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Grampians disAbility Advocacy to the Senate inquiry into the Business Services Payment Scheme Bill 2014

July 2014

Grampians disAbility Advocacy has provided advocacy support for people with any kind of disability in a large part of rural Victoria since 1999.

Our client, Gordon Prior of Stawell, was one of the two plaintiffs who took the Federal Government to court over the use of the discriminatory wage assessment tool in 2012 (the other was Michael Nojin). The High Court ultimately found in Mr Prior and Mr Nojin's favour.

The Federal Government has introduced the Business Services Wage Assessment Tool Payment Scheme Bill 2014 (BSWAT Bill) to offer a potential payment of up to 50% of what each person previously assessed under the BSWAT is owed for work already completed in ADEs. In exchange, they will be forced to give up their legal right to seek a fair pay settlement through the class action case currently before the Federal Court. The result would be a large number of highly vulnerable Australians, who are already the lowest paid workers in the country, being induced to settle for half their entitlement.

The High Court has already ruled in favour of two workers in an identical situation to those who would be impacted by this legislation, providing a very strong legal precedent for the class action case.

The BSWAT Bill also includes a radical provision allowing the departmental secretary, who has allowed workers to be paid under a discriminatory tool, to appoint nominees to act on behalf of individuals without their consent. This is a clear conflict of interest.

This legislation would lead to grossly unfair outcomes for these underpaid workers. It is also a manipulative attempt by the Federal Government to take advantage of people's limited access to information and legal advice.

Instead of encouraging independence, dignity and fair pay for honest work, it attempts to take half of the wages of people who are earning only \$3 or so per hour. This is mean, tricky and despicable behaviour by the Federal Government.

Where employees with disabilities have been underpaid due to BSWAT, they have a legal and moral right to be compensated in full. They should not be taken advantage of due to their cognitive impairment.

The BSWAT Bill is not in the best interests of this group of Australians, nor is it in the interests of their families, carers or the broader community. It is inequitable, complicated and unnecessary in terms of the broader context for underpaid workers

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To conclude, The *Business Services Payment Scheme Bill 2014* fundamentally erodes the human and legal rights of employees with an intellectual disability; it disregards decisions of the Federal and High Court of Australia and is in contravention of a number of international conventions and covenants.

It introduces a dubious system of departmental control in the appointment of nominees with broad powers that raises a clear conflict of interest which is seemingly without precedent.

Employees have a right to be compensated in full by applying a simple formula that has regard to the difference between what their wages would have been by using their productivity-based score and their actual wages.

The Australian Parliament and its legislative powers should not be used by any Government as a way of bypassing due legal process.

We hope the Senate will resist this desperate approach by the Federal Government in favour of the fair and equitable compensation mechanisms that are already in place.

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