

Submission to the Human Rights Commission Support for the temporary exemption of the DDA in relation to BSWAT

Disability Services Australia (DSA) employs over 500 people with disability within our 4 Australian Disability Enterprises (ADEs). We submit this paper to the Human Rights Commission with full confidence that we represent the views of our employees and their families and carers.

DSA has been operating as a legitimate employer of people with a disability for well over 50 years. During this period we have always adopted the most contemporary wage setting practices that we believe offered our employees the best opportunity to secure a fair and reasonable wage.

DSA adopted the BSWAT after careful consideration. We had representatives from DSA on the working parties with representatives from the Australian Industrial Relations Commission, Unions and other stakeholders to develop the BSWAT, we trialled it against other tools and weighed up the options. On occasions where a comparator tool was used, the BSWAT always produced the most favourable wage determination for the person. This is still the case for people transitioning into our employment.

We also chose this tool because it was a Government owned and endorsed tool. It was a tool requiring an assessment to be conducted by the Commonwealth Rehabilitation Service (CRS) and independent of DSA. This independence offered our employees an additional sense of security and transparency in the process of determining fair and unbiased wage determinations.

As a practice, DSA works closely with CRS to facilitate a fair assessment for our employees. When we believe that the assessment is not an accurate reflection, we work with CRS to explain our rationale prior to the final report and come to an understanding of the person's ability. If our employee believes that the assessment is unfair, we offer them the opportunity to complete extra training, continuing to pay at the higher rate and after a 6 month period, we conduct a reassessment.

DSA fully supports the Department of Social Services' exemption application. DSA wants to see a fair and reasonable wage assessment tool developed, supported and implemented. We believe that this is the only way for collateral discrimination to be avoided. By collateral discrimination we refer to the following possible outcomes:

1. ADEs are not able to maintain viability and pay people award wages and therefore have to cease business and dismiss their employees.
2. ADEs needing to scale down their operations significantly in response to the direction to pay award based rates to improve efficiency by retaining only lower support and higher skilled employees.

Both of these outcomes will result in the loss of employment choice for supported employees. People with a disability, particularly those with higher support needs and lower skills, will be at the most risk of unemployment and significantly reduced employment options.

The social impact of these scenarios would be enormous and represents the collateral discrimination that we believe to be completely unacceptable by Australian society generally and the Human Rights Commission. This discrimination will be the consequence of an unbalanced determination for employees, their families and carers.

If the outcome of any new tool was a move to full award wages, DSA would need to pursue the first option and retrench over 500 people with disability. We would not be able to maintain viability. If the outcome of the redesign was a move to a productivity based wage and significantly higher wages resulted, then at a minimum, the second option would need to be adopted by DSA and we would be forced to retrench our lower skilled employees. Both decisions are abhorrent and are in direct conflict with our purpose and mission which is to enhance the lives of people with a disability.

The government's current agenda of increasing employment participation rates for people with a disability would appear to be a redundant strategy if the 20,000 people with a disability that are currently employed in ADEs across Australia are placed into the prospect of unemployment arising from this situation.

DSA strongly refutes the claims made by the Association of Employees with Disability (AED) and the National Council on Intellectual Disability (NCID) that ADEs are not legitimate employment options for people with disability. Every business development and sales contract decision DSA makes is made to enhance our ADE business and improve viability. We invest significant resources into marketing, sales and quality improvement. The aim is always to improve our businesses thus increasing the opportunities for the people we employ. Our business development and customer engagement strategies are robust and are on par with mainstream employers of people without disability.

At DSA we strongly disagree that open employment is always the appropriate employment options and the desirable choice for people with disability. Two of our ADE sites support people predominantly with mental health concerns, many with dual diagnosis. What we often experience in these two sites is a transient workforce. In many instances people come to us when they are not well, and when their mental health improves they leave to join the open employment market. Subsequently if their mental health deteriorates they re-enter our ADEs.

The claims by AED and NCID that ADEs do not offer an inclusive workforce is highly inaccurate. Many people come back to DSA because we offer them an inclusive, supportive and understanding workplace. Many of our employees have worked in open employment at some point in their lives and came to us because of the isolation and lack of inclusion they felt was a reality in open employment. Many employees talk to the fact that their employers and colleagues did not understand their mental health or medical condition. They were either terminated from their employment or made to feel so bad about their absenteeism that they resigned from their employment. Some are very scarred by the experience and the thought of moving out of the security of an ADE like DSA is overwhelming.

DSA offers an inclusive and flexible work environment. We accommodate people's situations and change contracts for people based on their individual needs and circumstances. DSA understands the fact that people may need to take extended sick leave at times and offer people the security of returning into our workplaces. We are accommodating of unusual and unpredictable behaviours. DSA offers the support of qualified staff and psychologists on site to work with people to overcome individual challenging barriers to maintain an inclusive employment option. Mainstream employment options are often not as accommodating and supportive.

DSA conducts an annual satisfaction survey for employees with disability. Our employees overall satisfaction rate is high, sitting around the 80% mark over the past few years. Specific responses on feeling valued and included in the workplace achieved a high score of 85%.

The notion of a segregated workforce, lacking integration with the community is also highly inaccurate. DSA provides support for all of our employees to access their local communities. We also provide out of business hours recreation programs that aim to support people to access and transition into mainstream activities.

A critical issue in the debate is the true voice and feelings of supported employees. Discerning their true voice is often difficult as many supported employees find it difficult to communicate their feelings on what supported employment offers their lives in a holistic sense. Whilst advocacy groups representing employees with a disability have contributed to the debate, DSA's experience is that supported employment is much more than 'just a job', it is a critical and stable element of their lives. For many employees, supported employment is the most stable and consistent part of their lives. Most supported employees consider their work mates as an extension of their family. At DSA there is a real 'community' amongst themselves in workplaces where they feel valued, accepted and supported.

These facts are reflected in both high employment longevity and employee retention rates. After more than 50 years of supported employment experience, we conclude that their employment is critical to their personal wellbeing and if taken away from their lives, will result in significant and ongoing personal distress.

The past 10 months of BSWAT uncertainty has been a time of great stress and anxiety for ADEs, parents, carers but most importantly supported employees. These people are the most vulnerable members of our community and under the greatest stress.

In the interests of certainty and clarity we would ask that the exemption be granted. This would allow all parties an opportunity to work together to determine a new tool that is in the best interest of people with a disability and one that avoids the collateral discrimination that is potentially pending.

DSA recognises that the BSWAT, like all wage determination tools, has potential for improvement. We are fully supportive of working with our employees and their carers, the Human Rights Commission, the Department of Social Services, National Disability Services, Unions and Advocacy Groups to come up with a solution that best meets the needs of our employees, and in line with our mission of enhancing their lives.

Thank you for the opportunity of responding to this critical issue.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mark Spurr', written in a cursive style.

Mark Spurr
Chief Executive Officer
Disability Services Australia
25th of October, 2013