



Action for More Independence & Dignity in Accommodation

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Advocacy, Self Advocacy, Rights, Accessibility, & Community Living for People with a Disability

29th October, 2013

Legal Section
Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001

Dear Sirs

**Re: FaHCSIA (now Department of Social Services) application for exemption
in relation to BSWAT**

Introduction

AMIDA makes the following submission in relation to the FaHCSIA (now DSS) application:

AMIDA is an advocacy organisation which works on housing issues for people with a disability, with an emphasis on people with intellectual disability. Many of the people we work with are employed or have been employed at AEDs. We watched the recent unfolding of the case of Gordon Prior and Michael Nojin with interest and were pleased with the outcome. We were then dismayed by the DSS application for temporary exemption under the Disability Discrimination Act 1992. We are not in favour of the exemption.

It would be AMIDA's preference to see AEDs closed, and the people working in them being given the opportunity to have support and work in the open employment market. This would cease the segregation occurring with the existence of AEDs, and give people the dignity and respect they deserve by allowing real inclusion, real jobs, real wages and their human rights being upheld. However, this will take time for the jobs market to respond. In the interim we suggest the Supported Wages assessment Tool be used as it is much fairer than the BSWAT.

BSWAT –

It has long been recognised that housing and employment are linked, hence our interest in this area.

After consultation with those working in Employment advocacy, with workers and former workers at ADEs and with family members directly experienced in the BSWAT system, the following are our main concerns:

- Inconsistencies of assessment. Our evidence is from personal experience when twin adults were assessed under BSWAT at differing levels, but in meetings with the ADE it was made quite clear that the adult who had been assessed at a higher capacity was usually observed as less competent in the workplace. When review was insisted upon, the result was again that the less competent adult was assessed as being more productive than the other twin. So twice the system provided inaccurate assessments.
- Inflexibility of BSWAT system. We give the example of the assessment of a worker who refused to take direction from an assessor and was subsequently marked negatively as being unco-operative. This worker was following directions which had been previously given i.e. 'only take direction from manager'. The worker was in fact following her directions, and the assessor was unable or unwilling to make allowances for this fact under the rules of the BSWAT system.
- BSWAT uses a system which measures productivity and competency, therefore automatically disadvantaging people with intellectual disability, whilst the Supported Wages System is productivity based only. The Court found that BSWAT discounted the wages of people with intellectual disability unfairly and was designed to produce poor wage outcomes.

ADEs –

- If requirements for fairness on ADEs threaten closure, extra government funding should be allocated in this area. People with disability should not be disadvantaged. ADEs were set up to provide opportunities for people with disabilities, and whilst they exist should be developed in such a way that benefits them.
- ADEs must link work to training, as in other workplaces, where professional development is offered, and in fact insisted upon.
- ADEs must have advancement opportunities within their own site or into open employment, therefore developing greater independence and opportunities for people with disabilities
- It must be ensured that the DSP is not cancelled because of work in ADEs. The DSP is an important safety net for people with disabilities who have been unable to gain work in open employment, and are therefore on a low income. With the current system, there is the risk of losing DSP and concessions if

people work over a certain number of hours. They are automatically deemed to be able to work full time....even though they may not be able to, and are in fact not able to gain full time employment. Retention of the DSP is vital. Workers in ADEs should be exempt from limits on numbers of hours worked while on DSP.

- As an example of the work practices in ADEs, it came to our attention that a worker with an injury whose doctor recommended a shorter working week, was finally and begrudgingly granted this shorter week. Soon after this happened, he was then dismissed from his job without reason. So whilst they exist ADEs must improve not only the assessments of its workers, but also its work practices.

Page 3 of the application for exemption states that 'Moving towards any alternative wage setting model, such as that used by the Supported Wage System, would take time to develop and implement. It would be difficult to move immediately to alternative wage setting arrangements, as this may result in....unemployment for workers with disability, and adverse financial impacts for these workers'. This argument demonstrates a lack of acceptance of the decision of the high court, and offers a lengthy time frame to correct that which has been deemed by the Full Federal Court of Australia to be discriminatory. ADEs should be able to seek compensation from government if work places are threatened.

Page 4 speaks about the 'Fast tracking of *Inclusive Employment 2012-2022: A vision for supported employment (The Vision)*'. 10 years to implement a just system of wages for people with disabilities could hardly be called fast tracking, and we urge that a much shorter time frame be implemented to ensure that people with disabilities are paid a fair wage. By the development of this paper, the government has recognised the injustice of the disability wages and employment system, so any further delay in improvements cannot be contemplated.

Conclusion

In an effort to ensure that people with disabilities live a full life, both housing and employment options should be available to them, and if it is necessary for the government to financially support these sectors, then this should be done.

We encourage the use of the Supported Wage System, which is in use in open employment, as a fairer system for all those working in ADEs.

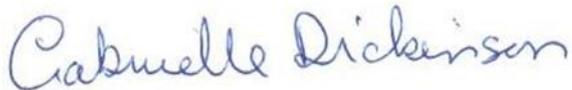
In developing an alternative and fairer system of wages assessment for people with disabilities working in Australian Disability Enterprises it is vital that a system be developed which provides justice for those with disabilities. If this means that further funds are required to be allocated to the sector, then DSS should commit to this. DSS should implement the human rights that they ascribe to under the United Nations Convention on the Rights of Persons with Disability and develop a system

which clearly demonstrates their commitment to people with disability and other marginalised groups.

In seeking an exemption for 3 years, DSS gives the impression that it considers it acceptable for people with disability to continue to be assessed in a discriminatory manner. If DSS is successful in its application for exemption, this will mean that a fairer system is not instigated soon. It is vital that this work be done as soon as possible, and we fail to see how it can take 3 years, and why people with disability should continue to be assessed in a way that is discriminatory, as decided in the Full Federal Court in May 2013.

We strongly urge that the application by DSS for exemption under the disability discrimination Act 1992 be refused.

Yours faithfully



Gabrielle Dickinson
Advocate on behalf of AMIDA Committee of Management