



29 October 2013

Legal Section
Australian Human Rights Commission,
GPO Box 5218,
Level 3,
175 Pitt St
Sydney NSW 2000

Dear Australian Human Rights Commission,

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

This submission is being lodged by the Board of Management of Ballarat Regional Industries, an Australian Disability Enterprise in Ballarat Victoria. We submit that the Australian Human Rights Commission should 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 seek the Commission to view the Board of Management of BRI as an interested party and consider our statements below as part of your deliberations.

BRI was established in 1984 to meet a community call for post education opportunities for people with a disability. Not granting the exemption and making that decision retrospective will most likely force BRI to liquidate its assets and close down. Evidence relating to this statement is embodied further in this submission.

BRI's Mission Statement is *"To optimise employment for people with a disability by operating viable manufacturing and service industries based on sound business principles and practices, providing BRI employees with opportunities to develop and enhance their workplace skills, personal skills and social engagement"*.

In 2008, the 1000th person with a disability commenced their employment with BRI which demonstrates the contribution BRI has made to the Ballarat community.

BRI is only one of two ADEs in Ballarat. We work in collaboration with our colleagues at McCallum Disability supporting each other where we can but we are two individual Not for Profit organisations. McCallum similarly have made a strong contribution over time to the Ballarat community and 60 employees with a disability and has a growing waiting list as well.

BRI believes that an exemption should be granted for a sufficient period of time deemed necessary for the Federal Government to develop an alternative tool. Granting an exemption so that we may continue to use BSWAT is critical to our ongoing capability to provide employment for our 140 people with a disability and 27 staff.

BRI believes that the current ban placed on using BSWAT only further marginalizes people with a disability. Since the instruction from the Government to cease using the tool, we have been unable to perform the triennial reassessments for more than 1/3 of our workforce. This will increase to over 2/3 in the next 12 months.

Also, we have been unable to properly determine wage rates for our newer employees who have completed their initial 13 weeks assessment period.

There must be better recognition that our employees have joined BRI because they want to work and enjoy what they are doing. Our own observations are that our employees understand the need for a productivity type wage system and are glad that they have a supporting employer in BRI who has their total wellbeing at heart. We evidence this from our annual employee survey.

The current situation effectively leaves all our employees in *No-Mans-Land* and this impasse can only continue until some interim stability in wage fixation is found. We had investigated some of the alternative tools that have also been approved by the Government and have resolved that they are similar in basic design as BSWAT and therefore simply changing to another tool to avoid the current dispute will not be a permanent solution.

Failing to grant an exemption will see claims lodged for the short term gain of higher wages but this will be offset by the closure of many ADEs and the loss of employment for the 10,000 plus people whose wages are assessed under BSWAT.

Contrary to the arguments of others that the continued use of the BSWAT tool is not necessary, we argue that our whole business model has been based on the BSWAT tool and without time being given for us to investigate alternative models, any increase in the wages that we pay to our employees will see BRI become uncompetitive and therefore unviable as a going concern.

Those parties who are against granting the exemption present "nice" arguments about equality but their calls for *countering the negative outcomes of legal inequality, positive outcomes of respect, inclusion, fairness, equal pay for work of equal value* are naive because the real consequences of their pleas will be the wholesale closure of ADEs and therefore even greater unemployment of people with a disability.

You will be already aware that the litigation being taken against some ADEs will force their financial collapse and therefore immediate job losses for an already disenfranchised group of people. The net benefit of any increase in wages would be further minimised because a consequence of an increase in wages would be that their Disability Support Pensions will go down.

During this period of potential crisis, BRI has continued to be proactive. As an interim measure BRI has adopted reusing a benchmarking wages assessment tool based on productivity and support developed by BRI a decade ago however the end result is that it is an adaption of BSWAT assessments to obtain a baseline. In addition we have developed an alternative approach to wages assessment based on bandings within industry sectors that take into account award rates in particular industry sectors similar to the approach applied in the current SES Award 2010. We are happy to contribute this option for consideration.

Unfortunately, BRI has been unable to expand much beyond our capacity of 135 funded places because the additional cost of supporting their employment is not available from Government and we are unable to fund that employment ourselves because we are already on the edge of being non-competitive. This is a more significant issue for BRI than organizations that also offer non-employment services which have allowed generate reserves from State funded care programs. These other organisations have the luxury of being able to subsidize their ADE operating expenses through economies of scale or by marginally distributing their overheads whereas BRI's business model means we can only survive by being commercially competitive.

The loss of an organisation like BRI will mean much more than our 140 employees and 27 staff being jobless. The demand for supported employment in Ballarat is far greater than our current employment numbers as there are 155 other people with a disability who have approached BRI and are on a waiting list, seeking the opportunity of gaining supported employment.

Finally we ask the Commission to factor in that the consequences of not providing the exemption goes far beyond individual ADEs. It will permeate throughout our communities as any increase in unemployment for people with a disability will place even more stresses and strains on parents, family members, carers and residential care units. Supported employment provides all of these people with some respite and with the knowledge that employment is providing both self-esteem, freedom and socialization opportunities.

Yours sincerely



Paul Crosbie
Chief Executive Officer
On behalf of the Board of Management
Ballarat Regional Industries Inc.