



National Disability Services

Additional submission to the Australian Human Rights Commission – Application by Department of Social Services for a temporary DDA exemption

NDS would like to provide this additional submission to the Australian Human Rights Commission (AHRC) in respect of the Application named above. The submission details additional sources of evidence obtained by NDS since its initial submission made to the AHRC in May 2015.

NDS seeks wage setting arrangements in ADEs that are fair, legal and sustain the jobs of supported employees. ADEs are not-for-profit organisations that, across Australia, employ around 20,500 people with significant disability. Few of these organisations have the capacity to absorb higher wage costs and few of their supported employees have alternative employment opportunities if their ADE could no longer afford to employ them. It is important, therefore, that the significant risks entailed in shifting from the Business Services Wage Assessment Tool (BSWAT) to a new wage assessment method are understood and carefully managed.

NDS strongly supports the application for a twelve month DDA exemption on two key grounds:

- An exemption allows some certainty for ADEs that require additional time to transition from the use of the BSWAT due to circumstances beyond their control. Potentially, the withdrawal of any DDA exemption protection would immediately place these ADEs in contravention of the DDA;
- NDS is engaged in project work, the results of which will be important to the Fair Work Commission's BSWAT conciliation process. These results will not be available until late August. The first of these projects is analysing the impact of increased wage costs incurred by ADEs moving from the BSWAT to one of the other wage assessment tools available (including the Supported Wage System). This includes investigating the implications for the ongoing viability of ADEs and the jobs they support. The second project will investigate definitions of productivity that are suitable for use in supported employment. NDS has commissioned KPMG to undertake both projects.

The ADE sector is under intense pressure. Numerous ADE-related legal and industrial actions are currently underway and there is ongoing opposition to the supported employment model by some disability advocacy organisations. In addition to preparing for the huge task of transitioning to the National Disability Insurance Scheme (NDIS), many ADEs are struggling financially. Significant pressure to pay increased wages could lead to many ADEs closing, as well as workers with severe disability losing their jobs. In addition, there is a risk that if ADEs were deemed to be in breach of the DDA, they would need to cease operating, resulting in the same negative consequences identified above.

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NDS recently surveyed its ADE members on their financial health. The survey results were sobering and present a picture of a sector facing significant financial viability challenges. The survey, which related to ADEs' financial trading results for 2013-14, attracted responses from 74 ADEs, which is 39% of all ADEs (191). These ADEs employ 11,259 supported employees (55% of supported employees nationally). Of these ADEs, 47 (63.5%) were using the BSWAT on 21 December 2012 (the date of the Federal Court Nojin decision).

Almost half the respondents (49%) reported making a loss in 2013-14, averaging \$133,172 loss per ADE. Overall, the ADE sector appears to have little or no capacity to absorb higher wage costs. A summary of the survey is provided in Attachment A.

NDS members have also provided evidence demonstrating that transition from the BSWAT to a different wage tool is an expensive and time-consuming process. High demand for the two most popular wage tools, Skillsmaster and Greenacres, has meant extensive delays in the implementation of these tools by organisations seeking to use them. When they adopt a new wage tool, ADEs face the following costs:

- the cost of purchasing the new tool
- adaptation of their information management systems
- training of staff in use of the new tool
- conducting the wage assessments under the new tool
- employee wage increases resulting from use of the new tool

NDS has received detailed submissions from thirteen of its ADE members that set out the likely cost impacts of both the transition to the SWS and the actual cost impacts of moving to wage tools such as Skillsmaster and Greenacres. Six ADEs investigated the cost of moving to the SWS but decided not to do so as it would have put them out of business. The organisations that adopted the Skillsmaster and Greenacres tools found:

- significant up-front adoption costs;
- wage impacts that have led to reduced hours for employees to keep the ADE commercially viable; and
- forced savings on other expenditures that have weakened the quality of the ADE service

A summary of the impacts of the wage tools identified above is provided at Attachment B.

ADEs that have moved from the BSWAT to a different wage tool do not yet have access to the Government's \$173 million assistance package because of a delay in its implementation. That package aims to provide financial assistance to ADEs with their transition from the BSWAT; however, it is still unclear exactly when it will be made available.

In another survey, NDS asked 60 ADEs that used the BSWAT (55% of all ADEs using the BSWAT) about their progress in adopting a different wage assessment method. It found:

- 19 had completed all assessments (32%)
- 20 will meet the interim DDA exemption deadline of 31 August 2015 (34%)
- Eight will meet the FWC's 31 October 2015 deadline (12%)

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- Nine will need longer to complete the transition, including two that will need until the FWC's final deadline of 29 February 2016 (15%)
- Three could not confirm their completion date and one had not yet chosen a tool

The survey also revealed that the logistics of conducting wage assessments is the principal cause of the delay in adopting a new tool, especially if an ADE employs a significant number of supported employees. The two organisations needing until 29 February 2016 employ a total of 750 supported employees and the other seven exceeding the 31 October deadline employ 400 supported employees. The eight organisations completing their transition between September and October 2015 employ 570 supported employees. A summary of the survey is provided at Attachment C.

Consulting the DSS fourth quarterly report (Feb-Apr 2015) for the 2014-15 BSWAT DDA exemption reveals that 71 ADEs are yet to complete their transition from the BSWAT and that almost 3,600 supported employees have not had their wages assessed under a tool other than the BSWAT. The report is provided at Attachment D.

The 31 October 2015 and 29 February 2016 deadlines referred to above are part of the Fair Work Commission's decision to remove the BSWAT from the Supported Employment Services Award 2010. All the participants in the FWC BSWAT conciliation process agreed to the phasing-out process and the subsequent end-October and end-February deadlines. NDS argues that this further strengthens the case for an ongoing BSWAT DDA exemption until at least 29 February 2016.

Were legal protections to be withdrawn from ADEs that have not yet been able to complete their transition from the BSWAT, it would exacerbate the uncertainty which they and their employees are experiencing and jeopardise jobs for people.

NDS remains committed to working with other parties to find a solution that is compliant with the DDA and fair to supported employees without truncating their future employment opportunities by jeopardising the financial viability of their employers. Finding a solution that is sustainable will require further time.

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National Disability Services is the peak industry body for non-government disability services. Its purpose is to promote and advance services for people with disability. Its Australia-wide membership includes 1100 non-government organisations, which support people with all forms of disability. Its members collectively provide the full range of disability services and include around 170 of the 191 not-for-profit organisations that provide

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supported employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.