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The Commissioners
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001

11th October 2013

Application for Exemption under the Disability Discrimination Act 1992 (Cth)

Dear Commissioners

I am writing in opposition to the application by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) for exemption from sections 15 and 24 of eth Disability Discrimination.

I am presently the Chief Executive of NOVA Employment, a Sydney based Disability Employment Service (DES) and I have worked in the field of disability employment for 26 years. In that time I have been responsible for vocational training programs, open employment services, an Australian Disability Enterprise (ADE) and a large Transition to Work program.

The Federal Court's findings declare that the use of the BSWAT measure by 2 ADE's unlawfully discriminated against Mr Nojin and Mr Prior.

Surely, that's the end?

It would be difficult to imagine another Federal Court decision where discrimination was proved and then subsequently enshrined for as much as 3 years. How could this be?

Imagine the scene: the High Court brings down its verdict; I have discriminated against my non- disabled employees. I turn to the judges and say, 'you are right, I have, but I am short of a quid and my accountant's busy for a few years, do you think I might wait to fix things till then?'

Laughable if it were not the very issue.

There is a suggestion by FaHCSIA that the BSWAT may deliver a more favourable outcome in some circumstances – that should be readily proved from data presently available, if it is not then surely no further discrimination should be

contemplated or risked in an attempt to find out?

I note the repeated use of the word ‘may’ in the ‘current situation’ section of the FaHCSIA application. Surely, if the BSWAT ‘may’ be a better tool in some circumstances, then it equally ‘may not’ and if it does not consistently deliver a fair outcome then surely there is an obligation to immediately source a fair and non-discriminating alternative?

The truth is that people with disability have been marginalised and underpaid in sheltered settings for decades.

It does not have to be that way.

Our ADE (Café 64) is located in Walgett, a small country town (pop 2200) in the north west of NSW. This is a an area of significant socio-economic disadvantage. I invite you to visit this facility or at least to view some of our online material: http://www.youtube.com/watch?v=dfwt5-L2KJw .

There are approximately 20 employees and 17 have significant disability.

My organisation does not use the BSWAT. This was deliberate. We chose the Supported Wage Assessment process in the sure knowledge that was the most effective and fairest measure of our worker’s productivity.

FaHCSIA’s data clearly shows the result. Our workers typically are assessed as having a higher level of disability, they are paid almost 4 times the average wage for workers in ADE’s they work slightly less hours and are far more likely to be indigenous.

They are happy in the knowledge they receive a fair days pay for their contribution, that this contribution varies dependent upon ability but that higher skills are rewarded with higher wages (just like everywhere else).

The decision to use SWS costs us. Although recent developments and additions are moving Café 64 toward a much stronger bottom line, the service has to be supported by other parts of the organisation.

You will be strongly lobbied to the contrary of the views I express.

The truth is that services know their workers could earn more. Many could work in open employment and this can be easily proved through a consideration of results achieved when the free transfer of people between what is now DES and ADE programs was permitted.

Anecdotal information suggest collusion between assessors and programs that is not necessarily evilly motivated but that reflects the assertion made by FaHCSIA that ADE closure is a possibility if wages are increased.

Again, surely that is not the point. If I was imprisoned and the Federal Court ruled

that my incarceration was unfair under what circumstances perhaps a reasonable argument could be made that I might be better off in jail? That perhaps bad things might happen to me outside of my cell or I might skip a meal?

The arguments against immediate action to stop discrimination are either weak or spurious – the situation exposed by the experience of Mr Nojin and Mr Prior has been understood for many years. That workers were and are being underpaid has been accepted with a nudge and a wink and the repetition of the flawed arguments rehashed in this application.

Time to stop.

It is both reassuring and exciting to see the opportunity to end discrimination. That is in the interests of people with disability and the broader Australian community.

I invite you to come to Walgett and see for yourselves what is being achieved and, should you so require, I am more than happy to expand on any point made above or in relation to this unfair application.

Sincerely

Martin Wren
Chief Executive Officer
NOVA Employment
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