

Quarterly Report to the Australian Human Rights Commission

Reporting period: 30 April 2014 to 31 July 2014.

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 the BSWAT subject to the conditions for the Commonwealth outlined below. Progress against these conditions is provided as follows:

- a) Take all necessary steps to transition from the BSWAT to the Supported Wage System (SWS), or an alternative tool approved by the Fair Work Commission (FWC), as quickly as possible.**
 - The Department of Social Services (the Department) regularly provides information to the ADE sector on a range of implications arising from the findings of the Full Federal Court, the AHRC decision on the 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 the 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. DisAbility e-news is a regular departmental email newsletter designed to keep the Department's disability providers (including ADEs) and other interested readers informed about disability issues and current work being undertaken.
- b) Take all appropriate steps to ensure ADEs using or proposing to use the BSWAT to conduct wage assessments immediately commence using the SWS, or an alternative tool approved by FWC, (other than the BSWAT) to conduct new and outstanding wage assessments.**
 - The Commonwealth ceased allowing BSWAT wage assessments for supported employees working in ADEs on 24 December 2012 following the Full Federal Court finding that the use of the BSWAT by ADEs to assess the wages constituted indirect discrimination under the DDA in relation to Mr Noin and Mr Prior.
 - ADEs are not-for-profit organisations with organisational governance arrangements independent from government. Day to day business decisions and the overall business management of each ADE sit with the relevant management team and Board. As such, each ADE will make independent decisions about wage assessment arrangements within the industrial relations framework and its business/philosophical requirements.
 - There are 29 wage assessment tools currently listed in the *Supported Employment Services Award 2010*, not including BSWAT. Of the 29 tools, the Commonwealth administers only SWS.

- Five of the listed assessment tools in *Supported Employment Services Award 2010* have their use restricted by the Award to specific ADE providers. Under current industrial arrangements, ADEs are able to use, or to transition to, any of the remaining 24 wage assessment tools, including SWS.
 - The Department believes there are approximately 15 ADEs who currently use SWS, with about 600 approved SWS agreements in place.
- 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.**
- The Commonwealth formally ceased BSWAT wage assessments on 24 December 2012. There have been no BSWAT assessments conducted since 19 December 2012.
 - For the period from 30 April 2014 to 25 July 2014, there were 32 SWS applications for 32 ADE employees.
 - Informally, the Department is also aware of three small-to-medium size ADEs which have transitioned to the SWS since 21 December 2012.
 - Scope, a large Victorian ADE provider with 243 supported employment places, advised the Department that it is moving to the Skillsmaster Wage Assessment Tool. Skillsmaster is one of the 24 tools listed in the *Supported Employment Services Award 2010* that ADEs can use.
 - The Department's State Offices have reported an increased number of enquiries from ADEs about SWS.
 - The Department can also report that a large ADE has approached the Department about SWS assessment for their workforce, but has so far lodged only one application.
 - The Department is currently looking to implement a more efficient process to accommodate ADE providers seeking multiple SWS assessments. Currently, SWS operates as an automated process which requires an individual application for each individual assessment.
 - The Department is unable to provide the number of assessments still to be conducted as it does not keep data in relation to when new assessments are due.
 - The Department has no data on the use of the other 28 approved tools. Therefore, we are unable to provide advice as to what other tools have been used, if any, to assess wages during the reporting period.

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.

- 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.
- Informally, one small to medium size ADE which has almost completed a transition to SWS has voluntarily shared its experience and outcomes from the transition with the Department. The ADE reported that SWS wage assessment resulted in 10 per cent of the supported employees' wages being reduced. A number of strategies were put in place by the ADE employer to make up for the short fall in wages for these individuals.