

**ussex Street Community Law Service Inc**

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| Attention Ms Bridget AkersLawyerLegal SectionAustralian Human Rights CommissionGPO Box 5218SydneyNew South Wales 200129 October 2013 Dear Ms Akers | (by email) |

**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) **(E0A).**

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 [20121 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.

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| 29 Sussex Street EAST VICTORIA PARK WA 6101 Postal Address: Locked Bag 2 EAST VICTORIA PARK WA 6981 Telephone: (08) 6253 9500 1800 642 791 TTY (08) 9470 2831 Facsimile: (08) 9470 1805• |
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29 Sussex Street EAST VICTORIA PARK WA 6101

Postal Address; Locked Bag 2 EASTVICTORIA PARK WA 6981 ABN: 94 676 872 055



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

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 AD Es.

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.2

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



**Michele Hardesty-Munday Solicitor**

**Disability Discrimination Unit**

*Disability Discrimination Act 1992* (Cth), Section 3(a)(i).

2.Article 27 (I) (b) United Nations Convention on the Rights of Persons with Disabilities (CRPD)