

**Submission to the Senate inquiry into the  
Business Services Payment Scheme Bill 2014**

---

**23 July 2014**

**Prepared by: Claudine Duvall**

By email: [community.affairs.sen@aph.gov.au](mailto:community.affairs.sen@aph.gov.au)

23 July 2014

Committee Secretary  
Senate Standing Committees on Community Affairs  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Committee Secretary,

**Re: BSWAT Payment Scheme (Consequential Amendments) Bill 2014**

On behalf of my son, Tyson Duval-Comrie, I am bringing a case to the Federal Court. The proceedings are also on behalf of all those other employees with an Intellectual disability working in Australian Disability Enterprises. I am concerned that the application of the Business Services Wage Assessment Tool Payment Scheme (Consequential Amendments) Bill 2014 (BSWAT Bill) is going to affect this action that is needed to get the correct back-pay for these employees who have been assessed under BSWAT, a tool that was found to be discriminatory pursuant to section 6 of the *Disability Discrimination Act 1992* in *Commonwealth of Australia v Nojin and Prior* [2013].

I welcome the opportunity to make a submission to the Community Affairs Committee inquiry into the BSWAT Bill 2014. I object to the introduction of the BSWAT Bill in the strongest possible terms, based on the fact that it is unnecessary as there has been a decision saying that BSWAT is discriminatory and therefore I believe full compensation of the underpayment of wages should be paid.

I do however submit that there are a number of problems with the Bill itself not the least is that it is far too complicated and does not fairly compensate employees who have been underpaid whilst working for an Australian Disability Enterprise.

### 1. The Application Process

Under Cl. 15, a person must have their name on the registrar before they can make an application, otherwise they will not be eligible to have their application reviewed. I don't believe it is necessary, nor helpful to use a two-stage process in order to have your application considered. This will have the effect of complicating an already confusing process, particularly for applicant's who have an intellectual disability.

### 2. Eligibility

There is an exclusion that is absolute for anyone who participates at all in litigation (Cl. 9). Employees are excluded from registering, making an application and having that application assessed if they have already received a settlement under litigation. The purpose of this legislation should be to compensate worker's who have not received adequate payments. By not giving an applicant the opportunity to explore all possible avenues to seek their entitlements, the purpose is not being achieved. In the worst case scenario, an applicant may receive very little or no compensation through litigation (particularly after paying legal fees) and they are then precluded from making an application through the Scheme. By excluding access to the Scheme to anyone who has participated in litigation, the Scheme

aims to reduce the amount of payments to be made to employee's who are in fact entitled to compensation.

### 3. Issues Concerning Payment Amount

Under Cl. 8(3), an employee may only be given a maximum of 50% of the monies owed to them in underpayments. This takes away the entitlement to payment of fair wages from disabled employees who have been discriminated against, a group which is already amongst the most vulnerable in our community. These workers should have the avenue and ability to seek full compensation for discrimination under the BSWAT. Morally these employees deserve to be paid in full for the amount of work they have completed. This legislation is an obvious attempt to avoid paying the full amount owed to the employees. When work is performed, employees should be entitled to full remuneration. The offer of only 50% at best, of an employee's entitled payments under the Scheme is completely inadequate and inconsistent with other workplace practices.

### 4. The Offer and Review Process

Cl.19 gives a person at least 14 days to respond to an offer for a payment. While it is contemplated that most people will in fact be given 60 days, this should be included in the legislation. This short amount of time of 14 days is grossly inadequate, particularly given the requirement that the applicant must seek legal and certified financial advice during that time.

### 5. Nominees

The Secretary has the power to appoint a nominee of their choosing at the request of a employee or on the Secretary's own initiative. This nominee may act for the employee in relation to the scheme.

This takes away authority from the applicant to deal with decisions relating to their application, as well as their power to appoint someone of their choosing as nominee. It is a conflict of interest that the secretary is funding the ADE's, is in charge of construction and implementation of the Scheme, and has absolute authority to decide who represents the interests of an applicant. There is also a real possibility for a strong conflict of interest to arise, given that the nominee of the Secretary's choosing may not have the applicant's best interests at heart. It does not give enough weight to an already established relationship between an applicant and their guardian. This also takes control of the process away from applicants who may be in a position to make these decisions for themselves without a nominee.

I sincerely hope that the Senate will recognize that this Bill is treating employees such as my son as if they are not entitled to be like everyone else. That they want the same employment rights as other employees and to be treated with respect. We all want that for our sons and daughters. I am no different from those in the Senate with children. I do not want my son to be treated as if he were sub-human. Please do not pass this Bill.

Yours sincerely,

*Claudine Duval*

Claudine Duval