

**2013-2014**

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**SENATE**

**BUSINESS SERVICES WAGE ASSESSMENT TOOL PAYMENT SCHEME  
BILL 2014**

**ADDENDUM TO THE EXPLANATORY MEMORANDUM**

**(Circulated by the authority of the  
Minister for Social Services, the Hon Kevin Andrews MP)**

## **BUSINESS SERVICES WAGE ASSESSMENT TOOL PAYMENT SCHEME BILL 2014**

This addendum adds information to the explanatory memorandum, as requested by the Senate Standing Committee for the Scrutiny of Bills in its Tenth Report of 2014, dated 27 August 2014 – pages 410 to 414 of the report refer.

### **Business Services Wage Assessment Tool Payment Scheme Bill 2014**

#### **Part 4 – Nominees**

##### **Clause 56 – Rules may prescribe requirements etc. (page 36)**

After the paragraph on page 36 that reads –

**Clause 56** provides that rules may be made to set out requirements with which the Secretary must comply relating to nominee appointments, cancellations or suspensions, and matters to which the Secretary must have regard in appointing nominees, or cancelling or suspending appointments of nominees.

Insert the following paragraphs –

The primary legislation goes to some lengths to outline the circumstances in which a nominee may be appointed, or have their appointment cancelled or suspended. Clauses 51 to 55 of Part 3 set out requirements with which the Secretary must comply in making such an appointment, or cancelling or suspending the appointment – for example, see clause 51 above about the appointment of nominees.

If enacted, these provisions in the primary legislation will be supplemented by rules, to be made as disallowable legislative instruments.

The BSWAT payment scheme is a new scheme with applicants who are people with intellectual impairment. The nominee provisions in the legislation are based on those in the social security law and the National Disability Insurance Scheme, with supported decision-making as a primary focus. While the primary legislation may well cover all potential circumstances relevant to the appointment, suspension and cancellation of nominees, there may be other circumstances not addressed sufficiently by sections 51 to 55 that only come to light as the scheme commences operation. Therefore, the capacity to set out additional requirements through the rules, if needed, allows sufficient responsiveness as the scheme is implemented – so the rules provide an additional safeguard.

Similarly, the primary legislation allows the Secretary to have regard to certain criteria in appointing, suspending or cancelling nominees – for example, the ability to suspend or cancel the appointment of a nominee in cases of physical, mental or financial harm. In appointing the nominee, the Secretary must consider whether the proposed nominee is able to comply with the requirements of section 46. The capacity to add requirements to criteria the Secretary must consider in appointing, suspending or cancelling nominees provides an additional safeguard as the scheme is implemented.

## **Part 5 – Administration**

### **Clause 73 – Offence (page 41)**

After the paragraphs on page 41 that read –

**Clause 73** makes it an offence, with a penalty of 30 penalty units, if the person refuses or fails to comply with a notice under clause 69, 70 or 71 without reasonable excuse. A penalty unit is prescribed for the purposes of the *Crimes Act 1914*. That Act also provides that, if a body corporate is convicted of an offence, a fine of up to five times the penalty stated can be imposed.

The burden of providing whether a person has a reasonable excuse is on the defendant, by virtue of subsection 13.3(3) of the *Criminal Code*. This provision [n] the Criminal Code provides that a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter.

Insert the following paragraphs –

The inclusion of the 'reasonable excuse' defence means that a defendant who denies criminal responsibility may adduce or point to evidence that he or she had a reasonable excuse for refusing or failing to comply with a notice or a requirement under clause 73.

In the context of the BSWAT payment scheme, it is not possible to anticipate the full range of circumstances in which a person – particularly an individual – might refuse or fail to comply with the requirements of a notice issued under section 73. As the existence of a reasonable excuse would be peculiarly within the knowledge of the person, it is appropriate to include some flexibility in the range of excuses in respect of which a defence could point to or adduce evidence.