

## **Fair Work Commission Submission: SES Award Review**

### **Background**

Activ is the largest disability organisations in Western Australia, providing accommodation, community, employment and training support to over 1,750 people living with disability. Activ provides employment support to over 1,000 supported employees in nine Australian Disability Enterprise (ADE) sites in both metropolitan and regional areas, representing 50% of WA's supported workforce.

Activ is grateful for the opportunity to contribute to the Fair Work Commission SES Award Review.

The recent SES Award Review has created uncertainty for ADEs. There is considerable anxiety within the sector as service providers' work hard to prepare for an unknown future. There are a number of policy decisions pending, the Supported Wage System as well as decisions regarding the NDIS employment pricing framework.

Like many ADE's Activ use the Greenacres tool, to assess and determine wages for people with disability employed in their services. As expressed in A Guide to Good Practice Wage Determination report, Activ believe the Greenacres tool best represents the needs and skills of people with disability. Greenacres assesses in accordance with industry-determined competencies which are generally linked to training needs. This enables providers to determine current competencies, training needs and productivity, and determine a fair, adequate wage.

In January, Activ reviewed and made some changes to its wage assessment processes. This change required considerable time and effort. To implement change of this magnitude and transition more than 1,000 supported employees, Activ invested in five full time positions for more than 6 months. 3 months of pre-planning was required and continued ongoing training and support is delivered to staff, supported employees and their families. Any changes made by FWC, will in turn impact providers significantly.

### **Lessons Learnt from other Countries**

Activ encourages the Commission to consider the lessons learned by other countries who have implemented changes to the wages paid to people living with disability. The Disabled Persons Employment Promotion Act introduced in New Zealand required that all supported employees be paid no less than the minimum wage. Three years later, at the end of the roll out, the Act was repealed and replaced by the Minimum Wage Amendment Act 2007, allowing individual workers to be paid less than the minimum wage. The New Zealand Minister of Disability Issues at the time said: "To counter concerns about the continuing financial viability of sheltered workshops, the ministry has put in place a system of individual minimum wage exemption permits for workers who are 'significantly and demonstrably limited' in their work." The requirement to pay no less

than the minimum wage was displacing many supported employees from work and a significant number of NZ supported employment services had transformed into day centres providing non-work activities.

With the sector experiencing the significant change of the National Disability Insurance Scheme many providers struggle to maintain sustainability, particularly those delivering employment services. Many ADE's in WA reported concerning end of financial year figures, commonly between \$2M losses and modest net earnings of \$0.5M.

Activ participates in a highly competitive market, to enable employment for people living with disability. Whilst doing so, Activ incurs higher overhead costs, due to the additional supports required by our supported workforce, which are offset by a wage regime that makes allowances for that support cost. This is in addition to allowing for the productivity differential.

The NDIS quarterly reports state that only 3.5% of people with disability have employment goals provided for in their funding plan. The impact of this low level uptake for employment services, coupled with low operating margins and high administration costs (due to funding reporting requirements) is a financially fragile sector. Significant change to the SES Award could have devastating impacts possibly displacing up to 20,000 people with disability from their current employment.

## **Proposed guiding principles for the future of wage scheme**

Activ supports the hybrid approach proposed by the Fair Work Commission and the research team involved in A Guide to Good Practice Wage Determination report for the wage setting tool, that the assessment take into account:

- The range of tasks performed by the supported employee, relative to the full range of tasks expected of an employee with no disability and the degree of support necessary to allow the employee to perform those tasks; and
- The productivity of the employee in the job, taking into account periods of non-productivity

Activ advocate strongly for the inclusion of competency based assessment in tandem with productivity. When developing a tool, it is important to mirror mainstream practices. Mainstream staff are engaged and paid based on their broad competency level. For example: a CEO completes filing and various administrative tasks at points in time; however they are assessed and remunerated based on their broad competency level as a CEO.

Additionally organisations assess behaviours exhibited in the workplace when determining staff fit, promotion and retainment. Assessing competency is embedded practice within mainstream, mirroring this practice assists in setting people with disability up for success if they choose to transition to open employment.

## **Proposed design of the wage setting tool**

The wage setting tool will need to encompass best-practice wage assessment, in both open employment and supported employment. Activ believe the following features are important:

- Mandatory minimum hourly pro-rata wage rate
- Robust, reliable and valid productivity assessment
- Assessment applicable to any industry or job type
- Assessment maps competencies to training needs
- Transparent and easily understood by employees
- Provides an appeal mechanism
- Sets maximum review periods between assessments

## **Implementation Proposal**

Australia is undergoing significant change with the roll out of the National Disability Insurance Scheme (NDIS), impacting many providers who now struggle to maintain sustainability, particularly those delivering employment services. Activ request the FWC take into consideration the above stated changes and fragile state of the sector, when deciding on implementation.

Given our recent lived experience with changes arising from our internal review, any implementation proposal must consider impacts on providers.

- More than \$580,000 to plan and implement the transition
- 5 additional staff recruited for the duration of the implementation
- 13 existing Activ staff allocated
- 6 months of implementation

Activ propose an adequate period of implementation, with ADE's requiring a minimum 24 months to understand the new tool, assess impacts on business, plan implementation, train its staff and implement the transition. After this period it would be expected all are fully compliant.

Activ also propose Fair Work Commission, Department of Social Services or similar make available the new assessment tool training resources and training workshops for ADE's across each state prior to the 24 month implementation period.

## **Summary**

Activ thanks you for the opportunity to contribute to this review and convey our thoughts. Providers require clarification on the SES Award review to move forward and prepare for the future. Activ support the intent of the NDIS and hope this review compliments its strategic intent and will assist in delivering a strong employment sector for the future.

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