provide support and information in relation to transition.

d) Give consideration to ensuring that no disadvantage is suffered by ADE employees whose wages may be reduced as a result of the application of the SWS or alternative tool.

- As previously advised, the Commonwealth's ongoing funding arrangements with ADEs is limited to the provision of case-based funding which provides support to assist supported employees in their workplace.
- Tapering wage supplementation is in place from 1 February 2015 for organisations that have moved to the Supported Wage System (or to the new productivity-based tool, when available).