



**Victorian Equal Opportunity
& Human Rights Commission**

Our ref: [PE:CD/14/302409]

23 July 2014

Committee Secretary
Senate Standing Committee on Community Affairs
Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: community.affairs.sen@aph.gov.au

Dear Committee Secretary

**Business Services Wage Assessment Tool Payment Scheme Bill 2014 and
Business Services Wage Assessment Tool Payment Scheme (Consequential
Amendments) Bill 2014**

The Victorian Equal Opportunity and Human Rights Commission (**Commission**) is an independent statutory authority that is Victoria's lead agency in promoting and protecting human rights and equality.

The Commission has responsibilities under the *Equal Opportunity Act 2010* and the *Charter of Human Rights and Responsibilities Act 2006* to promote and advance the objectives of those laws. These laws apply in Victoria alongside federal human rights and anti-discrimination laws.

The Business Services Wage Assessment Tool Payment Scheme Bill 2014, together with the Business Services Wage Assessment Tool Payment Scheme (Consequential Amendments) Bill 2014 will establish a payment scheme for employees in Australian Disability Enterprises (**ADEs**) with intellectual impairment who previously had their wages assessed under the Business Services Wage Assessment Tool (**Payment Scheme**).

The Payment Scheme to be established by the Bills will be available across Australia and many Victorian employees may be eligible to apply for the Payment Scheme. ADEs operate in Victoria, employing people with a disability in a range of industries.

The proposed Payment Scheme will impact on the rights of Victorians with a disability, including their rights to equality and non-discrimination, privacy and reputation, effective remedy, just and favourable conditions of work, fair hearing and rights to self-determination.

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The Commission has concerns that the Payment Scheme may infringe rights to equality and non-discrimination.¹ People with disabilities have the right to participate in employment without discrimination and are entitled to equal remuneration for work of equal value. Equality and non-discrimination are fundamental rights in our society and limitations on those rights are subject to stringent levels of justification.²

The Commission notes that current payment arrangements for employees in ADEs with an intellectual disability have been found to be discriminatory.³ The Payment Scheme proposes that a person may receive payment of an amount equal to 50 per cent of what a person would have been paid, had their wages been assessed only on the productivity component of BSWAT. It is unclear how this provides an effective, or non-discriminatory, remedy for people with intellectual disabilities.

The Commission also supports the comments of the Parliamentary Joint Committee on Human Rights in its request for further information from the Minister regarding the Bills.⁴ In Victoria, the *Charter of Human Rights and Responsibilities Act 2006* provides that limitations on human rights are only permissible where those limitations are reasonably justified. The questions of the Joint Committee on Human Rights are relevant to determining if the proposed limits on rights in the Bills are justified.

Yours sincerely

Kate Jenkins
Commissioner

¹ The right to equality is recognised in Victoria's *Charter of Human Rights and Responsibilities Act 2006* (Vic) section 8 and the aims of the *Equal Opportunity Act 2010* (Vic) include to eliminate discrimination, promote and protect the right to equality and to promote and facilitate the progressive realisation of equality (section 3).

² *Lifestyle Communities (No 3) (Anti-Discrimination)* [2009] VCAT 1869 at [107].

³ See *Nojin v Commonwealth* [2012] FCAFC 192. Note that the Australian Human Rights Commission has granted an exemption to Commonwealth and all Australian Disability Enterprises from the Disability Discrimination Act 1992 (Cth) for a period of 12 months: Australian Human Rights Commission, *Notice of Grant of A Temporary Exemption*, 29 April 2014.

⁴ Joint Parliamentary Committee on Human Rights (2014), *Ninth Report of the 44th Parliament*, 2-12.