



# Sussex Street Community Law Service Inc

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Attention Ms Bridget Akers  
Lawyer  
Legal Section  
Australian Human Rights Commission  
GPO Box 5218  
Sydney  
New South Wales 2001

29 October 2013

(by email)

Dear Ms Akers

## **Response to the application for an exemption under the Disability Discrimination Act 1992 (Cth)**

We refer to the above application for an exemption under the *Disability Discrimination Act 1992* (Cth) (**DDA**) by the Department of Families, Housing, Community Services and Indigenous Affairs (**FaHCSIA**) now the Department of Social Services (**DSS**), in relation to the use of the Business Services Wage Assessment Tool (**BSWAT**).

The Disability Discrimination Unit (**DDU**) based at Sussex Street Community Law Service Inc in East Victoria Park, Western Australia provides legal advice and representation to people with disabilities who believe they have been discriminated against because of their disability. The service is free and available to all people across the State of Western Australia. We advise on the *Disability Discrimination Act 1992* (Cth) (**DDA**) and Equal Opportunity Act 1984 (WA) (**EOA**).

We thank you for the invitation to respond to the application submitted by FaHCSIA requesting a temporary exemption.

We submit 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**).

We believe 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 **DDA**.

We believe that it is in the best interests of people with intellectual disabilities to be assessed for employment in an ADE as soon as possible using an appropriate assessment tool, other than BSWAT.

The DDA aims to eliminate, as far as possible, discrimination against persons on the ground of disability, including in the area of work.<sup>1</sup>

In FaHCSIA's submission, they state that, "Around 20,000 people with disability are employed in ADE's across Australia, with roughly half of these individuals receiving wages assessed using the BSWAT."

This implies that approximately 10,000 people with intellectual disabilities currently receive wages assessed under a tool other than the BSWAT and are employed by viable ADEs.

We submit that future supported employees in ADEs should be assessed using a non-discriminatory wage assessment tool as is currently the case.

We do not believe that a 3 year exemption for the continued use of the BSWAT is necessary or reasonable.

### **The Importance of the Australian Disability Enterprise (ADE)**

In our view, ADE's are an important employer now and will be even more so in the future of people with intellectual disabilities. We believe it is important to balance the need for ADE's to be viable with the rights of people with disabilities to not suffer discrimination and to receive equal remuneration for work of equal value.<sup>2</sup>

For the above reasons our service opposes the FaHCSIA's application for a temporary exemption as the BSWAT is unfair and discriminatory to employees that have a disability.

Yours sincerely



**Michèle Hardesty-Munday**  
**Solicitor**  
**Disability Discrimination Unit**

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<sup>1</sup> *Disability Discrimination Act 1992* (Cth), Section 3(a)(i).

<sup>2</sup> Article 27 (1) (b) United Nations Convention on the Rights of Persons with Disabilities (CRPD)