AED legal centre

Suite 4 Level 5, 276 Flinders Street, Melbourne, 3000
Tel (03) 9639 4333 Fax (03) 9650 2833
email: noni.lord@aed.org.au
web: www.aed.org.au
PO box 236 Flinders Lane VIC 8009
Liability limited by a scheme approved under Professional Standards Legislation

Winner of the 2011 LIV Community Lawyer of the Year Award

Winner of the 2013 Tim McCoy Award

Winner of the 2014 HESTA Social Impact Award

AED submission to the Senate inquiry into the Business Services Payment Scheme Bill 2014

---

23 July 2014

Prepared by: **Kairsty Wilson – Legal Manager and Phillip Camela – General Manager**

1. About AED Legal Centre

The Association of Employees with Disability Inc. t/a AED Legal Centre (AED) welcomes the opportunity to make a submission to the Community Affairs Committee inquiry into the *Business Services Payment Scheme Bill 2014.*

AED Legal Centre was established in 2008 as a specialist Community Legal Centre to act as the service arm of the Association. Through a human rights framework we aim to protect and advance the rights of people with disability who experience difficulties and/or discrimination in employment or education because of their disability. AED is funded by the Department of Social Services (DSS).

AED staff have monitored the wage assessment of over 100 employees in Australian Disability Industries (ADEs) and have a combined experience of over 40 years in dealing with employment and education issues as they affect persons with a disability.

AED was the advocacy agency that spearheaded the landmark test-case in the Federal Court of Australia (*Nojin v Commonwealth of Australia* [2012] FCAFC 192 (21 December 2012) and supported the same employees with disabilities right through to the High Court decision on 10 May 2013.

AED is currently supporting a representative action through Maurice Blackburn Lawyers and members of the Victorian Bar (*Tyson Duval-Comrie v Commonwealth of Australia* (VID 1367 of 2013) aiming at achieving full compensation for employees with disability who have been assessed and underpaid under the BSWAT. There are about 10,500 workers whose interests are to be determined in the representative action.

2. Overview of submission

The Business Services Wage Assessment Tool Payment Scheme Bill 2014 (BSWAT Bill) offers a potential payment of up to 50% of what each person is owed for work already completed up to 28 May 2014 in exchange for them losing 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 of their past entitlement to 28 May 2014 and nothing for the time worked since that date nor into the future.

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. Further, acceptance of a scheme entitlement automatically affects the opt-out of the accepting worker from the representative action. Since the Commonwealth is the respondent to the representative action, this provision causes a clear conflict of interest in the Commonwealth, in the person of the departmental secretary.

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.

This legislation would lead to very unfair outcomes for these underpaid workers and that 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 only earning wages as low as $0.33 an hour to begin with.

Where employees with disabilities have been underpaid due to BSWAT, they have a legal and moral right to be compensated in full.

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.

3. The Business Services Wage Assessment Tool (BSWAT)

BSWAT is a workplace assessment tool that used to set the rate of pay for people with intellectual disabilities who work in ADEs.

ADEs are not-for-profit organisations that operate in a range of industries, including packaging, manufacturing, catering and horticulture. They are funded in part by DSS to provide support in the workplace for people with disability. The wages for the employees with disability comes from the contracts they have with other business who use the service offered by the ADE such as but not limited to: production, cleaning, gardening and hospitality

BSWAT was developed in 2003 by DSS and is also administered by the Commonwealth. It provides a formula where people are paid a proportion of award wages dependant on their level of intellectual disability.

BSWAT has two parts. These are a productivity test and a competence test.
The productivity test measures how long it takes a person to complete their work compared with an average worker.

The competency test involves a number of abstract questions around general knowledge of the workplace. It is set so a person receives a score of zero for an entire category of questions if they answer a single question wrong in any category.

AED is not challenging the productivity test as it has a direct connection to the work output of an employee.

In contrast, the competency test is not directly related to work tasks and it actively discriminates against people who understand how to do their job, but are unable to verbally respond to abstract questions. This accounts for a high proportion of the workforce in ADEs.

The High Court has already found BSWAT unlawful because of the discriminatory impact of the competence test. (Nojin & Prior)

4. Nojin and Prior

In December 2012, the Full Federal Court ruled that BSWAT discriminated against two employees in a similar situation to Tyson and was unlawful for that reason. (Nojin & Prior) Justice Buchanan commented extensively about the discriminatory nature of BSWAT, including saying that 'Intellectually disabled people are placed, at the outset, at a disadvantage which prevents effective compliance.'

He also commented that 'The basic defect in the use of BSWAT is that it reduces wages to which intellectually disabled workers would otherwise be entitled by reference to considerations which do not bear upon the work that they actually do.'

In May 2013, the Commonwealth was refused special leave to appeal the decision by the High Court.

Justice Crennan said 'The Full Court of the Federal Court, by a majority, concluded that the use of the BSWAT disadvantaged intellectually disabled persons. Although it was widely used, it was not reasonable. The unchallenged expert evidence was that the BSWAT produced a differential effect for intellectually disabled persons and reduced their score. We see no reason to doubt the conclusions of the Full Court.'

The Court's decision makes clear that their findings also apply to the other 10,500 employees of ADEs around Australia.

Since this decision, the Commonwealth has continued to allow people to be paid under BSWAT. [redacted]

This precedent is important as it reveals that this bill would also have the impact of excluding anyone who participates in the payment scheme from accessing their full legal right to be paid backwages via existing legal compensation mechanisms and the class action that is already underway for this purpose.

5. The BSWAT Class Action

Despite the Federal Court ruling that BSWAT was unlawful, the Commonwealth has continued to allow over 10,500 people to be paid based on the discriminatory BSWAT formula.

As a result, Maurice Blackburn Lawyers, with our support, commenced a class action on behalf of workers who have been systematically underpaid. This case commenced in the Federal Court in December 2013.

The lead applicant in this case is Tyson Duval-Comrie, a 25 year old man who lives with his mother in [redacted]. Tyson works for [redacted], and undertakes packaging tasks like placing sugar sticks in boxes and putting lids on herb containers. He also does the cleaning once a week. Tyson is paid according to BSWAT.

The award rate for his job is $15.96 per hour. Based on BSWAT, he is paid $1.79 per hour having recently received a pay rise of $0.02 an hour. Based on the productivity test alone he should be paid $3.58 per hour, twice the rate he is currently receiving.

For people who already receive such low wages, there is no reason to find discriminatory ways to reduce their rates of pay further.

6. Parliamentary Joint Committee on Human Rights

AED agrees with the Report by the Parliamentary Joint Committee on Human Rights that there are a number of human and legal rights connected to this Bill:

The principal rights engaged by this bill are the right to an effective remedy, the right to just and favourable conditions of work and the right to equality and non discrimination including the right of persons with disabilities to be recognised as persons before the law and to the equal enjoyment of legal capacity.[1]

As far as the matters the Committee raises in its report AED strongly believes that:

1) The payment amount under this Bill does not constitute an effective remedy. We also note that the Committee "considers it unlikely that the bill could be assessed as providing an effective remedy while affected individuals continue to be paid wages assessed by the use of BSWAT"[2]
2) The release and indemnity provisions, and the characterisation of the scheme as not being 'compensatory in nature' are clearly intended to deny access to legal remedies to employees with a disability affected by the BSWAT. They are clear infringements of human and legal rights and in a very reprehensible way seek to defeat a legitimate representative court action that is based on existing decisions of the Federal Court and the High Court.
3) We agree that there is a lack of effective review mechanisms (internal or external) for persons excluded from the scheme due to having received an 'alternative amount'.
4) We believe the Secretary appointed external reviewer to constitute a serious violation of human and legal rights as the Secretary has a conflict of interest.
5) The Bill contravenes the right to just and favourable conditions of work because it does not allow for the back-pay and full compensation of underpayments to employees with a disability affected by the BSWAT assessments.
6) The Bill contravenes the basic right to adequate remuneration because the payment amount provided for in this Bill is only half of what an affected person would have been entitled to had their wages been assessed by a non-discriminatory method.
7) AED is seriously concerned that the provisions in this Bill for the appointment by the Secretary of nominees and the power of nominees has the potential of limiting rights to equality and non-discrimination:
    a) The Secretary has a conflict of interest.
    b) There is no restriction on who can be appointed as nominee – there is no exclusion of persons who may have a conflict of interest with the participant.

    Under these operational conditions in our view it is highly likely that nominees will substitute rather than facilitate the choice and preferences of participants in this scheme.

---

[1] Parliamentary Joint Committee on Human Rights, Examination of legislation in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, Bills introduced 23 – 26 June 2014, Legislative Instruments received 7–20 June 2014, Ninth Report of the 44th Parliament, July 2014, p.2.
[2] Ibid, p.4

8) AED concurs with the Committee that "that there are no positive obligations on the Secretary to ascertain whether or not a person understands the offer".[3] Under these operational conditions, the timeframe for accepting an offer is limiting and likely to result in indirect discrimination.

9) AED also concurs with the Committee that in a number of areas it is questionable whether the bill is aimed at achieving a legitimate objective, whether there is a rational connection between the limitation and that objective as well as whether the limitation is reasonable and in proportion for the achievement of that objective.

At its core, what is wrong with the Business Services Payment Scheme Bill 2014 was best described by Mr Josh Bornstein, Principal at Maurice Blackburn Lawyers, when he described the scheme as: " 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 ". [4]

7. Australian Human Rights Commission (AHRC) Exemption

Another tactic of the Commonwealth was to seek a three-year exemption from the Disability Discrimination Action for BSWAT in May 2013.

A one-year exemption was granted on thecondition that the Commonwealth take all necessary steps to transition people from BSWAT to the productivity-based test, known as the Supported Wage Scheme (or another approved tool).

The significance of this is that BSWAT is being phased out and ADEs will not be financially disadvantaged by the outcome of this legislation or the class action.

8. Application process

A person must make an application before 1 December 2015

This deadline is likely to put employees who have been underpaid under BSWAT in a position where they cannot compare if they are financially better off under this scheme or any compensation that may arise from the representative action in the Federal Court.

If the person accepts the offer:

(a) the Secretary will make the payment to the person; and
(b) by force of this Act, the person will cease to have certain legal rights.

By waiving their rights to further legal action, the person loses the opportunity to recover their just entitlement which could be obtained via the current representative action. They would be accepting 50% of what is owed, and only to 28 May 2014, with no further right to pursue the balance.

---

[3] Ibid, p. 11
[4] http://m.smh.com.au/comment/government-takes-fight-to-intellectually-disabled-20140625-zsl3w.html

Offers will be made before 1 September 2016. While there might be some new offers after this date arising from reviews, all acceptances must be lodged by 31 December 2016.

Again this deadline is likely to preclude employees who have been underpaid under BSWAT to be in a position to compare if they are financially better off under this scheme or any compensation that may arise from the representative action in the Federal Court

9. Appointment of nominees

The BSWAT Bill also gives the Secretary of the DSS the power to appoint nominees on behalf of underpaid workers without their consent. There is no restriction on who can be appointed and no exclusion of individuals or parties with a conflict of interest.

Part 4—Nominees

42 Simplified outline of this Part

The Secretary may appoint nominees to act for persons in relation to the BSWAT payment scheme. Some appointments will be made on the Secretary's own initiative and others at the request of the person, depending on the person's circumstances. Not everyone will have a nominee.

There are several issues of great concern with Part 4 that demonstrates of how this scheme is not – first and foremost – for the benefit of the ADE's employees but to indemnify the Commonwealth and ADEs: namely:

1. The Secretary has a conflict of interest.
2. Although there are various matters that the Secretary must take into account, they do not bind him.
3. The Secretary can take into account whether the participant has a guardian, but he can still appoint someone else as a nominee.
4. There is no restriction on who can be appointed as nominee – there is no exclusion of persons who may have a conflict of interest with the participant.

AED believes that this part of the Bill erodes the fundamental legal rights of employees with disability. We are seriously concerned that the Secretary has the power of appointing nominees notwithstanding the fact that the Secretary has an obvious conflict of interest in doing so.

We are also worried by the fact that there is nothing in this part of the Bill that prevents the Secretary in appointing ADE staff or management as nominees when again they have a clear conflict of interest and influence on employees with disability.

It is unimaginable that employees with an intellectual disability by virtue of their cognitive impairments would understand the ramifications, full substance and processes contained in the legislation. In this regard, the legislation fails employees with an intellectual disability because it put them in a position where either the offer is accepted on their part by the nominee or they are expected to blindly accept what they are told by nominees or other parties who may have a conflict of interest.

This Bill is a very reprehensible way to defeat a legitimate representative court action that is based on existing decisions of the Federal Court and the High Court and yet obstructed and delayed (at considerable costs to the taxpayer) by the Commonwealth in a desperate bid to avoid paying very vulnerable people a fair wage.

As the Commonwealth is the Respondent to the current class action, the Secretary is themselves in a position of conflict in relation to exercising these powers. They could in effect make decisions that would eliminate people from the class action.

This provision in the BSWAT Bill is particularly concerning and manipulative. It grants broad powers without accountability in a way that is may further disadvantage those people who have been underpaid because of BSWAT.

This also demonstrates that the aim of the BSWAT Bill is not to provide fair back-pay to under-paid workers, but to take away their right to have their case heard fairly in the courts.

It is a political fix to a legal problem and the offer of some cash upfront looks to be a crude and conniving attempt to undermine the class action being brought on behalf of this group.

10. Eligibility

AED is of the view that the Bill should not be confined to people with intellectual disabilities as provided in Cl. (2) (a).

As a matter of fairness any employee who was underpaid under BSWAT should receive full compensation irrespective of their disability.

Moreover, Cl. 6 (3) discriminates against employees who did not require *ongoing daily support in the workplace* but nevertheless were underpaid under BSWAT. This clause should be removed.

Eligibility should also apply to employees who have been assed under other wage assessment tools which display the same deficiencies as BSWAT as determined by the Full Federal Court.

11. Payment amount

AED challenges the fundamental assertion in the explanatory memorandum that every case requires individual assessment as provided in Cl. 8 (1) and Cl. (8) (2) and Cl. 17.

In *Nojin v Commonwealth of Australia* [2012] FCAFC 192 the Court stated that as a class of people, people with intellectual disability have had a wage tool imposed on them that subjects them to a disadvantage:

Fourthly, part of the reason why, in my view, use of BSWAT is not reasonable is because it is discriminatory in the wider and less technical sense of the term so far as intellectually disabled workers are concerned.

Such persons make up the bulk of workers in ADEs. As a class of people they have had imposed on them a tool to measure their work contribution, compared to that of a Grade 1 worker, which does not measure like for like and which subjects them to a disadvantage.

The likely result in most cases, and the actual result for Mr Nojin and Mr Prior, is a calculation which understates their actual contribution relative to the work for which the Grade 1 rate of pay is fixed.

Understatement of the value of the actual work contribution of an intellectually disabled worker is, in my respectful view, neither necessary nor reasonable. [Buchanan 139]

I accept that BSWAT is skewed against intellectually disabled workers. The preponderance of the evidence was to that effect. [Buchanan 141]

Powerful evidence was given in these cases, however, that it was unfairly skewed against the intellectually disabled. [Katzman 268]

The Full Court of the Federal Court, by a majority, concluded that the use of the BSWAT disadvantaged intellectually disabled persons.

Although it was widely used, it was not reasonable. One component of the BSWAT involves the assessment of a person's competencies in the workplace.

The unchallenged expert evidence was that the BSWAT produced a differential effect for intellectually disabled persons and reduced their score. We see no reason to doubt the conclusions of the Full Court. [HCA Crennan 306]

In light of the Courts ruling the circumstances of people with an intellectual disability are obviously so similar to Nojin and Prior's that automatic eligibility rather than registration and application for eligibility would more appropriate.

A much simpler scheme could be devised for administering payments as opposed to subjecting applicants to what seems to be an involved and complex process.

The payment amount in the Bill is to be determined by the Rules:

> *8 (1) The **payment amount** for a person is the amount worked out for the person by a method prescribed by the rules.*
>
> *8 (2) The rules may prescribe different methods for different circumstances.*

We have great concerns that the Rules are not incorporated in the legislation yet this is a substantive element of the legislation that prescribes the method to be applied to determine the payment amount Cl. 8 (1).

Cl. 8 (2) should also be more descriptive and outline which methods apply to which circumstances.

The rules should be clearly outlined in the Bill and describe how a payment amount will be determined.

AED is gravely concerned that this Bill seeks to impose a blatantly inequitable, unjust and unfair Rule, as the instrument to pay for only 50% of the underpayments suffered under BSWAT assessments.

We also cannot accept that there are vastly different circumstances that warrant different methods to arrive at a payment amount.

8 (3) In making rules for the purposes of this section, the Minister must have regard to the following principles:

(a) the amount a person should receive, if the person accepts an offer, should broadly reflect the amount that is 50% of the excess (if any) of a productivity-scored wage over an actual wage;

In *Nojin v Commonwealth of Australia* the Court concluded that the competencies that account for 50 % of the overall pro-rate wage had the effect of decreasing or discounting wages.

In my view, the criticism of BSWAT is compelling. I can see no answer to the proposition that an assessment which commences with an entry level wage, set at the absolute minimum, and then discounts that wage further by reference to the competency aspects built into BSWAT, is theoretical and artificial.

In practice, on the evidence, those elements of BSWAT have the effect of discounting even more severely, than would otherwise be the case, the remuneration of intellectually disabled workers to whom the tool is applied.

The result is that such persons generally suffer not only the difficulty that they cannot match the output expected of a Grade 1 worker in the routine tasks assigned to them, but their contribution is discounted further because they are unable, because of their intellectual disability, to articulate concepts in response to a theoretical construct borrowed from training standards which have no application to them. [Buchanan 142]

In light of the Courts findings on the discriminatory and disadvantageous effect of competencies, an equitable, fair and just payment amount should be the amount that is 100% of the excess of a productivity-scored wage over an actual wage.

12. Effect on representative proceedings

We are dismayed that with this Bill the Commonwealth has chosen a legislative response to the Federal Court decision when it could have chosen a much simpler administrative response or could have negotiated at the table for a settlement with group members of the current representative action.

The claim by the Commonwealth that this Bill is designed to secure the on-going employment of supported employees in ADEs is hard to accept in light of the fact that the Full Court decision of 21 December 2012 was followed by inaction by the Commonwealth. It was only after an application for representative proceeding was lodged in the Federal Court on 20 December 2013 that the Commonwealth promptly announced a BSWAT Payment Scheme.

We cannot resist the conclusion that the real intent of this Bill is to derail the current representative proceedings before Justice Davies of the Federal Court of Australia. Nowhere is this clearer than in Cl. 9 (2) which seeks to extinguish the provisions of Part IVA of the *Federal Court of Australia Act 1976* " In particular, a group member does not need to opt out of the proceeding in accordance with section 33J of that Act in order to cease to be a group member"

From a legal and moral point of view this is Bill is reprehensible because by virtue of Cl. 9 it takes away from over 10,500 of the most vulnerable people in our community the right to seek full compensation.

From a cost/benefit point of view the imbalance in the Bill is striking. For only 50% of what they are legally owed employees will sign away their legal rights in the most absolute way:

- Cl. 9 The exclusion is absolute for anyone who participates at all in litigation
- Cl. 10 – discharge of liability of Commonwealth for future claims to the extent that they affect the BSWAT
- Cl. 14 excludes person from *registering* if they have already received a settlement under related litigation
- Cl. 16 states that a person can't make an *application* if they have received a settlement under related litigation.
- Cl. 18 states that the Secretary can't assess the application if the person has received a settlement under related litigation.

13. Other concerns

Division 2—Registration and application

Cl. 13 and Cl.14 deal with registration and application respectively. AED is concerned that this two-stage process will confuse people with intellectual disability who have cognitive impairments. Nor is it clear why a two-stage approach is necessary, why not simply an application?

Division 3—Determinations, offers and refusals

Under Cl. 19 people are to be given at least 14 days to respond to an offer for a payment.

In our view, as already mentioned, this period is inadequate particularly in view of the fact that under Cls. 35 (3) (a) and (35) 3 (b) the applicant has to seek and obtain certified legal advice and certified financial advice.

Cl. 36 and Cl. 37 requires a participant to obtain certificates from a legal practitioner and a financial counselor as to the best interests of the participants in relation to any offer.

However, under Cl.45 (1):

> *Any act that may be done by a participant under or for the purposes of this Act may be done by the participant's nominee, except to the extent specified in the instrument of appointment of the nominee.*

This is a fundamental erosion of the human and legal rights of employees with intellectual disabilities with the result that nominees will have the power to substitute the decisions, choices and preferences of participants of this scheme.

As the Bill does not exclude the appointment by the Secretary of individuals and organisations that have a conflict of interest to act as nominees, we can see no reason why an ADE or management of an ADE cannot act as nominees. From there, obtaining

for their employees under the Provision in Cl. 45 (1) the certificates from a legal practitioner and a financial counselor would be a simple matter.

We are concerned that as this a clear conflict of interest, there is a very real danger that employees with disability will be placed under duress and that pressure will be applied to ensure that they (or the nominee in the shoes of the employee) accepts any offer that is made under this scheme.

14. Conclusion

For the reasons outlined above AED does not believe that this legislative response to the underpayments resulting from the application of the BSWAT is equitable, fair, appropriate, or necessary.

The *Business Services Payment Scheme Bill 2014* erodes in a very fundamental way 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 and that which is without precedent in the experience of AED Legal Centre. This mechanism was not discussed or scrutinised by parliamentarians as the Bill was passed through the House of Representatives.

It would appear that the current Senate Committee is the first time that it will be looked at properly and given its radical and unnecessary nature, we hope that all parties will review their positions on the Bill accordingly and decide if this is the standard of legislation they wish to pass into law in our country.

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.

This could be achieved by putting in place administrative arrangements that are much simpler than the proposed Bill and do not require registration, application nor the appointment of nominees.

It is also our view that advocacy agencies have a role in explaining to employees with disabilities their legal and basic human rights and the fairness (or otherwise) of any offer that may be made by the DSS.

We are also very disappointed in light of the Federal Court and the High Court findings that the Minister for Social Services has to date failed to give an apology to any of the 10,500 employees with disability who have been assessed using BSWAT or offered them any form of compensation.

And it is clear from this Bill that the Commonwealth continues to deny any liability, having first developed BSWAT and being the current legal owner of the assessment tool.

Not only was BSWAT found by the courts to be clearly discriminatory but the Australian Human Rights Commission had advised some 10 years ago the Department of Families, Housing Community Services and Indigenous Affairs (FaHCSIA) (now DSS) that BSWAT

was likely to be discriminatory, yet this advice was ignored at a cost to over 10,500 employees with disabilities and the Australian taxpayer.

This legislation would lead to very unfair outcomes for these underpaid workers and we believe that it is also a manipulative attempt by the Federal Government to take advantage of these employees limited access to information and legal advice.

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.

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

Legislating away the Constitutional and human rights of citizens is a desperate and unbecoming approach, which we hope the Senate will resist in favour of the fair and equitable compensation mechanisms that are already in place.

AED submits that the Bills should not be passed. The Commonwealth instead should take the steps recommended by the Australian Human Rights Commission in April 2014, which we submit include taking all necessary steps to transition to the Supported Wage System. Further the Commonwealth should negotiate for the appropriate compensation of Australian workers who have had their wages underpaid. We submit that this move would be more in keeping with case law and in ensuring fair access to wages for people with disability in Australia.