

# Australian Greens' Dissenting Report

1.1 People with a disability are severely underrepresented in the workforce in Australia, and those with an intellectual disability are especially so. With only 6.9 percent of working age people with an intellectual disability reporting work in an open labour market<sup>1</sup> it is clear that workers with an intellectual disability face “large gaps of support to help them move into open employment, earn a real wage and reduce their reliance on the pension.”<sup>2</sup>

1.2 Structural change is required. We need much better strategies and legislation to encourage and support a greater participation by people with disabilities. However, increased participation by discrimination against workers is unacceptable. The Australian Greens are committed to equal pay for equal work and are very concerned with the distressingly low payments made to people with an intellectual disability assessed under the Business Services Wage Assessment Tool (BSWAT).

1.3 BSWAT has been found by the High Court to be discriminatory towards workers with an intellectual disability. The Australian Human Rights Commission also finds BSWAT to be an unacceptable tool, and concerns have also been raised by a variety of peak disability and legal bodies including Inclusion, People with Disabilities and AED legal centres.

1.4 The Australian Greens are deeply concerned with the Business Services Wage Assessment Tool Payment Scheme Bill 2014 and the Business Services Wage Assessment Tool Payment Scheme (Consequential Amendments) Bill 2014 and the affect that they will have on the rights of workers with a disability assessed under BSWAT.

1.5 We are particularly concerned that the Bill does not adequately address or cease the continued discrimination of workers assessed under BSWAT. We also have key concerns regarding:

1. That a payment rather than compensation is being offered
2. People have to waive their legal rights to access the payment
3. Conflict of interest issues around power to appoint a nominee provisions.

1.6 The Australian Greens are also concerned with the fact that the Bill does not extend to workers with a disability who do not have an intellectual disability.

Only people with intellectual disability will be eligible for the payment scheme. A person with psychosocial disability, for example, may work in the same ADE, do the same job and earn the same wage as a person with an intellectual disability but they are excluded from the payment scheme. The

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1 Inclusion Australia, *Submission 10*, p. 2.

2 Inclusion Australia, *Submission 10*, p. 2.

Commonwealth's failure to recognise the violation of rights that people without intellectual disability have experienced will continue.<sup>3</sup>

### **Accessing the Payment**

1.7 Approximately half of Australian Disability Enterprises (ADEs) use the BSWAT, which means there are currently around 10,000 people who have been assessed using the BSWAT model.<sup>4</sup> This Bill offers a potential payment of up to 50 percent of what is already owed on completed work in exchange for workers losing their right to seek a fair pay settlement. In other words, for 50 percent of what workers are entitled to they will be asked to sign away their legal rights. Only paying workers 50 percent of what they are entitled to, is unacceptable. There should be full compensation for unpaid wages. In addition, the lost opportunity of what people could have purchased with their rightful wage is not addressed. This is a similar situation that resulted from wages stolen from Aboriginal and Torres Strait Islander peoples.

1.8 The Australian Greens are very concerned that the tight timeframe that people have to decide if they wish to pursue the payment will mean that people can't adequately weigh up all their options to make a decision in their best interest.

1.9 We are also concerned that there are inadequate provisions being made to ensure all those affected are aware of their choices and the consequences of decisions. This legislation could lead to unfair outcomes for underpaid workers.

1.10 There are also inconsistencies between the payments as:

A person who is found eligible and is made an offer of payment this year will receive less than if they apply to the payment scheme next year as they would have been working under the BSWAT for longer. This will create unequal outcomes and is unfair.<sup>5</sup>

### **Power to appoint a nominee**

1.11 The provision in the Bill that allows the Secretary of the Department of Social Services to appoint nominees on behalf of underpaid workers without their consent is very concerning. "There is no restriction on who can be appointed and no exclusion of individuals or parties with a conflict of interest"<sup>6</sup>

The third point—and, in my eyes, the most important—is the right given to the secretary to appoint a nominee to effectively stand in the shoes of the supported employees. This is not only a conflict of interest but removes from these employees their very basic human and constitutional rights.

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3 Ngila Bevan, Manager, People with Disability Australia, *Committee Hansard*, 24th July 2014, p. 1.

4 National Disability Services, *Submission 5*, p. 2.

5 Ngila Bevan, Manager, People with Disability Australia, *Committee Hansard*, 24<sup>th</sup> July 2014, p. 1.

6 AED Legal Centre, *Submission 9*, p. 7.

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There is a very real danger here that the nominee appointed would or could have a larger picture goal in sight rather than that of the employee.<sup>7</sup>

1.12 This Bill ignores supported decision making, which is vitally important in respecting the rights of people with a disability.

So really the whole provisions in this act around appointing nominees are completely in opposition to respect for supported decision making and respect for a person's right to legal capacity.<sup>8</sup>

There is a conflict of interest, first, in having the secretary being able to appoint a nominee. As to the nominee themselves, the role of that nominee raises the concern that it could be, potentially, a conflict of interest.<sup>9</sup>

1.13 This Bill does not have adequate safeguards to ensure peoples' legal rights are protected.

### **Viability of ADE**

1.14 ADEs are an important part of work opportunities for people with disabilities and offer support and employment that are very much in demand. During the inquiry the viability of ADEs to survive if they had to pay the non-discriminatory wage was brought up on several occasions. The Greens agree with People with Disabilities Australia that "maintaining the financial viability of ADEs is not a consideration that should trump the right of a worker to receive equal pay for work of equal value."<sup>10</sup>

### **Conclusion**

1.15 The BSWAT tool has been found to discriminate against workers with an intellectual disability. This Bill does not adequately address the discrimination or need for compensation.

1.16 The Bill fails because it "does not fairly compensate employees who have been underpaid whilst working for an Australian Disability Enterprise."<sup>11</sup>

In conclusion, the payment scheme is asking people with intellectual disability to accept a partial payment for the wage injustice, discrimination and significant economic loss that they have experienced. In return, they will continue to experience the same wage injustice, discrimination and economic loss indefinitely.<sup>12</sup>

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7 Kairsty Wilson, Legal Manager, Principal Legal Practitioner, AED Legal Centre, *Committee Hansard*, p. 3.

8 Therese Sands, Co-Chief Executive Officer, People with Disability Australia, *Committee Hansard*, p. 4.

9 Kairsty Wilson, Legal Manager, Principal Legal Practitioner, AED Legal Centre, *Committee Hansard*, p. 5.

10 People with Disability Australia, *Submission 21*, p. 4.

11 Elizabeth Nojin, *Submission 3*, p. 1.

12 Ngila Bevan, Manager, People with Disability Australia, *Committee Hansard*, 24<sup>th</sup> July 2014, p. 2.

1.17 The Greens support compensation for these unpaid wages. However, because of the provisions in the Bill only paying 50 percent of wages owed, the demand for relinquishing legal rights, issues around timeframes and transparency, as well as conflict of interest in power to appoint a nominee, the Australian Greens cannot support the Business Services Wage Assessment Tool Payment Scheme Bill 2014 and the Business Services Wage Assessment Tool Payment Scheme (Consequential Amendments) Bill 2014.

### **Recommendation 1**

**1.18 That the Business Services Wage Assessment Tool Payment Scheme Bill 2014 (Bill) and the Business Services Wage Assessment Tool Payment Scheme (Consequential Amendments) Bill 2014 (Consequential Bill) not be passed in their current form.**

**Senator Rachel Siewert**