

Submission from Robert Macfarlane

Inquiry into Business Services Wage Assessment Tool Scheme Bill 2014 and BSWAT Payment Scheme (Consequential Amendments) Bill 2014

I am writing, as a long time advocate of sheltered workshop/business service/Australian Disability Enterprise reform, to register my strong disagreement with the government's present legislative approach to compensating ADE employees whose wages have been short-changed due to the introduction of the Business Services Wage Assessment Tool (BSWAT).

I think it is the height of arrogance and injustice for the Government to conceive of a wage compensation scheme that not only pays just 50% of these employees' "stolen wage" entitlements but also requires them to waive any further legal rights to seek full compensation elsewhere and pick up various related administrative costs connected to obtaining certificates from a legal practitioner and a financial counsellor.

I find it especially unjust and arrogant in that this BSWAT was deliberately manufactured by the Government, as the Federal Court full bench decision clearly highlighted, to keep wages lower than would be paid by the existing wage assessment tool (Supported Wages Scheme) used since 1995 in mainstream employment as well as in a number of more progressive ADEs/Business Services, as well as being introduced despite pronouncements from the disability advocacy sector that BSWAT was an inherently flawed and discriminatory tool.

Furthermore the Government continues to support the interim use of BSWAT while looking to develop an alternative tool and challenges both the Federal Court Full Bench decision through its intervention in the Human Rights Commission in search of a 3 year exemption from the Disability Discrimination Act and its current appeal to the Administrative Appeals Tribunal after only a one year reprieve was granted by the AHRC. I just don't understand why the Government just does not support the use of an existing tried and trusted wage assessment process –the Supported Wages System (SWS)–that has been used successfully since 1995 in many ADEs. My understanding is that sections of DSS itself support this approach as a condition of various recent grants to ADES wishing to transition to a more integrated social firm service delivery model is that they make use of the SWS to determine the wages of their employees.

I urge the Senate Committee to not ratify these Bills unless they are amended to ensure affected and eligible ADE employees are paid the full amount that they are owed. They should be no legal waiver clause that excludes ADE employees from participating in any representative actions in the Federal or other courts. There should be no clauses requiring significant out-of-pocket costs to prove eligibility for the wage compensation.

On the other hand, I wonder if any legislation is even necessary and concur with a recent statement from Josh Bornstein from Maurice Blackburn on this whole question:

"The government says the payment scheme is about providing certainty and reassurance to employees, their families and their carers. It says the scheme, which will not pay compensation, will deliver payments to workers as quickly as possible, and that it will help make sure disability enterprises can continue operating and afford to give people jobs.

What the government doesn't say is that the payment scheme is a blatant attempt to coerce some of our most vulnerable workers into signing away their legal rights, for a sum of money that is just half of what they should be paid. Nor does it acknowledge that the scheme is not needed at all – if the government wanted to reassure workers, they could have simply come to the negotiating table and settled the case." (<http://m.smh.au/comment/government-takes-fight-to-intellectually-disabled>)