



Oakleigh Centre

For Intellectually Disabled Citizens Inc.

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Legal section
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30 October 2013

Dear Australian Human Rights Commission

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

This submission is being lodged on behalf of the Board of Management of Oakleigh Centre, which owns and controls the Australian Disability Enterprise - Oakleigh Centre Industries (OCI). We submit that the Australian Human Rights Commission should grant the three year exemption for all Australian Disability Enterprises (ADE's) from sections 15 and 24 of the *Disability Discrimination Act 1992* (Cth)(DDA) and for the Commonwealth (and officers of the Commonwealth) from section 29 of the DDA to permit ADE's to continue to access and pay wages to workers using the Business Services Wage Assessment Tool (BSWAT) as sought by the Department of Social Services (DSS). We seek the Commission to view the Board of Management of Oakleigh Centre as an interested party and consider our statements below as part of your deliberations.

Oakleigh Centre was established in the 1950's and has grown substantially over the past sixty plus years to offer Day Service to over 120 clients; Accommodation to over 70 clients; Recreational activity to more than 600 clients and Supported employment to over 100 employees.

Oakleigh Centre Industries (OCI) is currently a 'going concern' that has managed to trade through the losses during the Global Financial Crises, with the past three years showing both sales and profit growth. As a Not for Profit organisation, all generated surpluses have been either reinvested in the industry or used to support the other services offering opportunities for people with disability. In 2012 OCI increased its expenditure in training enabling ten supported employees to attain a Certificate II in Competitive Systems and Manufacturing. The success of this program has resulted in a further ten supported employees undertaking the same course in 2013. In addition to training, OCI has sought to develop alternative businesses to increase the skill development offering to existing and new employees.

We have also proposed to FaHCSIA a re-engineering of OCI to enable the factory to be more productive and re-invigorate the sector to enable ADE's to pay higher wages through higher productivity and more value adding to products and services.

The current suspension/ban on the use of BSWAT has resulted in following major impacts on OCI and all employees, as well as Oakleigh Centre and clients:-

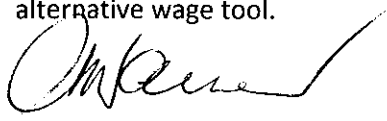
1. During 2013, over 60 supported employees were due to have their triennial wage review conducted. None could be undertaken.
2. Currently 8 supported employees are still awaiting their initial wage assessment.
3. In early 2014 an additional 16 supported employees will be due to have their triennial wage assessment.
4. During the first week of October 2013, OCI's Accreditation Audit was conducted. As OCI had not conducted the supported employees wage assessments (due to the FaHCSIA suspension of BSWAT)

we were unable to meet the legislated quality assurance requirements of Standard 9, *Employment Conditions*. As a result, OCI was deemed to have a **Major Non-Conformity** which was required to be attended to within 3 months. OCI provided an 'Action Plan' to deal with this Major Non-conformity and was thus able to have it downgraded to a **Minor Non-Conformity**, which provided a further 3 month period (6 months from audit date) to rectify the non-conformity. By the first week in April 2014 OCI must find a resolution to the wage Assessment issue otherwise the Commonwealth Funding is in jeopardy and OCI may be forced to close.

The only solutions identified in the 'Action Plan' was

- (i) For the Australian Human Rights Commission to grant this exemption, or
 - (ii) OCI to undertake an alternate wage assessment tool. (refer item 5 below).
5. Evaluations were undertaken on alternate wage assessment tools that did not include any element of 'competency' based assessment. In doing this, the assumption must be made that the employees possess the competency and can undertake higher skilled work. These assessments identified that the alternative wage assessment tools were financially unsustainable with the current workforce and that an entire 're-engineering' of the OCI operations and workforce would need to be undertaken to try to avoid closure. This would result in the most disadvantaged supported employees losing their jobs. The analysis revealed the following:-
- (i) Use only the Productivity assessment of the BSWAT tool – this equated to an estimated increase in wage costs of over \$400,000.
 - (ii) Use Supported Wage System tool – this equated to an estimated increase in wage costs of over \$260,000. *(This took the assumption that a minimum weekly wage of \$78 would be paid to all supported employees, as required under this tool)*. It should be noted that an estimated 10% of supported employees would be disadvantaged by the dropping of the competency assessment as their productivity assessment was less than their competency assessment.
 - (iii) Use Supported Wage System tool – if the commercial decision was made in relation to supported employees, that being only employees capable of earning the minimum \$78 per week through productivity were retained, then 28% of supported employees would not be commercially viable to employ and a further 40% would be commercially questionable.
6. A flow on effect of the most disadvantaged supported employees losing their jobs would be the transfer of their care to the State Funded organisations; to elderly carers; or merely remaining isolated at home.
7. Uncertainty of the future has suspended any further capital investment in OCI. Without the firm knowledge of the value future wage costs, accurate economic evaluations cannot be conducted and meaningful business cases cannot be put forward for evaluation.
8. As per item 7 above, the same can be said for the Day, Accommodation and Recreation arms as Oakleigh Centre must conduct financial planning as a total organisation.

The impact that the suspension of BSWAT has had, and will have into the future is not restricted to solely to OCI, but the entire ADE industry and employment for people with disability. If the requested exemption is not granted, then the foreseeable future for OCI and all employees appears quite bleak. The flow on effect to the other arms of Oakleigh Centre would cause extreme financial hardship due to the payment of redundancies, lost income and contribution to overall organisation costs. We therefore urge the Commission to grant the three year exemption to allow the ADE industry to continue to develop employment opportunities for people with disability and to work with other parties in developing an alternative wage tool.



Mel Warner
Chief Executive Officer
On behalf of the Board of Management – Oakleigh Centre