



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

PROOF

BILLS

**Business Services Wage Assessment Tool
Payment Scheme Bill 2014, Business Services
Wage Assessment Tool Payment Scheme
(Consequential Amendments) Bill 2014**

In Committee

SPEECH

Monday, 15 June 2015

BY AUTHORITY OF THE SENATE

SPEECH

<p>Date Monday, 15 June 2015</p> <p>Page 28</p> <p>Questioner</p> <p>Speaker Lambie, Sen Jacqui</p>	<p>Source Senate</p> <p>Proof Yes</p> <p>Responder</p> <p>Question No.</p>
---	--

Senator LAMBIE (Tasmania) (12:28): On Monday, 24 November, I rose to oppose the Business Services Wage Assessment Tool Payment Scheme Bill 2014 and the Business Services Wage Assessment Tool Payment Scheme (Consequential Amendments) Bill 2014. The Senate defeated the government's legislation by one vote. By one vote, more than 10,000 Australian workers with intellectual disabilities had their court-recognised entitlements for back pay protected. Seven months later, this government has now brought back to the Senate essentially the same bill with the same intent: namely, to steal about half of the 40 per cent of the back pay owed to 10,000 Australian workers with intellectual disabilities. Which prompts the question to Prime Minister Abbott and the Liberal and National Party members of this place: what have you got against 10,000 workers with intellectual disabilities?

Surely they and their families have suffered enough. Why won't you just accept the court rulings, accept that you have got it wrong, and accept that the Australian government got caught out stealing money from disabled people—and pay the full 100 per cent of that money that is owed to them. Stop wasting money on more legal fights, and stop wasting the time of the Australian people in the Senate: just let the 10,000 Australian workers with intellectual disabilities have all their money—not part of it; not about 63 per cent of it but 100 per cent of it. Surely that is not a lot to ask. Authorise the release of the full amount of money owed to them.

The re-presentation of this bill is a new low for this government and I am disgusted. However, I will work with the other senators on this legislation, and turn this lemon into lemonade. I will support amendments foreshadowed in this Senate which will allow the part payment of moneys owed to the victims while still giving the 10,000 Australian workers with intellectual disabilities the right to pursue in court the remaining moneys owed by the Commonwealth. Should those fair amendments fail to pass the committee stage of this debate, I will vote to oppose this legislation at the third reading stage—because as it stands, this Liberal bill, the Business Services Wage Assessment Tool Payment Scheme Bill 2014, is still grossly unfair. This bill tries to take away the justice delivered by a court to Tyson Duval-Comrie, who is leading a federal court class action on behalf of all 10,000 workers with intellectual disabilities—and, my goodness me, he is certainly leading by example. I honour his strength. The draft legislation as it stands authorises this Liberal-National party government to steal money from disabled workers. On behalf of Tasmanians, I will not and cannot be a part of that sad, unjust state of affairs.

This is just another attack on vulnerable Australians by this government. I would have thought that after the budget last year they would have learnt their lesson—but obviously not. We have seen a total disregard for the lives of people who do not have much, who work hard, and who suffer against the odds because they are unemployed, they are carers, or they are sick or have a disability. This pattern of behaviour needs to stop. Today we have seen this Liberal government's attack on the vulnerable continue: the cleaners of Parliament House are on strike for 24 hours, because of a mean and tricky Liberal government deal which will see most of them lose up to \$6,000 per year, or \$100 per week. I met with these great Australians and I just cannot understand why the Liberal government wants to hurt them—let alone take more money from them—when they are some of the lowest paid workers in Australia. The same can be said of members of our defence forces—and by the way you still owe them one per cent—who, like the victims of the BSWAT rip-off, are victims of a dud deal. They are largely voiceless and vulnerable, and the Liberal government has taken advantage of that fact and denied them a fair pay rise and back pay.

This display of arrogance and just plain cruelty—to the BSWAT victims, to the cleaners and to the defence victims—comes at a time when we hear that this government has authorised massive cash payments to people smugglers. There is now no doubt that these smugglers are criminals responsible for murders, rapes and gross human rights abuses. But the Abbott government is happy to shower international criminals with cash, while denying our BSWAT workers, our cleaners and our diggers a fair deal.

In this case, it is very clear that we have a group of over 10,000 Australians who have worked hard in their jobs for many years—and we have not paid their fair wages because of discrimination. They work in factories, in

offices, and in gardening businesses all over Australia. Some people earn as little as \$1 to \$2 an hour. These are the lowest wages in Australia. More than 10,000 workers with intellectual disabilities have been paid under a tool called the Business Services Wage Assessment Tool for more than 10 years. BSWAT is a tool that was created by and is still run by the Commonwealth government. Under BSWAT, workers with intellectual disabilities are paid a proportion of the minimum wage for their work, depending on how productive they are compared to a worker without a disability as well as on how they respond to a series of abstract questions. In 2012, the full Federal Court found that using BSWAT to calculate wages was unlawful because it required workers with intellectual disabilities to answer questions instead of looking at how productive they were in their jobs. The Commonwealth then appealed to the High Court and lost that case and—God knows—I would love to know how much the Commonwealth has paid out so far and how much it is going to continue to pay out.

The result of this appeal made it clear what the court thinks: BSWAT discriminates against workers with intellectual disabilities—so you have been told by the courts, you have been told by the Senate, and yet you are still running off your same old ideas. This appeal also made it clear that the same ruling would apply to the other 10,000 workers in the same situation. However, instead of then stopping the use of BSWAT, the Commonwealth allowed workers to continue to suffer unlawful discrimination, and did not offer a cent until now. Because of that, a class action is currently before the Federal Court seeking to enforce the Federal Court and High Court decisions for these employees and to fairly compensate them for the work they have completed. This court case is seeking full back pay for all members, and is in line with the decisions the courts have already made on this matter.

In closing, I bring to the Senate some comments and feedback my office has received from Mr David Cunningham, who is a co-creator, producer and host of the Dangerous TV project. Mr Cunningham made these five powerful points: first, workers with intellectual disabilities are just as entitled to a decent wage and salary as any other similar worker doing the same job in Australia; second, workers with intellectual disabilities are amongst the most vulnerable workers in the nation's workforce as they have no recognised union to properly represent them; third, the government's actions on this issue did not match up with their actions in relation to the NDIS and other disability issues—we are going down a very dangerous path here; fourth, the government's apparent willingness to defy an order of the High Court demonstrates their contempt for the legal processes of this country, and further demonstrates their sinister attempts to pervert the course of justice; and five, the government's apparent use of dirty fear tactics to attempt to scare the parents and families of workers with intellectual disabilities from seeking and securing redress is totally and utterly abhorrent and should be rejected outright.

I oppose the legislation as it stands but, as I indicated, I will support foreshadowed amendments which guarantee a quick, part payment of approximately 60 per cent—because I can assure you people are doing it very tough out there, let alone these people here. If I can deliver that 60 per cent tomorrow, I will be very grateful to be able to do that—but they will get the choice to go after the rest of their money. That is the very least we can do. As a matter of fact we should not even be put in this position, because you owe them 100 per cent of that money. It is your own integrity that has sunk to the lowest today. I think that about says it all. Should those just and decent amendments fail, I will vote to oppose the bill, as I have said. That is common sense and that is a fair thing to do. That is giving a fair go. That is the Australian way. I urge fellow senators to vote in the same manner.