

Community Affairs Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
SOCIAL SERVICES PORTFOLIO

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

Date: 24 July 2014

Question No: 1

Hansard Page: 8

Topic: Nominees – conflict of interest

(A) Senator MOORE (p.36): I would like to have from the department some clear statements around the standard nature of this nominee process. It has come up in three separate lots of evidence today—that is, concerns about the nominee section—and I am interested to know whether those concerns had been discussed when the bill was being drawn up.

Senator MOORE (p.36):We have been asking this all day: is the sequence of legislation about nominees that we have in this bill the standard legislation about nominees that we have identified now for the NDIS process and so on?

(B) CHAIR (p.35-6): One of the criticisms of the bill that has been made by witnesses has been clause 50 and the fact that the Secretary can appoint a person to be a nominee of a participant for the purposes of the act either at the request of the participant or on the initiative of the Secretary. Are you able to take us through what the intention is behind that clause?

(C) Senator SIEWERT (p.36): You would have heard the evidence from PWD and the AED around the possibility that a director of an ADE could be appointed for a group of people. Is that a possibility under the -

Answer:

Article 12 of the International Convention on the Rights of Persons with Disabilities commits countries to ensuring that people with disability can exercise legal capacity in all aspects of their life and receive appropriate support to do this if required.

The BSWAT Payment Scheme Bill is beneficial legislation and attempts, as far as possible, to achieve supported decision making rather than substituted decision making. The nominee provisions in the Bill and proposed rules are based upon the provisions in the *National Disability Insurance Scheme Act 2013* and *National Disability Insurance Scheme (Nominees) Rules 2013* under the National Disability Insurance Scheme (NDIS) and the *Social Security (Administration) Act 1991* for the purposes of Social Security legislation. Both the NDIS and Social Security legislation deliver assistance and payments to people with intellectual disability.

The nominee provisions in the Bill and proposed rules have been largely based on the wording and structure of the NDIS legislation. For example, the provisions in the Bill and proposed rules relating to appointments and duties of nominees under the BSWAT Payment Scheme closely reflect the provisions about appointment and duties of nominees under the NDIS legislation (proposed rules listed below).

The main difference between the nominee provisions in the Bill and NDIS legislation is the collapsing of two types of NDIS nominees, 'a plan and correspondence nominee' to 'a nominee' in the BSWAT Payment Scheme. The Social Security legislation also provides for two types of nominees, 'a correspondence and payment nominee'. However, there is no requirement for two types of nominees under the BSWAT Payment Scheme.

Clause 50 of the Bill allows the appointment of a nominee that may be made at the request of the participant or on the initiative of the Secretary or delegate. Paragraph 51(1)(b) requires the Secretary to take into consideration the preferences (if any) of the participant regarding the making of the appointment. Nominee appointments can be limited in relation to matters and have a specified term.

The Bill requires the nominee (as a prescribed duty) to 'ascertain the preferences of the participant in relation to the BSWAT Payment Scheme and to act in a manner that gives effect to those preferences' (subclause 46 (1)). When appointing a person as a nominee, the Secretary must consider whether the person is able to comply with this duty as well as being able to comply with other matters referred to in clause 46 of the Bill (subclause 51(2)).

It should be noted that, of all workers in Australian Disability Enterprises in August 2014, regardless of their disability type:

- 80 per cent have a nominee for social security purposes; and
- 19 per cent do not have a nominee for social security purposes.

The remaining 1 per cent are unable to be data matched, are no longer active, or overseas.

The rules for the legislation, which cover nominees, are in the process of being drafted. All rules will require a Statement of Human Rights Compatibility to be included at the time of lodgement.

However, the Department can confirm that the proposed rules will be drafted to include overarching principles for decision making reflecting those set out the Australian Law Reform Commission's discussion paper, Equality, Capacity and Disability in Commonwealth Laws. These principles broadly reflect the principles under the NDIS legislation.

These are that:

- Every adult has the right to make decisions that affect their life and to have those decisions respected.
- Persons who may require support in decision-making must be provided with the support necessary for them to make, communicate and participate in decisions that affect their lives.
- The will, preferences and rights of persons who may require decision-making support must direct decisions that affect their lives.

- Decisions, arrangements and interventions for persons who may require decision-making support must respect their human rights.

It is proposed that the rules will specify, among other things, that the nominee must:

- Support decision-making by the participant personally;
- Have regard and give appropriate weight to the views of the participant;
- Avoid or manage any conflict of interest in relation to the nominee and participant;
- Provide support to the participant to express their preferences in making decisions in respect of accepting or declining an offer from the scheme;
- Communicate to the participant, the process, decision and implications of decisions relating to the BSWAT Payment Scheme;
- Promote and safeguard the participant's human rights and act in the way least restrictive of those rights; and
- Recognise and respect the cultural and linguistic circumstances of the participant and ensure appropriate form of communication is used.

In appointing a nominee under clause 50, it is proposed the Secretary must have regard to (among other things) the following considerations about the proposed nominee:

- the relationship between the participant and the proposed nominee;
- understanding and commitment to performing the duties of a nominee;
- sensitivity to the cultural and linguistic circumstances of the participant;
- familiarity with assistive technology used by the participant;
- ability to act with other supporters and representatives for the participant's wellbeing;
- the understanding of the proposed nominee of the duties of a nominee;
- familiarity with, and ability to work with, any assistive technology used by the participant;
- ability to act in conjunction with other supporters and representatives to maximise the participant's wellbeing
- ability of the proposed nominee to undertake the duties of a nominee under the Bill;
- ability to involve the participant in decision making processes;
- ability to assist the participant to make their own decisions;
- ability to determine what judgments/decisions the participant may have made for themselves;
- desirability of preserving family relationships and informal support networks of the participant;
- relevant views of other people within the participant's circle of support;
- any conflict of interest;
- whether a court appointed decision maker is already in place; and
- whether the applicant already has identified a nominee.

The rules will also include a provision that identifies persons who must not be appointed as nominees. This will exclude the following persons from being appointed as a nominee:

- a recipient of a grant made under Part II of the *Disability Services Act 1986* or an employee of such a recipient (for example, ADEs and employees of ADEs); and
- a person employed by the Department.

However, exceptions will be made in certain circumstances – for example, if the person is also a relative, or already an existing nominee for Social Security purposes.

Please list all other Branches/Agencies/Departments Consulted:

1. Public Law Branch

Date: 24 July 2014

Question No: 2

Hansard Page: pp5-6,

Topic: ADEs in remote or regional towns

Senator MOORE: Most of the ADEs, if not all of them, are in significant centres though. You do not have big ADEs in remote or regional towns..... We will get the department to give us a list.

Answer:

This is not a complete list of ADE's. These are the ADE outlets located in remote or regional towns based on the Accessibility Regional Index of Australia (ARIA). There are Australian Disability Enterprises in both inner and outer regional Australia. Some of these organisations are proportionately large organisations because of the size of the population of the town in which they are located.

State	Outlet Name	Outlet - ARIA+ 2006
NSW	Bourke Laundry Service Incorporated - Bourke	Remote Australia
NSW	Castlereagh Industries St Vincent de Paul	Remote Australia
NSW	NOVA Employment - Far West	Remote Australia
NSW	Western District Supported Employment	Remote Australia
NT	Lifestyle Solutions (Aust) Ltd - Bindi Centasales	Remote Australia
SA	Bedford - Port Lincoln	Remote Australia
WA	Activ Esperance	Remote Australia
NSW	Gwydir Industries - Moree	Outer Regional Australia
NSW	House With No Steps - Lachlan Region	Outer Regional Australia
NSW	Kurrajong Waratah - Leeton	Outer Regional Australia
NSW	Kurrajong Waratah - Narrandera	Outer Regional Australia
NSW	Kurrajong Waratah - West Wyalong	Outer Regional Australia
NSW	Louisa's Fine Foods	Outer Regional Australia
NSW	Nambucca Valley Phoenix	Outer Regional Australia
NSW	Ningana Enterprises - Griffith	Outer Regional Australia
NSW	Northaven Limited - Inverell	Outer Regional Australia
NSW	Picton Plants	Outer Regional Australia
NSW	Spindler Street Packaging Services	Outer Regional Australia
NSW	Stitches and Prints	Outer Regional Australia
NSW	Tulgeen Group Riverside Nursery - Bega	Outer Regional Australia
NT	Kokoda Industries	Outer Regional Australia
NT	Palmerston Business Service	Outer Regional Australia
QLD	Endeavour Industries Bowen	Outer Regional Australia
QLD	Endeavour Industries Cairns	Outer Regional Australia

QLD	Endeavour Industries Home Hill	Outer Regional Australia
QLD	Endeavour Industries Innisfail	Outer Regional Australia
QLD	Endeavour Industries Mareeba	Outer Regional Australia
QLD	Endeavour Industries Townsville	Outer Regional Australia
QLD	Gumnut Place	Outer Regional Australia
SA	Bedford - Kadina	Outer Regional Australia
SA	Bedford - Millicent	Outer Regional Australia
SA	Bedford - Port Pirie	Outer Regional Australia
SA	Loxton Business Service	Outer Regional Australia
SA	Melaleuca Business Service	Outer Regional Australia
SA	Phoenix Society Inc. Whyalla Outlet	Outer Regional Australia
SA	Port Augusta Business Service	Outer Regional Australia
SA	Port Pirie Business Service	Outer Regional Australia
SA	Wesley Social Enterprises Kingston	Outer Regional Australia
SA	Wesley Social Enterprises Whyalla	Outer Regional Australia
SA	Wood Werx - Clare	Outer Regional Australia
TAS	Tahune Fields	Outer Regional Australia
TAS	Vincent Industries	Outer Regional Australia
VIC	All Star Access	Outer Regional Australia
VIC	Cooinda	Outer Regional Australia
VIC	Kyeema Business Services	Outer Regional Australia
VIC	McCallum Industries - St Arnaud	Outer Regional Australia
VIC	Noweyung Disability Enterprises	Outer Regional Australia
VIC	Noweyung Disability Enterprises (Orbost)	Outer Regional Australia
VIC	Sunraysia Supported Employment Services	Outer Regional Australia
VIC	Task Force Kerang	Outer Regional Australia
VIC	Task Force Swan Hill	Outer Regional Australia
VIC	The Wool Factory	Outer Regional Australia
VIC	Warracknabeal Laundromat	Outer Regional Australia
VIC	Wimmera UnitingCare	Outer Regional Australia
VIC	Woodbine Adult Services Employment Programs	Outer Regional Australia
WA	Activ Albany	Outer Regional Australia
WA	Activ Geraldton	Outer Regional Australia
WA	Activ Kalgoorlie	Outer Regional Australia
WA	Shire of Manjimup	Outer Regional Australia

State	Outlet Name	Outlet - ARIA+ 2006
NSW	Access Industries - Lithgow	Inner Regional Australia
NSW	Ballina Shire Council Regional Works Crew	Inner Regional Australia

State	Outlet Name	Outlet - ARIA+ 2006
NSW	Byron Bay Herb Nursery	Inner Regional Australia
NSW	Caloola Vocational Services Incorporated - Cessnock	Inner Regional Australia
NSW	Challenge Contract Services	Inner Regional Australia
NSW	Challenge Laundry Service	Inner Regional Australia
NSW	Challenge Recycling	Inner Regional Australia
NSW	Challenge Sewing Service	Inner Regional Australia
NSW	Challenge Tweed Business Services	Inner Regional Australia
NSW	DSA Business Services- Braemar (Mittagong)	Inner Regional Australia
NSW	Elouera Industries	Inner Regional Australia
NSW	Endeavour Industries - Cessnock	Inner Regional Australia
NSW	Endeavour Industries - Goulburn	Inner Regional Australia
NSW	Endeavour Industries Ltd	Inner Regional Australia
NSW	Flagstaff Shoalhaven	Inner Regional Australia
NSW	Glenray Industries	Inner Regional Australia
NSW	Huntley Berry Farm	Inner Regional Australia
NSW	Kalianna Twin City Laundry	Inner Regional Australia
NSW	Kalianna Workshop and Contract Services	Inner Regional Australia
NSW	Koombah Enterprises	Inner Regional Australia
NSW	Koora Industries	Inner Regional Australia
NSW	Kurrajong Waratah - Wagga Wagga	Inner Regional Australia
NSW	Kurrajong Waratah A-Team Workcrew	Inner Regional Australia
NSW	Kurrajong Waratah Divine Foods	Inner Regional Australia
NSW	Lambing Flat Employment Services	Inner Regional Australia
NSW	LEAD NSW	Inner Regional Australia
NSW	LFE Breakout Industries	Inner Regional Australia
NSW	Macleay Valley Enterprises	Inner Regional Australia
NSW	Manning Great Lakes Mowing Services	Inner Regional Australia
NSW	Mid-Western Regional Council - Mudgee Recycling	Inner Regional Australia
NSW	Mullala Nursery - A Division of Yumaro Industries	Inner Regional Australia
NSW	Multitask Human Resource Foundation Limited	Inner Regional Australia
NSW	New Horizons Enterprises - Coffs Harbour	Inner Regional Australia
NSW	Orara & Clarence Industries	Inner Regional Australia
NSW	Slice of Life (Aust.) Pty Limited	Inner Regional Australia
NSW	Summerland House	Inner Regional Australia
NSW	The Ascent Group	Inner Regional Australia
NSW	Valley Industries.	Inner Regional Australia

State	Outlet Name	Outlet - ARIA+ 2006
NSW	Valmar Employment Support	Inner Regional Australia
NSW	Wangarang Industries - Orange	Inner Regional Australia
NSW	Welby Garden Centre	Inner Regional Australia
NSW	Westhaven Industries	Inner Regional Australia
NSW	Willing & Able Foundation	Inner Regional Australia
NSW	Windara Communities	Inner Regional Australia
NSW	Witmore Enterprises	Inner Regional Australia
NSW	Yumaro Industries	Inner Regional Australia
QLD	Anuha Supported Employment Service	Inner Regional Australia
QLD	Australian Red Cross Society - Gympie	Inner Regional Australia
QLD	Endeavour Industries Bundaberg	Inner Regional Australia
QLD	Endeavour Industries Gladstone	Inner Regional Australia
QLD	Endeavour Industries Gympie	Inner Regional Australia
QLD	Endeavour Industries Kingaroy	Inner Regional Australia
QLD	Endeavour Industries Mackay	Inner Regional Australia
QLD	Endeavour Industries Maryborough	Inner Regional Australia
QLD	Endeavour Industries Rockhampton	Inner Regional Australia
QLD	Endeavour Industries Toowoomba	Inner Regional Australia
QLD	Endeavour Industries Warwick	Inner Regional Australia
QLD	IMPACT Make Your Mark	Inner Regional Australia
SA	Bedford - Mount Gambier	Inner Regional Australia
SA	Mount Gambier Business Service	Inner Regional Australia
SA	Mt Barker Supported Employment	Inner Regional Australia
SA	Murray Bridge Business Service	Inner Regional Australia
SA	Victor Harbor Supported Employment	Inner Regional Australia
SA	WoodWerx Nuriootpa	Inner Regional Australia
TAS	Bluegum Home & Garden Maintenance	Inner Regional Australia
TAS	BlueLine Laundry Inc	Inner Regional Australia
TAS	Colony 47	Inner Regional Australia
TAS	Devon Industries	Inner Regional Australia
TAS	Oak Metro	Inner Regional Australia
TAS	Plane Tree Studio	Inner Regional Australia
TAS	Self Help Workplace	Inner Regional Australia
TAS	St Vincent Industries, Hobart	Inner Regional Australia
TAS	TADPAC Print	Inner Regional Australia
TAS	Tastex Knitwear Inc.	Inner Regional Australia
VIC	ASTERIA Business Services	Inner Regional Australia
VIC	Aware Industries	Inner Regional Australia
VIC	Ballarat Regional Industries	Inner Regional Australia

State	Outlet Name	Outlet - ARIA+ 2006
VIC	Bendigo Access Employment	Inner Regional Australia
VIC	CAL Industries (Yooralla)	Inner Regional Australia
VIC	Connect GV Business Enterprises	Inner Regional Australia
VIC	Connecting Skills Australia - Moonya	Inner Regional Australia
VIC	Dual Ware Mooroopna	Inner Regional Australia
VIC	Foster Place	Inner Regional Australia
VIC	G.A.T.E Enterprises (Yooralla)	Inner Regional Australia
VIC	Green Thumbs Service Team	Inner Regional Australia
VIC	Integ Work Crew	Inner Regional Australia
VIC	Jiffy Business Services	Inner Regional Australia
VIC	Kyneton Copy Centre	Inner Regional Australia
VIC	Latrobe Valley Enterprises - Morwell	Inner Regional Australia
VIC	Mawarra Centre - Warragul	Inner Regional Australia
VIC	McCallum Industries	Inner Regional Australia
VIC	Merriwa Industries	Inner Regional Australia
VIC	Murray Valley Centre Supported Employment Service	Inner Regional Australia
VIC	Noweyung Disability Enterprises (Sale)	Inner Regional Australia
VIC	Pinnacle Employment Services Ararat	Inner Regional Australia
VIC	Pinnacle Employment Services Stawell	Inner Regional Australia
VIC	Radius Disability Services	Inner Regional Australia
VIC	St Laurence Business Enterprises, Colac	Inner Regional Australia
VIC	Task Force Echuca	Inner Regional Australia
VIC	VATMI Industries Bendigo	Inner Regional Australia
VIC	VATMI Industries Wangaratta	Inner Regional Australia
VIC	Western District Employment Access (WDEA)	Inner Regional Australia
WA	Activ Bunbury	Inner Regional Australia
WA	Intework Peel	Inner Regional Australia
WA	Workpower Mandurah	Inner Regional Australia

Please list all other Branches/Agencies/Departments Consulted:

1. Not required.

Topic: Financial Counselling and Legal Advice

(A) **Senator MOORE (p.43):** My first question is to do with aspect of the financial counselling and legal advice that people are going to need. I want to know whether the department has any information on the availability of services with experience of working with people with intellectual disability across the board in that area. You can take that on notice. It is a precondition, so you have to have it.

(B) **Senator MOORE (p.43)** "...whether it (payment system for financial and legal counselling) is going to be some kind of voucher system and how that is going to operate. So we would like to have that on the record.

Answer:

Individuals are required to seek both financial counselling and legal advice, and acquire compliant certificates for both, to lodge an effective acceptance of an offer received from the Scheme.

Individuals are able to approach a legal practitioner of their choosing, and the BSWAT Payment Scheme will provide a capped level of funding to pay for legal costs associated with this activity. Legal practitioners, even in sole practice, deal with a wide range of issues associated with legal capacity and competency. The Department will develop an online catalogue of legal firms which have expressed a willingness to provide advice in relation to offers under the BSWAT Payment Scheme. This catalogue will include capacity for a firm to provide a brief outline of their experience, including their experience working with people with Intellectual Disability.

The Department has also consulted with Financial Counselling Australia, the peak body for financial counsellors in Australia, and discussed the experience of Financial Counsellors to work with people with Intellectual Disability. Following these discussions the Department is confident about the skills of Financial Counsellors to support applicants to the scheme. To support both the legal practitioners and the financial counsellors, the Department will develop support material focussed on communicating with, ensuring the understanding of, and providing advice to, people with Intellectual Disability.

People with disability who are eligible for the BSWAT Payment Scheme will be able to exercise choice and control. This mirrors arrangements with the National Disability Insurance Scheme (NDIS) which allows participants to have choice and control about the reasonable and necessary supports that are identified in their personal plan. In addition to choosing whether or not they take a payment from the Scheme based on the offer they receive, the participant is also able to choose a legal practitioner and financial counsellor who best suits their needs. Like the NDIS, the Department will publish the names and firms of legal practitioners and financial counsellors who have expressed an interest in delivering legal advice and financial counselling to Scheme participants, and their experience in working with people with disability. This will assist participants in choosing the practitioner who best suits their needs.

Please list all other Branches/Agencies/Departments Consulted:

Not required

Date: 24 July 2014

Question No: 4

Hansard Pages: 38 and 39

Topic: Consultation

- A. Senator SIEWERT (p.38):** Can I take us back to consultation. It is fair to say that everyone we spoke to this morning said that they had not been consulted other than that their ADEs had been briefed. Can you take us through what consultation process you have undertaken to develop this?
- B Senator SIEWERT (p.39):** Can you take on notice to give us a list of the people who attended those roundtables?
- C. Senator MOORE (p.39):** And where they were?

Answer:

In July 2013, the Department undertook extensive consultations on the **Future of wage assessments in Australian Disability Enterprises**. Feedback from the sessions has been considered in deciding the approach to the BSWAT issue. (Feedback reports from the sessions are attached).

The Department facilitated sessions for Australian Disability Enterprises (ADEs) and stakeholders. In total, representatives from 120 Australian Disability Enterprises (ADEs), 27 Advocacy Agencies, 5 peak bodies and one union peak attended. The sessions were held in Sydney, Tasmania, Melbourne, Adelaide, Perth and Brisbane.

The Department invited all ADEs and National Disability Advocacy Programme agencies to attend the sessions, which included the offer to reimburse travel to those in regional/remote areas so no organisation was excluded from attending. After the sessions, organisations were sent the summary report and presentation.

Representatives from the National Council on Intellectual Disability; AED, People with Disabilities, National Disability Services and Speak out Advocacy Tasmania attended the July consultations sessions.

The Department contracted facilitators from the Department of Human Services (who are experienced with consulting people with intellectual disability) to undertake the sessions for supported employees and parents and carers. 317 people attended the 59 sessions in both urban and regional locations.

Further detail about who attended sessions, and where they were held, are in tables below.

Information sessions: Attendance Stakeholders

	Sydney	Tasmania	Melbourne	Adelaide	Perth	Brisbane
ADEs	2 sessions	1 session	2 sessions	1 session	1 session	1 session
Stakeholders	1 session	1 session	1 session	1 session	1 session	1 session

Departmental Consultation Sessions with Australian Disability Enterprises	
1	Ability Options Limited
2	Ability Works Australia Limited
3	Access Industries for the Disabled Limited
4	Accord (St John of God)
5	Achieve Australia Limited
6	Activ Foundation Inc
7	Anuha Supported Employment Services
8	Ascalon Enterprises
9	ASTERIA Business Services and Employment
10	Ballina Shire Council
11	Barkuma Inc
12	Barossa Enterprises Inc
13	Bedford Group Inc
14	Bendigo Access Employment Inc
15	Blue Mountains Disability Services Ltd
16	Brunswick Industries Association Inc
17	CatholicCare
18	Cerebral Palsy League of Queensland
19	Challenge Southern Highlands
20	Challenge Tweed Inc
21	Colony 47
22	Connect GV
23	Connecting Skills Australia
24	Delando Corporation Limited
25	Devonfield Enterprises Inc
26	Disability Services Australia Limited
27	Eastern Outsource (ADE) (Mokami Centre Inc)
28	Elouera Association (Inc)
29	Endeavour Foundation Industries
30	Eurla Community Services Inc
31	Finding Workable Solutions
32	Flagstaff (Wollongong)
33	Gilgandra Council
34	Good Samaritan Industries
35	Goodwill Engineering
36	Greenacres Disability Services
37	Hands on South Australia Limited
38	HELP Enterprises
39	HiCity
40	Holy Cross Laundry Limited
41	Horizon Foundation Omc
42	House with No Steps
43	Illawarra Vocational Services
44	Intework Inc
45	Karakan, KBH Enterprises

46	Knoxbrooke
47	Kommercial
48	Koomarri
49	Kurrajong Waratah
50	Kurri Kurri Community Centre
51	Kyeema Support Services Incorporated
52	Lead ACT
53	Macarthur Disability Services Ltd
54	Mach2 Australia Limited
55	Mai-Wel Limited
56	Mambourin Enterprises Inc
57	Marme Garden Services
58	Marriott Support Services
59	McCallum Disability Services Inc
60	Mercy Community Services
61	Merriwa Industries Limited
62	Minda Inc
63	Miroma
64	Multicap
65	Multitask Human Resource Foundation Ltd
66	Murray Valley Centre Incorporated
67	Nadrasca
68	Nambucca Phoenix Ltd
69	New Horizons Enterprises Ltd
70	Northern Occupational Support Service
71	Noweyung Ltd
72	NWEG Inc (North West Employment Group Inc)
73	Oak Tasmania
74	Oakleigh
75	Oakleigh Centre Industries
76	On Track Community Programs
77	Orana Incorporated
78	ORARA & Clarence Industries Louisa's Fine Foods (Carringa Enterprises)
79	Outlook Victoria
80	Packforce
81	Paramount Workforce
82	Pathways Rehabilitation and Support Services
83	Peter Harcott Disability Services
84	Plane Tree Studio
85	Product Action Incorporated
86	Red Cross College
87	RSB Industrial Services - Clean Room
88	SA Group Enterprises Inc
89	Salvation Army
90	Samaritans Foundation
91	Scope (Victoria) Limited

92	Self Help Workplace and Encore Clothing
93	SkillsConnection, Colac
94	Society St Vincent de Paul (St Vincent Industries Inc)
95	Spinal Cord Injuries Australia
96	Spine and Limb Foundation (Paraquad Industries)
97	St Vincent Industries
98	Sunnyfield
99	Sylvanvale Foundation
100	Tadpac Print
101	Tastetex Knitwear and Uniforms
102	Terama Industries
103	Thorndale Foundation Limited
104	UnitingCare West
105	Valley Industries Limited
106	Valmar Support Services Limited
107	VATMI
108	VincentCare Victoria - ADE Ozanam Enterprises
109	Wangarang Industries Limited
110	Waverley Helpmates Inc
111	Waverley Industries Limited
112	Wesley Mission Victoria
113	Wesley Mission, Disability Respite Operations
114	Wesley Social Enterprises
115	Westcare Inc
116	Western District Supported Employment Services Inc
117	Windgap Foundation Ltd
118	WISE Employment Limited
119	Workpower Inc
120	Yooralla
Departmental Consultation Sessions with Stakeholders - Advocacy Agencies	
1	A.C.T. Disability, Aged and Carer Advocacy Service (ADACAS)
2	Advocacy for Inclusion (via video Conference)
3	Advocacy SouthWest Inc
4	Advocacy Tasmania
5	AED Legal Centre
6	Barwon Disability Resource Council
7	Citizen Advocacy Launceston
8	Citizen Advocacy
9	Disability Advocacy Network Australia (DANA)
10	Disability Advocacy and Complaints Services SA
11	Disability Rights Advocacy Services
12	Ethnic Disability Advocacy Centre (EDAC)
13	Gippsland Disability Advocacy Inc
14	Grampians Disability Advocacy
15	Intellectual Disability Rights Services
16	Leadership Plus

17	MIDLAS
18	Newell Advocacy
19	People with Disabilities Australia
20	People with Disabilities WA
21	Personal Advocacy Service
22	Queensland Advocacy Incorporated
23	Rights in Action, QLD
24	Side by Side Advocacy
25	Southern Disability Advocacy
26	Speak Out Advocacy Hobart
27	Victorian Mental Illness Awareness Council

Departmental Consultation Sessions with Stakeholders – Peak bodies

1	Australian Federation of Disability Organisations
2	Australian Foundation for Disability (AFFORD)
3	Downs Syndrome Australia
4	Jobs Australia, Community Sector Industrial Relations
5	National Council on Intellectual Disability
6	National Disability Services
7	Australian Council of Trade Unions

DHS Consultation Sessions with supported employees and parents and carers

Date	Site	Location	State	Session type	No. Participants
16/07/2013	BRI - Wendouree	Ballarat	VIC	SE	7
16/07/2013	BRI - Wendouree	Ballarat	VIC	Parent	1
16/07/2013	BRI - Wendouree	Ballarat	VIC	SE	6
16/07/2013	BRI - Sebastopol	Ballarat	VIC	SE	6
16/07/2013	BRI - Sebastopol	Ballarat	VIC	SE	6
16/07/2013	BRI - Sebastopol	Ballarat	VIC	Parent	4
16/07/2013	BRI - Wendouree	Ballarat	VIC	Individual	2
17/07/2013	Vatmi	Keon Park	VIC	SE	5
17/07/2013	Vatmi	Keon Park	VIC	SE	5
17/07/2013	Vatmi	Keon Park	VIC	SE	4
17/07/2013	Vatmi	Keon Park	VIC	SE	5
17/07/2013	Vatmi	Keon Park	VIC	Parent	13
17/07/2013	Vatmi	Keon Park	VIC	Individual	2
17/07/2013	Vatmi	Keon Park	VIC	Individual	2
18/07/2013	St Vincent Industries	Hobart	TAS	SE	5
18/07/2013	Tastex	Glenorchy	TAS	SE	12
18/07/2013	Tastex	Glenorchy	TAS	Individual	3
18/07/2013	Tadpac	Glenorchy	TAS	SE	7
18/07/2013	Tadpac	Glenorchy	TAS	SE	8
18/07/2013	Tadpac	Glenorchy	TAS	Individual	2
18/07/2013	Tas combined	Glenorchy	TAS	Parent	12
22/07/2013	Bedford	Adelaide	SA	SE	4

Date	Site	Location	State	Session type	No. Participants
22/07/2013	Bedford	Adelaide	SA	SE	7
22/07/2013	Bedford	Adelaide	SA	SE	5
22/07/2013	Bedford	Adelaide	SA	Parent	19
22/07/2013	Bedford	Adelaide	SA	Individual	2
23/07/2013	AFFORD	Sydney	NSW	SE	4
23/07/2013	AFFORD	Sydney	NSW	SE	5
23/07/2013	AFFORD	Sydney	NSW	SE	5
23/07/2013	AFFORD	Sydney	NSW	SE	5
23/07/2013	AFFORD	Sydney	NSW	Individual	2
23/07/2013	AFFORD	Sydney	NSW	Individual	2
23/07/2013	AFFORD	Sydney	NSW	Parent	5
23/07/2013	House with no Steps	Alstonville	NSW	SE	6
23/07/2013	House with no Steps	Alstonville	NSW	SE	5
23/07/2013	House with no Steps	Alstonville	NSW	SE	6
23/07/2013	House with no Steps	Alstonville	NSW	SE	6
23/07/2013	House with no Steps	Alstonville	NSW	Individual	3
23/07/2013	House with no Steps	Alstonville	NSW	Individual	2
25/07/2013	Endeavour	Bundaberg	QLD	SE	4
25/07/2013	Endeavour	Bundaberg	QLD	SE	5
25/07/2013	Endeavour	Bundaberg	QLD	SE	4
25/07/2013	Endeavour	Bundaberg	QLD	Individual	1
25/07/2013	Endeavour	Bundaberg	QLD	Individual	2
25/07/2013	Endeavour	Bundaberg	QLD	Parent	15
30/07/2013	Mylestones	Rocklea	QLD	Parent	3
30/07/2013	Mylestones	Rocklea	QLD	SE	8
30/07/2013	Mylestones	Rocklea	QLD	SE	9
30/07/2013	Mylestones	Strathpine	QLD	SE	8
30/07/2013	Mylestones	Strathpine	QLD	Individual	2
30/07/2013	Mylestones	Strathpine	QLD	Parent	5
31/07/2013	Workpower	Perth	WA	SE	5
31/07/2013	Workpower	Perth	WA	SE	11
31/07/2013	Workpower	Perth	WA	SE	6
31/07/2013	Workpower	Perth	WA	Individual	2
31/07/2013	Workpower	Perth	WA	Individual	2
31/07/2013	Workpower	Perth	WA	Parent	10
9/8/2013	RSB SA	Phone	SA	Individual	1
Total Attendance at Sessions					317

Please list all other Branches/Agencies/Departments Consulted:

1. Not required

Date: 24 July 2014

Question No: 5

Hansard Page: 43

Topic: Application of Nojin and Prior

Senator MOORE: So the Commonwealth still believes that it is not discriminatory?

Senator MOORE: Do we have anything on that that actually spells out the Commonwealth's position?

Senator MOORE: That would be very useful. None of the evidence today has actually brought it out that the Commonwealth is in disagreement about the judgements on the case.

Answer

The judgment of the Full Court of the Federal Court in *Nojin v Commonwealth of Australia* (2012) FCAFC 192 (21 December 2012) (*Nojin*) found that two workers with intellectual disability (Messrs Nojin and Prior) were indirectly discriminated against because of a requirement that they undergo a wage assessment using the BSWAT to achieve a higher wage outcome.

The findings of unlawful discrimination made by the Court were made in relation to Messrs Nojin and Prior *only* and were made by reference to, and were based on, the particular evidence before the Court and the particular findings of fact made by the Court in those two proceedings. The findings of the Court do not apply to all workers with intellectual disability who have had their wages assessed under the BSWAT. Whether it was lawful to use the BSWAT to assess their wages, or whether these persons have been unlawfully discriminated against, will turn on the particular circumstances of each case. The Australian Government does not agree that use of the BSWAT to assess the wages of all intellectually disabled employees constituted unlawful discrimination.

This has been the position of the Commonwealth throughout the BSWAT proceedings. This view was also stated and debated with stakeholders during the consultation sessions in July 2013.

A regularly expressed assumption is that the Court found in *Nojin* that use of the BSWAT to assess the wages of all intellectually disabled employees constitutes (or constituted) unlawful discrimination. The Australian Government does not agree with this assumption (which is not the effect of the Court's decision in *Nojin*) and does not agree that use of the BSWAT to assess the wages of all intellectually disabled employees constituted unlawful discrimination.

Furthermore, no compensation was ordered by the Federal Court for Messrs Nojin and Prior as the claim for compensation was abandoned during the running of the legal proceedings. Accordingly, the Court did not consider the difficult question of how any compensation should have been calculated for Messrs Nojin and Prior.

However, it is the Australian Government's position that, in order to avoid further potentially protracted and expensive legal debate, to ensure the stability of the supported employment sector and having regard to feedback received from all sections of the sector, proactive action has been commenced by the Commonwealth. This includes the establishment of the BSWAT Payment Scheme which will provide a payment to eligible workers who have had their wages assessed using the BSWAT. The BSWAT Payment Scheme seeks to provide reassurance to people with disability, their parents and carers, and to supported employers by removing any perceived liability on the part of supported employers (ADEs) that have used the BSWAT to assess the wages of their employees. [After the Full Federal Court's judgment in the Michael Nojin and Gordon Prior proceedings, many ADEs feared that legal action would be commenced against them by their present and former employees for compensation in relation to the use of the BSWAT to assess their wages. Many ADEs feared that their businesses would have to close because of a perceived liability for these claims.]

Please list all other Branches/Agencies/Departments Consulted:

1. Public Law Branch

Date: 24 July 2014

Question No: 6

Hansard Page: 40

Topic: Why is legislation necessary?

Senator SIEWERT: The point was made by one of the Bornsteins: why legislate at all? You heard that other processes have not been legislated; why legislate this particular one?

Answer:

Legislating to establish the BSWAT Payment Scheme allows for open and transparent review, debate and public scrutiny around the basis for the proposed approach and the elements that go into the determination of the payment amount. The Scheme will ensure the most efficient and effective use of public monies in resolving issues arising from the Nojin decision.

The legislation places eligible employees with disability at the centre of the decision making process. The legislation provides certainty about the essential elements including: eligibility, calculation of payment, review processes and disbursement of funds. This approach supports applicants to receive funded independent advice of both a financial and legal nature in order to make the best decision to suit their individual circumstances. This is regardless of the potentially extraneous interests of the broader group.

This type of direct engagement would not normally be available (up front) to group members in a litigation process.

Please list all other Branches/Agencies/Departments Consulted:

1. Public Law Branch

Date: 24 July 2014

Question No: 7

Hansard Page: 11

Topic: Adequacy of payment

Senator SIEWERT: In other words, what they are being asked to do is forgo possible compensation and potentially get half their due wages and no compensation for opportunity forgone.

Clarification:

Acceptance of a payment under the Scheme is entirely voluntary. Individuals can freely choose to pursue a legal remedy in the Courts rather than accepting a payment under the Scheme.

Part 2, clause 8 of the Bill, provides details as to the determination of the payment amount. While the BSWAT Payment Scheme provides a payment, and not compensation, the process for determining the payment amount:

- Broadly reflects the amount that is 50 per cent of the excess (if any) of a productivity-scored wage over an actual wage (section 8(3)(a));
- Includes an increase to the payment amount to take into account expected tax (section 8(3)(b));
- Will provide a minimum payment of \$100 after tax if the amount worked out for the person is more than \$1 but less than \$100.

Three other cases have been settled through Federal Court mediation processes. While the details of these settlements are confidential, amounts agreed to by the applicants' representatives were less than amounts they would have received through the payment scheme.

As stated previously, the findings of the Full Federal Court in the *Nojin & Prior* matters do not apply to all workers with intellectual disability who have had their wages assessed under the BSWAT. Whether it was lawful to use the BSWAT to assess an intellectually disabled person's wages, or whether the person has been unlawfully discriminated against, will turn on the particular circumstances of each case.

In the case of Messrs Nojin and Prior, a claim for compensation was abandoned by their representatives during the appeal before the full Federal Court. Therefore no compensation was paid. Both Mr Nojin and Mr Prior are able to apply to the BSWAT Payment Scheme.

In the representative proceeding, the Commonwealth is defending the allegations that it unlawfully discriminated against the Applicant and the group members.

If the representative proceeding went to trial, or individuals commenced their own legal proceedings, the relevant individuals (or at least some of them) may not succeed in establishing their claims of unlawful discrimination which means they would receive no award of compensation by the Court. If they were successful in establishing their claims, it is possible that the Court may award individuals an amount less than, the same as or more than what they would receive under the BSWAT Payment Scheme. It is also possible that the Court may award an individual no compensation at all (even if they were successful in

establishing their claim of unlawful discrimination). Assessing compensation in matters of this kind is complicated and will also generally turn on the particular circumstances of the case.

As noted above, the Bill calculates a payment amount that broadly reflects the amount that is 50 per cent of the excess (if any) of a productivity-scored wage over an actual wage. However, the Commonwealth does not accept that, if the Court found that any further individuals (beyond Nojin and Prior) were unlawfully discriminated against by the use of the BSWAT to assess their wages, it would be appropriate to assess compensation based on the premise used by the Scheme.

Applicants will receive, in writing, the payment offer which outlines how the calculation was determined. Prior to accepting, the applicant will need to receive both financial counselling and legal advice as to the relative merits or otherwise of accepting the offer based on their personal circumstances and wishes. Legal advice will also include the implications of accepting a payment in accordance with sections 9 and 10 of the Bill. The applicant themselves will then have the choice/opportunity to accept or reject the offer.

If a supported employee accepts a payment under the Scheme, he or she will automatically cease to be a group member in any representative proceeding, and will be unable to make any further claims in relation to the assessment of wages using the BSWAT.

It should be also be noted that, if any settlement is reached in the representative proceeding and a group member is provided with an amount of money, this would result in the extinguishment of the group member's right to (a) accept a payment through the BSWAT Payment Scheme, and (b) to take any or further action against the Commonwealth or their employer in relation to wages paid using the BSWAT (assuming that a standard "release from liability" clause was a term of the settlement).

Please list all other Branches/Agencies/Departments Consulted:

1. Public Law Branch

Date: 24 July 2014

Question No: 8

Hansard Page: 11

Topic: interaction of DSP and wages

Senator REYNOLDS (p.7): This is a question of fact, just from my background. Do those people who are working in these organisations get the full disability support pension, with these payments on top of that, or do they lose some of their disability support pension?

Answer:

A pension recipient can receive an amount of income before their pension starts to be reduced. This amount is called the income test free area. The income test free area is adjusted each year in July for singles and for couples combined for increases in the cost of living using the Consumer Price Index.

From 1 July 2014, the DSP income test free area is \$160 a fortnight (\$4,160 a year) for a single pension recipient.

Single Disability Support Pension recipients

For each dollar of income over the income test free area, the single pension is reduced by 50 cents. This is called the taper rate. You can earn up to \$1,845.60 a fortnight (\$47,985.60 a year) if you are a single DSP recipient before your pension completely cuts off. As long as you receive \$1 of DSP, you still keep your Pensioner Concession Card.

Couple Disability Support Pension recipients

For each dollar of income over the income test free area, the couple's combined pensions are reduced by 50 cents. This is called the taper rate. This means that for a pensioner couple, their individual pensions are reduced by 25 cents a fortnight for each dollar of income that the couple has over the income test free area. A part-pension is currently payable up to an income of \$2,825.20 a fortnight (\$73,455.20 a year) for pensioner couples combined, and they keep their Pensioner Concession Cards if their combined income is under this amount.

Please list all other Branches/Agencies/Departments Consulted:

1. Age, Disability and Carer Payments Policy Branch

Date: 24 July 2014

Question No: 9

Hansard Pages: 3

Topic: Eligibility for Scheme

Senator REYNOLDS: Also, previously, I think some people with disability in their evidence were saying that there are some people who will be excluded under this legislation. I think it was people with psychosocial disabilities, but also some people who have already undertaken some partial legal activities. Did you hear that this morning?

Answer:

The Department is not aware of the 100 clients who are stated to have taken action in relation to the BSWAT. The Commonwealth is only aware of Messrs Nojin and Prior (both of whom are able to submit an application for the Scheme – their claim for compensation was withdrawn by their representatives at appeal), another case that was dismissed by consent and three other cases that were settled at mediation in the Federal Court following termination of their complaints with the Australian Human Rights Commission – a total of six individuals.

The individuals who had cases finalised are not eligible to apply for the Scheme. This is because they do not meet the eligibility requirement at ⁶(4), which requires there to be no ‘alternative amount’ for the person. The legislation defines that ‘there is an alternative amount for the person if:

- (a) The person has accepted an amount of money, otherwise than under this Act, in settlement of a claim made in relation to a matter referred to in subsection ¹⁰(2); or
- (b) An amount of money is payable to a person in accordance with a court order that is in effect in connection with a claim made in relation to a matter referred to in subsection ¹⁰(2).’

The BSWAT Payment Scheme provides an option – but not the only option. If an individual has accepted a payment through a court process or representative proceeding for issues relating to the BSWAT, the individual is not eligible for the Scheme.

However, an individual who is part way through a court process or a representative proceeding, and has not yet accepted an amount of money from that process or proceeding (if so determined), is eligible for the Scheme (so long as the cut-off dates for registration or applications have not passed). It is the acceptance of the amount of money from a court process or proceeding in relation to the BSWAT, not the participation in a court process or proceeding, which makes an applicant ineligible for the BSWAT Payment Scheme.

Please list all other Branches/Agencies/Departments Consulted:

	Action Officer:	Cleared by:	
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Branch/Group:	BSWAT Employment Response Team	Disability and Carers Group	
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Cleared by Group Manager	Yes <input type="checkbox"/> No <input type="checkbox"/>	Date:	Cleared by Group Manager Yes <input type="checkbox"/> No <input type="checkbox"/>