



Submission in reply to the Fair Work Commission: Decision of the Full Bench 3 December 2019 - AM2014/286.

NDS welcomes the opportunity to provide this submission to the Fair Work Commission (the Commission) regarding the Full Bench's decision on the new wages structure proposed for the Supported Employment Services (SES) Award 2010, AM2014/286.

As requested by the Commission, this submission addresses the proposed rates of pay and classification descriptors for the new Grades A and B, the new classification descriptors for Grades 1-7 and the implementation timetable.

In addition, we would like to propose a new operative date for the changes to supported employee superannuation contributions.

Response on the proposed new wages structure for supported employees

NDS supports and welcomes the Commission's decision regarding the need for and proposed form of, a new wage fixing methodology in the SES Award on the basis set out in the full decision from clause 371 onwards. We note the decision contains emphatic statements about the need to determine supported employee wages taking into account both the value of the work they perform and their productivity level, where this is affected by their disability.

However, we wish to raise certain matters for consideration when conducting further work on developing and trialling the proposed wage fixing methodology.

Clause 372 proposed changes to the classification structure:

Clause 372 (2) includes the following descriptions of the proposed new Grades A and B:

Grade A ... shall apply to employees who perform one or more simple tasks consisting of up to three sequential actions under direct supervision and constant monitoring.

*Grade B ... shall apply to employees who perform one or more simple tasks consisting of **more than** three sequential actions, which **may involve the use of mechanical or electrical equipment or tools**, under direct supervision with **regular** monitoring.*

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The differences between Grades A and B include the number of sequential actions specified, the complexity of tasks performed, the use of mechanical or electrical equipment or tools and the level of monitoring.

NDS notes the inclusion of the concept of “sequential actions” in the description of the duties performed in the new classification Grades A and B.

NDS members have informed us that a significant proportion of simple tasks (that constitute a job) have more than three sequential actions and in some examples, significantly more than that number.

We request that the Commission provides further guidance by defining “sequential actions” as used in the descriptions of Grades A and B. Following provision of the definition, NDS may request an increase in the maximum number of sequential actions identified in Grade A.

The reference to the use of mechanical or electrical equipment or tools as specified in Grade B, appears to be too broad. An employee performing duties under Grade A may currently undertake an activity that supports or results in the use of mechanical or electrical equipment or tools, while in no way being in control of or operating those devices. Consequently, we would recommend that the description of Grade B in Schedule B – Classifications, be changed to the following:

*Employees at this grade will perform a simple tasks or tasks consisting of more than three sequential actions, which may involve the **operation or control** of mechanical or electrical equipment or tools, under direct supervision and with regular monitoring.*

Clause 373 – suggested wording for classification grades on work value and relevant industry Awards:

This clause addresses how to ensure that Grades A-B and 1-7 “provide a classification structure which accommodates in a comprehensive way the jobs which the evidence shows actually exist in the Disability Enterprise sector and properly reflects their work value”. NDS agrees that the classification descriptors for the existing Grades 1-7 should be modified to express generic indicators of work value and that the current lists of indicative tasks should be removed.

We would recommend that a statement such as the one below be included in the relevant Grades in the classification structure so as to allow alignment to other relevant industry Awards while avoiding the need to identify them. For example, for Grade 2, we would suggest:

Employees at this grade will perform a basic task or tasks in accordance with defined procedures under direct supervision. Such employees will understand and undertake basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults. This may include the performance of work included in classifications in other, relevant industry Awards and where those Awards provide proper guidance as to the work intended to be undertaken at each classification level.

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Clause 376 – conduct of the trial of the proposed wage fixing methodology:

The Commission specifies that it is vital the new wages structure be trialled by a number of representative Disability Enterprises to ascertain cost impacts before it is implemented. NDS is keen to engage its membership in the trial and will work with the Commonwealth and the Commission to ensure a representative sample of Disability Enterprises is engaged in the course of the trial.

In addition, NDS recommends that the trial revisits the application of productive output assessments of employees with disability in production line and group settings. This will support the development and incorporation of a methodology that ensures equitable wage rates are determined for employees working in those settings.

In order to ensure that the implementation of the new wages structure is not rushed and to ensure that feedback from interested parties can be adequately considered, NDS recommends that the trial be run from 1 May 2020 to 31 July 2020.

Identification of a minimum hourly rate in the new Schedule D – Supported Wage System:

NDS notes that the new Schedule D on Supported wage rates identifies a minimum hourly wage rate of \$3.00 in clause D4.1 (b). Given the new hourly minimum wage rate of \$3.50 specified in the full decision at paragraph 374 (4) we assume that the rate identified in clause D4.1 (b) of the new Schedule D is an error.

Timetable for introduction of changes to supported employee superannuation provisions in the SES Award

NDS notes the Commission has granted the claim seeking an increase to supported employee superannuation contributions. The new provision will amend the contribution rate from 3% of an employee's earnings or \$6 per week (whichever is greater) to 9.5% or \$15 per week (whichever is greater). The increase will take effect in full from 1 October 2020. The new provision continues to identify an earnings threshold of \$450 per month as below:

19.5 Employees with disabilities

Where an employee with a disability is being paid less than \$450 per month in accordance with clause 14.4, contributions for such employees will be either 9.5% of their ordinary time earnings or \$15.00 per week whichever is the greater.

NDS is concerned that retention of the threshold in the new clause produces anomalous outcomes for supported employees based on their monthly earnings. For example, the effect of the new clause would be as follows (assuming there are only four weeks' wages paid in most months over a year):

- An employee wage of \$112 per week – superannuation contributions are \$15 pw (this employee would be generally earning \$448 per month)

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- An employee wage of \$120 per week – superannuation contributions are \$11.40 pw (this employee would be generally earning \$480 per month)

NDS recommends that the \$450 per month threshold be removed from the new clause 19.5. Our suggested wording would be:

Superannuation contributions for employees with disability will be either 9.5% of their ordinary time earnings or \$15.00 per week, whichever is the greater.

Given the other significant developments in the supported employment sector, including wage increases that will result from the new wages structure, NDS recommends that the introduction of the superannuation increase be delayed. The increase in employee superannuation contributions represents a significant unfunded wage increase for Disability Enterprises. To allay the impact of the increase, NDS recommends that it be phased in over 18 months with staged increases as follows:

- First increase to 6.5% or \$11 per week (whichever is greater) from 1 October 2020
- Second increase to 9.5% or \$15 per week (whichever is greater) from 1 July 2021

December 2019

Contact: David Moody
CEO
National Disability Services
Ph: 03 8341 4343
Mob: 0437 107 851
david.moody@nds.org.au

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 more than 1,000 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.