

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 21/12/2015 11:31:25 AM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating Application Under the Australian Human Rights Commission Act 1986 - Form 116 - Rule 34.163(1)
File Number:	VID1367/2013
File Title:	Tyson Duval-Comrie (by his Litigation Representative Claudine Duval) v Commonwealth of Australia
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink, reading "Warwick Soden".

Dated: 21/12/2015 12:06:51 PM AEDT

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



No. VID 1367 of 2013

Federal Court of Australia  
District Registry: Victoria  
Division: General Division

**TYSON DUVAL-COMRIE (by his litigation representative KAIRSTIEN WILSON)**

Applicant

**COMMONWEALTH OF AUSTRALIA**

Respondent

**SECOND FURTHER AMENDED STATEMENT OF CLAIM**

(Amended pursuant to leave granted by Justice Davies on 21 December 2015)

1. This application is brought by the Applicant on his own behalf and as a representative party pursuant to Part IVA of the *Federal Court of Australia Act 1976*.
2. The Applicant and the group members to whom this proceeding relates (**Group Members**) are all intellectually disabled workers, each of whom, as at 22 October 2013, was or had been ~~was~~ employed in an Australian Disability Enterprise (**ADE**) ~~as at 22 October 2013~~ and each of whose wage had been, or at 22 October 2013 was proposed to be, assessed using the Business Services Wage Assessment Tool (**BSWAT**).

**Particulars**

The Applicant is assessed as having an IQ of 51 and hence has an intellectual disability within the meaning of paragraph 2A(a)(i) below. Particulars of the Applicant's employment in an employing ADE are set out in paragraph 11 below.

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Particulars of the intellectual disabilities and the employment in  
employing ADEs of the group members will be given after trial of  
the common questions and the completion of discovery.

2A. In this Second Further Amended Statement of Claim:

- (a) a reference to a person having an **intellectual disability** means that  
the person has an “intellectual disability” within the meaning of that  
term in s 7(a)(i) of the *Business Services Wages Assessment Tool  
Payment Scheme Act 2015 (Cth)*;
- ~~(i) has scored below 70 on the Wechsler Adult Intelligence Scale IV  
(WAIS IV) or equivalent contemporary assessment, or~~
- ~~(ii) although scoring 70 or more on the WAIS IV or equivalent  
contemporary assessment, has been assessed by a  
standardised adaptive behaviour assessment using the  
Respondent's Disability Support Pension Impairment Tables or  
equivalent previous method of assessment, for eligibility for the  
Disability Support Pension (DSP) as scoring 20 points on the  
Tables, so as to demonstrate an intellectual function equivalent  
to IQ below 70; or~~
- ~~(iii) has been accepted by the Respondent as satisfying the criteria to  
receive the DSP on the basis of having an intellectual disability.~~
- (b) a reference to a **non-intellectually disabled** person or a disabled  
person who is **not intellectually disabled** means a person who has  
been accepted by the Respondent as satisfying the criteria to receive  
the DSP but who does not have an intellectual disability.
- (c) A reference to a **disabled** person means a person who has been  
accepted by the Respondent as satisfying the criteria to receive the  
DSP.

### **BSWAT**

3. BSWAT is a system for measuring competency and productivity of workers with disabilities who are employed in ADEs (**workers**).
4. The assessments of competency and productivity of a worker under BSWAT are used to calculate the wage which is to be paid to the

particular worker by the ADE which employs that worker (the **employing ADE**).

### Particulars

BSWAT is used to calculate the percentage of the minimum rates prescribed by applicable or nominated industrial awards, which are to be paid to the worker.

5. At all material times, it was a requirement or condition of the employment of the Applicant and each of the group members, imposed by his and each of their employing ADE's, that in order to secure a higher wage the Applicant and each group member undergo a wage assessment by BSWAT (**the Condition**).
6. Assessment under BSWAT has the following attributes:
  - (a) the worker is assessed against a maximum of four industry competencies defined in the Australian Training Quality Framework (**the four industry competencies attribute**);
  - (b) if there are not four industry competencies applicable to the worker's job, the worker is assessed against the industry competencies applicable to his or her job plus additional industry competencies applicable to jobs performed by other workers in his or her workplace to a total of four industry competencies even where the worker will never be required to use those industry competencies in their employment (**the irrelevant competencies attribute**);
  - (c) if there are not four industry competencies applicable in the worker's workplace, the worker is assessed against the lesser number of industry competencies which are applicable and is automatically scored zero for each missing industry competency (**the scope attribute**);
  - (d) the worker is assessed against four competencies defined in BSWAT and designated by BSWAT as core (**the core competencies attribute**);
  - (e) the assessment of core competencies is conducted by way of interview (**the interview attribute**);

- (f) the interviews are conducted using questions some of which use abstract language (the **abstract language attribute**); and
- (g) unless the worker gives an acceptable answer for every question for a particular core competency, the worker is assessed as 0% competent on that competency (the **all or nothing attribute**);  
(collectively the **Competency Attributes**)
- (h) the worker's productivity is assessed by comparing the worker's performance on specified tasks which are part of his job against benchmarks for those tasks;
- (i) the worker's productivity score is expressed as a percentage of the benchmark performance;
- (j) fifty percent of the worker's wage is determined by applying the productivity score to the ~~Class 4~~ wage for the relevant grade referable to the worker's job under the applicable Award;
- (k) the worker's competency score is expressed by allowing 6.25% for each competency for which the worker was assessed as competent and adding one amount of 6.25% for each of the eight competencies to a maximum possible total of 50% ;
- (l) fifty percent of the worker's wage is determined by applying the competency score to the ~~Class 4~~ wage for the relevant grade referable to the worker's job under the applicable Award.

#### Particulars

The Competency Attributes are set out in, and the assessment practice is in part set out and in part to be inferred from, the Assessor's Guide used in the administration of BSWAT (the **Assessor's Guide**).

7. The Applicant and the group members ~~awere~~ not able to comply with the Condition within the meaning of section 6(ac) of the *Disability Discrimination Act 1992 (DDA)* as that Act provided on and before 4 August 2009.

#### Particulars

- a) The Applicant and the group members are more likely to undertake a more restricted range of duties

in their employment than workers with non-intellectual disabilities.

- b) Because of the restricted range of duties, there are less likely to be four industry competencies against which the Applicant and the group members are able to be assessed than are available to assess non-intellectually disabled workers.
- c) The Applicant and the group members refer to and repeat the matters set out in sub-paragraphs (a) and (b) to paragraph 6 above.
- d) The Applicant and the group members are not able to show competency in an interview assessment.
- e) The Applicant and the group members are not able to understand and respond to abstract language.
- f) The applicant and the group members refer to and repeat the matters set out in sub-paragraph (g) to paragraph 6 above.

7A. Because of their intellectual disabilities, the Applicant and the group members were not, are not or would not be able to comply with the Condition within the meaning of section 6(1)(b) of the *Disability Discrimination Act 1992 (DDA)* as that Act has provided since 5 August 2009.

#### **Particulars**

The Applicant and the group members refer to and repeat the particulars to paragraph 7 above.

7B. Further or in the alternative to paragraph 7A above, because of their intellectual disabilities, the Applicant and the group members were, are or would be able to comply with the Condition within the meaning of section 6(2)(b) of the *Disability Discrimination Act 1992 (DDA)* as that Act has provided since 5 August 2009 only if the employing AED of each of the Applicant and the group members made reasonable adjustments for each of them, namely using a productivity only wage assessment tool, but each employing ADE has not done and does not propose to do so.

### **Particulars**

The Applicant and the group members refer to and repeat the particulars to paragraph 7 above.

- 7C. By reason of the matters set out in paragraphs 3 to 6 inclusive and 7A, the Condition had, has, or is likely to have, the effect of disadvantaging the Applicant and the group members within the meaning of section 6(1)(c) of the Disability Discrimination Act 1992 (DDA) as that Act has provided since 5 August 2009, by assessing their wage at a lower level than an assessment by a productivity only tool.
- 7D. In the alternative to paragraph 7C above, by reason of the matters set out in paragraphs 3 to 6 inclusive and 7B, the failure to make reasonable adjustments, namely using a productivity only wage assessment tool, had, has, or is likely to have, the effect of disadvantaging the Applicant and the group members within the meaning of section 6(2)(c) of the Disability Discrimination Act 1992 (DDA) as that Act has provided since 5 August 2009, by assessing their wage at a lower level than an assessment by a productivity only tool.
8. A substantially higher proportion of disabled persons employed in ADEs who awere not intellectually disabled awere able to comply with the Condition within the meaning of section 6(a) of the DDA as that Act provided on and before 4 August 2009.

### **Particulars**

- a) The Applicant and the group members refer to and repeat the particulars set out in sub-paragraphs 7a), b) and c) above.
- b) Non-intellectually disabled workers are more likely to be able to show competency in an interview assessment than intellectually disabled workers.
- c) Non-intellectually disabled workers are more likely to understand and respond to abstract language than intellectually disabled workers.
- d) The Respondent has estimated that about 200 of about 20,000 disabled workers employed in ADEs would score worse under a productivity only test

than they do under BSWAT. About 10,500 disabled workers employed in ADEs have an intellectual disability and have had their wages assessed under BSWAT including the Applicant and the group members. They would score better under a productivity only test.

9. By reason of the matters set out in paragraphs 3 to 6, 7 and 8 above and paragraph 10 below, requiring compliance with the Condition was discriminatory within the meaning of section 6 of the DDA as that Act provided on and before 4 August 2009.
- 9A. By reason of the matters set out in paragraphs 3 to 6, and 7A to 7D above, and 10A below requiring compliance with the Condition was discriminatory within the meaning of section 6(1) and/or (2) of the DDA as that has Act provided since 5 August 2009.
10. Requiring compliance with the Condition ~~was~~ not reasonable within the meaning of subsection 6(3b) of the DDA as that Act provided on and before 4 August 2009.

**Particulars**

The Applicant refers to and repeats the particulars to paragraphs 6, 7 and 8 above.

- 10A. Requiring compliance with the Condition is not reasonable within the meaning of subsection 6(3) of the DDA as that Act has provided since 5 August 2009.

**Particulars**

The Applicant refers to and repeats the particulars to paragraphs 6 and 7A to 7D above.

### **Discrimination in employment**

11. The Applicant is and has been since about late 2007 or early 2008 employed by High Point Industries, which is an ADE operated by Scope Business Enterprises, as a process worker and cleaner.

#### **Particulars**

The Applicant is employed as a permanent employee working 70 hours per fortnight.

12. In or about May 2009 the Applicant was assessed under BSWAT by CRS Australia, which is an agency funded by the Respondent to carry out BSWAT assessments for ADEs (the **first BSWAT assessment**).

#### **Particulars**

A copy of the first BSWAT assessment is available on request from the Applicant's solicitors.

13. In or about June or July 2009, the Applicant was informed by management at High Point Industries that his wage assessed under BSWAT would be \$2.21 per hour.
14. The Applicant was assessed in the first BSWAT assessment against only one industry competency. He scored zero for that competency.
15. The Applicant scored zero in the first BSWAT assessment for all four core competencies.
16. From about June or July 2009 until about late May 2012 the Applicant's wages were paid in accordance with the first BSWAT assessment.
17. In or about late May 2012 the Applicant was again assessed under BSWAT by CRS Australia, (the **second BSWAT assessment**).

#### **Particulars**

A copy of the first BSWAT assessment is available on request from the Applicant's solicitors.

18. In or about late May 2012, the Applicant was informed by High Point Industries that his wage assessed under BSWAT would be \$1.77 per hour.
19. The Applicant was assessed in the second BSWAT assessment against four industry competencies. He scored zero for each of those competencies. He was not assessed against a cleaning industry competency.
20. The Applicant scored zero in the second BSWAT assessment for all four core competencies.
21. From about late May 2012 the Applicant has been paid in accordance with the second BSWAT assessment.
22. During his employment by High Point Industries, the Applicant has been paid wages per hour worked as follows:
  - a. from about July 2009 to about late May 2012, \$2.21 per hour in accordance with the first BSWAT assessment;
  - b. from about late May 2012 to about late 2013, \$1.77 per hour in accordance with the second BSWAT assessment; and
  - c. from about late 2013, \$1.79 per hour in accordance with the second BSWAT assessment, the \$0.02 rise in the hourly rate being due to the application of the National Wage Case decision applied to the increased relevant Award rate of pay.
23. The Applicant was not able to comply with the Condition.

#### **Particulars**

- a) By reason of his intellectual disability, the Applicant's employment at High Point Industries was limited in scope such that for the first BSWAT Assessment he could not be assessed against four industry competencies but could only be assessed against one industry competency, with the result that his BSWAT score was immediately reduced by 18.75%, representing a zero score on three other potential

industry competencies, each carrying a possible score of 6.25%.

- b) By reason of his intellectual disability, the Applicant's employment at Scope High Point Industries was limited in scope such that it did not involve four industry competencies but for the second BSWAT Assessment he was assessed against four industry competencies, three of which were not competencies which he will ever be required to use with the result that his BSWAT score was immediately reduced by 18.75%, representing a zero score on three other potential industry competencies, each carrying a possible score of 6.25%.
- c) By reason of his intellectual disability, the Applicant was unable to answer questions using abstract language in an interview so as to give an acceptable answer for every question for each core competency and was consequently unable to achieve an assessment of "competent" in relation to any of the four core competencies on either assessment with the result that his BSWAT score was immediately reduced by a further 25% in both BSWAT assessments.

23A. The group members are not, were not or would not be able to comply with the Condition.

#### Particulars

Particulars of the inability of the group members to comply with the Condition will be given after the trial of the common issues and the completion of discovery.

24. On 21 December 2012, the Full Court of the Federal Court of Australia determined in *Nojin v Commonwealth; Prior v Commonwealth* (2012) 208 FCR 1 (**the Full Court decision**) that the requirement that workers with

intellectual disabilities undergo wage assessments by BSWAT in order to secure a higher wage was unlawfully discriminatory, contrary to the DDA.

25. On 10 May 2013, the High Court of Australia refused the Respondent special leave to appeal the Full Court decision.
26. By reason of the matters set out in paragraphs 5 to 25, High Point Industries has unlawfully discriminated against the Applicant:
  - (a) in terms on which employment was offered, in contravention of section 15(1)(c) of the DDA; further or alternatively
  - (b) in terms of employment which High Point Industries afforded the Applicant, in contravention of section 15(2)(a) of the DDA;
  - (c) by denying or limiting the Applicant the benefit of access to higher remuneration, in contravention to section 15(2)(b) of the DDA; further or alternatively
  - (d) by subjecting the Applicant to the detriment of having a reduced remuneration, in contravention of section 15(2)(d) of the DDA.
- 26A. By reason of the matters set out in paragraphs 5 to 10A, 23A, 24 and 25 above, each employing ADE has unlawfully discriminated against each group member whom it employs or employed:
  - (a) in terms on which employment was offered, in contravention of section 15(1)(c) of the DDA; further or alternatively
  - (b) in terms of employment which the employing ADE afforded the group member , in contravention of section 15(2)(a) of the DDA;
  - (c) by denying or limiting the group member the benefit of access to higher remuneration, in contravention to section 15(2)(b) of the DDA; further or alternatively
  - (d) by subjecting the group member to the detriment of having a reduced remuneration, in contravention of section 15(2)(d) of the DDA.

#### **Discrimination in provision of services**

27. Further or in the alternative to paragraph 26 above, from time to time from June or July 2009, High Point Industries has provided or offered to provide

services to the Applicant within the meaning of sub-paragraph (a) of section 24 of the DDA, being services of providing supported employment **(the services)**.

- 27A. Further or in the alternative to paragraph 26A above, from time to time from June or July 2009, each employing ADE has provided or offered to provide services to each group member whom it employed or employs within the meaning of sub-paragraph (a) of section 24 of the DDA, being services of providing supported employment (the group member services).
28. By reason of matters set out in paragraphs 5 to 25 inclusive and paragraph 27, High Point Industries unlawfully discriminated against the Applicant in the terms on which High Point Industries provided the Applicant with the services, in contravention of sub-paragraph (b) of section 24(1)(b) of the DDA.
- 28A. By reason of matters set out in paragraphs 5 to 10A, 23A, 24, 25 and 27A, each employing ADE has unlawfully discriminated against each group member whom it employs in the terms on which employing ADE provided each group member whom it employed or employs with the group member services, in contravention of sub-paragraph (b) of section 24 of the DDA.

#### **Involvement of the Commonwealth**

29. At all material times since about late 2007, the Commonwealth has:
- (a) approved BSWAT as a wage assessment tool for use by ADEs including High Point Industries and each employing ADE;
  - (b) distributed information about BSWAT to ADEs including High Point Industries and each employing ADE;

#### **Particulars**

Copies of communications sent to ADEs and published in Commonwealth Government media may be inspected by appointment at the offices of the Applicant's solicitors. Further particulars may be provided following the completion of discovery.

- (c) distributed information to ADEs, including High Point Industries and each employing ADE, to the effect that ADEs which use BSWAT are eligible for free, Commonwealth Government-funded wage assessments conducted by CRS Australia assessors;

**Particulars**

The Applicant and group members refer to and repeat the particulars under the preceding subparagraph. Further particulars may be provided following the completion of discovery.

- (d) offered the services of CRS Australia staff to conduct BSWAT assessments for ADEs, including High Point Industries and each employing ADE, free of charge;

**Particulars**

The offers were made in the communications referred to in subparagraph (b) above. Further particulars may be provided following the completion of discovery.

- (e) by CRS Australia, conducted BSWAT assessments including the Applicant's and group members' BSWAT Assessments;

**Particulars**

Particulars of the conduct of the assessment of the Applicant are set out in the first BSWAT assessment and the second BSWAT assessment.

Particulars of the conduct of the assessments of the group members will be provided after trial of the common questions and the completion of discovery.

30. At all material times since about late 2007, High Point Industries and each employing ADE was aware of each of the matters referred to in paragraph 29(a) to (e) inclusive.

31. At all material times since about late 2007, High Point Industries and each employing ADE would not have used, or was materially less likely to have used, BSWAT as a mechanism for assessing the proportion of award-based wages to be paid to persons employed by High Point Industries and each employing ADE if:
- (a) BSWAT had not been approved by the Commonwealth for the use by ADEs; and/or
  - (b) the Commonwealth had not offered, at no charge to High Point Industries and each employing ADE, the services of CRS Australia to conduct BSWAT assessments for High Point Industries.
32. By its conduct referred to in paragraph 29 above, the Commonwealth caused, induced or aided High Point Industries and each employing ADE to impose the Condition within the meaning of section 122 of the DDA.
33. By reason of the matters set out in paragraph 32, pursuant to section 122 of the DDA, the Commonwealth is taken also to have discriminated unlawfully against the Applicant and the group members:
- (a) in his and their employment as alleged in paragraphs 26 and 26A above respectively; further or alternatively
  - (b) in the provision of the services, as alleged in paragraphs 28 and 28A above respectively.

#### **Discrimination in administration of Commonwealth programs**

34. Further or in the alternative to paragraphs 26, 28 and 33 above, High Point Industries ~~or alternatively the Commonwealth~~ performed functions or exercised powers under Commonwealth laws or for the purposes of a Commonwealth program within the meaning of section 29 of the DDA, namely the program of supported employment services in ADE's (the Program).

#### **Particulars**

The Program is provided by High Point Industries under the Disability Services Act 1986.

- 34A. Further or in the alternative to paragraphs 26A, 28A and 33 above, each employing ADE or alternatively the Commonwealth performed functions or

exercised powers under Commonwealth laws or for the purposes of a Commonwealth program within the meaning of section 29 of the DDA, namely the Program.

### **Particulars**

The Program is provided by each employing ADE under the Disability Services Act 1986.

35. By reason of the matters set out in paragraphs 5 to 25 and 34, High Point Industries, ~~further or alternatively the Commonwealth~~ discriminated against the Applicant in the performance of that function or exercise of that power.
- 35A. By reason of the matters set out in paragraphs 5 to 10A, 23A, 24, 25 and 34A, each employing ADE, further or alternatively the Commonwealth discriminated against the Applicant in the performance of that function or exercise of that power.

### **Complaint and proceeding**

36. On 26 July 2013, Alysia Maloney made a Further Amended complaint pursuant to sections 46P and 46PB of the *Australian Human Rights Commission Act 1986* (the **HR Act**) on her own behalf and on behalf of the Applicant and the group members alleging that the Respondent had engaged in discriminatory conduct in contravention of the DDA.
37. On 22 October 2013 the complaint was terminated pursuant to section 46PH(1)(i) of the HR Act.
38. The Applicant is an affected person in relation to Alysia Maloney's complaint within the meaning of sections 3 and 46PO of the *Australian Human Rights Commission Act 1986*.

### **Loss and Damage**

39. By reason of the conduct engaged in by High Point Industries and each employing ADE and/or the Commonwealth in assessing the wages of the Applicant's and the each group members' wages who has had his or her

wages assessed using BSWAT and been paid in accordance with that assessment, the Applicant and the group members were assessed to be entitled to a wage lower than the wage to which he and they would have been entitled if an assessment free of unlawful discrimination had been conducted.

### Particulars

- a) an assessment free of discrimination would not have included competency assessments;
- b) further or alternatively to a), an assessment free of discrimination would not have reduced the Applicant's and the group members' wages for performing a job with fewer than four industry competencies available for assessment;
- c) further or alternatively to b), an assessment free of discrimination would not have reduced the Applicant's and the group members' wages when his and their employment require him and them to use fewer than four industry competencies in total;
- d) further or alternatively, an assessment free of discrimination would not have required the Applicant and the group members to be assessed against industry competencies which he and they were not required to use in their employment;
- e) further or alternatively, an assessment free of discrimination would not have involved assessment against core competencies;
- f) further or alternatively to e), an assessment free of discrimination would not have assessed core competencies by way of interview;
- g) further or alternatively to d), e) and f), an assessment free of discrimination would not have assessed core competencies by way of interviews conducted using abstract language;
- h) further or alternatively to d), e), f) and g) an assessment free of discrimination would not have required all questions during an interview assessment of a core competency to be answered correctly in order to achieve an assessment of "competent" for that competency.

40. By reason of the matters set out in the preceding paragraph, the Applicant and the group members have suffered and continue to suffer loss and damage.

### **Particulars**

The loss suffered by the Applicant is his productivity score from about July 2009 to about late May 2012, being 30.89%, multiplied by the applicable hourly wage from Award AP841959, being \$14.31 for each hour he was employed by High Point Industries during that period less the amount that he was paid for that employment, together with his productivity score from about late May 2012 until the date of judgment, being 22.22%, multiplied by the applicable hourly wage from Award MA000103, being \$15.96, for each hour he was and is employed by High Point Industries from about late May 2012 until the date of judgment, less the amount that he was paid for that employment.

The loss suffered by group members is the difference in remuneration received for work in an employing ADE between the date of their first assessment under BSWAT and the date of judgment and the remuneration which would have been received in that period had the Applicant and the group members been assessed under the SWS or another productivity testing wage assessment method. Further particulars of loss and damage will be provided following the completion of discovery and prior to trial.

### **AND THE APPLICANT AND THE GROUP MEMBERS CLAIM:**

- A. A declaration that the Respondent has unlawfully discriminated within the meaning of section 122 of the *Disability Discrimination Act 1992 (DDA)* against the Applicant and the Group Members in causing, inducing or aiding the respective Australian Disability Enterprises which employ or

have employed the Applicant and the Group Members (**relevant ADEs**) to assess his and their wages under BSWAT in contravention of:

- a. section 6;
- b. section 15;
- c. further or alternatively, section 24;
- d. further or alternatively, section 29

of the DDA.

- B. An injunction restraining the Respondent from causing, inducing or aiding any relevant ADE to assess the wages of the Applicant or any Group Member under BSWAT.
- C. An order that the Respondent cause, aid or induce the relevant ADEs to assess the wages of the Applicant and the Group Members using the Supported Wage System or some other wage assessment tool which tests only their productivity.
- D. An order that the Commonwealth pay compensation to be assessed to the Applicant and each Group Member for loss and damage suffered because of the unlawful discrimination.
- E. Interest.
- F. Costs.
- G. Such further or other orders as the Court holds to be just.

**THE APPLICANT SEEKS FURTHER ON HIS OWN ACCOUNT:**

- H. Compensation being the difference between the wages paid to the Applicant from the date of his BSWAT assessment and the wage payable to the Applicant as assessed under the SWS or another productivity testing wage assessment tool.
- I. Such further or other orders as the Court holds to be just.

DATED 12 February ~~6 May 2014~~ 21 December 2015



Herman Borenstein

K P Hanscombe

K A Bowshell