



Submission to the Fair Work Commission: Opposition to variation determinations and provision of evidence - AM2014/286.

NDS welcomes the opportunity to provide this submission to the Fair Work Commission (FWC) on the Review of the Supported Employment Services (SES) Award 2010, AM2014/286.

This submission will include an outline of our opposition to particular variation determinations as well as the lodgement of further evidence supporting our opposition to those variations.

The submission sets out our opposition to the following requested variations to the Award:

- The request by United Voice to vary the supported employee superannuation clause
- The request by AED Legal that seeks to strike out all wage assessment tools except the SWS

In addition, we have lodged via Australian Business Lawyers and Advisors the following evidence:

- The KPMG Report “Assessing the impact of wage increases in disability enterprises”
- Various statements of evidence from NDS members that operate Disability Enterprises
- Statements of evidence from Dr Ken Baker AM, NDS Chief Executive and Michael Smith.

The SES Award Superannuation Clause

In the SES Award Review Exposure Draft, the arrangements for supported employee superannuation contributions are set out in clause 18.5:

Employees with disabilities:

Where an employee with a disability is being paid less than \$450 per month in accordance with clause 16, contributions for such employees will be either 3% of their ordinary time earnings or \$6.00 per week whichever is the greater.

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The FWC has suggested that Parties consider whether the amount of \$6.00 per week is still appropriate.

Through the SES Award review United Voice has sought an Award variation that would increase the superannuation contribution rate for supported employees from \$6 per week to \$15 per week.

NDS's position is that such an increase would constitute a significant cost impost on employers and that there should be no increases in employer costs unless they are subsidised. Consequently, NDS opposes the variation sought by United Voice.

Increasing the weekly contribution from a minimum of \$6 per week to \$15 per week equals an annual unfunded wage increase for employers of \$468.

For an ADE employing 100 supported workers, this would equate to an annual unfunded wage increase of \$46,800.

The current tax and fees as per the AustralianSuper fund for supported employees are as follows:

- Tax per week levied at 15% (\$0.90)
- Admin fee per week of \$1.50
- In addition, an investment management fee is levied on an annual basis (0.74% in 16-17)

Supported employees accessing this fund must elect to opt out of all insurance coverage, or it will automatically be deducted from the \$6.00. It is important to note that employees are able to opt out – the insurance units are not compulsory.

This leaves a weekly net contribution of \$3.60 after tax and the admin fee (or \$187.20 per annum). Again, it is important to note that the MySuper changes introduced several years ago fixed both the tax rate and the admin fee. Therefore, these cannot be changed without amendments to the relevant legislation. It should also be noted that supported employees have access to the Low Income Superannuation Tax Offset (LISTO - which has now replaced the low income superannuation contribution). Access to the LISTO enables tax paid on the contributions to be refunded to the employee's superannuation account, up to a maximum refund of \$500 per annum.

NDS and supported employers have had discussions with AustralianSuper on amendments to the industry fund for supported employees. Consequently, AustralianSuper is amending the supported employment fund rules to allow automatic opt out from insurance units and the ability to opt in to these instead.

The key intent of the superannuation changes introduced by government was that people would save for their own retirement so as not to be dependent on government benefits (i.e. the age pension) when they retired.

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The welfare safety net in the form of a full or part pension would remain in place for those with insufficient superannuation balances when leaving the workforce. This safety net will be available for supported employees when they leave the workforce, i.e. they will continue to receive the DSP (or the aged pension) and at a higher rate than previously if they were subject to the pension income test due to their earning a wage.

Clause 16: Wage assessment – employees with disability

AED Legal has sought a variation to the SES Award seeking to remove clauses contained within section 16 of the Award Exposure Draft, dated 20 December 2016. The variation sought by AED Legal refers to the removal of clauses 14.4 (b)–(e), 14.4 (f), 14.4 (g)-(h) and 14.6. These correspond to clauses in the SES Award that relate to wage assessment for employees with disability.

The variation sought by AED Legal requests the removal of all wage assessment tools from the SES Award except the SWS.

NDS is opposed to any variation of the SES Award that would strike out wage assessment tools currently used by Disability Enterprises. NDS has previously identified a subset of wage assessment tools that have ceased to be used by any disability enterprise. We note that these wage assessment tools are identified for removal in the Award Exposure Draft.

In support of this variation, AED Legal has lodged a witness statement by Paul Cain. NDS will provide a submission in reply in December 2017 that includes counter arguments to various claims made in that statement.

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National Disability Services is the peak industry body for non-government disability services. Its purpose is to promote and advance services for people with disability. Its Australia-wide membership includes 1100 non-government organisations, which support people with all forms of disability. Its members collectively provide the full range of disability services - from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.