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President Gerardine (Ged) Kearney
 Secretary Dave Oliver

SC/CD:jh

27 June 2015

Ms Michelle Lindley
 Deputy Director, Legal
 Australian Human Rights Commission
 133 Castlereagh Street
 Sydney NSW 2000

Email: legal@humanrights.gov.au

Re: Notice of Application of Extension of Temporary Exemption - Business Services Wage Assessment Tool

Dear Ms Lindley,

I write in support of the submission made by the United Voice and Health Services Union in relation to the Commonwealth Government's application for an extension of the temporary exemption from the *Disability Discrimination Act 1992 (Cth)*.

The ACTU does not believe it necessary or advisable for the Australian Human Rights Commission (AHRC) to further extend the exemption.

I do not propose to repeat the arguments made in the submission by United Voice and HSU, but I do wish to make several supplementary points.

The Commission granted a 12 month exemption from 29 April 2014 to 29 April 2015 in order to give the Commonwealth sufficient time to transition ADEs away from the Business Services Wage Assessment Tool (BSWAT) and onto one of the 29 other tools listed under the Supported Employment Services Award 2010. The AHRC stipulated that the Commonwealth must act "as soon as practicable" to begin assessments under a different tool. The Commonwealth did not heed that imperative.

The Commonwealth could have given ADEs clear deadlines by which to nominate the alternative tool which they proposed to move to, and could have imposed further timelines around setting and completing the assessments. That it did not do so was its choice. If the consequence of the Commonwealth's laissez-faire approach is that they have been unable to meet the one-year deadline set by the AHRC – such that a third of all ADEs still have not commenced their assessments over a year later – so be it. The Commonwealth's failure to take adequate steps to prepare for the impending expiry of their exemption ought not be condoned by the AHRC through an extension of that exemption.

The Commonwealth has made the following claims in support of their application for a further one-year extension:

- That moving to the Supported Wage System (SWS) tool will increase wages to such an extent that it affects the financial viability of the ADEs; and

- Where ADEs have chosen to transition to the Greenacres or Skillsmaster tools, that there have been unavoidable delays in the assessment of workers under those tools due to increased demand.

These assertions are unconvincing. To date, none of the affected ADEs has provided any financial documents or other written evidence to support the claim that their financial viability will be affected by moving to the SWS. For those ADEs transitioning to Greenacres or Skillsmaster, we also haven't seen any record of unavoidable delays in setting the appointments. There have been numerous opportunities for ADEs to test out the impact of moving to the SWS tool over the past year, including through a trial which was run earlier this year through the FWC conciliation process. Moreover, throughout the conciliation hearings, unions have made every effort to ensure that the SWS tool meets the needs of ADEs, including agreeing to a number of compromises and modifications to the tool.

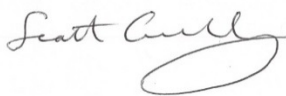
Nothing in the award or the stipulations set forth by the AHRC require an ADE to remain on the SWS if they find it does not meet their requirements, and there are other approved tools listed in the award which the ADEs could choose to move to.

It is our preference that a modified SWS tool be developed and approved through the FWC conciliation process, and that this become the default wage assessment tool in the SES Award. The development of a new wage assessment tool could well take months or even years. However, the conciliation process and possible development of a new tool does not abrogate the responsibility of the Commonwealth to meet its one-year deadline to the AHRC. The granting of the exemption was not premised on a conclusion that a new tool would be designed and implemented through the award system within the stipulated timeframe; rather, it was premised on a view that there were other tools already available to transition to. That remains the case. The fact that the union movement and others are taking a lead on improving the SWS does not detract from that, and workers with disabilities should not be penalised as a consequence of these efforts.

The FWC has now published a consent order varying the award in order to remove the BSWAT from the list of approved wage tools. This removal is subject to transitional arrangements until 31 October 2015, with a further extension to 26 February 2016 following application in writing. We believe that these transitional arrangements are more than sufficient to enable the Commonwealth to transition the remaining ADEs away from the BSWAT and onto an alternative tool. Were the AHRC to approve another extension, this would only serve to create confusion given a transitional timeframe has already been agreed to by all parties.

Finally, it is important not to lose sight of the real issue at stake in this process; that is, wage justice for workers with disability. For every day that passes while the exemption remains in place, workers with intellectual disability are being discriminated against in their workplaces. They deserve to be assessed and remunerated fairly for their work, and this cannot occur while the exemption remains in place. More than two and a half years after the Nojin decision, it is long past time for BSWAT to be removed from use, and I urge the AHRC to lift the exemption so that all parties can now move forward.

Kind regards,



Scott Connolly
Assistant Secretary