Dear Sir/Madam

2009 Minimum Wage Review

Thank you for the opportunity to provide a submission to the 2009 Minimum Wage Review. Please note that we provided a detailed submission to the 2008 Minimum Wage Review which focussed on the wages and conditions of workers with intellectual disability in employment. All of these issues remain relevant to the 2009 Minimum Wage Review. Attached is a copy of our earlier submission for your reference. This present submission relates to the specific issue of the inconsistencies between and fairness of using different wage assessment tools.

The Intellectual Disability Rights Service

The Intellectual Disability Rights Service (IDRS) is a community legal centre that provides legal services to people with intellectual disability throughout New South Wales. Our services include the provision of telephone legal advice and legal
representation in selected matters. We also engage in policy and law reform work and community legal education with a view to advancing the rights of people with an intellectual disability.

We have acted in cases concerning the employment of people with intellectual disability in disability enterprises (formerly ‘business services’). We have also provided legal advice to people with intellectual disability and their support persons about wages and working conditions in open employment and in business services. One of our solicitors is a member of the steering committee of the University of New South Wales Disability Studies and Research Centre’s FairPay Commission Research Project Steering Committee. We draw upon all of this experience in making this submission.

Inconsistencies and inherent unfairness in the use of different disability enterprise wage assessment tools

Unlike the situation in open employment where one wage assessment tool is used in the assessment of wages, in the context of employment in disability enterprises, there is no one wage assessment tool that must be used nor is there uniformity in the assessment of wages between disability enterprises for similar work. IDRS is concerned that disability enterprises are using wage assessment tools that involve competency based components but are failing to adequately train employees with intellectual disability in these areas. Not all wage assessment tools are properly tailored to the specific job requirements of employees with intellectual disability, and they fail to take into consideration reasonable adjustments and support for employees with disability in the workplace, and, as a consequence some employees with intellectual disability are being assessed by tests with large parts that have no relevance to their actual job. The use of some wage assessment tools available to disability enterprises may produce different wage outcomes for people performing the same work or different wage outcomes for the same person performing the same work. These outcomes are inequitable and unfair.

Case study

IDRS has a legal matter concerning a person with an intellectual disability who is employed in a disability enterprise. He has been employed at the enterprise for over 10 years and until recently had his work capacity assessed pursuant to the same wage assessment tool. Successive assessments pursuant to this tool calculated his work productivity at approximately 20%. The disability enterprise recently introduced a new wage assessment tool, the ‘Business Services Wage
Assessment Tool’ (BSWAT). After being assessed pursuant to this tool, he was assessed as having only 9% work productivity. Our client was alarmed and upset at the drastic decrease in his assessed productivity given his disability and support needs have not changed. The new wage assessment tool which was used included questions concerning issues which our client has not been adequately trained on. The wage assessment tool also has built-in problems in that it has only ‘not yet competent’ (NYC) and ‘competent’ (C) assessments for each component, rather than a more equitable scaled assessment.

IDRS urges the Australian Fair Pay Commission to take into account our submissions in performing its wage-setting function pursuant to ss 22 and 23 of the Workplace Relations Act 1996 (Cth) to promote the economic prosperity of the people of Australia having regard to providing minimum wages for employees with disabilities that ensure those employees are competitive in the labour market. We submit that our arguments concerning wage assessment tools are within the scope of the parameters set out in s 23 of the Workplace Relations Act 1996 (Cth) insofar as they relate to issues concerning maximising the earning potential of employees with intellectual disability (including through providing appropriate training and development of employees and accurately assessing their work capacity) and in turn their economic prosperity. They also reflect the ‘good practice’ outlined in the Commonwealth Government’s 2001 Wage Assessment in Business Services: A guide to good practice wage determination (at [3.5]) which emphasises the importance of linking assessment to training.

IDRS suggests that the FairPay Commission:
- review the BSWAT wage assessment tool developed by the Commonwealth Government and all other wage assessment tools used by disability enterprises and engage employees with disability, disability peak organisations, disability enterprises and the Commonwealth Rehabilitation Service to develop a single, flexible and adaptable wage assessment tool,
- conduct research into the operation of the BSWAT wage assessment tool developed by the Commonwealth Government to determine whether the use of this tool in particular is resulting in reduced wage outcomes for workers, whether it links training with assessment and whether it is sufficiently flexible and adaptable to respond to the circumstances of each individual employee, and
- review the process for the approval of new wage assessment tools for inclusion in the Special Business Services Pay Scale which was established by the FairPay Commission in its 2007 Wage-Setting Decision in light of the concerns raised in this submission.
In making these recommendations, IDRS acknowledges that the FairPay Commission’s 2008 Wage-Setting Reasons for Decision notes that monitoring and evaluation of the introduction of the Special Business Services Pay Scale will be an area for research during 2008-09 focusing on wage outcomes under different wage assessment tools. Moreover, IDRS understands that the Australian Fair Pay Commission has commissioned the Disability Studies and Research Centre to conduct some research into the views of employees concerning wage assessment in disability enterprises. IDRS hopes that the results of this research will inform the performance of its wage-setting function pursuant to ss 22 and 23 of the Workplace Relations Act 1996 (Cth) in relation to employees with disabilities.

Should you wish to discuss the content of this submission, please contact Ben Fogarty, Principal Solicitor, on (02) 9318 0144.

Yours faithfully,

Janene Cootes
Executive Officer

Ben Fogarty
Principal Solicitor

Intellectual Disability Rights Service