

SUBMISSION COVER SHEET

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This submission is made by Practical Workplace Relations on behalf of all organization currently using the SkillsMaster System – Pro-rata Award Based Wage Assessment Tool.

Is your submission ‘CONFIDENTIAL’?

No

**MATTER NO. AM2014/286
SUPPORTED EMPLOYMENT SERVICES AWARD 2010 – FOUR YEARLY
REVIEW OF MODERN AWARD**

**FURTHER SUBMISSION TO THE FAIR WORK COMMISSION IN RESPONSE TO
THE SUBMISSION OF THE DEPARTMENT OF SOCIAL SERVICES ON 22ND
OCTOBER 2019**

THIS SUBMISSION IS ON BEHALF OF THE USERS OF THE SKILLSMaster© SYSTEM PRO-RATA AWARD BASED WAGE ASSESSMENT TOOL FOR DETERMINING WAGE OUTCOMES FOR PEOPLE WITH A DISABILITY WORKING IN AN AUSTRALIAN DISABILITY ENTERPRISE (ADE)

1. We agree with paragraph one (1) of the DSS submission of 22 October 2019 in so far as the DSS at its own choice has been an observer during the entire proceedings yet has on occasion had both oral and written communication with the Commission regarding aspects of the proceedings.
2. We are disappointed and concerned, the DSS has at the eleventh hour knowing the Commission had indicated it was about to hand down its decision following a number years of deliberation by all parties, decided to advise the Commission of an impending new arrangement for funding of support services for ADE's, which the DSS implied that the funding may in some way have an impact or influence on the decision of the Commission.
3. As mentioned in one (1) the DSS had been observers during the entire proceedings and had an opportunity to participate in those proceedings. The DSS would have had knowledge of the new funding arrangements prior to the public announcement on 10th October 2019 and could have advised the Commission at a much earlier date of the DSS's imminent position and decision.
4. It is our view the submission of the DSS should have no significant influence or bearing on the wage determination process for people with a disability and has only contributed to a further delay in the Commission handing down its long awaited decision.
5. We question the DSS's understanding of the Industrial Relations system in Australia insofar as the DSS has indicated that changes to the funding arrangements for support services for people with a disability (which have as yet not been implemented) would in some way have an impact on wage determinations as they apply to the Award and the classification structure and rates of pay contained in the Award.
6. We also recognize that DSS funding for people with a disability and ADE's is open to Government policy, which from time to time can be reduced or removed by Governments due to budgetary factors, changes in the policy or indeed changes in Governments.

7. We acknowledge the additional one off five (5) year funding arrangement provided by the Government for ADE's to transition to the new wage assessment tool when the decision of the Commission is published.
8. From the information available it is unclear how the additional one off funding is to be applied or implemented within the sector.
9. In regard to the implications of changes to the funding model, from the limited information available (Refer: Attachment 1 – Fact Sheet Supported Employment Pricing Framework) it is also unclear if any ADE would be better off under the new arrangements.
10. From the modelling undertaken by a client of Practical Workplace Relations based on the limited information available, any increases or decreases in support services funding is dependent on three factors:
 - (i) The ratio of support workers to employees with a disability;
 - (ii) The hours worked on any day by each employee with a disability; and
 - (iii) The number of employees with a disability engaged on any given day.
11. As the majority of employees with a disability working in an ADE only work ordinary hours between the spread of hours 6.00am – 6.00pm Monday to Friday the support services funding for Saturdays, Sundays, Public Holidays, Afternoon and Night Shifts will never be available.
12. This assumption is confirmed by the DSS at paragraph 47 of the DSS submission where the DSS states the new NDIS pricing structure is only likely to increase support services funding for ADE's There is absolutely no evidence that the new funding model arrangement will increase the funding.
13. We also question the DSS's assumption, that by providing increased funding for ADE support services the additional funding would in some way make an ADE more profitable or contribute to increases in wages of an employee with a disability or increase the ability of an ADE to change the capacity of an employee with a disability to undertake a specific task.
14. We do agree that providing additional support funding may assist an employee to gain additional skills and/or be more productive.
15. If the additional funding does lead to an employee gaining additional skills or productivity through additional training, and further increases in productivity, the employee should be rewarded in accordance with the Award provisions and in particular the Classification structure and the rates of pay attached to each classification level using an appropriate wage assessment tool.

16. The DSS (NDIS) Support services funding and wages determination for people with a disability are two separate issues and either one should not impact on the outcome of the other.
17. As ADE's operate in the same customer market as all other employers it is our view and it is imperative that the Award contain a Pro-rata Award Wage Assessment Tool for people with a disability that compares the skill and performance of an employee with a disability to that of an employee without a disability doing the same or similar work.
18. Classifications and the wage levels of the employees doing the work should also be determined with reference to the indicative tasks contained in the classification structure of the Award creating the **whole job** to be undertaken.
19. The Pro-rata Award Wage Assessment Tool should assess an employee with a disabilities, competence and ability to undertake each task (or work) of the **whole job** to establish what percentage of the **whole job** the employee with a disability can do.
20. As there are a number of other factors that have a direct impact on an employee with a disabilities performance, which have a direct impact on the ability of the employee with a disability to perform a given task at an acceptable level of competence these factors should also be taken into account as they also have a major impact on the profitability of the ADE.
21. These issues should be considered in the new Pro-rata Award Wage Assessment Tool.
22. The support services provided to the an employee with a disability may contribute to the outcome of the assessment insofar as it may increase the skills level and performance including productivity of the employee which when assessed using the Pro-rata Award Wage Assessment Tool may also increase the wage level of the employee.
23. We agree, the DSS does have responsibility for supported employment services as the DSS provides financial assistance for support services of people with a disability in a working environment including the ADE's throughout Australia and the Disability Support Pension. For ADE's the assistance for the past number of years has been provided through case base funding and as the DSS has indicated will be transferred to the NDIA to administer.
24. In regard to the Supported Wage System (SWS) the DSS was only one of a number of organisations and State Governments to endorse the inclusion of the than developed 'Model Clause' into a number of Awards (Refer: Dec 1831/94 s Print L5723) before a Full Bench of the Australian Industrial Relations Commission on 10th October 1994.
25. The 'Model Clause' has been subsequently included in many Awards and more recently Modern Awards made under the Fair Work Act 2009.

26. It should be noted, the decision of the Full Bench, Australian Industrial Relations Commission and contained in the decision attachment ‘Model Clause’ at Clause 1, Sub-clause (b) Eligibility Criteria, paragraph three(3) states;

‘The award does not apply to employers in respect of their facility, programme, undertaking service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and ‘sheltered workshop’ to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which received recognition under s10 or under s12A of the Act, or if a part only has received recognition that part.’

27. As contained in the decision extract above it was made very clear during the 1994 decision and supported by all parties, that the SWS was not an appropriate wage assessment tool for people with a disability working in what was then known as a Sheltered Workshop and now an ADE.
28. It was also recognised within that decision, and has been widely documented in various reports that ADE’s have a dual purpose of providing additional support for people with a disability that would not be available in an open employment environment and at the same time providing work for the person with a disability which would otherwise not be available to that person.
29. Over the period since the introduction of the Supported Wage System (SWS) or any other wage assessment tool for people with a disability working in an ADE, there have been a number of changes to the support services funding arrangements, yet none have had an impact or have been considered or taken into consideration to establish appropriate wage outcomes for employees with a disability.
30. The funding by the DSS has always been to provide support services to the employee with a disability and has never been used to determine the wage outcomes for the employee with a disability.
31. The matter of wage outcomes for employees including people with a disability has always been the role of the relative Industrial Commission jurisdictions whether being in a State or Federal jurisdiction.
32. Under the Australian Industrial Relations system wages and wage rates for all employees are in accordance with the relative modern award for the industry in which the employee works.
33. The rate of pay for each employee is determined by the tasks to be undertaken by the employee as those tasks relate to the classification structure contained in the award and an assessment of the skills and capacity of the employee to perform the tasks at the required level or grade of the structure to a level of competence required by the employer.

Practical Workplace Relations – Philip AMOS

Submission – 4 Yearly Modern Award Review – New Award Classification Structure and Wage Assessment Tool for people with disability working in an Australian Disability Enterprise (ADE)

34. In conclusion we would seek that the Commission hand down its decision and provide details of the Pro-rata Award Wage Assessment Tool determined by the Commission to allow ADE's throughout Australia to transition to the new tool without delay thereby creating industrial certainty within the sector.

Phil Amos

Practical Workplace Relations.

For the users of the SkillsMaster System

See Attachment '1'

Practical Workplace Relations – Philip AMOS

Submission – 4 Yearly Modern Award Review – New Award Classification Structure and Wage Assessment Tool for people with disability working in an Australian Disability Enterprise (ADE)

See Attachment ‘1’

Supported employment pricing framework

A factsheet for Australian Disability
Enterprises

October 2019

Introduction

The NDIS is introducing a new supported employment pricing framework, which will replace case-based funding arrangements that exist between the Department of Social Services (DSS) and Australian Disability Enterprises (ADEs) from early 2020.

The new pricing framework provides new opportunities for participants to exercise choice and control around where they work and how they are supported.

As disability confident employers and experienced providers of on-the-job employment supports, ADEs are uniquely positioned to transform their business models to support participants in alternate employment settings as well as their own place of business.

About the new pricing framework

Under the NDIS and person-centred planning approach, supported employment will no longer be defined by the nature of the workplace, but the intensity and frequency of support needed.

This means that participants will be able to purchase intensive or frequent on-the-job employment supports and use them in any setting including social enterprises, micro-businesses, open employment, self-employment and in an ADE.

The new pricing framework introduces an hours based per participant model that:

- reflects the actual hours of support provided to the participant per week, which may include non-face-to-face work time if appropriate
- will vary depending on the expected level of workplace supports a participant needs
- aligns NDIS funded employment support prices with NDIS funded community participation support prices, noting that supported employment providers will be able to charge for non face-to-face time that directly relates to the support of the participant.

The new pricing framework will expand opportunities for more participants to have the right supports to find and keep a job, driving new opportunities for providers and new models of support.

Figure 1. New prices for supported employment providers

Ratio of support worker to participants	Weekday	Saturday	Sunday	Public Holiday	Afternoon Shift	Night Shift
1:1	\$54.95	\$74.79	\$96.62	\$120.44	\$60.41	\$61.50
1:2	\$28.53	\$38.45	\$49.36	\$61.27	\$31.26	\$31.80
1:3	\$19.72	\$26.33	\$33.61	\$41.55	\$21.54	\$21.90
1:4	\$15.31	\$20.27	\$25.73	\$31.69	\$16.68	\$16.95
1:5	\$12.67	\$16.64	\$21.00	\$25.77	\$13.76	\$13.98
1:6	\$10.91	\$14.22	\$17.85	\$21.82	\$11.82	\$12.00
1:7	\$9.65	\$12.48	\$15.60	\$19.01	\$10.43	\$10.59

NB. These prices are subject to change as part of the NDIS annual price review.

Transitioning to the new pricing framework

There are more than 20,000 people working at approximately 168 ADEs across Australia, with the majority of these being NDIS participants.

In order to support ADEs and NDIS participants who are employed by an ADE to prepare for these changes, we are releasing the unit prices well in advance of transition.

The new pricing framework for supported employment will not be implemented in NDIS price guides or plans until early 2020.

Detailed information and resources will be made available to impacted participants and providers shortly to facilitate a smooth transition.

There will also be a series of information sessions and webinars delivered across Australia in November and December.

Contact

Please direct any questions you might have to the Participant Employment Taskforce at participant.employment@ndis.gov.au.

Frequently asked questions

Why are we changing the current pricing model?

Before the NDIS was established, state/territory and Commonwealth governments paid providers, including Australian Disability Enterprises (ADEs) to deliver supports to people with disabilities.

As people transitioned onto the NDIS, the Department of Social Services (DSS) funding arrangements were mirrored in the Capacity Building Supports budget in NDIS plans. ADEs would then access funding for the provision of supports through the NDIS.

It is important that the pricing model for supported employment is based on the funding principles that underpin the NDIS and not the old DSS funding arrangements. A change has been needed to achieve this.

How will this change impact participants?

There are more than 20,000 Australians with disability currently working in ADEs. 15,000 have transitioned to the NDIS.

As we transition to the new pricing model:

- supported employment funding will move into a participant's Core Supports budget
- existing service agreements between participants and ADEs will continue
- participants will be able to choose how to spend their supported employment funding within their existing budgets. Any changes to support provision should be discussed and agreed in new service agreements

When the transition is complete, NDIS participants will have the option to continue using their employment support funding with their ADE, a different ADE, or choose to purchase employment supports via different providers to be supported to work in the setting of their choice.

This provides new opportunities for participants to choose where they work and how they are supported. It creates a range of opportunities for providers and employers, particularly ADEs, who are both disability confident employers and experienced providers of on-the-job employment supports.