

**TAB 1**

**MAREE JOAN IRELAND**

**Disability Worker / Solicitor**

IN THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
AT MELBOURNE

IN the matter of: C2002/2281, C2002/5548, C2002/5547, C2002/5546,  
C2002/4268, C2002/5545, C2002/2282, C2002/2283, C2002/2284, C2002/5559,  
C2002/5558, C2002/5569, C2002/5639, C2002/5640, C2002/5716, C2002/5674,  
C2002/5694, C2002/5679, C2002/5693, C2002/5692.

**WITNESS STATEMENT**

I, Maree Joan Ireland of Action for Community Living, Advocacy House, 179 High Street, Northcote in the State of Victoria make the following witness statement:

1. I am a Solicitor and I was admitted to the Supreme Court of Victoria in April 2002 after I completed my Law/Arts Degree at the University of Melbourne in 1994. I now work for Action for Community Living as their Systemic Advocate and, more recently, as their Legal Counsel.
2. However, I have not had the normal path to becoming a Lawyer and that is why I am writing this statement. In fact, for thirteen years, from 1973 to 1986, I “worked” in various Spastic Society sheltered workshops mainly doing basic packaging/assembling work and some typing and computer work. Therefore I have first hand knowledge of life in such workshops and why change is so desperately needed in the areas of wages and conditions in sheltered workshops
3. Before I go on, I would like to say that when my time to leave school arrived, I had no idea what I wanted to do. There had been no encouragement from my teachers to think about it. I now believe that there had been an underlying assumption that my future lay in a sheltered workshop with the Disability Support Pension and a so-called supplementary wage as my

income for my life. There was no discussion about being able to support one's self, nor the development of one's abilities or skills to be able to earn a decent wage and not be dependent on welfare. This is why it is now important that this Commission looks at this whole issue of wages and conditions for workers with disabilities within sheltered workshops. Workers want to be paid real meaningful wages for their daily efforts and not be at the mercy of workshop management and the welfare system for their future income.

4. I would now like to discuss some of my experiences within the sheltered workshops. As I have said, there had been no discussion about my abilities and what I wanted to do with my life.
5. Northern districts spastic Centre. This is where I would be going to work and earn an "income." Of course this was what one did when one left school. So early February 1972 I set off to work. I think I had had an introductory day before the day I started so in a way I knew what to expect. My first impression of the workshop was rows of long tables with people in wheelchairs and chairs doing lots of packaging and assembly work. I then remember a sense of relief when I saw a few people I had known at school. Looking back, maybe that was my first mistake. Knowing I had friends there kind of made it all right. Not that I knew anything better to leave for.
6. My first task as a "worker" was packing small nuts and bolts into plastic bags. A few weeks later, I progressed to stripping Kodak film, I had to strip exposed film from the paper backing and put each into its own barrel which was on either side of my chair Other sorts of work were very similar to this. It wasn't until years later that I realised how this type of work was not suited to my fine motor skills.

7. Most people remember their first pay cheque with a sense of achievement and pride at the amount of the money they had earned. From vague memory I think my first fortnight's paycheque was about \$1.50 – not something to sing about!
8. During my first year there the O.T. helped me to start one subject for my HSC, which was ENGLISH. So I was allowed to study for two hours in the morning, which gave some relief from the boredom.
9. There is a strange ethos about a workshop and staff there. It is like they have to constantly remind you that you are there because of your disability and you should accept it. If you can't, then you need psychological assistance to learn to cope with the boredom of the work you were given to do. This was what I was told by a workshop manager when I told him that I was bored and depressed with what I was doing.
10. I had several friends there with whom I shared conversations while working. But even then, I would be checked by the supervisor for not working hard enough because I had to use my hands to talk. It is sad looking back because at the time I thought my life, even though somewhere in side me something didn't feel right, was how it should be and was normal even though I felt like I was sometimes on a treadmill.
11. It was always like I was in a constant state of contradiction with myself. Being in a workshop never gave me a good work ethic and never developed my sense of self-worth as a worker. From the moment I arrived at my "place of work" it was like being on a treadmill. I was taken into "the worker's lunch room" for a cuppa and to order lunch. Then you would go to your worktable until lunchtime. Then I'd have lunch for 30 minutes. Then return to my worktable until afternoon tea then I'd leave work about 3.30 and go home on the bus that had brought me to work.

12. I think the saddest part of it all is places like these do not develop people's own sense of worth, integrity, creativity, lateral thinking or problem solving. All these attributes are squashed in a person to make them see that what they are in "is quite normal"
13. I can't express the feeling of change I feel in myself between then and now. I feel I am talking about another person rather than myself. I have much more confidence in what I think I can do.
14. The experience of being at University and studying for a Law/Arts Degree and having the Disability Supports that I needed, that is, note-takers; library assistance and cafe assistance all under my control, gave me a sense of my own self worth and potential.
15. It was not only the fact that I was studying law, but I began to develop a sense of my own worth and ability, which the workshop management had stripped away from me.
16. In my current position, it is both exhilarating and sometimes depressing. It is exhilarating in that I am fighting for social change for people with disabilities, and am being paid a decent wage to do so. One aspect of my position has been the involvement within a coalition of advocacy organisations called CAFEE, Campaign for Fairer and Equal Employment. Our aim is to improve the working conditions of workers within sheltered workshops either through closure, which at this time doesn't seem a viable option, or fighting for equal and fairer conditions. This involves meetings with various organizations including the Australian Council of Trade Unions ("ACTU"). In 2002 we held a combined conference to raise awareness of these issues. Other CAFEE members have been working around the issues of preventing unfair EBA's getting certified.

17. It is also depressing in that we are all still fighting for this in such an adhoc manner because there are varied issues and the legal system has not been able to solve them as yet.
18. Personally, I have concluded that, "this type of employment" should, at the least, no longer exist. If this cannot be achieved, then the Commission should be investigating and establishing proper and respectful wages and conditions for these workers just like all workers. Workers with disabilities do not want "special awards" established with: "special conditions" that can be misconstrued by management in that "these workers are special so they need special awards and rates".
19. Workers with disabilities should no longer be expected to accept second-class pay rates and conditions for the sake of retaining such work places. Governments, public and private enterprises should be looking at employment opportunities where workers with disabilities are treated with equality, respect and rewarded properly for their efforts and no longer disadvantaged because of their disabilities. Legal precedents are needed to establish equal wages and conditions for workers with disabilities. Where people with disabilities are not "able to work for a fair day's pay" then research is needed to establish alternative but meaningful activities for these people. Again the above should be rejected as an argument to retain poor wages and conditions within these places.

I hope the Commission will investigate this matter.

**Dated this 18<sup>th</sup> day of February 2003**

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**MAREE JOAN IRELAND**

**TAB 2**

**PETER FRANZ PAVLIK**

**Disability Worker**

IN THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
AT MELBOURNE

IN the matter of: C2002/2281, C2002/5548, C2002/5547, C2002/5546,  
C2002/4268, C2002/5545, C2002/2282, C2002/2283, C2002/2284, C2002/5559,  
C2002/5558, C2002/5569, C2002/5639, C2002/5640, C2002/5716, C2002/5674,  
C2002/5694, C2002/5679, C2002/5693, C2002/5692.

**WITNESS STATEMENT**

I, Peter Franz Pavlik of 7 Crockford Street, Benalla in the State of Victoria make the following witness statement:

1. I am a qualified electrician by trade. My back injured over a number of years and I was unable to work as before, since that time I have not been able to work in my profession. I have been on the Disability Support Pension since that accident.
2. After consultation with Centrelink, I decided that I need to earn some extra money. I was referred to Merriwa Industries Pty Ltd, Business Service and commenced employment there in January, 2000.
3. My duties consisted of process worker and setting up machines.
4. In October 2000, I was involved in a workplace accident where I lost part of my forefinger. I did not return to work at Merriwa until March 2001. I returned to the same section in June/July and then moved to Process and Packaging section where I had to work putting labels on cans.
5. Up until the time of my accident I had been happy at Merriwa. When I started work again everything was alright for a couple of months. After that

my working arrangements were continually changed around. I sought a leave of absence without pay so that I could recover and be productive when I returned to work. The Business Service would not give me a leave of absence and I decided in the end to quit so that I could at least get better.

6. Whilst I was working at Merriwa, I received \$2.50 per hour. I was working alongside other employees who were receiving full award wages yet we were doing the same job. I did not have an assessment done relating to my productivity and I believe that the work I did was in the quality and quantity of those I worked alongside.
7. Merriwa is situated in Wangaratta. As I live in Benalla I traveled 50km trip each way. After my accident my hours of work were 7.30am–11.30am each day I was employed. I received \$10 for these hours. I paid \$2 towards petrol for the morning trip and \$2.40 for the lunch time train back to home. I ended up with \$20 a week extra when I was working, as I paid half of what I earned in traveling expenses.
8. When I originally commenced at Merriwas the original rehabilitation agreement promised a pay rise after the three (3) month probation period. This never eventuated and when questioned the management said that I could not be given the pay rise because I had been assigned to new work. This was at the instigation of management. I was told I had to prove myself at the new work area. The movements required in the new work forced me to use my injured elbow to the detriment of my health and I was forced to resign.

**Dated this 18<sup>th</sup> day of February 2003**

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**PETER FRANZ PAVLIK**

**ROBERT RAYMOND DICK**

**Advocate**

IN THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
AT MELBOURNE

IN the matter of: C2002/2281, C2002/5548, C2002/5547, C2002/5546,  
C2002/4268, C2002/5545, C2002/2282, C2002/2283, C2002/2284, C2002/5559,  
C2002/5558, C2002/5569, C2002/5639, C2002/5640, C2002/5716, C2002/5674,  
C2002/5694, C2002/5679, C2002/5693, C2002/5692.

**WITNESS STATEMENT**

I, Robert Raymond Dick OF 31 Princess Street, Warrnambool in the State of Victoria make the following witness statement:

1. I have worked in the social and community service sector for 15 years. I have worked in disability advocacy for 5.5 years. I have a Bachelor of Arts (Hons) and a Diploma of Community Services.
2. Currently I am employed by Southwest Advocacy Association Inc. We have two advocates as well as one support staff. Southwest Advocacy services the South West region covering Warrnambool, Portland, Hamilton and Camperdown.
3. There are two organizations that run business services in the South West region of Victoria. There are a group of business services run by Vantage Inc. and another group run by Kyeema Centre Inc. Both organizations mainly employ people with intellectual disabilities. The level of intellectual disability amongst employees varies from mild to moderate.
4. In my experience people with intellectual disabilities want to be compliant and to please. They are more likely to give answers that they think people in authority want from them. When asked to make a decision or given a choice

they are more likely to give an answer that will stand them in good stead with the person, particularly if the person is in authority.

5. People with intellectual disabilities need things to be explained in relatively simple language. Sufficient time needs to be taken to ensure that they understand what is being explained to them. Information needs to be repeated and reinforced to help them understand.
  
6. I do not believe that some of the complex concepts involved in workplaces and in workplace agreements are adequately explained to people with disabilities, or in a way that enables them to make informed choices or decisions.

I also believe strategies need to be developed to safeguard the rights of those people who will not be able to make a genuine vote despite the best efforts of employers.

7. Many people with disabilities have often lived lives where they have lacked power and control and as a result they are easily intimidated. People with intellectual disabilities who work in business services are commonly afraid to speak out on issues for fear of being branded as troublemakers and losing their employment.
  
8. I will provide a specific example. In a particular workplace a vote was to be taken on a EBA. One of the employees consulted me in my role as an advocate. The client told me that most people at the worksite did not understand the agreement and the majority intended to go along with what Management said when it came to a vote. Southwest Advocacy was asked to assist the client in regards to sorting their Agreement out. Many of the aspects of Agreement were contrary to conditions and wages that should have been acceptable. A flat rate of \$171 was to be paid to each employee with no assessment procedure included. One of the first clauses stated that

the relationship was between provider and consumer which overrides the relationship of employer/employee.

South West Advocacy instructed DEAC to intervene in the Hearing after the client had informed us a vote by the employees had accepted the Agreement. Leave was granted to DEAC to intervene and a hearing is set down for 12 March 2003.

9. It is common in business services for employee representative committees to be established to negotiate agreements on behalf of all employees. Clients suggest that many employees in business services do not know who the representatives are and that there is inadequate consultation between representatives and employees.
10. At one particular Business Service, the employees are commonly told that if they were paid more they would lose the disability support pension. There doesn't seem to be any link between rates of pay and awards. There appear to be inconsistencies between rates that people with disabilities are paid. One person gets \$1.50 per hour while another with similar work is paid a slightly different rate of pay. It should also be noted that business services pay supervisory staff wages in line with community standards.
11. I believe that it is necessary for the Commission to hand down some principles that are followed in the format of Business Service's Agreements. This group of employees are so vulnerable however, they are entitled to be recognized for the work they do within their workplaces. For too long their needs have been ignored. With the Disability Standards due to take effect in January 2004, the time to do something is now.

**Dated this 18<sup>th</sup> day of February 2003**

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**ROBERT RAYMOND DICK**

**TAB 4**

**ROBERT GRAHAM MACFARLANE**

**Disability Consultant**

IN THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
AT MELBOURNE

IN the matter of: C2002/2281, C2002/5548, C2002/5547, C2002/5546,  
C2002/4268, C2002/5545, C2002/2282, C2002/2283, C2002/2284, C2002/5559,  
C2002/5558, C2002/5569, C2002/5639, C2002/5640, C2002/5716, C2002/5674,  
C2002/5694, C2002/5679, C2002/5693, C2002/5692.

**WITNESS STATEMENT**

I, Robert Graham MacFarlane make the following witness statement:

1. I spent ten years working in a disability employment agency. I worked predominately in marketing and job development. I am a member of the Australian Services Union disability working party, ACTU workers with disability group and Coalition Action for Employment Equity (CAFEE). I have a Bachelor of Arts and Graduate Diploma in Human Resources and Industrial Relations Management. I am now self employed as a consultant in disability awareness, training, industrial relations and human resources and I am a workplace assessor in the supported wage system and have been since 1995.
2. I believe that there is a real need for wage fixing principles to be set by the AIRC for Business Services.
3. Over the past two years there have been a series of appalling agreements go through the commission that maintained very low wages, and either have no wage assessment processes or unsatisfactory ones:-
  - a. Disability Services Australia
  - b. Yooralla
  - c. Ballarat Regional Industries

4. I have recently assisted a business service develop an enterprise bargaining agreement. In the application for Certification the Business Service has applied to use a generic cleaning industry award and added the supported wages system clause.

The Business Service involved were concerned that the employees were able to contribute to the process. They arranged for a Union to come out to talk to the employees and were given a choice of who they wanted to act for them. The employees asked that DEAC represent them and a number of consultative and negotiating meetings were held with DEAC and the employees.

5. Given the generally poor Enterprise Bargaining Agreements allowed through the commission for Business Services there needs to be greater education of Commissioners. Some principles need to be set for the Commissioners to refer to when making decisions relating to the Business Services.
6. It is my belief that the AIRC needs to look at the wage assessment tool used. The supported wages system should be the system used across the board. One of the big problems under the disability employment standards is that there is a huge loophole for business services when choosing their wage assessment tool. The criteria and tools set down by the DSA does not provide any certainty or consistency and leaves the assessment of validity to auditors who have no industrial relations authority or competence.
7. One business service in South Australia that is quality accredited will not make available to the public its wage assessment tool. There is a need for greater public accountability from business services in regard to wage assessment methods.

**Dated this 18<sup>th</sup> day of February 2003**

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**ROBERT GRAHAM MACFARLANE**

**TAB 5**

**GENNARO DINUCCIO**

**Manager Workforce**

IN THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
AT MELBOURNE

IN the matter of: C2002/2281, C2002/5548, C2002/5547, C2002/5546,  
C2002/4268, C2002/5545, C2002/2282, C2002/2283, C2002/2284, C2002/5559,  
C2002/5558, C2002/5569, C2002/5639, C2002/5640, C2002/5716, C2002/5674,  
C2002/5694, C2002/5679, C2002/5693, C2002/5692.

**WITNESS STATEMENT**

I, Gennaro Dinuccio of Rear 9 Langwells Parade, Northcote in the State of Victoria make the following witness statement:

1. I have worked at Workforce since September 2001. Prior to that I was the manager of a commercial cleaning business. I have worked in the cleaning industry for approximately 18 years.
2. Approximately twelve to eighteen months ago Workforce established the Business Service called Cleanforce. Cleanforce is a business that does contract cleaning. Groups of employees attend worksites to do their cleaning. Cleanforce is run as a viable business and to compete in the open market must offer competitive rates.
3. We commenced the bargaining process about 12 months ago. The managers of Cleanforce explained to the employees that an Enterprise Bargaining Agreement would provide benefits for both management and workers. Copies of the draft agreement were made available and discussions held over time with the employees. There are probably four or five variations compared with the award. Management invited the miscellaneous workers' union and DEAC to offer assistance to the workers in support of the development of the Enterprise Bargaining Agreement.

4. A number of meetings were held with information being provided to the employees about wage line, EBAs and contracts. When individual workers asked about the information, management staff took time to explain matters and direct workers to other sources of help.
5. Management involved the legal advocate from DEAC, Kairsty Wilson, in all meetings. Kairsty could fully explain all the items in the Agreement to the workers. I like to believe that the workers employed at Cleanforce do understand the agreement. There were lots of things that the workers were happy with such as sick leave, annual leave etc. The workers raised many issues but were most concerned with wages, supported wage system assessments, entitlements, hours, penalties, forms of leave and uniforms.
6. I believe all the workers have a really good understanding. Management invited support workers/advocates to the meetings to support workers who required such assistance. These advocates were given copies of the EBA and each clause was explained to the employees by their advocate. Many of the employees had items they wanted to be included such as boots. Although, we were unable to consider them at this time it was agreed that where they are necessary they would be provided..
7. Cleanforce as a new business needs to use an assessment tool. The supported wage system is necessary in order to be successful. I need this tool to employ people who's productivity is below standard, however the majority of our employees are paid at full award rates.
8. This use of the supported wage system is discussed openly with workers when they first start with the company. There are good conditions for all of the employees.

**Dated this 18<sup>th</sup> day of February 2003**

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**GENNARO DINUCCIO**

**BRAMANI FLICK**

**Community Legal Educator**

IN THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
AT MELBOURNE

IN the matter of: C2002/2281, C2002/5548, C2002/5547, C2002/5546,  
C2002/4268, C2002/5545, C2002/2282, C2002/2283, C2002/2284, C2002/5559,  
C2002/5558, C2002/5569, C2002/5639, C2002/5640, C2002/5716, C2002/5674,  
C2002/5694, C2002/5679, C2002/5693, C2002/5692.

**WITNESS STATEMENT**

I, Bramani Flick of Ross House, Flinders Lane, Melbourne in the State of Victoria make the following witness statement:

1. I am employed as the community legal educator/community development worker at Villamanta. I have worked at Villamanta for three years. I continue to meet with, and provide education to, employees in business services. Primarily I run the community legal information service. I provide information around general rights. I use a community development work approach. I use a method of inquiry to investigate issues relevant to, and of importance to, the group.
2. Many, many participants raise the issue of poor wages and conditions in many business services I have visited. There are also concerns about poor environmental conditions and poor occupational health and safety. There is also an issue around poor support in the workplace and workplace bullying. There is very little choice about the work that can be done. The work is mostly repetitive.
3. I am concerned that the process of certified workplace agreements in business services is totally inappropriate. This is my view because there is lack of real advocacy and support. There is, historically, a high level of

disempowerment of workers in business services. There is a lack of access to qualified industrial advocacy and a lack of trade union involvement.

4. A major issue is that many business services have a public face of being representative, however in reality workers are constantly stifled. Some business services are better at providing opportunities for employees to have a say, however the majority of people I meet are fearful and unwilling to speak out because of fear of retribution.
5. Quite often informed consent is assumed when people actually do not fully understand the issues at hand. Parents are referred to inappropriately to give consent when it is not appropriate to contact them. Quite often the employees have a limited ability to understand information. Also people have an inability to balance risk and alternatives. Employees do not have the ability to consent in an informed manner.
6. People are not given full access to information. Employees in business services do not engage in real bargaining. It is ludicrous to assume that there is a real bargaining period. Quite often guardians are not consulted. It is ironic that often a person's ability to make decisions is taken away and the appropriate guardian is not consulted about the CWA. Business services do have the responsibility to ensure that people have information so that they can provide informed consent.
7. Often employees in business services are subject to threats. Common threats are that if your pay goes up you will lose your pension or the workshop will close. Threats are consistently used without the provision of adequate and proper information about wages, pensions etc.
8. In conclusion, I consider it vitally important for the AIRC to give due consideration to an industrial framework that provides workers with disability in business services. To ensure that they receive their wages and

employment conditions that are fair and through a process that protects the worker from fear of intimidation and coercion.

**Dated this 18<sup>th</sup> day of February 2003**

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**BRAMANI FLICK**

**TAB 7**

**PHIL TUCKERMAN**

**Manager Job Support**

IN THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
AT MELBOURNE

IN the matter of: C2002/2281, C2002/5548, C2002/5547, C2002/5546,  
C2002/4268, C2002/5545, C2002/2282, C2002/2283, C2002/2284, C2002/5559,  
C2002/5558, C2002/5569, C2002/5639, C2002/5640, C2002/5716, C2002/5674,  
C2002/5694, C2002/5679, C2002/5693, C2002/5692.

**WITNESS STATEMENT**

I, Phil Tuckerman of 1-5 Commercial Road, Kingsgrove in the State of New South Wales make the following witness statement:

1. Prior to the introduction of the Disability Services Act in 1986 people with a moderate intellectual disability did not achieve open employment. I established Jobsupport in 1986 as a Commonwealth Government funded demonstration project to investigate whether people with a moderate intellectual disability could achieve open employment.
2. Today Jobsupport supports approximately 400 people with a moderate intellectual disability in jobs throughout Sydney. Approximately one third are paid sub-award wages under the Supported Wage system. Many people with a moderate intellectual disability can only access employment at sub-award wage levels. I was a member of the Ronald's Report committee that recognized the need for a fair sub-award wage system.
3. Jobsupport spent several years trialing alternate approaches to calculating sub-award wages before settling on the weighted productivity approach used by the United States Department of Labor as the best available option in 1991. This weighted productivity approach now forms the basis of the current Supported Wage system. Most recently I was the ACE National

Network (ANN) representative on the committee that oversaw a review of the Supported Wage system. The review found that the Supported Wage system was well accepted by employers, people with disabilities and service providers. No system is perfect and incapable of improvement however the current Supported Wage system provides a useful standard against which future alternate approaches can be assessed.

4. Jobsupport's experience is that the Supported Wage clause is often overlooked. It can take two months to arrange an Australian Workplace Agreement (AWA) when the clause is not inserted and it is unclear whether AWAs would be retained under a future labor government. In some cases even an AWA is not possible.
5. Jobsupport had to write to a large government employer recently indicating that we would have to withdraw from the placement and advise the client to resign unless an appropriate legal basis for paying the client a sub-award wage was put in place. We had been unable to secure award wage employment, the inclusion of the Supported Wage clause in the enterprise agreement or an AWA despite several years of requests.
6. I hope that the Full Bench will consider the following two initiatives. Both initiatives have the full support of the ANN Executive:-
  1. Adopt the current Supported Wage system as the standard against which any future sub-award wage approaches are assessed on a 'no disadvantage test' basis.
  2. Make inclusion of the Supported Wage clause mandatory in every industrial agreement.

**Dated this 18<sup>th</sup> day of February 2003**

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**PHIL TUCKERMAN**

**KAYE FARISH**

**Nurse, Author and Mother (of Kate Farish - disability worker)**

IN THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
AT MELBOURNE

IN the matter of: C2002/2281, C2002/5548, C2002/5547, C2002/5546,  
C2002/4268, C2002/5545, C2002/2282, C2002/2283, C2002/2284, C2002/5559,  
C2002/5558, C2002/5569, C2002/5639, C2002/5640, C2002/5716, C2002/5674,  
C2002/5694, C2002/5679, C2002/5693, C2002/5692.

**WITNESS STATEMENT**

I, Kaye Farish of Old Melbourne Road, Dunnstown in the State of Victoria make the following witness statement:

1. I hold the following qualifications:
  - i. Registered nurse (Division 1)
  - ii. Registered midwife
  - iii. Maternal & Child Health nurse
  - iv. Post Graduate Diploma in Childhood Development
  - v. Bachelor of Science – Nursing
  - vi. Lactation Consultant
  - vii. Continence Nurse advisor
  - viii. Certificate IV, Workplace Assessment and Training
  
2. 1967 to present – I have been employed in the public sector in many positions relating to my nursing qualifications. During this time I have worked as a general nurse, in intensive care units, in special nurseries, practiced as a midwife, as a maternal and child health nurse, as a specialist nurse in treating elderly incontinence.
  
3. Additionally I own and manage a private consultancy treating children and young adults for nocturnal (night time) and diurnal (day time) enuresis (bed

wetting) and encopresis (soiling). I have written many articles on the subject including several assessment and management manuals that are sold throughout Australia and New Zealand and the United Kingdom. I am the author of a number of books on the subject and lecture extensively throughout Australia and the United Kingdom.

4. I have also assisted my husband with the running of a company manufacturing and selling high quality enuresis alarms and associated products. I have also been involved with the compilation of the documents, including manuals, and assisted with the certification of this company to ISO 9002 and subsequently ISO 9001:2000 for Quality Assurance. In the course of assisting in the running of this company I have been involved in the setting up and maintenance of the company records; assisted in research and development projects and marketing finished products.
5. I am the mother of two children. My son has an honours degree as a Mechanical Engineer. My daughter is intellectually disabled. I have taught her developmental skills and ensured that she is as prepared as can reasonably be expected to be a worthwhile member of the community. These tasks range from teaching her to read through to sex education. We have been involved, hands on, in an ongoing basis to enable her to reach her present level. Kate lives independently. She is capable of looking after her personal hygiene, house work, shopping, budgeting and managing her own finances including paying bills. She does however need supervision. Kate is in receipt of a disability pension. She has also been placed in the 'Futures for Young Adults' program.

### **Kate's Employment**

6. Over the years Kate has been employed in a number of jobs. Prior to her current position she was employed as a kitchen hand at a pub called 'Irish Murphy's' in Ballarat. During this time she was subjected to bullying by the

chef and when she complained to management the matter was inappropriately handled. Instead of the bully being tackled about her behaviour Kate was dismissed from her position.

7. Prior to the dismissal Kate had her hours cut back from 30 per week to 5. These were not consecutive hours but split up over the week. At this time she was living at home and traveling 10km to work and 10km home. Some of the time my husband and I were able to take her and collect her however there were other times, each week, that she had to take a taxi. When the wages were reduced, due to the hours worked being cut back, she had insufficient salary to cover the cost of the taxis and my husband and I subsidised them.
8. Most of the staff she worked with were accepting of her disabilities and found her to be friendly and co-operative and voiced their concern when Kate was dismissed and an additional chef appointed.
9. Kate remained unemployed from then for a period of 18 months. During this time she was searching for employment and attended a number of training courses. Her self esteem suffered badly and she became quite depressed.
10. In May 20001 Kate commenced employment at Ballarat Regional Industries (BRI) as a packer and kitchen hand. When Kate was interviewed (by Paul McGee, Human Resources Manager) for her position my husband and I were also present. We were told that Kate would initially start on \$2.50 per hour and this was at the lower end of the scale and Kate's hourly rate would increase in line with her productivity. We were not given any documentation nor were we told when any assessment would take place to reassess her productivity. To our knowledge she has never been assessed.

11. Early in 2002 we had a further meeting with BRI (Mr McGee) about Kate's progress and increase in her hourly rate. Mr McGee stated that Kate wasn't as fast in some areas as he felt she may have been capable of. This related specifically to tying ropes on laundry bags. Although Kate was shown a number of times how to do it she didn't pick up the technique and expressed her frustration. She continued to have problems with this task until they were no longer required to perform it. Mr McGee asked Kate if she had anything to say about work and she told him of the problems some of the supervisors had understanding people with disabilities. (The supervisors employed by BRI do not have any experience in working with people with a disability and do not have the relevant Certificate in Workplace Assessment and Training). Mr McGee's reply was to tell Kate to mind her own business and it was up to BRI to decide who they would employ as team leaders.
12. Several months after this meeting. I rang Mr McGee and asked him for a fan for the kitchen. I also asked him when Kate's wages would increase. His reply was that they were reviewing it and this review would take about a month. After the month had expired I again contacted him and again asked for the fan and about the wages. Once again I was told the matter was still being reviewed. During this waiting period I spoke to Kate and explained to her that she would have to speak to her employer representative about asking for the fan at the workers meetings held each month. This she did, on at least two occasions, in the presence of Mr McGee, but still no fan was forthcoming.
13. On 6<sup>th</sup> May 2002 we had a meeting with the Department of Human Services where we expressed our displeasure at the situation. Kate has not learnt new skills at work and that nothing had happened about her pay review. On 20<sup>th</sup> May 2002 we had another meeting with the DHS about these matters and lack of action by BRI and on 31<sup>st</sup> May 2002 we had another meeting

with the Department of Human Services about the lack of action by BRI over her pay review. On 22<sup>nd</sup> July 2002 we had a further meeting with the DHS and once again expressed concerns about the lack of action at BRI. The level of Kate's funding to BRI was investigated by DHS which revealed that BRI was claiming for full time employment for Kate under the Futures for Young Adults funding when, in fact, Kate was working about half time. The Department also informed us that there was no mechanism to enable them to recoup the excess funding paid to BRI.

14. On 2<sup>nd</sup> December 2002 we with three other parents whose children (co-workers of Kate's) had a meeting with Paul Cain and Kevin Stone. Paul is an Advocate from NCID and Kevin is the President of NCID and the CEO of Valid. A further meeting took place in late December with Paul and Kevin (no other parents or children present). We were told that they had had a meeting with BRI and had discussed the breaches of the workplace agreement, including the failure to re-assess Kate for her productivity pay increase. They asked us if we would attend a meeting with the CEO (Rex Carland) of BRI on 14<sup>th</sup> January 2003. This we agreed to do.
15. Apart from the problems of a failure to re-assess Kate (and the others) for pay increases, issues were raised about the inadequacy of the team leaders in recognising and dealing with persons with disabilities. We also raised our concern about the lack of communication of how the grievance procedures worked within BRI.
16. During the whole of this time we were unable to get a face to face meeting with Mr McGee or anyone higher up the hierarchy of BRI. Every time we requested a meeting, we were side tracked to the production manager Paul Ross. Everything was handled on the phone – usually unsatisfactorily.

17. In May 2002 Kate was ordered to perform cleaning duties and her allocation included the male and female toilets, disabled toilets, sick bay, foyer, warehouse and bins. Kate was shown once how to do these duties and was given written instructions also. Kate had difficulty in following the instructions. The cleaning of the toilets included the bowls and urinals (on the instruction sheet given to Kate is written the word 'revenge' after the instructions on cleaning the urinals). As a result of Kate being put on this type of cleaning duty we took her out of BRI on the date she was rostered to do it and put her into a computer course instead. We did not believe that she was employed to do these duties and had not received adequate training.
18. At no time have we been given a copy of any of Kate's file. We have asked, both verbally and in writing, for a copy but have, to date, not received anything. This includes a copy of any assessment of her. At no time has she been informed that an assessment is to be conducted on her.
19. I am wanting Kate to participate in the workforce and earn a decent wage. Her correct wages and conditions of employment do not reflect her true worth and productive capacity. I hope the Commission will seek to address this enquiry and unacceptable situation.

**Dated this 18<sup>th</sup> day of February 2003**

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**KAYE FARISH**

**PAUL CAIN**

**SENIOR POLICY OFFICER  
NATIONAL COUNCIL INTELLECTUAL DISABILITY**

IN THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
AT MELBOURNE

IN the matter of: C2002/2281, C2002/5548, C2002/5547, C2002/5546,  
C2002/4268, C2002/5545, C2002/2282, C2002/2283, C2002/2284, C2002/5559,  
C2002/5558, C2002/5569, C2002/5639, C2002/5640, C2002/5716, C2002/5674,  
C2002/5694, C2002/5679, C2002/5693, C2002/5692.

### WITNESS STATEMENT

I, Paul Leonard Cain of 17 Partridge Crescent, Frankston in the State of Victoria  
make the following witness statement:

1. Current Employment: Senior Policy Officer, National Council on Intellectual  
Disability

**Qualifications: *Bachelor of Social Science (Human  
Services)***

2. ***I have worked at Disability services for 15 years.  
From 1994 I have undertaken senior national policy  
positions at Disabled Peoples' International  
(Australia), National Ethnic Disability Alliance,  
Australian Psychiatric Disability Coalition, and the  
National Council on Intellectual Disability.***

3. I have represented the National Caucus of Disability Consumer Organisations (which is a network of national organisations representing people with disability) and the National Council on Intellectual Disability, on many employment reform working groups attempting to address change in disability employment services funded by the Commonwealth since 1994.
4. These Commonwealth working groups including: The Quality Assurance and Standards Working Party, The Case Based Funding Trial Working Group; The Business Services Reform Implementation Group; The Business Services Wage Assessment Tool Reference Group; and The Assessment and Contestability Trial Reference Group (Welfare Reform).
5. ***It is the goal of the National Council on Intellectual Disability to ensure the maximum participation of people with intellectual disability in Australian society. The Council attempts to represent the interests of people with intellectual disability and their family members to Governments.***
6. The subject of the rights of people with intellectual disability in employment has been a targeted area of the Council's work for many years. As an employee of the Council, I have been engaged in argument and action to ensure that employees with disability receive wages and conditions of employment that reflect their fundamental right to the same terms and conditions of employment enjoyed and expected by other workers as per the Law.
7. NCID has received complaints from workers with intellectual disability and their family members who work in the business services industry (formerly

know as sheltered workshops). Workers and their families complain about the appalling wages and conditions, poor training and support, and the lack of choice they have to gain meaningful employment. This complaint is reflected in consultation and research reports of workers with intellectual disability.<sup>69</sup>

8. In recent years, workers and family members have alerted the Council to the negotiation of workplace agreements in business services. Family members, in particular, have been outraged by employers negotiating and

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<sup>69</sup> Commonwealth of Australia. Report of the Handicapped Programs Review. *New Directions*. (1985) Australian Government Publishing Service: Canberra. (Exhibit 28)

The Parliament of the Commonwealth of Australia. (1992). *Employment of People with Disabilities: Report of the Senate Standing Committee on Community Affairs* (Exhibit 31)

Commonwealth of Australia (1992). *Consultancy on the Development of a National Assessment Framework for a Supportive Wages System*. Report to the Wages Subcommittee of the Disability Task Force. Don Dunoon, Department of Industrial Relations. AGPS. (Exhibit 32)

Commonwealth of Australia. (1995). Baume, K., & Kay, K. *Working Solution*. Report of the Strategic Review of the Commonwealth Disability Services Program. AGPS (Exhibit 33)

National Caucus of Disability Consumer Organisations. (Dec, 1995). "All I want is a job .." Report on consultations regarding the Disability Services Quality Council Strategic Plan. (Exhibit 34)

National Council on Intellectual Disability June 1995. *Consultations with consumers on aspects of the discussion papers relating to integration and wages in employment services*. Not published. (Exhibit 35)

Commonwealth of Australia. (1996). *Making Rights Count. Services for people with a disability*. Review of legislation administered by the Department of Health and Family Services. Australian Law Reform Commission. Report No 79 p. 233. (Exhibit 36)

Service Quality Australia. February 1997. Evaluation Of The Barriers To The Implementation Of The Disability Service Standards. A Report To The Disability Service Standards Review And Quality Assurance Working Party (Exhibit 14 & 38)

Report of consultations held with people with disability regarding the recommendations of the Business Services Review: A viable future - strategic imperatives for Business Services. National Caucus of Disability Consumer Organisations. June 2000. Funded by the Commonwealth Department of Family and Community Services (Exhibit 40)

ACTU Workers with a Disability Conference. Outcomes and statement arising from the Workers with a disability conference held on July 11 - 12 2002. (Exhibit 1)

Commonwealth of Australia. (2002). *Evaluation of the Case Based Funding Trial*. Australian Healthcare Associates. Department of Family and Community Services. (Exhibit 43)

bargaining with their sons and daughters about their terms and conditions of employment. This outrage is due to the fact that their sons and daughter have intellectual impairment and are highly vulnerable to abuse and exploitation.

9. The issues of fair wages and employment for people with intellectual disability continue to be a “running sore”. Workers employed by business services receive wages and conditions of employment that the ordinary person would find to be exploitative and abusive.
10. It is a situation that the Commonwealth has been aware of through consultation, research and audit for at least two decades<sup>70</sup>. Workers with intellectual disability, however, continue to be supported in businesses where they do not receive fair wages and conditions of employment.
11. Much of my work, on behalf of people with disabilities, has concentrated on assisting the Commonwealth refine the system by which employment assistance funding is granted to employment service organisations.
12. This work has always been distracted by the non-compliance of the Business Service (also known as sheltered workshop) industry. This model of employment was deemed by the Disability Services Act 1986 as not meeting basic standards of integration or employment conditions (and many still do not meet basic service standards). Many strategies have been provided to assist such organisations change over a period of 16 years – i.e. resources, transition assistance, reviews, research, pathways, self assessment tools, time, etc. I am in the process of contributing to the preparation of advice to the Minister to determine further measures of support for Business Services.

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<sup>70</sup> See footnote No. 1

13. Despite a concerted effort by the Commonwealth and the sector, little change has occurred. Due to recent changes to the Disability Services Act, the expectation is that “time is up” for Business Services to meet basic employment rights of workers with disability.
14. Very few Business Services have paid award rates or maintained award conditions however, under the Workplace Relations Act s.123 to pay below minimum rates an employer must have permission of the Commission. The reason why the AIRC is confronted with a growing number of agreements from business services is that AIRC certification is now required to be eligible for Commonwealth service provider contracts under the DSA 1986.
15. The consequences of this is that, workers with disability in Business Services who had been receiving illegal wages and conditions of employment are now subject to industrial bargaining processes in which they do not have any independent support, advocacy or safeguards to protect their employment rights.
16. As a result the Commission has been presented with many agreements which seek to argue the legitimisation of wages and conditions of employment which are essentially appalling and discriminatory in substance. Employers have, however, been able to present arguments to convince the Commission that there is no disadvantage or discrimination, or even if there is, it is in the public interest to do so. Without any opposing view from employees, who in large part are unaware and rendered powerless, the Commission has inadvertently certified wages and conditions of employment which should never have been allowed.
17. The frustration of NCID has been that the law provides many safeguards, i.e. the supportive wage system, the need to take into account the needs of particular groups of people, the no-disadvantage test and the need to take

into account the Disability Discrimination Act. Yet employers, who are desperate to achieve certification in order to remain eligible for Commonwealth employment assistance funding, have sought to subvert these safeguards.

18. The frustration of NCID is further exacerbated by the nature of the system of industrial relations, particularly the ability for employers and employees to bargain a workplace agreement. This provision places a major disadvantage on workers with disability in business services. This means that an industrial process can be initiated, pursued and completed without the knowledge of any other party. The result is an agreement that is placed before the Commission without any safeguards, no independent advocacy or information provided to the workers, and the propensity of only one view, that of the employer, being presented to the Commission. This has led to decisions based on information that was never tested, and information that was skewed to suit the purposes and interests of the employer.
19. I believe that the Commission urgently needs to determine some critical issues to safeguard the rights of workers with disability. This includes rulings on what pro-rata award wage system is going to be acceptable for passing the no disadvantage test, or at the very least, what principles pro-rata award assessments and systems require to be deemed valid. Currently the SWS, according to the Act, passes the no disadvantage test, yet the Commission has passed many others that do not provide any safeguards against exploitation, have no independence in assessment, and lack valid comparison to relevant awards and job classifications.
20. There is also an urgent need to consider rulings on the process of enterprise bargaining in the business service sector including issues of genuine consent, voting, provision of information, independent support for information and bargaining, and preventing and eliminating discrimination.

These issues need urgent development so as to guide the Commission in meeting its obligations when determining certification of awards and agreements.

21. If these tasks are not addressed, workers with disability in the business service sector are at risk of a further two decades of wages and conditions of employment which are exploitative.

**Dated this 18<sup>th</sup> day of February 2003**

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**PAUL CAIN**

**MICHAEL HAND**

**MANAGER ADVOCAY PROGRAMME  
DISABILITY EMPLOYMENT ACTION CENTRE**

IN THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
AT MELBOURNE

IN the matter of: C2002/2281, C2002/5548, C2002/5547, C2002/5546,  
C2002/4268, C2002/5545, C2002/2282, C2002/2283, C2002/2284, C2002/5559,  
C2002/5558, C2002/5569, C2002/5639, C2002/5640, C2002/5716, C2002/5674,  
C2002/5694, C2002/5679, C2002/5693, C2002/5692.

**WITNESS STATEMENT**

I, Michael Hand for DEAC, Level 8, 55 Swanston Street in the State of Victoria make the following witness statement:

1. I am the manager of the DEAC advocacy programme. I have held this position since November 2000. Prior to joining DEAC, from 1986 to 2000, I was employed in the Commonwealth Department of Family and Community Services (DFaCS) in the roles of project officer and executive officer in the disability services program (DSP). The DSP is a national program established in 1987 to implement the Disability Services Act (DSA 1986).
2. The DSA specified two new types of employment services which constitute the current disability services employment assistance program. These are competitive employment, training and placement (CETP) services to assist people with disability to obtain and retain paid employment at or above the relevant award rate. This model of service operates as a job placement service assisting people with disability to find jobs in the open labour market.
3. There are also supported employment (SE) services to provide meaningful paid employment for people who because of disability are unlikely to obtain paid employment at or above the relevant award rate and who because of

disability need substantial ongoing support to obtain and retain paid employment. The supported employment service model sees the service provider as the employer which employs people with a disability in a business. Sheltered workshops are an example of this business service model.

4. My primary role as a project officer was to work with service providers.
5. The disability services employment assistance program is a labour market program providing employment support to people with disability who require more support than mainstream labour market programs alone can provide.
6. Standard nine of the disability services standards which refers to employment conditions confirms the labour market status of the employment assistance program. Standard nine requires that workers with a disability in open or supported employment are paid wages that accord with the relevant award or industrial agreement. If a worker because of disability is unable to work at full productive capacity a pro rata wage based on the relevant award or industrial agreement is to be paid.
7. Much of my work in the disability services program concentrated on monitoring the performance of employment services against the disability services standards. Monitoring highlighted the non compliance of the majority of business services with the disability standards and in particular non compliance with standard nine.
8. What does non compliance with standard nine mean? It means that business services have for the last sixteen years continued to pay wages which do not have any identifiable relationship to relevant awards or industrial agreements. Setting of wages in business services over the last sixteen years has been arbitrary and largely determined by a business

service's capacity to pay which is contrary to the requirements of standard nine.

9. This is despite the efforts of DFACS to assist business services to change. Over the last sixteen years DFACS has provided additional funding and resources to assist business services to comply with the disability services standards and to become financially viable in order to have the capacity to pay appropriate wages.
10. Recent changes to the disability services standards require business services to meet the basic employment rights of workers with disabilities if they are to continue to receive funding from the disability services program. The changes to standard nine will require business services to pay their workers a fair day's pay for a fair day's work. Business services will no longer be able to determine wages based on capacity to pay.
11. The changes to the disability services standards are the major reason why the Australian Industrial Relations Commission (AIRC) is receiving a growing number of agreements for certification from business services. Many business services see AIRC certification as demonstrating that they meet standard nine and are eligible to continue to receive funding from DFACS. As a result the AIRC has had to deal with many agreements which seek to continue the payment of low wages and conditions of employment which employees without disability would not countenance. Unfortunately, the AIRC itself has allowed many of these agreements to be certified thus legitimising the continuation of a low wage regime.
12. DEAC has received many complaints from workers with disability who work in business services. They and their families complain about the appalling wages and conditions which they as workers have to endure. They also complain about the process of negotiation of workplace agreements that

occurs in business services. Workers with disability generally have little understanding of the industrial relations process and do not have the negotiation skills required to participate in the negotiation of a workplace agreement.

13. Many of the agreements brought to DEAC's attention have, according to the complainants, been arbitrarily presented to the workers. In this process workers have lacked opportunity to negotiate wages and conditions and have been discouraged from seeking independent support and rely on the management of the business service for explanation of the agreement and for protection of their rights as workers.
14. The quality of many of the agreements that have come before the AIRC demonstrates the inequity of this process. The issue of a fair day's pay for a fair day's work for workers in business services is an enduring and disgraceful feature of the Commonwealth employment assistance program and should not continue. Yet continue it will if the AIRC continues to certify such agreements.
15. What can the AIRC do? DEAC submits the AIRC should convene a full bench inquiry into the use of the certification process by business services to maintain a regime of low wages to the continuing disadvantage of workers with disability. The full bench should set down principles for the commissioners to refer to when making decisions relating to certification of agreements presented by business services.
16. In particular the AIRC needs to consider the wage assessment process used to determine wages. It is DEAC's view that the supported wage system (SWS) should be used to determine the wages of workers with disability in business services. The SWS, which is currently used by open

employment services, already has the imprimatur of the AIRC and has the support of the ACTU.

17. It is acknowledged by the stakeholders as the most fair, reasonable and transparent assessment method for determining productivity based wages. An evaluation of the SWS by KPMG Consulting in 2000 found the SWS assessment process to be relevant and applicable to wage determining procedures within business services.
18. Other matters the full bench might deal with include issues around genuine consent, independent support for workers with disability in the bargaining process, i.e. advocacy, and the application by the AIRC of the no disadvantage test.

**Dated this 18<sup>th</sup> day of February 2003**

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**MICHAEL HAND**

**MARIE LORRAINE KUCHENMEISTER  
MANAGER  
DIAL A LUNCH**

IN THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION  
AT MELBOURNE

IN the matter of: C2002/2281, C2002/5548, C2002/5547, C2002/5546,  
C2002/4268, C2002/5545, C2002/2282, C2002/2283, C2002/2284, C2002/5559,  
C2002/5558, C2002/5569, C2002/5639, C2002/5640, C2002/5716, C2002/5674,  
C2002/5694, C2002/5679, C2002/5693, C2002/5692.

**WITNESS STATEMENT**

I, Marie Lorraine Kuchenmeister of 6 Little Ryrie Street, Geelong in the State of Victoria make the following witness statement:

1. Corio Bay Innovators Inc., established in 1991, is a non profit supported employment service for young adults with disabilities.
2. Trading as Dial A Lunch our organization offers innovative training and employment programs through our gourmet catering service and two retail outlets in Geelong.
3. We provide real jobs with achievable outcomes and a variety of accredited courses, in partnership with the Gordon TAFE College, tailored to meet the special needs of all participants.
4. With the guidance and expertise of our committee of management and through the hard work and dedication of our management team our vision "For adults with special needs to experience meaningful employment in a commercial environment" has become a reality.

5. Our goal to pay productivity based wages to our employees was realised in 1996. All employees are assessed through the Supported Wage System and this is reviewed annually by an independent assessor nominated by the Commonwealth Department of Family and Community Services. Our move to productivity based wages was achieved with careful planning and gradual wage increases over a four year period as the business expanded and became more profitable.
6. This system was chosen by our organisation not only because the federal government expected and recommended it but because our committee of management believes it is fair and just. A productivity based wage takes into account a range of ability and within Dial A Lunch the range varies from 20% to 80%. The majority of employees are paid between 40% and 60% of the current award. This award, as set down by the Industrial Relations Commission, is the Liquor and Accommodation Industry – Restaurants – Victoria 1998 award and also covers the Supported Wage System under clause 19.
7. Providing large quantities of fabulous food while at the same time retaining the high quality of support necessary to train our employees is no mean feat. This however has been achieved and is evident in the continuing growth of our business. Participants are encouraged and expected to take ownership and to have input into the running of the business/service. Our holistic approach encompasses case management, skill development and social and community participation.
8. We are expanding our service in exciting ways and are supporting people with special needs in the achievement of their right to a place in the competitive employment market. We are proving that our business can be as efficient as any other and in so doing have promoted community awareness of the value of adults with special needs.

**Dated this 18 day of February 2003**

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**MARIE LORRAINE KUCHENMEISTER**

# SAFETY NET REVIEW 2003

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