

2013-2014

The Parliament of the
Commonwealth of Australia

THE SENATE

Business Services Wage Assessment Tool Payment Scheme Bill 2014

*(Amendments and requests for amendments to be moved by Senator Moore, on behalf of the
Opposition, in committee of the whole)*

- (1) Clause 3, page 2 (lines 23 to 24), omit “by force of this Act, the person will cease to have certain legal rights”, substitute “if the person receives compensation in relation to the use of the Business Services Wage Assessment Tool, some or all of that compensation may be recoverable by the Commonwealth”.
[preserving right to legal redress]
- (2) Clause 4, page 3 (line 14), omit “matter referred to in subsection 10(2)”, substitute “possible ground for compensation”.
[preserving right to legal redress]
- (3) Clause 4, page 3 (line 17), omit “matter referred to in subsection 10(2)”, substitute “possible ground for compensation”.
[preserving right to legal redress]
- (4) Clause 4, page 4 (lines 14 and 15), omit the definition of *group member*.
[preserving right to legal redress]
- (5) Clause 4, page 5 (after line 1), after the definition of *payment amount*, insert:
possible ground for compensation has the meaning given by section 10.
[preserving right to legal redress]
- (6) Clause 4, page 5 (lines 9 and 10), omit the definition of *relevant representative proceeding*.
[preserving right to legal redress]
- (7) Clause 4, page 5 (lines 11 and 12), omit the definition of *representative party*.
[preserving right to legal redress]
- (8) Clause 4, page 5 (lines 13 and 14), omit the definition of *representative proceeding*.
[preserving right to legal redress]

(9) Page 5 (after line 16), at the end of Part 1, add:

4A General principles guiding actions under this Act

- (1) People with disability have the same right as other members of Australian society to respect for their worth and dignity and to live free from abuse, neglect and exploitation.
- (2) People with disability have the same right as other members of Australian society to pursue any grievance.
- (3) People with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives, to the full extent of their capacity.
- (4) People with disability should be supported in all their dealings and communications with the Department so that their capacity to exercise choice and control is maximised in a way that is appropriate to their circumstances and cultural needs.
- (5) People with disability should have their privacy and dignity respected.
- (6) The role of families, carers and other significant persons in the lives of people with disability is to be acknowledged and respected.
- (7) It is the intention of the Parliament that the Minister, the Secretary and any other person or body is to perform functions and exercise powers under this Act in accordance with these principles.

4B General principles guiding actions of people who may do acts or things on behalf of others

It is the intention of the Parliament that, if this Act requires or permits an act or thing to be done by or in relation to a person with disability by another person, the act or thing is to be done, so far as practicable, in accordance with both the general principles set out in section 4A and the following principles:

- (a) people with disability should be involved in decision making processes that affect them, and where possible make decisions for themselves;
- (b) the judgements and decisions that people with disability would have made for themselves should be taken into account;
- (c) the cultural and linguistic circumstances, and the gender, of people with disability should be taken into account;
- (d) the supportive relationships, friendships and connections with others of people with disability should be recognised.

[guiding principles]

(10) Clause 5, page 6 (line 7), omit “person;”, substitute “person.”.

[preserving right to legal redress]

(11) Clause 5, page 6 (line 8), omit paragraph (c).

[preserving right to legal redress]

(12) Clause 9, page 8 (line 23) to page 9 (line 23), **to be opposed.**

[preserving right to legal redress]

(13) Heading to clause 10, page 9 (line 24), omit the heading, substitute:

10 Possible ground for compensation

[preserving right to legal redress]

(14) Clause 10, page 9 (lines 25 to 34), omit subclause (1).

[preserving right to legal redress]

(15) Clause 10, page 10 (lines 1 to 3), omit “(2) The matters are the following, to the extent to which they relate to the use of a BSWAT assessment to work out a minimum wage payable to a person”, substitute “Each of the following matters is a ***possible ground for compensation*** for a person, to the extent to which it relates to the use of a BSWAT assessment to work out a minimum wage payable to the person”.

[preserving right to legal redress]

(16) Clause 19, page 17 (line 9), omit “sections 9 and 10”, substitute “section 41A”.

[preserving right to legal redress]

(17) Clause 38, page 30 (line 16), omit “person; and”, substitute “person.”.

[preserving right to legal redress]

(18) Clause 38, page 30 (lines 17 and 18), omit subparagraph (c)(iii).

[preserving right to legal redress]

(19) Clause 38, page 30 (lines 19 to 21), omit the note.

[preserving right to legal redress]

(20) Clause 39, page 30 (line 22) to page 31 (line 3), **to be opposed.**

[preserving right to legal redress]

(21) Page 31 (after line 19), at the end of Part 3, add:

Division 8—Recovery of payments from alternative amounts

41A Recovering payments from alternative amounts

(1) This section applies if:

- (a) a payment amount for a person has been paid under this Act; and
- (b) there is an alternative amount for the person.

(2) An amount (the ***recoverable amount***) is payable by the person to the Commonwealth. The recoverable amount is equal to the smaller of the following amounts:

- (a) the alternative amount;
- (b) the payment amount.

Note: For debt recovery, see Division 4 of Part 5.

(3) If the Commonwealth is liable to pay an amount of compensation referred to in paragraph (1)(a), the Commonwealth may set off the recoverable amount against the amount of compensation.

41B Secretary may send preliminary notice

- (1) If:
 - (a) a payment amount for a person (the *payment recipient*) has been paid under this Act; and
 - (b) the payment recipient makes a claim against another person (the *potential compensation payer*) for compensation; and
 - (c) the compensation would, if paid or payable, result in there being an alternative amount for the payment recipient;the Secretary may give written notice to the potential compensation payer that the Secretary may wish to recover an amount from the potential compensation payer.
- (2) A notice under subsection (1) must contain:
 - (a) a statement of the potential compensation payer's obligation under section 41C; and
 - (b) a statement of the effect of section 41D.

41C Offence—potential compensation payer

A person (the *potential compensation payer*) commits an offence if:

- (a) the potential compensation payer is given a notice under section 41B in relation to a person (the *payment recipient*); and
- (b) before or after receiving the notice, the potential compensation payer agrees, or becomes liable, to pay compensation to the payment recipient; and
- (c) the compensation resulted, or would result, in there being an alternative amount for the payment recipient; and
- (d) the potential compensation payer does not give written notice to the Secretary of the agreement or the liability within 7 days after forming the agreement or becoming liable, or receiving the notice, whichever is later.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

41D Secretary may send recovery notice

- (1) If:
 - (a) a payment amount for a person (the *payment recipient*) has been paid under this Act; and
 - (b) another person (the *compensation payer*) is liable to pay compensation to the person; and
 - (c) the compensation would, if paid, result in there being an alternative amount for the payment recipient;the Secretary may give written notice to the compensation payer that the Secretary proposes to recover from the compensation payer the amount specified in the notice.
 - (2) If a compensation payer is given a notice under this section, the amount specified in the notice is payable by the compensation payer to the Commonwealth.
- Note: For debt recovery, see Division 4 of Part 5.
- (3) The amount to be specified in the notice is the lesser of the following:
 - (a) the payment amount;
 - (b) the amount of the compensation.

-
- (4) A notice under this section must contain a statement of the effect of section 41G so far as it relates to such a notice.
 - (5) This section applies to an amount payable by way of compensation in spite of any law of the Commonwealth, a State or Territory (however expressed) under which the compensation is inalienable.

41E Preliminary notice or recovery notice suspends liability to pay compensation

If a person (the *compensation payer*) has been given a notice under section 41B or 41D in relation to the compensation payer's liability, or possible liability, to pay compensation, the compensation payer is not liable to pay that compensation while the notice has effect.

41F Compensation payer's payment to Commonwealth discharges liability to participant

Payment to the Commonwealth of an amount that a person (the *compensation payer*) is liable to pay under section 41D in relation to another person (the *payment recipient*) operates, to the extent of the payment, as a discharge of:

- (a) the compensation payer's liability to pay compensation to the person; and
- (b) the payment recipient's liability to pay the Commonwealth.

41G Offence—making compensation payments after receiving preliminary notice or recovery notice

- (1) A person (the *potential compensation payer*) commits an offence if:
 - (a) the potential compensation payer has been given a notice under section 41B or 41D in relation to the payment of compensation to a person; and
 - (b) the potential compensation payer makes the compensation payment to the person.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

- (2) Subsection (1) does not apply if:
 - (a) in the case of a notice under section 41B—the Secretary has given the potential compensation payer written notice that the notice is revoked; or
 - (b) in the case of a notice under section 41D—the potential compensation payer has paid to the Commonwealth the amount specified in the notice; or
 - (c) the Secretary has given the potential compensation payer written permission to pay the amount.

41H Liability to pay the Commonwealth if there is a contravention of section 41G

- (1) A person who contravenes section 41G is, in addition to being liable under that section, liable to pay to the Commonwealth:
 - (a) if the contravention relates to a notice under section 41B—an amount determined by the Secretary; or
 - (b) if the contravention relates to a notice under section 41D—the amount specified in the notice.
- (2) The amount determined by the Secretary under paragraph (1)(a) must not be more than the amount that would have been specified in a notice under section 41D if one had been given.

(3) This section applies in relation to a payment by way of compensation in spite of any law of the Commonwealth, a State or Territory (however expressed) under which the compensation is inalienable.

(4) The amount determined by the Secretary under paragraph (1)(a) or specified in the notice under section 41D is payable by the person to the Commonwealth.

[preserving right to legal redress]

(22) Clause 67, page 47 (line 12), omit “where an amount is wrongly paid to a person”.

[preserving right to legal redress]

(23) Clause 67, page 47 (line 15), omit “the person”, substitute “a person”.

[preserving right to legal redress]

(24) Clause 84, page 56 (after line 28), after subclause (3), insert:

(3A) An amount payable by a person to the Commonwealth under subsection 41A(2), 41B(2), 41D(2) or 41H(4) is a debt due to the Commonwealth by the person.

[preserving right to legal redress]

(25) Clause 98, page 64 (lines 19 and 20), omit “matter referred to in subsection 10(2)”, substitute “possible ground for compensation”.

[preserving right to legal redress]

Business Services Wage Assessment Tool Payment Scheme Bill 2014

(Amendments and requests for amendments to be moved by Senator Moore on behalf of the Opposition in committee of the whole)

Statement pursuant to the order of
the Senate of 26 June 2000

Amendments (12), (14) and (18)

The effect of these amendments will enable a person to receive payment under the Bill without losing his or her rights to seek compensation in relation to the use of a Business Services Wage Assessment Tool assessment to work out a minimum wage payable to the person. This will allow those who intend to seek such compensation to also receive payments under the Bill, resulting in an increase in expenditure under the standing appropriation in clause 99 of the Bill.

Amendments (12), (14) and (18) should therefore be moved as requests.

Amendments (2) to (8), (10), (11), (13), (15), (17), (19), (20) and (25)

These amendments are consequential on amendments (12), (14) and (18).

Amendments (2) to (8), (10), (11), (13), (15), (17), (19), (20) and (25) should therefore be moved as requests.

Amendments (12), (14) and (18)

The stated effect of amendments (12), (14) and (18) is that it would allow an increase in expenditure to be met from the standing appropriation contained in clause 99 of the Bill.

The Senate has long followed the practice that it should treat as requests amendments which would clearly, necessarily and directly result in increased expenditure under an appropriation clause in a bill.

If, as stated, amendments (12), (14) and (18) would result in increased expenditure under the standing appropriation in clause 99 of the Bill, it is in accordance with the precedents of the Senate that those amendments be moved as requests.

Amendments (2) to (8), (10), (11), (13), (15), (17), (19), (20) and (25)

These amendments are consequential on the requests. It is the practice of the Senate that amendments purely consequential on amendments framed as requests may also be framed as requests.