



**Australian Government**  
**Department of Social Services**

Finn Pratt AO PSM  
Secretary

The Hon Susan Ryan AO  
Age and Disability Discrimination Commissioner  
Australian Human Rights Commission  
GPO Box 5218  
SYDNEY NSW 2001

Dear Ms Ryan *Susan*

On 21 April 2015 I wrote requesting you consider an application for an exemption under section 55 of the *Disability Discrimination Act 1992* (DDA) from the operation of sections 15, 24 and 29 for the Commonwealth and all Australian Disability Enterprises (ADEs) using the Business Services Wage Assessment Tool (the BSWAT). I am now writing to amend that application following recent developments in the Fair Work Commission (FWC).

***The Fair Work Commission (FWC) Order***

On 5 June 2015, the FWC, by consent, made an order varying the *Supported Employment Services Award 2010* (the Award). The effect of the variation is to remove the BSWAT as an approved wage assessment tool from the Award; require ADEs within 1 month to inform the FWC in writing of the approved wage assessment tool the ADE proposes to transition to; and to allow ADEs to transition to that approved wage assessment tool by 31 October 2015. If an ADE is unable to transition to an approved wage assessment tool by 31 October 2015, the FWC may grant an additional transitional period, upon written application by the ADE, to close of business on 29 February 2016.

The FWC has effectively set a timetable for all ADEs to transition to another approved wage assessment tool. The consent order reflects the agreement of the industrial parties to the Award. I understand the broader interested parties, who have been participating in conciliation proceedings in the Fair Work Commission since June 2014, were also satisfied with the variation.

As a result of this development, the Department of Social Services (the Department) proposes that an exemption from the DDA, if granted, should apply for the same period as the FWC order. Such an approach would ensure the greatest level of certainty for ADEs and their supported employees who are transitioning from the BSWAT, and would prevent any perceived or actual legal ambiguity.

### ***Progress of transitioning supported employees***

On 5 June 2015, the Department provided to the Australian Human Rights Commission (the Commission) the quarterly report for February – April 2015, pursuant to the conditions of the 29 April 2014 temporary exemption. The report shows that as at 30 April 2015, 58 per cent of supported employees had had their wages assessed using an alternative approved wage assessment tool where their ADE had previously used the BSWAT. This is up from 32 per cent in the previous quarter (November 2014 – January 2015). The data also shows that while their assessments had not been completed, an additional 22 per cent of supported employees work at an ADE where assessments are underway.

As at 30 April 2015, only three ADEs had not chosen an alternative approved wage assessment tool, down from 24 ADEs in the previous quarter. Subsequently, these three ADEs have informed the Department they have now chosen an alternative tool.

### ***Amendment to the Department's 21 April 2015 application***

In the application of 21 April 2015 my Department requested a further 12-month exemption from the operation of sections 15, 24 and 29 of the DDA. In light of the changes to the Award made on 5 June 2015, the Department amends its application as follows:

- it withdraws its request for a temporary exemption for a further 12 months; and
- it requests a temporary exemption to close of business on 29 February 2016; and
- it requests that the requirement to report be on a quarterly basis up to and including 29 February 2016.

### ***Interim Exemption***

On 30 April 2015, the Commission granted a temporary exemption in relation to the use of the BSWAT. The Department supports the continuation of this temporary exemption on the conditions set out in that exemption.

I welcome any consultations with the Commission on this matter to assist the Commission to make its decision. The relevant contact in the Department is Mr Warren Pearson AM, Branch Manager, Disability and Employment Sector Reform Branch, on 02 6146 5720, or by email: [warren.pearson@dss.gov.au](mailto:warren.pearson@dss.gov.au).

Yours sincerely



Finn Pratt

 25 June 2015