

IN THE FAIR WORK COMMISSION  
Matter no: AM2014/286  
Four Yearly Review of Modern Awards  
Supported Employment Services Award 2010

## SUBMISSIONS OF THE HEALTH SERVICES UNION

### Introduction

1. The Health Services Union (HSU) makes these submissions in response to the Statement issued by the Full Bench on 11 September 2018 ('the September Statement').<sup>1</sup>
2. Parties were directed to make submissions on the merit of the provisional views in the Statement issued by the Full Bench on 16 April 2018 ('the April Statement'),<sup>2</sup> as well as *'any proposal which any party wishes to advance concerning the design and implementation of the new wage assessment mechanism outlined in the Statement, should the Full Bench ultimately determine to proceed with the provisional views expressed therein'*.<sup>3</sup>
3. The HSU supports and relies on the submissions of the AED Legal Centre ('AED Legal'), and the Australian Council of Trade Unions ('ACTU').
4. We also rely on the joint submission of 16 July 2018, from AED Legal, the HSU, United Voice, and other parties, made in response to the April Statement ('Joint Submission').
5. In addition, we provide brief submissions below, and intend to supplement our submissions with oral submissions at hearing.

### Impact on use of SWS in broader modern award system

6. As outlined in paragraphs [10] – [15] of the Joint Submission, we are concerned that the Full Bench's provisional view outlined in paragraph [15](3) of the April Statement contains criticisms of the SWS that are unsupported by the evidence.
7. Further, while the Statement purports to *'express no conclusion about the operation of the SWS in the context of open employment'*,<sup>4</sup> it is by no means clear that these criticisms can be isolated to the context of ADE employment.

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<sup>1</sup> [2018] FWCFB 5712, 'September Statement'

<sup>2</sup> [2018] FWCFB 2196, 'April Statement'

<sup>3</sup> September Statement, [6]

<sup>4</sup> April Statement [15](3)

8. We are concerned that if the Full Bench confirms its views on the SWS, this could undermine the SWS in the modern award system more broadly. We therefore reiterate that the Full Bench should be cautious in confirming these criticisms.

## Proposed new wage assessment mechanism

9. The Full Bench's provisional proposal in its April Statement's proposal involves a '*redesigned classification structure for Grades 1 - 3 of the Award*,<sup>5</sup> and a new hybrid model of wage assessment. The hybrid model involves, firstly, a job '*sizing*' and secondly, a '*modified SWS-type assessment*'.<sup>6</sup>
10. We have not been able to conceptualise a way in which this proposal could be brought about, while meeting the purported objectives of '*fairness, equality, objectivity, independence and sustainability, and be non-discriminatory*'.<sup>7</sup>
11. The most problematic aspect of this proposal is that it involves a double discounting of wages for supported employees. Based on the job size, a worker's rate is reduced to a percentage of the minimum rate in the appropriate classification. Then, based on the modified SWS-type assessment, their rate is reduced again based on their productivity. Such a model cannot be said to meet the objectives of a fair and non-discriminatory wage assessment. For example, a supported employee whose disability means they are assigned to a lower 'sized' job may be likely to have low productivity too, yet they are penalised twice for their disability. Employees with high productivity but assigned to a low sized job would have a low wage despite their output. In practice, this double discounting leads to very low, exploitative, wages.

## Conclusion

12. Our submission remains that the modified SWS should be retained as the only wage assessment tool in clause 14.4 of the SES Award.
13. We note that the proposal to redesign the Classification Structure for Grades 1 – 3 of the Award was not sought by any party in this matter, and we reiterate our view in paragraphs [15]-[17] of the Joint Submissions, that parties should be given the opportunity to make submissions on a concrete proposal on this matter.
14. Similarly, we submit that the Full Bench should not introduce the new wage assessment mechanism without a concrete proposal supported by evidence and submissions, and with an opportunity for parties to respond to its detail.
15. We intend to expand on our views on the proposal for the redesign of the Classification Structure and new wage assessment mechanism at hearing.

## Health Services Union

**21 October 2018**

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<sup>5</sup> April Statement [15] (7)

<sup>6</sup> Ibid, [15] (9)

<sup>7</sup> Ibid, [15](7)

