

**AUSTRALIAN HUMAN RIGHTS COMMISSION  
DISABILITY DISCRIMINATION ACT 1992 (CTH), s 55(1)  
NOTICE OF GRANT OF EXEMPTION**

## **Exemption**

By this instrument, under section 55(1) of the *Disability Discrimination Act 1992* (Cth), the Australian Human Rights Commission grants to the Commonwealth and all Australian Disability Enterprises that are members of the National Disability Services using or proposing to use the Business Services Wage Assessment Tool (the Applicants), an exemption from the operation of sections 15, 24 and 29 of the Disability Discrimination Act in the following terms:

### ***Period of exemption***

1. The term of the exemption is for the following periods, whichever is applicable:
  - a. For all Australian Disability Enterprises that are members of the National Disability Services continuing to pay wages pursuant to an assessment conducted with the Business Services Wage Assessment Tool (BSWAT) (Relevant ADEs) from 30 April 2015 until 5 June 2015.
  - b. For all Relevant ADEs continuing to pay wages pursuant to an assessment conducted with the BSWAT, that were in compliance with the Order of the Fair Work Commission of 5 June 2015 in the matter AM2013/30, from 6 June 2015 until 31 October 2015;
  - c. For all Relevant ADEs in relation to which the Fair Work Commission granted a further transitional period pursuant to clause 14.6 of the Supported Employment Services Award 2010, from 1 November 2015 until 18 December 2015, and
  - d. For the Commonwealth, from 30 April 2015 until 18 December 2015.

### ***Conditions***

2. It is a condition of the exemption that the Commonwealth:
  - a. Take all necessary steps to ensure the transition from the BSWAT to the Supported Wage System, or an alternative tool approved by the Fair Work Commission, as quickly as possible.
  - b. Report to the Commission, on a quarterly basis until all supported employees have been transitioned to an alternative tool or 18 December 2016 whichever is earlier, as to:
    - i. The steps taken to ensure the transition from the BSWAT to the Supported Wage System, or an alternative tool approved by the Fair Work Commission, as quickly as possible.

- ii. The number of ADEs previously using BSWAT:
    1. that have chosen an alternative tool and have some assessments completed,
    2. that no longer provide supported employment.
  - iii. The number of supported employees who work at an ADE that had previously used BSWAT:
    1. that have been assessed under an alternative tool, and
    2. that are yet to be assessed by an alternative tool
  - iv. The percentage of supported employees who have transitioned to an alternative wage tool.
- c. 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 Supported Wage System or alternative tool.
3. It is a condition of the exemption that each ADE to which this exemption applies:
- a. Take all necessary steps to transition from the BSWAT to the Supported Wage System, or an alternative tool approved by the Fair Work Commission, as quickly as possible.
  - b. Provide such information to the Commonwealth to enable it to accurately and effectively report to the Commission as required under this instrument.
  - c. 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 Supported Wage System or alternative tool.

Dated this 22nd day of March 2016.

A handwritten signature in black ink, appearing to read "Gillian Triggs". The signature is fluid and cursive, with a large initial 'G' and a long, sweeping underline.

Signed by the President, Professor Gillian Triggs,  
on behalf of the Commission.

# Reasons for Decision

## 1 Background

1. On 29 April 2014, the Commission granted to the Commonwealth and all Australian Disability Enterprises (ADEs) using or proposing to use the Business Services Wage Assessment Tool (BSWAT), an exemption from the operation of sections 15, 24 and 29 of the *Disability Discrimination Act 1992* (Cth) (Disability Discrimination Act) (Original Exemption). The decision granting this exemption is available on the Commission website at <http://www.humanrights.gov.au/department-social-services-dss>.
2. The exemption granted on 29 April 2014 expired on 29 April 2015.
3. On 21 April 2015 the Commonwealth applied, on its own behalf and on behalf of all ADEs, for a temporary exemption for a further 12 months to ensure the transition from the use of BSWAT to an alternative tool approved by the Fair Work Commission is able to continue in an orderly manner and to provide reassurance to people with disability working in ADE's and their families and carers (Primary Application).
4. On 21 April 2015 the Commission advised the Commonwealth that it would not be possible to make a decision on the Primary Application by 29 April 2015 and that once the Original Exemption expired, there would be no exemption in place.
5. On 22 April 2015 the Commonwealth made an application for an interim exemption for the period between the expiry of the Original Exemption on 29 April 2015 and 'the date on which the Commission publishes its determination in relation to the application of 21 April 2015' (Interim Application).
6. Shortly after receipt of the Primary Application the Commission published the Application and an Easy English explanation on its website and called for submissions. The invitation noted that if a person wanted to make a submission in another way or needed more time to make a submission they could contact the Commission. The date for submissions was ultimately extended to 23 October 2015. 35 submissions were received by the Commission. A number of extensions were granted and one oral submission was taken from supported workers and their parents. Most of the submissions were posted on the Commission's website.
7. On 30 April 2015 the Commission granted an exemption to the Commonwealth and all ADEs using the Business BSWAT (Interim Exemption). The exemption was from the operation of sections 15, 24 and 29 of the Disability Discrimination Act for the period of four months, or until such time as a decision is made with respect to the Primary Application, whichever is sooner, subject to certain conditions.
8. On 15 May 2015 the Commission requested the Commonwealth provide further information in relation to specific aspects of the Primary Application. Further requests for additional information were also made on 31 July 2015 and 1 September 2015. These requests and the responses provided

by the Commonwealth and the National Disability Service were published on the Commission's website and submissions were invited in response.

9. On 21 May 2015 the Commission received a request from NDS on behalf of its members to join the Primary Application. The NDS is the peak industry body for non-government disability services. That request was granted. On 28 May 2015 the Commission received a submission from the NDS in support of the Primary Application.
10. On 5 May 2015 People with Disability Australia (PWDA) lodged an application for review of the Interim Exemption in the Administrative Appeals Tribunal (AAT) in proceeding number 2015/2158. Prior to the hearing of this matter, the Secretary, Department of Social Services, NDS and AED Legal Centre were all joined as parties to the AAT proceedings.
11. On 5 June 2015 the Fair Work Commission made an order by consent in proceedings AM 2013/30, an application to vary the Supported Employment Services Award 2010 (Award). The order provided for the variation of the Award to remove BSWAT as an 'approved wage assessment tool' under clause 14.4 of the Award and insert transitional provisions phasing out the use of BSWAT. The Award has been amended accordingly with the insertion of clause 14.6.
12. Clause 14.6 of the Award now provides as follows:
  - 14.6 Transitional arrangement
    - (a) The Business Services Wage Assessment Tool is no longer an approved wage assessment tool for the purpose of this clause. Continued use of the Business Services Wage Assessment tool under this clause is only permissible in terms of this transitional arrangement.
    - (b) A supported employment service that is using the Business Services Wage Assessment Tool may continue to use the Business Services Wage Assessment tool:
      - (i) until 31 October 2015 provided that within 1 month of the date of this variation the supported employment service indicates in writing to the Fair Work Commission its decision to transition to another approved wage assessment tool and the name of the tool it intends to transition to; and
      - (ii) for a further transitional period not extending past close of business, Monday 29 February 2016 granted by the Fair Work Commission following application in writing by the supported employment service.
13. On 25 June 2015, as a result of the Order of the Fair Work Commission, the Commonwealth amended its Primary Application from a request for exemption for 12 months to an exemption to the close of business on 29 February 2016 to reflect the terms of that Order.
14. On 26 June 2015 the NDS provided further information in relation to the financial impact of the transition away from BSWAT on ADEs.

15. On 29 June 2015 the Commission was advised that NDS intended to commission KPMG to analyse the impact of increased wage costs incurred by ADEs moving from the BSWAT to one of the other wage assessment tools available.
16. On 29 June 2015 the Commission published the amended Primary Application on its website and called for further submissions in relation to the Application and in response to the additional information provided by the applicants.
17. On 1 July 2015 the Commission emailed the ACTU, Inclusion Australia, AED Legal Centre and Australian Centre for Disability Law and other stakeholders notifying of the amendment to the Primary Application and inviting further submissions.
18. On 28 July 2015 the AAT set aside the Commission's decision on the Interim Application for want of procedural fairness and remitted the matter to the Commission for reconsideration in accordance with its reasons.
19. On 4, 11 and 15 September 2015 the Commission received requests from four further ADEs to join the Application, namely Multitask Human Resource Foundation Ltd, Vincent Industries Inc., Jiffy Services and Tasmanian Association of Disabled Persons Abilities Centre. Those requests were granted.
20. On 4 September 2015 the Commission wrote to the Commonwealth seeking further information about the Interim Application.
21. On 7 September 2015 the Commission loaded the AAT decision on its website and noted on the website that it had requested additional information about the Interim Application from the Commonwealth and that once that information had been provided further submissions would be called for.
22. On 14 September 2015 the Commission created a project page on the homepage of the Commission website to increase the prominence of the information in relation to both Applications for exemption and to ensure the information was easier to find.
23. On 15 September 2015 the Commission received an embargoed copy of the KPMG report, 'Assessing the impact of increasing wage costs on Australian Disability Enterprises'. The embargo was lifted on 30 September 2015 and the report loaded onto the Commission website with an invitation for further submissions on the report. No submissions were received. Submissions on the Primary Application ultimately closed on 23 October 2015.
24. On 24 September 2015 the Commission loaded the response from the Commonwealth to its letter of 4 September 2015 on its website and called for further submissions in relation to the Interim Application. Submissions were called for by 5 November 2015. The Commission invited those who needed more time to make contact with the Commission.

25. On 15 October 2015 the Commission added to its website an Easy English explanation of the Interim Application and request for submissions.
26. Between 29 October 2015 and 1 December 2015 the Fair Work Commission granted ten ADEs a further transitional period pursuant to clause 14.6 of the Award.
27. On 5 November 2015 the Commission received a request from PWDA for an extension of time to make a submission on the Interim Application. That request was granted and on 16 November 2016 PWDA provided its submission.
28. On 17 December 2015 the Commission wrote to the Commonwealth asking it to provide evidence of the Commonwealth's authority to make the Interim Application on behalf of all ADEs using BSWAT, by 11 January 2016.
29. On 18 December 2015 the Commission made its decision on the Primary Application and granted an exemption to the Commonwealth, National Disability Services on behalf of its members, Multitask Human Resource Foundation Ltd and Vincent Industries Inc,. The Commission omitted to include Jiffy Services and Tasmanian Association of Disabled Persons Abilities Centre in that exemption. Therefore on 19 December 2015 the Commission granted a conditional exemption to Jiffy Services and Tasmanian Association of Disabled Persons Abilities Centre in the same terms (Current Exemptions).
30. On 18 January 2016 PWDA lodged an application for review of the decision on the Primary Application in the AAT.
31. On 11 January 2016 the Commission received a response to its letter of 17 December 2015 from the Commonwealth. The letter confirmed that the Commonwealth had advised the NDS and ADEs that it had made both the Primary and Interim Applications. On 25 January 2015 the Commission wrote to the Commonwealth and advised it was not satisfied the Commonwealth had authority to bring the application on behalf of all ADEs. The letter was copied to the NDS as peak body for the ADEs. It was also sent to the four individual ADEs that had joined the Primary Application.
32. On 3 February 2016 the NDS requested they be joined as applicants to the Interim Application on behalf of its members. On 5 February 2016 the Commission advised NDS it had granted its request.
33. On 12 February 2016 the Commonwealth provided a further report on the progress of the transition from BSWAT to another tool.
34. On 3 March 2016 the Commission wrote to the individuals and organisations that made submissions in the Original Application, inviting them to make a submission on the Interim Application. The invitation requested submissions by 18 March 2016 but indicated if more time was needed a request could be made. One request was made and an

extension to 21 March 2016 granted. The Commission received a further 7 submissions.

## 2 Consideration by the Commission

35. The reasons for granting the exemption are set out below. In deciding whether to grant the exemption, the Commission considered all of the relevant circumstances to determine whether it is reasonable to grant the exemption. In doing so, the Commission has also considered the following:
  - a. whether an exemption is necessary;
  - b. the objects of the Disability Discrimination Act;
  - c. the applicant's reasons for seeking an exemption;
  - d. submissions by interested parties, including arguments for and against granting the exemption; and
  - e. all relevant provisions of the Disability Discrimination Act.
36. In making its decision, the Commission had regard to the following documents:
  - a. the application for exemption received on 22 April 2015,
  - b. the application for exemption received on 21 April 2015,
  - c. all submissions received in relation to the Primary Application and Interim Application,
  - d. all correspondence between the Commission, the Commonwealth, the NDS and individual ADEs regarding the Primary Application and Interim Application
  - e. the decision of the Commission on the Primary Application,
  - f. quarterly reports provided to the Commission by the Commonwealth in compliance with the conditions of the Original Exemption.
  - g. responses to requests for further information from the Commonwealth in relation to the Primary Application and Interim Application,
  - h. all documents relating to the Original Exemption application including:
    - i. the application for exemption
    - ii. the submissions received by the Commission,
    - iii. the response to the Commission's request for additional submissions,
    - iv. *Nojin v the Commonwealth* [2012] FCAFC 192,
    - v. *Commonwealth Of Australia v Stawell Intertwine Services Inc And Gordon Prior and Commonwealth Of Australia v Elizabeth Nojin On Behalf Of Michael Nojin Coffs Harbour Challenge Inc* [2013] HCATrans 157 (High Court of Australia, Crennan, Kiefel and, Keane JJ, 10.05.2013),
    - vi. the Supported Employment Services Award 2010,
    - vii. the Disability Discrimination Act 1992 as it stood at the date of the Nojin decision and at the date of the application,
    - viii. the Commission's Guidelines on Temporary Exemptions under the Disability Discrimination Act,

- ix. Concluding Observations of the Committee on the Rights of Persons with Disabilities: Australia,
  - x. *Clarke v Catholic Education Office* (2003) 202 ALR 340,
  - xi. *Catholic Education Office v Clarke* (2004) 138 FCR 121,
  - xii. *Hurst v Queensland* (2006) 151 FCR 562,
  - xiii. Disability Services Standards (FaCSIA) 2007,
  - xiv. Guide to Good Practice Wage Determination,
  - xv. CRS Australia. Business Services Wage Assessment Tool report – sample,
  - xvi. CRS Australia. Business Services Wage Assessment Tool – Supervisor’s Wage Tool Assessment Guide,
  - xvii. CRS Australia. Business Services Wage Assessment Tool – Supervisor’s Assessment Workbook, and
  - xviii. CRS Australia. Business Services Wage Assessment Tool – Worker Information Guide.
- i. documents filed in the Fair Work Commission proceeding AM2013/30.
  - j. Orders of the Fair Work Commission in proceeding AM2013/30.
  - k. documents filed in the AAT proceeding 2014/2570.
  - l. documents filed in the AAT proceeding 2015/2158.
  - m. the decisions of the AAT in proceedings 2015/2158.

### 3 Relevant Law

#### 3.1 *Disability Discrimination Act 1992*

37. The Commission may grant exemptions from the provisions of Division 1 or 2 of the Disability Discrimination Act.<sup>1</sup> An exemption may be granted subject to terms and conditions, and may be expressed to apply only in particular circumstances, or to particular activities.<sup>2</sup> Exemptions are to be granted for a specified period not exceeding five years.<sup>3</sup> It is not unlawful for a person who has been granted an exemption to act in accordance with the exemption.<sup>4</sup>
38. It is unlawful for an employer to discriminate against an employee on the ground of the employee’s disability, in the terms and conditions of employment that the employer affords the employee.<sup>5</sup> It is also unlawful to discriminate on the ground of disability in the provisions of goods and services<sup>6</sup> and in the administration of Commonwealth laws and programs.<sup>7</sup> The relevant provisions are located in Divisions 1 and 2 of Part 2 of the Disability Discrimination Act.

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<sup>1</sup> Section 55(1) *Disability Discrimination Act 1992*.

<sup>2</sup> Section 55(3)(a) and (b) *Disability Discrimination Act 1992*.

<sup>3</sup> Section 55(3)(c) *Disability Discrimination Act 1992*.

<sup>4</sup> Section 58 *Disability Discrimination Act 1992*.

<sup>5</sup> Section 15 *Disability Discrimination Act 1992*.

<sup>6</sup> Section 24 *Disability Discrimination Act 1992*.

<sup>7</sup> Section 29 *Disability Discrimination Act 1992*.



### **3.2 Technical aspects of the application**

39. A number of submissions in relation to the Primary Application objected to the exemption on the basis that the Commonwealth has no standing to seek the exemption on behalf of all ADEs. The issue of standing is also relevant to this application.
40. Pursuant to s 55(1)(b) of the Disability Discrimination Act the Commission may grant an exemption on application by:
- (b) 2 or more persons:
- (i) on their own behalf; or
  - (ii) on behalf of themselves and another person or other persons; or
  - (iii) on behalf of another person or other persons;
41. On 22 April 2015 the Commonwealth purported to make its Interim Application for an exemption on behalf of all ADEs using BSWAT.
42. On 4 September 2015 the Commission asked the Commonwealth to 'confirm the Commonwealth is authorised to make the application on behalf of ADEs that are still using the BSWAT and are not members of the NDS'.
43. On 18 September 2015 the Commonwealth responded as follows:
- The Secretary may make the application on behalf of the Commonwealth and Australian Disability Enterprises (ADEs).
44. On 17 December 2015 the Commission asked the Commonwealth to provide evidence of its authorisation to bring the Interim Application on behalf of the ADEs.
45. On 11 January 2016 the Commonwealth responded as follows:
- As you know, the Commonwealth applied for a three-year exemption in September 2013 and requested ADEs join the application.
- The Commonwealth again applied for two exemptions in April 2015 and subsequently informed National Disability Services (NDS) and ADEs that it had made the applications. These applications sought to extend the exemption in place between 28 April 2014 and 28 April 2015, The Commonwealth also believed at the time it made the 2015 applications, that the previous requests to join from ADEs in 2013 still applied as those applications were for three years.
- The Commonwealth has not received any advice from ADEs that they do not wish to support the application.
46. While the Commission accepts that ADEs were advised by the Commonwealth that it had made both the Primary and Interim Applications and that no ADE had advised them they did not wish to support the applications, the Commission is not satisfied that the Commonwealth had authority to bring the application on behalf of all ADEs. The Commonwealth, the NDS and the 4 individual ADEs that joined the

Primary Application were advised of this view. The NDS was subsequently joined as an applicant to the Interim Application on behalf of its members. No other applications for joinder were received.

### **3.3 *Period of exemption***

47. The Interim Application is for the period between the expiry of the original exemption on 29 April 2015 and the date on which the Commission published its decision in relation to the Primary Application. The Commission published its decision on the Primary Application on 18 December 2015. The period to which the Interim Application relates is therefore 30 April 2015 to 17 December 2015 (the Relevant Period).

## **4 The objects of the Disability Discrimination Act**

48. The Commission has had regard to the objects of the Disability Discrimination Act, set out in section 3.
49. Where an exemption is sought that would allow conduct that is inconsistent with, or would undermine the objects of the Disability Discrimination Act, this weighs against the granting of an exemption. It does not of itself prevent the granting of an exemption. The very nature of an exemption is to allow conduct that is, or is likely to be, unlawful discrimination. The test in deciding if that conduct should be allowed to occur, is whether in all the circumstances it is reasonable to allow it to occur for a defined period.
50. In considering this issue, the Commission has had regard to:
  - a. The reasonableness of the exemption sought – the Commission will weigh up the nature and extent of the discriminatory effect against the reasons advanced in favour of an exemption;
  - b. Whether an exemption could be granted subject to terms and conditions which further the objects of the Disability Discrimination Act.

## **5 Reasonableness**

51. For the reasons set out in the Primary Exemption and summarised below, the Commission is of the view that:
  - a. The exemption for the Relevant Period is necessary. As at 30 April 2015 there were still 3590 supported employees whose wages were being assessed under the BSWAT and in relation to whom use of the tool is likely to be discriminatory. As at 31 July 2015, this number was reduced to 3192 and by 31 January 2016 to 412. There were therefore still a significant number of employees that would be affected by an exemption relating to the Relevant Period.
  - b. On balance it is reasonable to grant an exemption for the period between the expiration of the Original Exemption on 29 April 2015 and the date of the decision on the Primary Application on 18 December 2015, in line with clause 14.6 of the Award.

## 5.1 *Summary of Reasons*

52. The Primary Exemption was granted for the following reasons:
- a. While some progress had been made during the period of the Original Exemption there were still a number of assessments to be conducted and in all the circumstances it was reasonable to allow further time to conduct the assessments that had not been completed during the period of the Original Exemption.
  - b. Due to the uncertainty and instability being faced by the ADEs as a result of:
    - i. the transition to an alternative tool and other ongoing processes impacting on ADEs.
    - ii. The possible impacts on their financial viability and consequential impacts on services and jobs for supported employees arising from increased wages costs and costs of transition to an alternative tool
  - c. To provide certainty and clarity for supported employees and their families and carers regarding the operation of the ADEs and the services they provide.
53. Each of these reasons are applicable to the Interim Application.
- a. While some progress has been made in the transition from BSWAT to another tool, as at 30 April 2015 there were still 3590 supported employees whose wages were still being paid pursuant to an assessment under BSWAT. As at 31 July 2015 that number had been reduced to 3192 and by January 2016, to 412. Therefore, more time was needed to complete these assessments.
  - b. Pursuant to the Fair Work Commission's transitional provisions, it was lawful for ADEs to continue to use BSWAT generally until 31 October 2015 and for any further transitional period not extending past close of business, Monday 29 February 2016 granted by the Fair Work Commission. As at 29 February 2016, ten ADEs had been granted further transitional periods. Therefore, use of the BSWAT was lawful under the Award for all ADEs until 31 October 2015 and for ten ADEs until the end of the Relevant Period. An exemption for the Relevant Period will ensure consistency between the Disability Discrimination Act and the Award.
  - c. The financial viability of the ADEs may still be impacted if the use of BSWAT during the Relevant Period was not exempted from being unlawful under the Disability Discrimination Act and they are open to complaint. An exemption for the Relevant Period will provide certainty and stability for ADEs, supported employees, their families and carers in circumstances where they are still undergoing the transition to an alternative wage tool, and other ongoing processes. An exemption will allow these ongoing processes to continue in an orderly manner.

54. In addition to the reasons set out in the decision on the Primary Application, the Commission notes that an exemption for the Relevant Period will ensure consistency between the lawfulness of the conduct of ADEs under the Disability Discrimination Act during the Relevant Period and the period of the Current Exemptions. The absence of an exemption for the Relevant Period will create an hiatus and therefore confusion and uncertainty about the coverage of the Disability Discrimination Act and liability of the ADEs.
55. The Commission has assessed the reasonableness of the Primary Application and has weighed the discriminatory effect of a further exemption against the reasons for the exemption. In doing so the Commission recognises that a further exemption will allow ongoing discrimination against the supported employees. The Commission has sought to limit this discriminatory impact by aligning the exemption with the terms of the Fair Work Commission Order and by the imposition of conditions.

## **6 Conclusion**

56. On balance the Commission considers it is reasonable to grant an exemption for the Relevant Period, subject to conditions, to reflect the terms of the Fair Work Commission's transitional provisions.
57. The Commission considers an exemption, on the terms granted, will provide the greatest level of certainty and clarity for all stakeholders, will allow additional time for new assessments to be conducted and will limit the discriminatory effect of the exemption.
58. The Commission is of the view that in the current circumstances it is reasonable to grant an exemption:
  - a. to all Relevant ADEs continuing to pay wages pursuant to an assessment conducted with the BSWAT from 30 April 2015 until 5 June 2015.
  - b. to all Relevant ADEs continuing to pay wages pursuant to an assessment conducted with the BSWAT, that were in compliance with the Order of the Fair Work Commission of 5 June 2015 in the matter AM2013/30, from 6 June 2015 until 31 October 2015;
  - c. to all Relevant ADEs in relation to which the Fair Work Commission has granted a further transitional period pursuant to clause 14.6 of the Supported Employment Services Award 2010, from 1 November 2015 until 18 December 2015, and
  - d. to the Commonwealth, from 30 April 2015 until 18 December 2015.
59. To ensure that the discriminatory impact is minimised and that transition to a new wage-setting model is achieved as quickly as possible, it is appropriate to grant the exemption subject to conditions.

## 7 Avenues For Review

60. Subject to the *Administrative Appeals Tribunal Act 1975* (Cth), any person whose interests are affected by this decision may apply to the Administrative Appeals Tribunal for a review of the decision.

Dated this 22nd day of March 2016.

A handwritten signature in black ink, reading "Gillian Triggs". The signature is written in a cursive style with a large, sweeping flourish at the end.

Signed by the President, Professor Gillian Triggs,  
on behalf of the Commission.