



National Disability Services

Responses to questions from the Australian Human Rights Commission in relation to the application for a temporary exemption under S 55 of the DDA

1. What are the arguments for and against the use of the Supported Wages System (SWS) as an alternative to the BSWAT?

While a small number of ADEs use the SWS, it would not be a suitable replacement for the BSWAT because:

- Many jobs in ADEs are designed for supported employees whose capacity to learn skills is limited. ADEs often divide what would be a multi-skilled job in open employment into several simplified jobs. The SWS takes no account of this. It assumes that a worker has the requisite competencies and measures only the pace of productive output.
- Use of the SWS would reduce wages for a proportion of supported employees assessed using the BSWAT (for example, an employee with a severe physical disability whose competency score is high but pace of work slow)
- It would increase ongoing wage costs significantly for ADEs without increasing productivity. Without significant additional income to the ADE this would result in widespread closures. Thousands of supported employees would lose their jobs if ADEs using the BSWAT were forced to close, with most supported employees unable to secure alternative employment, particularly people in rural and regional areas.
- Among ADEs that survived, the profile of the workforce would change. Supported employees whose capacity to learn work skills was low would be priced out of employment. The \$78 per week SWS minimum would exacerbate this for supported employees whose disability restricted their working hours.
- The results of productivity assessments conducted over a short period (as is done under the SWS) may be misleading and bear little resemblance to the longer-term productive capacity of an individual employee.
- ADEs with enterprise agreements would need to go through a process of terminating or re-negotiating them.

2. What steps/processes would need to be undertaken to implement the SWS immediately?

- SWS assessors would need to be recruited and/or trained. Not nearly enough qualified assessors exist to assess the 10,000 employees currently assessed using BSWAT.
- Assessments would need to be scheduled and then conducted
- Issues surrounding postponed BSWAT assessments would need to be resolved
- Job roles/tasks may need to be examined and re-designed to align them with open employment jobs
- Amendments to the SES Award 2010 would be required through the Fair Work Commission, as would renegotiation of existing ADE Enterprise Agreements (EAs)
- ADEs would need to identify the means to cover ongoing wage increases

3. How long would these steps/processes take?

- To assess 10,000 supported employees under a new wage assessment mechanism (taking into account the current number of assessors) would take several years.
- Implementing a strategy to ensure the viability of the ADE sector so as to prevent widespread closures and job losses would take several years.

4. What are the arguments for and against using only the productivity part of the BSWAT?

- Using only the productivity component of the BSWAT would be to apply the tool in a manner that contravenes the Supported Employment Services Award.
- The significantly increased wage rates that would result would lead to ADE closures and supported employees - especially those with the most severe disability - losing their jobs.
- The Federal Court decision found that the competency assessment component of the BSWAT disadvantaged employees with an intellectual disability, but it did not find against all competency-based assessment. Competency-based assessment is a component of most wage assessment tools and is the basis of the Australian Qualifications Framework. Open employment typically assumes competencies as a prerequisite.

5. What steps/processes would need to be undertaken to use only the productivity part immediately?

- Issues surrounding postponed BSWAT assessments would need to be resolved – new productivity assessments would be required
- ADEs would need to identify a source of significant supplementary income to cover ongoing wage increases
- The Fair Work Commission would need to embark on a process to vary the SES Award. This process would necessarily involve consultation with a range of parties some of whom would contest the proposed variation to the award.
- Existing EAs would need to be re-negotiated.

6. How long would these steps/processes take?

- Dealing with postponed productivity assessments since the suspension of the BSWAT would require a significant period of time. Time would also be required to amend the SES Award and various EAs.

7. What tools are currently used to assess the 50% of employees of ADEs that are not assessed by BSWAT?

- The most commonly used ADE wage assessment tools after the BSWAT are Greenacres and Skillsmaster. These three wage assessment tools are used by more than 75% of ADEs. 39% of ADEs use Greenacres, Skillsmaster, the SWS and the Yumaro and FWS wage assessment tools. The remainder are single use wage assessment tools.

8. What are the arguments for and against the use of these other tools in place of the BSWAT?

- All of these wage assessment tools have been independently assessed as complying with the Guide to Good Practice in Wage Determination that underpins Standard 9 of the

Disability Service Standards. To identify the various tools' strengths and weaknesses would require a technical review.

9. What evidence or analysis is available, or has been done, to support the submission that ADEs would close as a result of the increased wages?

- A significant proportion of ADEs report an operating loss. Requiring those ADEs to increase their wages bill without an increase in the productive output of workers or significant additional commercial or government income (either through funding or procurement) would render them unviable.
- NDS does not have access to the financial reports of ADEs, however ADEs are required to provide DSS with a set of their financial reports on an annual basis in accordance with a clause in their funding agreement.
- NDS notes that the ADEs that have made submissions to the AHRC supporting the exemption are adamant that a significant increase in wage costs (if not matched by increased revenue or funding) would require them either to cease operating or terminate the employment of their most disadvantaged employees – those with severe disability. Endeavour Foundation, which employs 1855 supported employees across 25 ADEs, conducted an analysis of the financial impact of an immediate switch to the SWS. From assessing a sample of 40 employees with an intellectual disability across four ADEs, it estimates that average wage rates would increase by \$3.52 per hour. If this figure was amortised across all Endeavour Foundation's employees with an intellectual disability wages would increase by \$10.5 million or 73%.

10. What consideration has been given to providing additional support to ADEs to assist them manage the additional costs resulting from increased wages?

- The provision of additional assistance to ADEs depends on access to government funding. An assistance package would need to include a direct subsidy to help pay for the increased wage costs; a program to reposition ADEs in commercial markets to boost their commercial revenue; and a formal Government procurement program aimed at increasing the goods and services purchased by Commonwealth agencies from ADEs. NDS administers a successful government procurement program in NSW which could be replicated nationally.

11. Please provide full details of the steps to move towards a new wage setting approach identified on page 4 of the exemption application, including proposed dates and timeframes?

- NDS proposed a process and timeframe to review and reform wage setting in its original submission; determining the detail of this process should first entail consultation with all stakeholders.

12. What steps have already been taken and what were the outcomes of those steps?

- NDS is seeking input from its membership on the design of a best practice wage assessment tool, and has developed a proposal for a Commonwealth procurement program based on the successful program that NDS administers in NSW.
- The Government has announced a BSWAT payment scheme, which NDS welcomes.

13. If the exemption were granted, what steps would be taken to ameliorate the discriminatory effects on employees?

- The Commonwealth Government BSWAT payment scheme would allow amelioration of any wage discrimination borne by supported employees. Milestones could be set to progressively increase wage rates, but it would be essential to link these milestones to measures to ensure the sustainability of supported employees' jobs and the viability of ADEs.

14. Please provide any comments in response to the submissions referring to the concluding observations of the CRPD committee relating to the BSWAT on the initial report of Australia, adopted at its tenth session (2-13 September 2013).

- The Report referred to recommends the immediate discontinuation of the use of the BSWAT. NDS's view is that this is impractical, due to the reasons set out in this submission, and that it would jeopardise the employment of thousands of people with disability.

15. Please provide submissions as to the reasonableness of the exemption, given the discrimination that will occur if the use of the BSWAT is continued.

- The temporary exemption would enable the review and reform of wage-setting to occur in an orderly, consultative and practical way. Without an exemption the uncertainty and anxiety among supported employees, their families and ADEs would escalate enormously; this would not be conducive to rational progress.

16. Provide any additional submission responding to the submissions provided to the Commission, or that you feel are appropriate

17. Technical amendment to the Exemption Application

- The Department of Social Services advises that following the lodging of a representative action, it has sought a technical amendment to the original exemption application that identifies additional clauses in the DDA. NDS supports the technical amendment, noting that its reason is to ensure there are no gaps in the coverage of any overall exemption that may be granted by the AHRC.

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About National Disability Services

National Disability Services is the peak body for non-government disability services. Its purpose is to promote quality service provision and life opportunities for people with disability. NDS's Australia-wide membership includes more than 900 non-government organisations, which support people with all forms of disability. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.