

FAIR WORK COMMISSION

4 Yearly Review of Modern Awards

Supported Employment Services Award 2010

Matter No: AM2014/286

OUTLINE OF SUBMISSIONS IN REPLY

**NATIONAL DISABILITY SERVICES,
AUSTRALIAN BUSINESS INDUSTRIAL AND THE NSW BUSINESS CHAMBER**

1. INTRODUCTION

- 1.1 His Honour Vice President Hatcher has issued directions in the above matter requiring that, *inter alia*, any evidence and outlines of submissions in reply in these proceedings be filed in the Commission on or before 4.00pm Thursday 14 December 2017.
- 1.2 This outline of submissions has been prepared in accordance with his Honour's direction above, and is in response to submissions and evidence prepared by:
- (a) AED Legal Centre;
 - (b) the Health Services Union (**HSU**); and
 - (c) other organisations and individuals in support of the above,
- (collectively, the **Advocate Parties**)

2. EVIDENCE FILED WITH THESE SUBMISSIONS

- 2.1 The following 6 statements have been filed with this document:
- (a) Statement of Chris Christodoulou dated 8 December 2017;
 - (b) Statement of Bradley Burrridge dated 12 December 2017;
 - (c) Statement of Annie Constable dated 14 December 2017;
 - (d) Statement of Anthony Rohr dated 14 December 2017;
 - (e) Statement of Steve Burgess dated 14 December 2017; and
 - (f) Statement of Heath Dickens dated 14 December 2017.
- 2.2 Where any of the above statements has:
- (a) been redacted, any redacted information is information that may be used to identify the identity of the persons noted in that statement, and has been excluded for confidentiality reasons. To the extent that any party wishes to obtain access to unredacted evidence it can be provided subject to that party entering into appropriate confidentiality undertakings agreed between the parties. Unredacted

statements may also become the subject of a future application under section 594 of the *Fair Work Act 2009* (Cth) (**FW Act**); and/or

(b) not been signed, we have been instructed to file identical signed versions of same as soon as possible, however these signatures will be redacted in accordance with the above protocol.

2.3 The above material is in addition to materials previously filed by the above parties in these proceedings.

2.4 National Disability Services (**NDS**) will also be filing separate reply submissions and evidence in relation to some of the matters pertaining to these award review proceedings, including changes to definitions in the SESA. ABI and NSWBC support NDS' submissions in this regard.

3. WORK VALUE CLASSIFICATION STRUCTURE AND COMPETENCE-BASED WAGE ASSESSMENT

Nojin

3.1 The Advocate Parties have asserted¹ that the Work Value Classification Structure (**WVCS**), proposed by Australian Business Industrial (**ABI**) and the New South Wales Business Chamber (**NSWBC**) offends the principles espoused in *Nojin*,² and therefore by extension the *Disability Discrimination Act 1992* (Cth) and/or section 153 of the FW Act.

3.2 To the extent that these arguments have previously been raised by the Advocate Parties in support of their proposal that methods of wage assessment currently in the SESA that take skills and competence into consideration should be deleted, we rely upon the Outline of Submissions in Opposition filed by NDS, ABI and the NSWBC on 21 November 2017, which deals with the applicability of *Nojin* at length, and also make additional submissions in reply below.

3.3 *Nojin* related explicitly to the application of the BSWAT methodology (a single, explicitly defined and structured wage assessment tool) to determine the wages of two workers, each with an intellectual disability, and its findings must be confined to its own facts.

3.4 It is critical to note that ADEs operate to provide employment and training support to people who have been independently assessed as lacking the skills and abilities to gain and retain entry level positions in open employment settings. This occurs prior to their referral to an ADE for supported employment.

3.5 The ability to demonstrate (or acquire) relevant skills and competency is a fundamental concept that is applied to the vast majority of the workforce across the Australian economy. As such, the assessment of skills and competencies that are relevant to the performance of a job, and the quality and quantity of the goods or services produced, be it by way of the WVCS or wage assessment tools currently in the SESA, must continue to be taken into account when determining a supported employee's wage, and do not fall foul of the specific criticisms of the Federal Court espoused in *Nojin* pertaining to the incorrect application of the BSWAT tool on two isolated occasions.

¹ Outline of Submissions of AED Legal Centre dated 21 November 2017 (**AED Opposition Submission**) at [23]-[24]; Outline of Submissions of the HSU dated 21 November 2017 (**HSU Opposition Submission**) at [16], Statement of Paul Cain dated 21 November 2017 (**Cain Opposition Statement**) at [11]

² *Nojin v Commonwealth of Australia* [2012] FCAFC 192 (21 December 2012)

Work value

3.6 The Advocate Parties have variously asserted that:

- (a) work value considerations are irrelevant to the WVCS, as it does not involve “a claim to vary modern award minimum wages”.³
- (b) the “*business or operational circumstances of the employer*”, and the “*value of the work to the employer*” are not relevant in relation to work value considerations;⁴
- (c) the Commission is not permitted to “*fix multiple minimum rates for the same kind of work*”;⁵ and
- (d) no work value grounds for the WVCS have been established in circumstances where the SWS already takes individual capacity into account.⁶

3.7 None of these arguments withstand scrutiny.

3.8 As to whether considerations of work value is relevant to these proceedings, it is uncontroversial that the effect of the WVCS (as is the case now with the SWS and the various wage assessment tools in the SESA) would be to vary modern award minimum wages for particular employees, by virtue of being a mechanism by which employees may lawfully receive remuneration which is less than the minimum rates set out in the SESA. Sections 156(3) and 156(4) are therefore clearly relevant and enlivened in this matter, and materials previously filed by the non-Advocate Parties in these proceedings squarely grapple with both:

- (a) how and why the WVCS is justified on work value grounds; and
- (b) the important of retaining a competence/skills approach to wage assessment, having regard to the particular characteristics of supported employment and work value grounds arising from same.

3.9 As to the arguments advanced by AED Legal set out above:

- (a) there is nothing in the language of section 156 (or otherwise in the FW Act) which has the effect of precluding the Commission for fixing “multiple minimum rates for the same kind of work”, provided the distinctions between these rates are justified by work value reasons;
- (b) as borne out by a vast array of evidence and submissions filed by the non-Advocate Parties in these proceedings, the SWS does not properly “*take individual capacity into account*”, and is therefore manifestly unsuitable as a compulsory mechanism for wage assessment. If the Advocate Parties assertions in this regard were correct, the question of wage assessment would not be a contested issue in these proceedings.

³ HSU Opposition Submission at [15]

⁴ AED Opposition Submission at [19]

⁵ Ibid at [20]

⁶ Ibid at [21]

Modern awards objective

3.10 The HSU has asserted⁷ that the submissions advanced in favour of the WVCS do not address the modern awards objective. This is plainly incorrect,⁸ and ABI and NSWBC rely upon the submissions earlier filed in this regard.

Impact of the WVCS and competence-based wage assessment on the lower skilled

3.11 A number of the other critiques levelled by the Advocate Parties at the WVCS and in relation to competence-based wage assessment generally assert that these involve a “*devaluation*” of the work performed by lower skilled employees.⁹

3.12 These arguments ignore the fact that classification schedules in Modern Awards differentiate the grades and wage rates for workers on the basis of the skills and competencies required to perform the duties of a position. It is the position that is classified and graded in the first instance, and an employer’s selection process seeks to appoint a person to the position on the basis that he/she has (or can readily acquire) the skills and competencies to fulfil its requirements. Performance in terms of “output” does not determine the grade or rate of pay. The rate of production output may however have an impact on job retention, especially if it falls consistently below requirements.

3.13 By contrast, workers employed in ADEs are accepted and appointed on the basis of their aspiration to work, and in the context of their support needs. Every effort is then made to identify or “structure” a job, its tasks and/or functions, to enable them to participate in meaningful employment. This, in turn, has direct and genuine implications for work value for the purposes of section 156 of the FW Act.

3.14 Equally significantly, ignoring relevant skills and competencies when determining a wage precludes the rewarding of an employee for new skills acquired, and compromises the promotion prospects of employees. It may also serve to devalue supported employees by limiting them to positions at the Grade 1 or 2 levels.

3.15 Logic would dictate that the use of skills and competencies in wage determination ought to be as valid for workers with disability as it is for other workers. The assessment methodology would need to focus on skills and competencies that are relevant to the performance of the job.

3.16 As stated at paragraph 3.4 above, most supported employees are assessed independently prior their referral to an ADE, confirming that, as a consequence of their disabilities, they lacked the skills and competencies needed to make it likely that they could gain and retain an entry level position in open employment settings. This is a pre-condition for their referral to an ADE for supported employment.

3.17 In this context, to assert that:

⁷ HSU Opposition Submission at [14]

⁸ Submissions in Support by Australian Business Industrial and the NSW Business Chamber dated 25 September 2017, at [5.2(b)]

⁹ See, for example, Cain Opposition Statement at [14], Statement of Robert MacFarlane (**MacFarlane Opposition Statement**) dated 21 November 2017 at [65]

- (a) skills and competency are not valid considerations;
 - (b) consideration of these factors in wage assessment is intrinsically discriminatory,
- is simply incorrect. Such assertions fails to have appropriate regard to why the supported employment model exists and how it operates.

3.18 People with disability are not a homogenous group of individuals. They each have their own range of skills and abilities and the capacity to learn and develop new skills. Many have the potential for promotion within a Disability Enterprise setting, and indeed some have the potential to progress to open employment, and do as a direct consequence of the training and support they receive through an ADE. To seek to ignore the presence or acquisition of skills and competencies in this process serves only to devalue both the supported employees and their work.

Aims of the WVCS

3.19 Mr MacFarlane has asserted that:

“the aim of the complicated four level Grade 2 classification structure is to institute a system of wage discounting with the potential to keep the majority of ADE workers at lower skill levels and lower rates of pay.”¹⁰

3.20 This is pure conjecture, and is unsupported by evidence. On the contrary, the evidence filed by the non-Advocate Parties in this matter clearly demonstrate the critical role that ADEs play in building the skills and enhancing the lives of supported employees, their families and carers, in both a financial and non-monetary sense.

4. POSITION OF THE DSS ON THE SWS AND THESE PROCEEDINGS

4.1 The AED Opposition Submission¹¹ refers to the correspondence filed by the Department of Social Services on 8 November 2017, which confirms that:

- (a) the DSS retains an interest in the SWS, but has no position in relation to other tools in the SESA, considering to be a matter for the parties; and
- (b) affirms the DSS’ position as follows:

The Government will continue to follow the proceedings in the Commission and ensure future policy settings allow for the ongoing viability of Australian Disability Enterprises for employees, their families and carers, and the businesses, while also meeting Australia’s obligations under international law.

4.2 The relevant paragraph from the AED Opposition Statement then goes on to state, that *“the viability concerns [raised by the DSS above] have been addressed”*.

¹⁰ MacFarlane Opposition Statement at [69]

¹¹ At [27]

4.3 No explanation, justification or evidence for this has been filed in these proceedings, and such a view clearly contradicts a large amount of evidence filed by the non-Advocate Parties in these proceedings.

Australian Business Lawyers & Advisors

For National Disability Services, Australian Business Industrial and the NSW Business Chamber

14 December 2017

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FURTHER STATEMENT OF ANNE LYNETTE CONSTABLE

I, Anne Lynette Constable, of 20 Christian Street, Maryborough, Victoria, state as follows:

BACKGROUND

1. I am the Chief Executive Officer of ASTERIA Services Incorporated (**ASTERIA**), which operates ASTERIA Business Services (**ABS**), an Australian Disability Enterprise (**ADE**) in the Central Goldfields Shire, Victoria.
2. This is my second statement in this matter. My first statement, dated 21 September 2017, was filed on 25 September 2017.

RESPONSE TO STATEMENT OF PAUL CAIN DATED 21 NOVEMBER 2017

3. I have read the statement of Paul Cain filed and dated 21 November 2017.
4. In response to paragraphs 193 to 201 of Mr Cain's statement I say that the view expressed in paragraph 51 of my first statement was included as a result of the information contained in the Australian Government Disability Employment Services Supported Wage System Assessment Guidelines V 1.3.
5. On pages 3 of the Assessment Guidelines, it states:

The Supported Wage System was introduced in 1994 to improve employment opportunities for people with disability. This followed consultation with the relevant industrial authorities, Employers, trade union and disability peak bodies, state and federal government departments and disability employment services. Many people with disability obtain employment at full award wages, but for others, the nature of disability can affect their productive capacity. People in such circumstances may wish to use a reliable process of productivity-based wage assessment to obtain a job in the open labour market. The Supported Wage System was introduced to provide both the industrial relations framework and the Assessment process to enable reliable productivity-based wage assessments for eligible people with disability. The Department of Social Services (DSS) manages a National Panel of Assessors under

the Disability Employment National Panel of Assessors Deed of Standing Offer to deliver a range of assessment services, including SWS Assessments (my own emphasis).

6. A copy of the Supported Wage System Assessment Guidelines is attached to this statement at **Annexure "A"**.



Anne Lynette Constable

December 14th 2017

Date



Australian Government



Supported Wage System Assessment Guidelines

V 1.3

Disclaimer

This document is not a stand-alone document and does not contain the entirety of the Providers' obligations. It should be read in conjunction with the Disability Employment National Panel of Assessors Deed of Standing Offer and any relevant Guidelines or reference material issued by the Department of Social Services (DSS) under or in connection with the Disability Employment National Panel of Assessors Deed of Standing Offer.

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Document Change History:

Version	Start Date	Effective Date	End Date	Change & Location
1.3	10 Sept 2016	10 Sept 2016		<p>Throughout Document: Where applicable changed DSS to the Department</p> <p>Throughout Document: Minor changes to align with Deed GDV4</p> <p>Throughout Document: Minor changes to reflect new JobAccess National Hub</p> <p>Page 10: Clarification of number of minimum/maximum observations recorded for each task</p> <p>Page 13: Clarification of 'Assessor Comments'</p>
1.2	12 Sept 15	12 Sept 15	9 Sept 2016	<p>Throughout Document: Removed references to DEEWR and replaced with DSS</p> <p>Throughout Document: Updated references to Deed to remove 2012-2015</p> <p>Throughout Document: Accessibility Changes</p>
1.1	01 Jul 12	01 Jul 12	11 Sep 15	<p>Throughout Document: Deed references updated to 2012-2015. Some minor rewording for improved clarity.</p> <p>Reference Documents: Updated</p>
1.0	15 Jan 10	01 Mar 10	30 Jun 12	Original version of document

Background

These Guidelines outline the process for arranging and conducting a Supported Wage System (SWS) Assessment for a Participant who is registered with a Disability Employment Services (DES) provider (hereon referred to as 'DES provider'). SWS Assessments are also available to people who are not registered with a DES provider. The Assessment process is very similar, except that the Assessor must work directly with the Employer to obtain information about the job.

Assessors, Employers, service providers and other parties have access to comprehensive information about the SWS at [JobAccess](#). This includes a SWS Handbook which is the key SWS document, and provides information on the industrial relations instruments and the roles of all parties involved. Questions may be directed to the Department's Supported Wage Management Unit (SWMU) on 1800 065 123.

Industrial relations and wages information is available from the Fair Work Infoline on 13 13 94 or the website at [Fair Work Ombudsman](#).

Information about the SWS Minimum Weekly Wage is available from JobAccess, or the Fair Work Commission website at [Fair Work Commission](#).

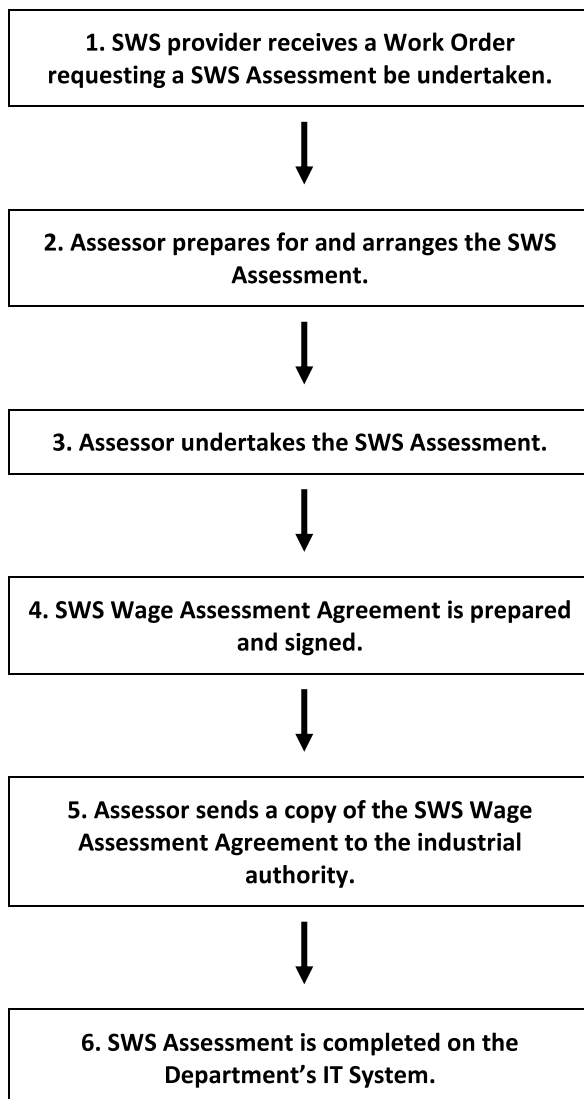
Summary

The Supported Wage System was introduced in 1994 to improve employment opportunities for people with disability. This followed consultation with the relevant industrial authorities, Employers, trade union and disability peak bodies, state and federal government departments and disability employment services.

Many people with disability obtain employment at full award wages, but for others, the nature of disability can affect their productive capacity. People in such circumstances may wish to use a reliable process of productivity-based wage assessment to obtain a job in the open labour market. The Supported Wage System was introduced to provide both the industrial relations framework and the Assessment process to enable reliable productivity-based wage assessments for eligible people with disability.

The Department of Social Services (DSS) manages a National Panel of Assessors under the Disability Employment National Panel of Assessors Deed of Standing Offer to deliver a range of assessment services, including SWS Assessments.

Flow Chart – Supported Wage System Assessment Guidelines:



Note: This should not be read as a stand-alone document, please refer to the Disability Employment National Panel of Assessors Deed of Standing Offer.

Text version of Supported Wage System Assessment flow chart

Step 1: SWS provider receives a Work Order requesting a SWS Assessment be undertaken.

Go to Step 2.

Step 2: Assessor prepares for and arranges the SWS Assessment.

Go to Step 3.

Step 3: Assessor undertakes the SWS Assessment.

Go to Step 4.

Step 4: SWS Wage Assessment Agreement is prepared and signed.

Go to Step 5.

Step 5: Assessor sends a copy of the SWS Wage Assessment Agreement to the industrial authority.

Go to Step 6.

Step 6: SWS Assessment is completed on the Department's IT System.

Disability Employment National Panel of Assessors Deed of Standing Offer Clauses:

Clause 4 – Formation of Contracts
Clause 7 – Conduct of Assessments
Clause 9 – Provider’s Personnel
Clause 13 – Excluded activities
Clause 50 – Conflict of Interest
Clause 62 – The SWS Services
Clause 63 – SWS Assessments
Clause 64 – SWS Assessment Reports
Clause 65 – SWS Fees

Reference documents relevant to these Guidelines:

Supported Wage System Handbook
Supported Wage System Supporting Document Version 1.1

Explanatory Note:

1. All capitalised terms have the same meaning as in the Disability Employment National Panel of Assessors Deed of Standing Offer.
2. In this document, “must” means that compliance is mandatory and “should” means that compliance represents best practice.

Supported Wage System Assessment Guidelines:

Who is Responsible:	What is Required:
<p>1. SWS provider</p> <p>Receives a Work Order requesting a SWS Assessment be undertaken.</p> <p><i>Disability Employment National Panel of Assessors Deed of Standing Offer</i></p> <p>Clause References:</p> <ul style="list-style-type: none"> • Clause 4 • Clause 13 • Clause 50 	<p>SWS providers may receive a Work Order on the Department's IT System which will request the provider to complete a SWS Assessment. The provider must:</p> <ul style="list-style-type: none"> • Regularly check the Department's IT System for any new Work Orders • Accept or reject Work Orders within one Business Day of receiving a Work Order • Record reasons for rejecting a Work Order, and • Take action to resolve any Conflict of interest that arises in connection with any Work Order. <p>The Department may have regard to previous rejections of Work Orders when deciding whether to allocate further Work Orders to the provider.</p>
<p>2. Assessor</p> <p>Prepares for and arranges the SWS Assessment.</p> <p><i>Disability Employment National Panel of Assessors Deed of Standing Offer</i></p> <p>Clause References:</p> <ul style="list-style-type: none"> • Clause 7 • Clause 9 • Clause 62 • Clause 63 • Clause 64 	<p>After accepting the Work Order on the Department's IT System, the provider may allocate the Assessment to one of its Specified Personnel who has been approved as an Assessor by the Department and has completed the SWS online training modules.</p> <p>The Assessor will be able to determine from the Department's IT system whether the SWS Assessment is an initial or a review assessment, and view the relevant background.</p> <ul style="list-style-type: none"> • if it is an initial assessment, the Assessor will access the details about the job, employee, Employer and applicant from the application screen, and • if it is a review assessment, the Assessor will also access the details about the previous SWS Assessments completed for that employee. <p>The Assessor will familiarise themselves with the relevant Assessment details on the Department's IT system; particularly the work classification, nominated industrial instrument, duties, tasks and past productivity ratings, where relevant.</p> <p>The Assessor should check that the name of the Employer on the JobAccess SWS application screen is correct by confirming the details with the Employer and advise the Department's SWMU so that the details are amended.</p> <p>The Assessor contacts the DES provider (where there is one), and the Employer, to make arrangements for the Assessment; including:</p> <ul style="list-style-type: none"> • agreeing on the time to conduct the SWS Assessment • explaining to the Employer the SWS Assessment process • confirming with the Employer if there are any special OH&S and building access requirements. • confirming with the Employer and the DES provider who will be present during the SWS Assessment and whether there is a union representative or nominee.

Ideally, the Assessor should develop rapport with all parties at a meeting before the SWS Assessment. It is particularly important to ensure that the employee knows when the SWS Assessment is to occur. The SWS Assessment should be undertaken at times and on days when the employee works. The employee should have the relevant tasks to do during the SWS Assessment.

The Assessor should collect background information from the DES provider, where relevant, and verify this information with the Employer. The Assessor should collect, from the Employer and the DES provider, all the relevant information that is required to make a detailed SWS Assessment, including:

- job description
- task descriptions
- job and task analysis
- core tasks and miscellaneous
- a copy of the award or other industrial instrument under which the employee is employed
- time spent on each duty per week/fortnight
- hours/days worked
- task sequencing
- supervisor's name/title
- allowable breaks
- employee performance information/specific performance issues
- busy and quiet period
- best times to take timings
- level/description of supervision required by client
- site/employee specific information relevant to conducting wage assessments
- safety requirements/WH&S considerations, and
- worksite access.

Before an SWS Assessment is conducted, the Assessor should confirm with the Employer and DES provider that:

- all the necessary modifications to the work environment and job have occurred to maximise the employee's productivity
- there is an appropriate job match
- that appropriate training has been provided to the employee in all duties to be performed. This is especially important for initial assessments and for review assessment where the duties have recently changed, and
- it is agreed that the employee is unable to work at the productivity level that would be expected by the minimum standards for that position.

Understanding the SWS Assessment Tool

The Supported Wage System Assessment Tool (SWAT) has been developed after significant consultation and trialling and it provides a reliable method of assessing work productivity.

The SWAT is accessed and completed online on the JobAccess secure

site. The methodology focuses on observing and timing employees doing their work tasks. The Assessor uses all the information gathered about the job to identify the duties – the key outcomes or results; and the tasks – the smaller pieces of work that together make up the duty.

For example, for the position of a room attendant in a motel, a duty could be to “clean the room”, and the tasks making up this duty would include things such as “make the bed”, “clean the bathroom”, “vacuum floor” and “dust furniture”.

The Assessor must describe each task in sufficient detail so that anyone else would be able to observe and measure the task being performed in exactly the same manner. The Assessor must document a description of the task so that the tasks are:

- observable
- measurable
- replicable, and
- have a clear beginning and end.

The task description is particularly important for the 12 month review, when a different Assessor may be conducting the SWS Assessment. There must be enough information in the SWS Assessment Report about the standard that was set, so that another Assessor reviewing the employee’s productivity 12 months later can assess if productivity has changed.

The Assessor must confirm if there are any duties that are performed at 100% productivity. If there are duties performed at 100%, the Assessor must not time these duties, but should include them (maximum 100%) in the productivity calculation so that the final productivity result accurately and fairly reflects the employee’s performance in all their duties.

The Assessor must assess the duties that are actually performed by the employee, even if there are more or less duties on the duty description. Jobs are often modified for people with disability and therefore standard position descriptions will not always fully reflect the duties actually performed by the employee with disability.

The Assessor, the Employer and any other parties to the SWS Wage Assessment Agreement must agree on the duties to be assessed before proceeding with the Assessment.

Establishing the basic performance standard

The SWS Assessment requires a basic performance standard to be set. This is the minimum work performance standard that the Employer will accept to pay the full award wage.

The Assessor must discuss with the Employer the selection of a suitable co-worker to use to time as a method of establishing the basic performance standard. Do not select the highest or lowest performing co-worker. Even the average performing co-worker may be doing more than the basic performance level required. It is the basic performance standard considered as the minimum

	performance acceptable to the Employer that must be established.
<p>3. Assessor</p> <p>Undertakes the SWS Assessment</p> <p><i>Disability Employment National Panel of Assessors Deed of Standing Offer</i></p> <p>Clause References:</p> <ul style="list-style-type: none"> • Clause 7 • Clause 63 • Clause 64 	<p>The Assessor should phone the Employer within 12 hours of the agreed time to conduct the Assessment and confirm with the Employer that the Assessment will be conducted at the agreed time. The Assessor should explain the Assessment procedure and the need for timings to the Employer and any other parties with whom the Assessment process has not already been discussed.</p> <p>The Assessor should put the employee at ease and take care to make the Assessment as stress-free as possible.</p> <p>Observe and time performance</p> <p>Using the agreed duty and task description and basic performance standard, the Assessor will observe and time the employee doing their tasks, allowing the employee to stop and repeat the process if something has unduly affected their productivity. Interruptions may be common in busy customer focussed work environments such as a busy supermarket and the Assessor may need to repeat their timings.</p> <p>The Assessor should maintain a flexible approach when taking timings and continue to take timings until satisfied there is a good consistency in results and an accurate measurement of work productivity. Generally, a SWS Productivity Assessment requires a minimum of three and a maximum of eight observations to be recorded for each task. In certain circumstances, however, fewer observations may be recorded.</p> <p>The Assessor should not time breaks if they conform to what is accepted in the workplace, however, unacceptable time away from tasks should be included and timed as a part of the duty in which it occurs. Acceptable breaks can be counted at 100% (e.g. meetings, morning tea break).</p> <p>The Assessor must always measure exactly the same thing for the employee as they did when setting the basic standard. For example, if the basic performance standard was set during a very busy time of the day, the employee’s productivity must be measured at a similar busy time, where relevant.</p> <p>The employee should have the same level of supervision during the SWS Assessment as they normally would while doing their tasks.</p> <p>How to do time weightings</p> <p>The Assessor must ascribe a time to all duties, even those performed at 100% productivity (maximum of 100% to be recorded). The Assessor must give a weighting to each duty the employee performs according to the amount of time spent on that duty (usually per week, but could be per day or fortnight). Duties are time weighted so that lower productivity on a minor duty (or vice versa) does not unduly affect the wage rate.</p> <p>Example of Time Weighting</p> <p>An employee in a plant nursery spends 60% of her time on one duty at which she achieves 70% of full award level productivity. She spends 30% of her time on a second duty in which she achieves 50%</p>

of full award level productivity. The remainder of her time is spent on a duty in which her productivity is 40% of the standard.

Without a time weighting, her productivity rating would be 53% - an average of the comparative timings of 70%, 50% and 40%, e.g.

Duty 1 – 70%

Duty 2 – 50%

Duty 3 – 40%

Result – 53%

With a time weighting, the person's productivity rating (without supervision or other adjustment) is 61%, e.g.

Duty 1 – $0.7 (70\%) \times 0.6 (60\%) = 0.42 (42\%)$

Duty 2 – $0.5 (50\%) \times 0.3 (30\%) = 0.15 (15\%)$

Duty 3 – $0.4 (40\%) \times 0.1 (10\%) = 0.04 (4\%)$

Result – 0.61 (61%)

If required, the Assessor must request any existing information from the DES provider and the Employer to verify the amount of time spent on each duty. If the amount of time spent on each duty fluctuates, the parties to the Assessment may agree to use an average time per week.

Rounding

The Assessor must round each productivity assessment calculation to 2 decimal places, i.e. all productivity results for duties and tasks must be recorded to 2 decimal places. The productivity rate for each duty must be added and then the total productivity rate must be rounded to the nearest whole decile that best reflects the employee's total productivity (e.g. usually 53% would be rounded to 50% and 55+% would be rounded to 60%).

If the Assessor considers that the employee requires significantly more supervision from their Employer than is required in the minimum basic standard, the Assessor may round an overall productivity rating down to the nearest whole decile (e.g. the 57% rating could be rounded to 50% if there is significantly more supervision required. Conversely, a productivity rating may be rounded up if the employee is highly focussed and a steady worker, e.g. a 53% rate could be rounded to 60%). The Assessor should carefully consider any rounding that is other than to the nearest whole decile and in particular, should only make the decisions to round down when it is very clear that there is a high level of supervision required.

Any rounding must be within the percentile band in which it falls.

After the final SWS productivity rating, including any rounding that is calculated, the Assessor discusses the result with the Employer and other parties to the SWS Wage Assessment Agreement and confirms the final rating.

If any parties dispute the rating made as a result of the SWS Assessment, at the Assessment, the Assessor should work with the parties to resolve the dispute. Some things that the Assessor can do,

	<p>include:</p> <ul style="list-style-type: none"> • conduct more timings, if the dispute relates to the results of particular duties • reconsider the rounding decision, taking into consideration the views of all the parties to the SWS Wage Assessment Agreement, or • if any party to the SWS Wage Assessment Agreement still wishes to dispute the result they should contact the Department's DSS SWMU who will either provide the party with the details of how to submit a request for a review of the Assessment; or if their dispute relates to industrial relations matters, direct them to the relevant industrial relations authority which has jurisdiction in the matter.
<p>4. Assessor</p> <p>SWS Wage Assessment Agreement is prepared and signed</p> <p><i>Disability Employment National Panel of Assessors Deed of Standing Offer</i></p> <p>Clause References:</p> <ul style="list-style-type: none"> • Clause 7 • Clause 64 	<p>After the Assessor has determined the final total SWS productivity rating, which the employee, Employer and any other parties to the SWS Wage Assessment Agreement have agreed to, the following things must happen:</p> <ul style="list-style-type: none"> • the Assessor enters the productivity rate into the SWS Wage Assessment Agreement • the Employer uses the agreed SWS productivity rate to calculate the SWS pro-rata weekly wage, applicable to the classification of work in which the employee is being employed • the Assessor enters the SWS weekly wage rate in the SWS Wage Assessment Agreement, and • the Assessor must ensure that the amount entered in the SWS Wage Assessment Agreement is not below the SWS Minimum Weekly Wage, as determined by the Annual Wage Review. <p>The current SWS Minimum Wage is available from the JobAccess (SWS Handbook) and Fair Work Commission websites.</p> <p>The Assessor should inform the Employer that they need to advise the Department's SWMU if the industrial instrument expires or is replaced by a new one.</p> <p>The Assessor should provide a copy of the signed SWS Wage Assessment Agreement to the Employer and employee, and the employee's nominee who is a party to the SWS Wage Assessment Agreement, if they request a copy. The Assessor may also provide a copy to the DES provider, with the consent of the employee.</p> <p>The Assessor should advise the parties to the SWS Wage Assessment Agreement that a new SWS Assessment will occur in 12 months time, or earlier if the employee's productivity has either significantly increased or declined, or if there has been a significant change in duties. In such cases, any party to the SWS Wage Assessment Agreement may request a review assessment by contacting the Department's SWMU.</p>
<p>5. Assessor</p>	<p>On behalf of the Employer, the Assessor sends a copy of the SWS Wage Assessment Agreement to the relevant industrial authority,</p>

<p>Assessor sends a copy of the SWS Wage Assessment Agreement to the industrial authority, where relevant.</p>	<p>where required by the industrial relations SWS provisions.</p> <ul style="list-style-type: none"> • if the relevant industrial instrument containing the SWS provisions is a Federal instrument, the SWS Wage Assessment Agreement is sent to Fair Work Commission. • if the relevant industrial instrument containing the SWS provisions is a State instrument, the SWS Wage Assessment Agreement is usually sent to the relevant State Government Industrial Registrar. <p>Assessors should check the signed SWS Wage Assessment Agreement thoroughly before sending it to the industrial authority, as this will ensure that only valid agreements are signed and lodged.</p> <p>The Assessor should obtain the details of any requirements to lodge the SWS Wage Assessment Agreement by checking the industrial instrument which is being used as the basis to employ the person and/or by checking with the Fair Work Infoline or the Fair Work Ombudsman website.</p> <p>Refer to the SWS Handbook for more information.</p>
<p>6. Assessor</p> <p>Assessment is submitted on the Department's IT System</p> <p><i>Disability Employment National Panel of Assessors Deed of Standing Offer</i></p> <p><i>Clause References:</i></p> <ul style="list-style-type: none"> • Clause 7 • Clause 64 • Clause 65 	<p>The Assessor enters the details of the SWS Assessment and the date the SWS Wage Assessment Agreement was signed into the Department's IT System. Detailed notes must be entered in the 'Assessor Comments' field – refer to the Learning Centre. This must be submitted within 7 business days of the date the Assessment is conducted.</p> <p>If the Department, at its absolute discretion, considers a SWS Assessment or SWS Assessment Report is unsatisfactory or incomplete, the provider may be required to conduct a further SWS Assessment in whole or in part or resubmit a revised SWS Assessment Report. This will be done without any additional charges or Fees.</p> <p>Where the SWS Assessment and SWS Assessment Report will jointly take more than 5 hours to complete, the provider may apply to the Department for additional Fees. This must be done prior to submitting the report.</p> <p>Where the provider seeks the Department's agreement to pay the additional Fees, the provider must meet additional requirements.</p> <p>Apart from the above, no further payments or reimbursements will be made by the Department to the provider for the Service.</p>

FAIR WORK COMMISSION

4 Yearly Review of Modern Awards

Supported Employment Services Award 2010

Matter No: AM2014/286

STATEMENT OF ANTHONY ROHR

I, Anthony Rohr, of 555 High Street, Maitland New South Wales, state as follows:

BACKGROUND

1. I am the General Manager, People Culture and Safety, of The Mai-Wel Group (**Mai-Wel**), which manages three Australian Disability Enterprise (**ADE**) businesses that employ more than 110 people with a disability.
2. This is my third statement provided in this matter. My first statement, dated 21 September 2017, was filed with the Fair Work Commission on 25 September 2017, and my second statement was dated and filed on 21 November 2017.

STATEMENT OF PAUL CAIN DATED 21 NOVEMBER 2017

3. I have read Paul Cain's statement dated 21 November 2017.
4. In his statement, Mr Cain appears to regard open employment and supported employment as being quite similar and states that jobs in open employment and in supported employment are modified to the same extent and that the employees in each type of employment require similar levels of support (see paragraphs 236 - 241). I note Mr Cain also attaches a copy of the Commonwealth Department of Family and Community Services (2001), Supported Wage System Evaluation report prepared by KPMG at Attachment D to his statement.
5. In my experience, Mr Cain's view of open employment vs supported employment is not able to be supported when taking into account the practical realities of each type of work. There are marked differences between open employment and supported employment. These differences are highlighted and discussed in the Supported Wage System Evaluation report attached to Mr Cain's statement.



6. In relation to specialised employment support in open employment the report states (on page 1 of Appendix 3):

*Competitive Employment Training and Placement (CETP) services were set up to assist people with disabilities to obtain and maintain award wage jobs in the open labour market. Training and support in CETP is **intensive to start with, then gradually reduces as the person becomes more confident and efficient at a job.** When the person can perform a job without constant support, contact and follow up still continue for some time. Training and support can be reintroduced whenever necessary, for example, if the nature of the job changes. (My own emphasis)*

(Note that CETP was the precursor to the current Disability Employment Service (DES))

7. However, in describing supported employment the reports state (on pages 1-2 of Appendix 3):

*Supported employment services on the other hand, are intended to provide meaningful, paid employment for people with disabilities who would not be able to perform paid work in disability employment unless they had ongoing support. The support **provided under these services may be quite intensive and is maintained at an appropriate level so the people involved can participate in meaningful, paid employment** in a variety of work settings. Such services were designed to promote independence and integration into the community. (My own emphasis)*

8. An important distinction between these two types of specialised employment support is the need and duration of employment support. In open employment, employment support is not ongoing if the person does not require this, which is the case for most people in open employment. Alternatively, support may be provided intermittently. Whereas in supported employment, due to the nature of the person's disability, they would not be able to maintain or perform in their job without the support provided by the ADE.

9. In my experience this distinction between open and supported employment works to cater for the level of disability and a person's capacity. While this is generally the case, it is not a hard and fast rule in every case. There are people with varying degrees of disability who work across open and supported employment. However, overall in my experience, people in open employment have a higher level of skills and capability and a lower level of support need, than those people with a disability working in supported employment.

10. The Mai-Wel wage assessment tool considers supervision as part of the assessment. The type of supervision can be described by assessing the ability of the supported employee to undertake their work with constant supervision through to working independently. This supervision should not be confused as the funded service which ADEs provide to supported employees.
11. At paragraph 31 of Paul Cain's statement, he states that the "*SWS does not being into the wage assessment the supervision or support provided to a disabled worker, whether by a Disability Employment Services provider or an ADE, as this is already funded by the Commonwealth*". However, this presumes that the funding provided by the Commonwealth government is sufficient to cover the supervision of support provided to a disabled worker in an ADE. This is not necessarily the case with all supported employees. The funding provided by the Commonwealth government does not always cover the support required by supported employees in an ADE setting.
12. In addition, there is no fixed correlation between the assessed level of Case Based Funding Levels 1 to 4 and the competency and productivity of a supported employee. The level of support which a supported employee is funded has no bearing on the wage that they are paid. A supported employee with funding at level 1 (lower end of support needs) may also have a high level of competency and productivity. Whereas a supported employee funded at level 4 (high and complex supports needs) can also have a high level of productivity. This also works in reverse, in that a supported employee at funding at level 1 may have a low level of competency and productivity, and supported employee funded at level 4 can also have a low level of productivity.
13. In response to paragraph 204 of Mr Cain's statement, I say that in many cases the modified jobs created in ADEs deem the performance standard a minor aspect when considering SWS assessment. For example jobs setup using jigs or controlled equipment to ensure the quality is consistent and highly unlikely to vary, means the timing during the SWS assessment is primarily focused on the speed at which the supported employee works.
14. In response to paragraph 207 of Mr Cain's statement, I say that SWS is required to set a performance standard to earn the full award wage. What Mr Cain omits in his statement is that many modified or constructed jobs performed by supported employees have no reference point to the full award wage job and performance standard. All the work in an ADE operation (which are jobs that have be deconstructed and significantly modified to provide meaningful work) are done by supported employees. Therefore in these



circumstances it is difficult for the SWS to operate in the way it was designed for in open employment.

15. In response to paragraph 211 of Mr Cain's statement he states that *"Of the employers interviewed most had only one person on supported wage within their employ. A number had had previous employees on the SWS, but only one at a time. A small percentage had more than one employee receiving SWS at a time."* (My own emphasis)
16. The nature and characteristics of workforce where there is a single job for a person with a disability (i.e. open employment) in comparison to every worker in the workforce having a disability (i.e. supported employment) is vastly different. I refer back to paragraphs 6 and 7 above, which outline the difference in supported employment and open employment.
17. I also refer back to paragraph 13, which explains that, in many instances, there is no accurate performance standard, given the use of equipment and other supports to assist perform a task in an ADE environment.



Anthony Rohr

14/12/17

Date

FAIR WORK COMMISSION

4 Yearly Review of Modern Awards

Supported Employment Services Award 2010

Matter No: AM2014/286

FURTHER STATEMENT OF BRADLEY RAYMOND BURRIDGE

I, Bradley Raymond Burridge, of 1/112 Benaroon Road, Belmore, New South Wales, state as follows:

BACKGROUND

1. I am the Operations and Business Development Manager at Centacare Industries (**Centacare**), an Australian disability enterprise (**ADE**) owned by CatholicCare Sydney Limited.
2. This is my third witness statement in this matter. My first statement was dated and filed in the Fair Work Commission on 25 September 2017. My second witness statement, dated 25 October 2017, was filed with the Commission on 21 November 2017.

STATEMENT OF PAUL CAIN, DATED 21 NOVEMBER 2017

3. I have reviewed the statement of Paul Cain dated 21 November 2017.

Response to paragraphs 75 to 80 of Mr Cain's statement

4. In response to paragraphs 75 to 80 of Mr Cain's statement, my description of the Supported Wage System (**SWS**) accurately reflects how the SWS assessment process is conducted at Centacare.
5. While I came on board at Centacare just after the organisation commenced using the SWS, my understanding has always been that this is how Centacare was instructed to apply the SWS in its business operations.
6. The work performed by Supported Employees at Centacare changes often. We get many short term jobs and the duties performed by the Supported Employees are often changing when we get a new job.
7. I note that on page 16 of the *Supported Wage System Handbook 2017*, it states that "*the SWS is not intended for short-term contractors, short-term or temporary jobs and jobs where the core duties change often.*"
8. At Centacare, we usually have short-term or temporary jobs.

9. Accordingly, I thought that we were doing the right thing by having a task, for the purposes of the assessment that all the employees can do. Otherwise, an assessment based on a particular job would soon be redundant as the jobs are often short term and change often.
10. My understanding is that we were told by SWS assessors that we needed to use a task that all employees could perform.
11. I should also add that, in the time I have been at Centacare (i.e. for approximately 18 months) we have had no fewer than 12 SWS assessors come to Centacare for the purposes of conducting SWS assessments and not one of them has ever said to me that the way we apply the SWS at Centacare is incorrect. This is despite me raising my concerns about the SWS with every assessor that comes to Centacare to conduct a SWS assessment.
12. Each time I have raised my concerns with SWS assessors, they have responded to me with words to the effect of, “*well, it is what it is*” and “*this is just the way the SWS works*”. Not once has an assessor ever said to me that our method of assessment at Centacare is incorrect. Nor has an assessor ever said that we should be assessing against multiple tasks. This is in spite of the fact that the assessors see the Supported Employees at work on a task, or tasks, and proceed to conduct the assessment against the task Centacare provides.
13. At Centacare we thought we were doing the right thing by our Supported Employees because our jobs are typically short-term jobs and it is difficult to assess Supported Employees against duties and tasks that are very changeable. Our jobs come in and out and an assessment conducted at one particular point in time, could be a redundant assessment soon afterwards as the job and tasks change.
14. Accordingly, we understood that we needed to have a central task that everyone could do and this is how we’ve been applying the SWS.
15. Indeed, the way Mr Cain describes the SWS was not the understanding that Centacare had of the tool, as it applies to our organisation, because we have so many short term jobs.
16. In my view, paragraph 77 of Mr Cain’s statement demonstrates why the SWS is not suitable for Supported Employees in an Australian Disability Enterprise (**ADE**) environment. Mr Cain states that the SWS “*is an assessment of **the major duties of an individual’s job***” (my emphasis). The reality is, in an ADE environment, that Supported Employees only do one or two individual tasks in their job. Many just do variations of a similar packing task. Examples from the tasks discussed in my first statement include:
 - (a) packing screws into small bags for sale;

- (b) delivery and receipt of SULO bins for paper shredding;
 - (c) shredding paper; or
 - (d) inserting cards into envelopes.
17. Our garden maintenance team would perform more varied work, however each Supported Employee in that team is generally allocated a specific task or two to perform.

Response to paragraphs 81 and 82 of Mr Cain's Statement

18. In response to paragraphs 81 and 82 of Mr Cain's statement, clause 14.4(f) of the Award specifically states:

(f) No decrease—regression of disability

An employee with a disability will not have their rate of pay reduced as a result of a wage assessment made pursuant to clause 14.4(a). This clause does not cover the circumstance where the wage of an employee with a disability may need to be reduced due to the regression of the employee's disability. However, a wage assessment that determines a lower percentage than an earlier wage assessment of the employee against the same duties is of no effect unless the reduction in percentage is solely due to the regression of the employee's disability. Before the wage of an employee may be reduced the employer must exhaust all reasonable training options and options to allocate the employee new tasks to avoid the regression. Where regression of wages is provided for in the wage assessment tool against which the employee was assessed, regression may only occur in accordance with the method provided for in that tool.

19. My understanding is that this clause does not permit an employer to simply reduce a Supported Employee's wages when the assessment determines that the Supported Employee's percentage of the wage they are to receive is reduced.
20. Clause 14.4(f) states that this can only occur where the wages need to be reduced due to the "regression of the employee's disability". If a Supported Employee is having a slower day when they are assessed, this does not necessary mean that their disability is regressing. Indeed, only a doctor could accurately determine whether someone's disability is regressing.
21. In the example I provided in my first statement of the Supported Employee with Down Syndrome, she is slower because she is ageing, not because her disability is regressing.
22. My understanding of clause 14.4(f) is that it does not permit an ADE to reduce an employee's wages because they are ageing.

23. In addition, clause 14.4(f) goes on to say that *“the employer must exhaust all reasonable training options and options to allocate the employee new tasks to avoid the regression.”*
24. However, additional training options (beyond the training that already occurs) is often not an option because the Supported Employees are performing one or two tasks, and training in these tasks is continually occurring with the interaction and involvement of the Support Workers.
25. Finally, clause 14.4(f) states that regression may only occur in accordance with the method provided for in the wage assessment tool. Nowhere in the SWS at Schedule D of the Supported Employment Services Award 2010 (**SES Award**) does it talk about reduction of wages.
26. The SWS Handbook does refer to reduction of wages, but states that the maximum possible amount by which an assessed rate can be lowered is 9.99 per cent (see page 24).
27. Accordingly, it is not clear to me how an ADE can lower a Supported Employee’s wages where:
 - (a) reduction can only occur due to the regression of the employee’s disability; and
 - (b) the SWS at Schedule D of the SES Award is silent as to reducing wages.
28. Even if I was to view the statement at page 24 of the SWS Handbook permits a reduction in wages, this appears to only be able to occur by 9.99 per cent at a time.

Response to paragraphs 83 to 89 of Mr Cain’s statement

29. In response to paragraphs 83 to 89 of Mr Cain’s statement, I was not describing how the Commonwealth Disability Support Pension system operates. Instead, I was describing my experience with what many Supported Employees do when there is an interaction between their welfare payments and paid work, that is they request to reduce their hours so that they don’t “lose” any of their pension. Of course, I am not talking about ALL Supported Employees here. However, in my experience, where welfare interacts with work, welfare tends to win every time.
30. I agree with Mr Cain that a Supported Employee is better off in terms of total income when wages and hours of work are maximised. At Centacare our preference is to provide our Supported Employees with as many hours as we can afford. However, my experience is that many Supported Employees don’t want to “lose” any of their pension and, once that loss starts to become significant, i.e. over \$100.00 pension withdrawal, they do not want to impact their pension further by earning additional income. The reality is that Supported

Employees and their carers cut back hours because they believe that they are “losing” their pension income. My impression is always that the pension appears to be sacrosanct to Supported Employees and their families, which is understandable in the circumstances.

31. As I have stated above, this is certainly not the case with all Supported Employees, but it is something that I have observed first hand in the past with some of Centacare’s Supported Employees.
32. Paragraph 89 of Mr Cain’s appears to infer that I tell Supported Employees or their families that they would either lose the DSP or be worse off if they accepted more hours of work or earned higher wages. I have never said such a thing to either Supported Employees or their families.
33. As I mentioned above, Centacare’s preference is to provide more hours wherever possible.

General response to Mr Cain’s statement

34. There are some things that I would like to say generally in response to Mr Cain’s statement.
35. I agree with him that assessments should be independent - this makes it easier, particularly for smaller ADEs that do not have the resources to engage an assessor or assessors within the enterprise.
36. Notwithstanding Centacare and the SWS assessors appear to have been applying the SWS incorrectly, my view remains that the tool is not appropriate for use within an ADE environment.
37. The SWS does not reward Supported Employees doing non time-based tasks. For example, Supported Employees doing some minor supervisory work and higher skilled employees doing quality checks or other production control type tasks, are not rewarded under this tool. The SWS effectively discriminates against people with a more rounded skill set and who are able to contribute to an ADE in other ways. Given its task productivity focus, there is no recognition in the SWS for supervisory type work.
38. The lower skilled Supported Employees are only doing one or two tasks at a time. However, our higher skilled Supported Employees get multiple tasks to perform and often look after the lower skilled employees. These people would be assessed on the major duties of their jobs. However, this is not necessarily an accurate assessment of their true value to the workplace. For any employer, an employee with multiple talents and a more rounded skill-set is very valuable. However the “soft-skills” cannot be rated in the same way per hour that an employee inserting cards into envelopes can.

39. For Supported Employees doing the same task or tasks every day are, of course, going to become more proficient at that task. However, Supported Employees performing varied tasks each day, including assisting the lower skilled Supported employees, won't necessarily be quicker, however they are very resourceful and useful in an ADE environment.
40. I have a Supported Employee at Centacare who is an amazing worker. He is mature and calm and will often step in to assist the lower skilled Supported Employees to stay on task. Many of the Supported Employees look up to him because of his calm demeanour and the way he can connect with them. However, he is slow at his individual tasks because of all the assistance he provides to others. Under the SWS, this employee is assessed at a lower percentage wage rate than our lower skilled Supported Employees who only perform one or two tasks. From Centacare's perspective, the speed with which he completes his tasks does not tell the full story of the value he brings to the organisation. It's the way he can lead other Supported Employees and influence them that makes him invaluable to us. However, the SWS does not appear to recognise this and has resulted in a lower percentage wage rate for this employee.

STATEMENT OF ROBERT MCFARLANE DATED 21 NOVEMBER 2017

41. I have reviewed the statement of Robert McFarlane dated 21 November 2017.
42. In response to paragraph 26 of Mr McFarlane's statement I reiterate what I have said above at paragraphs 18 to 28 of this statement. Clause 14.4(f) of the SES Award states that a reduction in a Supported Employee's wages is only permissible due to the regression of the employee's disability, not because they are having a slow day or because they are ageing.
43. Unless I had information from a medical practitioner, I would be very reluctant to make an assessment myself that a Supported Employee's disability is regressing, as I am not a doctor. Nor, as I understand it, are the SWS assessors.



Bradley Raymond Burridge

12-12-17

Date

IN THE FAIR WORK COMMISSION

Matter No: AM2014/286

Supported Employment Services Award

Award Review

FURTHER WITNESS STATEMENT

I, Chris Christodoulou of [REDACTED] NSW 2525, Chief Executive Officer of Greenacres Disability Services (GDS), declare the following:

General

1. This is my third witness statement in this matter. My first statement, dated 21 September 2017, was filed with the Fair Work Commission on 25 September 2017 and my second statement, dated 15 November 2017, was filed with the Commission on 21 November 2017.
2. It was Greenacres' intention to have Neil Preston OAM, the former CEO of GDS, provide a Witness Statement in these proceedings about his involvement in the construction of the Greenacres Association Competency Based Wage Assessment System (**GACBWAS**), which was agreed to in 2005. However, Neil Preston tragically passed away in a motorcycle accident on 18 October 2017.
3. In talking to Neil Preston in the lead up to this case, he said to me words to the following effect:

"The construction of the GACBWAS had regard to the Mayer Key Competencies. When the GACBWAS was constructed, it was agreed at the time with the then ALHMWU (now United Voice) that once a Supported Employee could reach Level EA under the GACBWAS, that they would have sufficient skills to be assessed under the SWS and if the Supported Employee desired assist them to transition to open employment."
4. Annexed to this statement at **Attachment "A"** is an explanation of the Mayer Key Competencies referred to by Neil Preston.
5. In statements I have previously filed in these proceedings, I have referred to the Supported Wage System (**SWS**) as "piece work". I accept this is not an explicit term of the SWS, but in the context of packaging and assembly, it is from a practical perspective. If the benchmark is packing 100 boxes in an hour and the cost to employ this person is \$30 per an hour, then this makes every box worth 30 cents. It follows if a Supported Employee packs 50 boxes, under the SWS they will receive \$15 per hour, which is 50 per cent of the hourly rate.

Response to Witness Statement of Paul Cain dated the 21 November 2017

6. I have reviewed Paul Cain's statement dated 21 November 2017.
7. In response to paragraphs 119 to 124 of Mr Cain's statement, I am very clear about the original intent of the SWS. Nothing in clauses 23 to 27 of my statement dated 21 September 2017, in my view, misleads the Commission.

Attached to this statement at **Attachment "B"** is a copy of Appendix B from the National Employment Initiatives for People with Disabilities Discussion Paper prepared by Chris Ronalds (**the Ronalds Report**). This document verifies my role as a member of the Steering Committee representing the ACTU, overseeing the Ronalds Report and assisting to develop ACTU policy in relation to unionisation, working rights, and employment opportunities for people with disabilities.

8. The primary intention of the SWS was to facilitate access of people with disabilities into open employment /mainstream employment and to be paid an assessed skills based wage which in many cases would be less than the full rate of pay. This is verified by both the Ronalds and Dunoon Reports.
9. I do not dispute at all the reference in the Dunoon Report to persons with severe disabilities as this was a term used generally in the discussion debate and policy deliberations being considered in relation to employment initiatives for people with disabilities who particularly did not have full wage mainstream employment. The reference in my statement in relation to "mild" disabilities is contemporary and follows the implementation of the SWS over two decades and the views of both open employers and ADEs about the appropriateness of the SWS here and now and the inappropriateness of its use in an ADE environment.
10. Whilst many Advocacy Groups never saw or wanted a future for Australian Disability Enterprises (**ADEs**), the Trade Union movement always saw a role for them to support people with disabilities who did not have the skills, capacity or the desire to work in open employment.
11. To the best of my knowledge, less than 10% of the supported employee workforce have their wages assessed under the SWS.
12. In response to paragraphs 28 to 31 of Paul Cain's Witness Statement dated 21 November 2017, I agree that GDS receives funding from the Commonwealth Government to assist Supported Employees. However, GDS does not receive any of the funding set out in the table under the heading "Case Based Funding Additional Fees" in Mr Cain's statement.
13. The funding GDS receives, assists to offset the cost of Trainers we employ, however it does not fund GDS Supervisors who are employed to assist Supported Employees as part of the overall production process.
14. What the funding also does not do, is subsidise wage costs of Supported Employees. Their wages must be funded by the commercial activity.

15. The commercial activity undertaken in the past is very much determined by GDS' ability to find work that our Supported Employees are capable of doing. For most Supported Employees who are at Employment Assistance Fee Levels 3 and 4, packaging and assembly suits their skills because we can break down the packaging and assembly duties to very simple tasks (within the framework of duties that one would expect expected of a Grade 2 work) and organise the work accordingly. This is not the most efficient way to package and assemble, but it is the only way to adapt the work to meet the skills of GDS' Supported Employees concerned.
16. The GACBWAS is primarily designed to assess Supported Employees with three components, namely:
- a. underpinning work skills;
 - b. complexity or otherwise of the tasks; and
 - c. productive output (to a lesser extent).
17. During the course of any day our Trainers carry on many of those activities outlined in Mr Cain's Statement at paragraph 29. Trainers spend time training for new work that comes in and retraining Supported Employees for existing work. They observe and write up case notes for wage assessments and make notes in relation to serious incidents. They respond to many behaviours and episodes that can occur with Supported Employees. In addition we also engage in a range of other activities with our supported employees (both organised and spontaneous) which stops production, such as:
- Birthday celebrations (ongoing);
 - Fund raising BBQs to raise money for other charities or special events;
 - lucky draw;
 - last day Xmas event;
 - Chodat Fitness Classes (once a week);
 - Greenacres Got Talent auditions; and
 - visits by special guests including Radio and sporting personalities.
18. At GDS, training of its Supported Employees is a continuous process, particularly because of the range of different types of work that Greenacres procures from time to time, but also in relation to the continuous improvement and upskilling that we endeavour to achieve for Supported Employees.
19. A snap shot of some real-life examples of behaviours and episodes that can also occur with Supported Employees, which I have personally observed first-hand, include:
- Supported Employees wandering away from their immediate work station. This occurs because of the desire to socially engage or in some instances to be alone in a quiet area. Many Supported Employees have certain repetitive and or challenging behaviours, obsessions or anxieties which are factors in them being unable to stay on task.
 - A Supported Employee spending time each morning greeting all the Support Staff by opening the reception door for them, and also on many occasions

(notwithstanding ongoing counselling to cease this behaviour) opening the car doors like a chauffeur.

- A Supported Employee always coming into the Corporate Services Area to say hello to staff, in some cases three times a day, and when agitated, walking to different buildings talking to staff to relieve their agitation.
 - A Supported Employee spending much of his time between doing actual work looking through Greenacres journals and marking off photos of friends or staff.
 - A Supported Employee who loves to watch the trains in their lunch break often coming back late to their work station.
 - Supported Employees behaving inappropriately towards another Supported Employee. This inappropriate behaviour varies from simple name calling (which leads to crying) through to inappropriate touching.
- 20.** Medical and other physical episodes are common, for example headaches, health issues specific to women, tiredness, etc.
- 21.** In the last 12 months an ambulance has been called on five occasions for more serious medical matters. When ambulances arrive most Supported Employees take an interest and it is very difficult to keep them on task.
- 22.** Violent behaviour (e.g. pushing and shoving) does occur from time to time, but thankfully this year only two serious issues which warranted suspension.
- 23.** Many Supported Employees suffer from mental illnesses and relapses will often require time out and counselling sessions with trainers. These episodes average approximately once every one and a half weeks for most of our Supported Employees with mental illnesses.
- 24.** Over the last 12 months GDS has had to deal with workplace grief issues to deal with the passing of Supported Employees. This has been a particularly difficult time also dealing with the death of our former CEO, Neil Preston OAM. Again when these issues occur extra time is spent by support staff dealing with the grief of Supported Employees, including their own grief.
- 25.** GDS has a policy which allows Supported Employees and Support Staff to attend funerals of Supported Employees who have passed away. In the past 12 months over 150 Supported Employees and staff have attended various funerals in work time of Supported Employees or our past CEO, Neil Preston OAM.
- 26.** In response to paragraph 31 of Mr Cain's Statement, I make the following points:
- a. Being funded to employ trainers has little to do with the additional costs associated with overall production outcomes that, in my view, the SWS does not allow for. In this regard, I refer to point 4 of Attachment 3 in my Witness Statement dated 15 November 2017, which details other costs to production, that are not contemplated by the SWS.

- b. If Greenacres withdrew the higher level of supervision and support offered in ADEs and asked Supported Employees to carry out their duties without that supervision and assistance, then many Supported Employees would not be able to organise their work to be productive at all. This is because our supervisors organise the Supported Employees' work and do many of the critical tasks themselves (typically those tasks that one might expect of a grade 2 production worker) to facilitate the individual tasks that the Supported Employees are then able to do themselves.
27. In response to paragraphs 32 and 33 of Mr Cain's Statement, GDS has a robust Grievance Procedure contained in its EBA, and GDS goes out of its way to encourage our Supported Employees to consider being a member of their union and to exercise their working rights. This was evidenced in the process we went through to establish our last EBA. Many of the Supported Employees at GDS are members of United Voice.
28. Under the GACBWAS, our Trainers and Supervisors are the first people to recommend that a Supported Employee moves to a higher skill level. Most of our Trainers are members of the ASU and our Supervisors are members of United Voice. They are professional workers who have the interests of Supported Employee at heart. They would never deliberately hold back a wage increase of a Supported Employee. Indeed, the *Greenacres Enterprises Collective Agreement 2014* requires GDS Trainers and Supervisors to actively recommend wage increases for Supported Employees when they believe they are eligible for an increase.
29. It is true that Supported Employees are susceptible to exploitation, as are workers from a non-English speaking backgrounds, 457 visa workers, young workers, casual workers etc.
30. The insinuation that ADEs will exploit Supported Employees is an unfortunate and inappropriate suggestion to make. The mission of an ADE is not to exploit a Supported Employee, quite the opposite in fact. An ADE exists to improve the lives of Supported Employees and facilitate their entry into the workforce as best as they can and to encourage their greater participation and activity in society.
31. However, I do agree that there should be safeguards in the Supported Employment Services Award 2010 (**SESA**) such as the Rights at Work Clause put forward by Our Voice Australia to ensure that any exploitation (or perceived exploitation) is not possible.
32. In response to paragraph 34 of Mr Cain's statement, I can understand why businesses in open employment would want an independent assessor given that, unlike an ADE, employers in an open employment environment do not have the expertise to conduct the assessment themselves.
33. I disagree with Mr Cain's assertion at paragraph 35 for the reasons outlined earlier in this statement.

34. I disagree with Mr Cain in relation to the inappropriateness of the Work Value Classification Structure (**WVCS**) (referred to by Mr Cain as the Work Value Classification Tool, WVCT) at paragraphs 36 to 73 for the following reasons:
- a. Mr Cain appears to confuse Commonwealth Funding for ADEs, with his analysis of whether the WVCS is an appropriate way to assess wages. Classifying Supported Employees against a structure which looks at the value of the work, the skill to do that work and the support and supervision required at each level, it is no different in the approach taken for workers without disabilities.
 - b. Indeed, the level of support needed by a Supported Employee, directly impacts on the measure of skill related to the job task (or tasks) performed by the Supported Employee.
 - c. For example, **Attachment "C"** to this statement contains the classification structures of both the current Manufacturing and Fast Food Awards. It is apparent from each example that, while they cover very different industries and have different classification structures, both structures specifically refer to the skills, training and the competence required and expected of employees at each level.

Response to the Statement of Leigh Svendsen dated 21 November 2017

35. I have reviewed Leigh Svendsen's statement dated 21 November 2017.
36. In response to paragraph 9 of Ms Svendsen's statement, do not believe I have revealed any material information arising from the Conciliation before Her Honour Deputy President Booth that was not already publically available.
37. In relation to paragraphs 18 and 19 of Ms Svendsen's statement, the calculations contained in Attachment F of my witness statement dated 21 September 2017, are only in relation to the assessments provided by Lead, notwithstanding the modifications as agreed by the parties to the SWS, the costs associated with shifting from a skills based wage assessment system to a productive output-based wage assessment system, would not be not very different at all to those provided in Attachment F. This is because at GDS we have extensive knowledge of our Supported Employees, their capabilities and their productive output having regard to their skill levels.
38. In relation to paragraphs 20 to 24 of Ms Svendsen's Statement, I do not dispute the HSU covers Support Workers in many States. I am not aware however that the HSU has ever represented the interests of Supported Employees in ADEs by way of membership or enterprise agreements , or have they implemented ACTU Policy, which was developed in the 1990s, where unions where encouraged to organise Supported Employees along with other workers without disabilities in ADE.
39. **Attachment D** is a copy of the summary of Ronalds Report on National Employment Initiatives for People with Disabilities Initiatives, which deals with the Unionisation issue on page 16. The Report recommended that Supported Employees be able to

join the same Union workers without disabilities were eligible to join in ADEs. To achieve this objective it was necessary (back in the 90s) to consider rule changes because at the time ADEs (as they do now) carried on such a variety of work that it would be almost impossible to work out which mainstream union might be appropriate. The Miscellaneous Workers Union led this reform. In a contemporary sense these types of rule changes are no longer necessary.

Response to Statement of Robert McFarlane dated 21 November 2017

40. I have reviewed a copy of Robert McFarlane's statement dated 21 November 2017.
41. I agree with paragraph 13 of Mr McFarlane's statement. Subject to Supported Employees working safely and to a quality standard, the assessment of wage levels primarily related to the output or how fast a Supported Employee works, compared to a person without a disability.
42. I agree with paragraph 14 and 15 of Mr McFarlane's Statement. Indeed, paragraph 15 demonstrates why the SWS is an impractical way of assessing wages for Supported in ADEs, because it only assesses a supported employee's performance at a particular task or few tasks the Supported Employee spends most of their time on. The reality is that the duties that might otherwise be expected of workers without disabilities, are significantly modified to enable a Supported Employee to perform certain tasks which meet their skill capability. A worker without a disability would be expected to be capable of performing to all the requirements of position description or duty statement.
43. In response to paragraphs 27 to 41 of Mr McFarlane's statement, this information simply reflects the experience of applying the SWS in open employment, which is a completely different environment to an ADE. Many large employers such as Coles, Woolworths, Bunnings and fast food establishments such as McDonalds and KFC, have the resources and the wherewithal to sustain having one or two people with a disability doing jobs that have been specifically designed for the person with disability. It is indeed very positive that these large employers are able to provide these types of opportunities to workers with a disability. Indeed, some GDS Supported Employees improve to a level where they are actively encouraged to seek open employment. However, working at these large employer organisations is very, very different to working at an ADE. It should be noted that many of these large national companies are able to absorb wage outcomes associated with the implementation of the SWS within a very different working environment and commercial activity when compared with ADEs.
44. The GACBWAS looks at skills and task levels primarily when determining wages. A Supported Employee who can only carry out low value simple tasks, is not paid as much as a Supported Employee capable of carrying more complex work within Grade 2 of the award.
45. To give an example, a full award wage employee at Grade 2 is expected to have the skills and initiative to carry out all the duties in their duty statement. Most Supported Employees are only capable of doing a limited number of tasks and generally are unable to do all the duties to the same standard as say a cleaner without a disability.

46. By way of example, **Attachment "E"** contains a duty statement of a cleaner. A worker without a disability would be expected to perform all of the duties of this role. However, depending on the level of disability and support required, for a Supported Employee, this role would be broken down so that it may take three or four Supported Employees to perform the role that one worker without a disability could perform, without the same level of supervision. If however under the SWS each of those supported employees can carry out their limited range of tasks fairly quickly, leading to a higher percentage of the award rate of pay being payable to each Supported Employee, it would make that job unsustainable to be performed by Supported Employees. In other words it would be more cost-effective to employ one cleaner without a disability and who does not need to be supervised.
47. In response to paragraph 25 of Mr McFarlane's statement, this confirms that speed is a major factor in determining the outcome of wages for a person with a disability under the SWS, once the skill and quality standards are achieved.
48. I am unable to respond to Mr McFarlane's Statement with respect to the use of the SWS in ADEs for these reasons:
- a. there is no information about the size of the ADEs he mentions, including the size of the workforce, the ratio of support staff to Supported Employees, the nature of the work contracts or enterprises they run or the financial outcomes of the ADEs;
 - b. there is no information provided about the wage levels currently paid by those ADEs; and
 - c. we do not know those ADEs' own views about whether they believe the SWS is the best way of assessing wages for Supported Employees in an ADE environment, as they have not provided their own statements in this matter.
49. I disagree with Mr McFarlane's views with respect to the WVCS.
50. The Ronalds Report at **Attachment "D"** makes a range of recommendations and also lists options and strategies which were to be considered by the Commonwealth in relation to employment initiatives for people with disabilities.
51. The trade union movement wanted to achieve three things arising out of the Ronalds Report, namely:
- a. to encourage more private and public sector employers to employ people with disabilities in open employment;
 - b. to ensure people with disabilities who did not get access to open employment (i.e. those people with disabilities in Sheltered Worksop's transitioning to ADEs) having working rights like all other employees including the right to be active participants in unions; and
 - c. for the Commonwealth to adopt a skills based wage assessment system plus a subsidy to employers to pay the full award rate.

52. Whilst I cannot speak on behalf of the trade union movement now, it is my personal view that for a host of reasons these objectives have not been fully achieved and forcing the SWS to be the only tool used in ADEs will make the achievement of these objectives even more difficult.

53. Attachment "F" are copies of letters I have received from:

- the Federal Minister for Disability Services Jane Prentice
- The Shadow Minister for Disability Services Carol Brown and local MPs Sharon Bird and Stephen Jones, and
- Ryan Park NSW Shadow Treasurer

Who have expressed a view about the proceedings before the Commission

[Redacted Signature]

Signature

Chris Christodoulou

Name

[Redacted Signature]

Signature of Witness

SUZANNE BATLEY

Name

[Redacted Address]

Address

[Redacted] NSW 2525

Date

08/12/2017

[Redacted Address]

Address

[Redacted] 2529

Date

8/12/2017

Attachment A



Home [Jasper](#) [Ruby](#) [Frank](#) [Stephanie](#)

[Q&AAdvice](#)



What are the Mayer Key Competencies?

The Mayer Key Competencies are more generally referred to as simply 'Key Competencies', and you'll find them identified in the Unit of Competency.



As part of the re-structure of training packages that began late in 2011, Key competencies will be removed from training packages and replaced with Employability Skills, however some training packages currently available will still include Key Competencies so it's a good idea to familiarise yourself with them.

In the future, employability skills will be combined with the Core Skills Framework to create Foundation Skills which will be reflected in each unit of competency. You can keep up to date with these changes at www.21c.tvetaustralia.com.au.

'Key Competencies are competencies essential for effective participation in the emerging patterns of work and organisation. They focus on the capacity to apply knowledge and skills in an integrated way in work situations'. (Mayer Report)

In 1992 a set of seven generic skills, the Mayer Key Competencies, were identified as the basic transferable competencies that underpin employability and the capacity to adapt to different types of whole work roles, as well as personal and community activities throughout an individual's life. They are named after Eric Mayer, who in 1992 presented 'The Key Competencies Report'.

This report identified seven key competencies which people should acquire before they moved into the workforce. These are:

1. **Collecting, analysing and organising information** The capacity to locate information, sift and sort information in order to select what is required and to present it in a useful way, and evaluate both the information itself and the sources and methods used to collect it.
2. **Communicating ideas and information** The capacity to communicate effectively with others using the range of spoken, written, graphic and other non-verbal means of expression.
3. **Planning and organising activities** The capacity to plan and organise one's own work activities, including making good use of time and resources, sorting out priorities and monitoring one's own performance.
4. **Working with others in teams** The capacity to interact effectively with other people both on a one-to-one basis and in groups, including understanding and responding to the needs of a client and working effectively as a member of a team to achieve a shared goal.
5. **Solving problems** The capacity to apply problem solving strategies in purposeful ways both in situations where the problem and the solution are clearly evident and in situations requiring creative thinking and a creative approach to achieve an outcome.
6. **Using mathematical ideas and techniques** The capacity to use mathematical ideas, such as number and space, and techniques such as estimation and approximation, for practical purposes.
7. **Using technology** The capacity to apply technology, combining the physical and sensory skills needed to operate equipment with the understanding of scientific and technological principles needed to explore and adapt systems.

Performance Levels

As work activities become more complex, and/or as a qualification level increases (eg from a Certificate II to a Diploma), people require more highly developed skills. For these reasons, the key competencies are described at three performance levels. They have three levels of performance that should be specified when identifying where they apply in industry contexts, and for the purpose of supporting and informing your competency-based assessment process.

As you can see in the table below, performance level 1 is the level of competence required to perform the task (generally under supervision or with a low level of responsibility), in comparison to performance level 3 where there is a need to evaluate and redesign tasks, and make decisions.

Key competency	Level 1	Level 2	Level 3
----------------	---------	---------	---------

Collecting, analysing and organising ideas	Access and record from a single source	Access, select and record from more than one source	Access, evaluate and organise from a range of sources
Communicating ideas and information	Simple activities in a familiar setting	Complex communication within a particular context	Complex communication in a variety of settings
Planning and organising activities	Under supervision	With guidance	Independently initiate and evaluate complex activity
Working with others and in teams	Familiar activities	Help formulate and achieve goals	Collaborate in complex activities
Using mathematical ideas and techniques	Simple tasks	Select appropriate tasks	Evaluate ideas and techniques and adapt as appropriate
Solving problems	<ul style="list-style-type: none"> • Routine - minimal supervision • Exploratory - close supervision 	<ul style="list-style-type: none"> • Routine - independently • Exploratory - with guidance 	<ul style="list-style-type: none"> • Complex problems • Implement systematic approach • Explain processes
Using technology	Reproduce or present basic product or service	Construct, organise or operate products or services	Design or tailor products or services

The important thing to remember is that these key competencies should be considered in relation to the performance criteria that form the foundation for your competency-based assessment.



You might also like to check the information here under **'What are Employability Skills?', 'How employability skills are incorporated into Training Packages'** and **'How do Mayer Key Competencies and the Employability Skills Framework differ?'** to find out more about the information contained in a competency standard and how it relates to your training and assessment.

Attachment B



NATIONAL
EMPLOYMENT INITIATIVES
FOR PEOPLE WITH
DISABILITIES

A DISCUSSION PAPER

Report of the Labour and Disability Workforce Consultancy

CHRIS RONALDS

with assistance from the
Labour Research Centre



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MEMBERSHIP OF STEERING COMMITTEE

The membership of the Steering Committee was:

Chairperson

Jeff Harmer, replacing Ian Fletcher, First Assistant Secretary, Disability Programs Division, Department of Community Services and Health

Members

Chris Christodoulou, Australian Council of Trade Unions

Ian Spicer, Confederation of Australian Industry

Graham Law, Disability Advisory Council of Australia

Frank Hall-Bentick, replacing Dianne Temby, Disabled People's International

Robert Westcott, National Council on Intellectual Disability

Malcolm Rowan, Australian Council for the Rehabilitation of the Disabled

Phil Tuckerman, JobSupport Inc.

Senator John Faulkner

Colin Bannerman, Department of Employment, Education and Training

Roger Tarlington, Department of Industrial Relations



Judy Raymond, Department of Social Security

Peter Moyle, Assistant Secretary, Employment and Community Participation Branch, Disability Programs Division, Department of Community Services and Health.

Claudia Thame, Senior Adviser, Portfolio Analysis Unit, Department of Community Services and Health

Attachment C

FAST FOOD INDUSTRY AWARD 2010 [MA000003]

[History of variations](#) | [Download: Current award](#)  [Current award](#)  | [Information](#) | [Reading this award](#) | [Subscribe to updates](#)

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Schedule B—Classifications

[Varied by [PR988389](#)]

B.1 Fast Food Employee Level 1

B.1.1 An employee engaged in the preparation, the receipt of orders, cooking, sale, serving or delivery of meals, snacks and/or beverages which are sold to the public primarily to take away or in food courts in shopping centres.

B.1.2 A Fast Food Employee Level 1 will undertake duties as directed within the limits of their competence, skills and training including incidental cleaning and cleaning of toilets.

B.2 Fast Food Employee Level 2

An employee who has the major responsibility on a day to day basis for supervising Fast Food employees Level 1 and/or training new employees or an employee required to exercise trade skills.

B.3 Fast Food Employee Level 3

An employee appointed by the employer to be in charge of a shop, food outlet, or delivery outlet.

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Schedule B—Classification Structure and Definitions

[Varied by [PR986428](#), [PR988376](#), [PR992240](#), [PR995121](#), [PR505533](#), [PR544780](#)]

B.1 The classification structure and definitions set out in clauses B.2 and B.3 apply to employees covered by this award, except where otherwise specified.

B.2 Classification structure

B.2.1 C1–C14 Levels

[B.2.1 substituted by [PR995121](#) ppc 19Mar10]]

Classification levels	Classification title	Minimum training requirement	Wage relativity to C10 (see clause B.2.2)
C1	Professional Engineer Professional Scientist <i>NOTE: Professional Engineers and Professional Scientists in Level C1 are covered by the Professional Employees Award 2010</i>	Degree	180/210%
C2(b)	Principal Technical Officer	Advanced Diploma or equivalent and sufficient additional training so as to enable the employee to meet the requirements of the relevant classification definition and to perform work within the scope of this level.	160%
C2(a)	Leading Technical Officer	Advanced Diploma or equivalent and sufficient additional training so as to enable the employee to meet the requirements of the relevant classification definition and to perform work within the scope of this level.	150%

Manufacturing and Associated Industries and Occupations Award 2010

Classification levels	Classification title	Minimum training requirement	Wage relativity to C10 (see clause B.2.2)
	Principal Supervisor/ Trainer/Co-ordinator	Advanced Diploma or equivalent of which at least 50% of the competencies are in supervision/training.	
C3	Engineering Associate/ Laboratory Technical Officer—Level II	Advanced Diploma of Engineering, or equivalent.	145%
C4	Engineering Associate/ Laboratory Technical Officer—Level 1	80% towards an Advanced Diploma of Engineering, or equivalent.	135%
C5	Advanced Engineering Tradesperson—Level II	Diploma of Engineering—Advanced Trade, or equivalent.	130%
	Engineering/Laboratory Technician—Level V	Diploma of Engineering—Technical, or equivalent.	
C6	Advanced Engineering Tradesperson—Level 1	C10 + 80% towards a Diploma of Engineering—Advanced Trade, or equivalent.	125%
	Engineering/Laboratory Technician—Level IV	50% towards an Advanced Diploma of Engineering, or 85% towards a Diploma of Engineering—Technical, or equivalent.	
C7	Engineering/ Manufacturing Tradesperson—Special Class Level II	Certificate IV in Engineering, or C10 + 60% towards a Diploma of Engineering, or equivalent.	115%

Manufacturing and Associated Industries and Occupations Award 2010

Classification levels	Classification title	Minimum training requirement	Wage relativity to C10 (see clause B.2.2)
	Engineering/Laboratory Technician—Level III	Certificate IV in Manufacturing Technology, provided that the minimum experience required for a Technology Cadet has been completed, or Certificate IV in Laboratory Techniques, or 45% towards an Advanced Diploma of Engineering, or 70% towards a Diploma of Engineering—Technical, or equivalent	
C8	Engineering/Manufacturing Tradesperson—Special Class Level I	C10 + 40% towards a Diploma of Engineering, or equivalent	110%
	Engineering/Laboratory Technician—Level II	40% towards an Advanced Diploma of Engineering, or 60% towards a Diploma of Engineering—Technical, or equivalent	

Manufacturing and Associated Industries and Occupations Award 2010

Classification levels	Classification title	Minimum training requirement	Wage relativity to C10 (see clause B.2.2)
C9	Engineering/ Manufacturing Tradesperson—Level II Engineering/Laboratory Technician—Level I	C10 + 20% towards a Diploma of Engineering or equivalent Certificate III in Engineering—Technician, or Certificate III in Laboratory Skills, or Certificate III in Manufacturing Technology, provided that the minimum experience required for a Technology Cadet has been completed, or 50% towards a Diploma of Engineering, or equivalent	105%
C10	Engineering/ Manufacturing Tradesperson—Level I Engineering/ Manufacturing Systems Employee—Level V	Recognised Trade Certificate, or Certificate III in Engineering—Mechanical Trade, or Certificate III in Engineering—Fabrication Trade, or Certificate III in Engineering— Electrical/Electronic Trade, or equivalent Engineering Production Certificate III, or Certificate III in Engineering— Production Systems, or equivalent	100%
C11	Engineering/ Manufacturing Employee—Level IV Laboratory Tester	Engineering Production Certificate II, or Certificate II in Engineering—Production Technology, or Certificate II in Sampling and Measurement, or equivalent	92.4%
C12	Engineering/ Manufacturing Employee—Level III	Engineering Production Certificate I or Certificate II in Engineering, or equivalent	87.4%

Classification levels	Classification title	Minimum training requirement	Wage relativity to C10 (see clause B.2.2)
C13	Engineering/ Manufacturing Employee—Level II	In-house training	82%
C14	Engineering/ Manufacturing Employee—Level 1	Up to 38 hours induction training	78%

B.2.2 The percentage wage relativities to C10 in the table in clause B.2.1 reflect the percentages prescribed in 1990 in *Re Metal Industry Award 1984—Part I* (M039 Print J2043). The minimum wages in this award do not reflect these relativities because some wage increases since 1990 have been expressed in dollar amounts rather than percentages and as a result have reduced the relativities.

B.2.3 Supervisor/Trainer/Coordinator

Where an employee is performing supervisory responsibilities, the employee is to be classified as a:

- (a) Supervisor/Trainer/Coordinator—Level I: 122% of the minimum wage paid to the highest technically qualified employee supervised or trained subject to clause 24.1(f)(i).
- (b) Supervisor/Trainer/Coordinator—Level II: 115% of the minimum wage paid to the highest paid employee supervised or trained subject to clause 24.1(f)(ii).
- (c) Supervisor/Trainer/Coordinator—Technical: 107% of the minimum wage applicable to the employee’s technical classification.

B.3 Classification definitions

B.3.1 The following classification definitions should be read in conjunction with:

- (a) the stream and field definitions in this award.
- (b) the following definitions:
 - (i) **Or equivalent** means:

[B.3.1(b)(i) varied by [PR995121](#) ppc 19Mar10]

- any training which a registered provider (e.g. TAFE), or State recognition authority recognises as equivalent to a qualification which Manufacturing Skills Australia recognises for this level, which can include advanced standing through recognition of prior learning and/or overseas qualifications; or
- where competencies meet the requirements set out in the Manufacturing Skills Australia competency standards in accordance with the National Metal and Engineering Competency Standards Implementation Guide.

(ii) **Work within the scope of this level** means:

[B.3.1(b)(ii) varied by PR995121 ppc 19Mar10, PR544780 ppc 01Jan14]

- for an employee who does not hold a qualification listed as a minimum training requirement, that the employee can apply skills within the enterprise selected in accordance with the National Metal and Engineering Competency Standards Implementation Guide, provided that the competencies selected are competency standards recognised as relevant and appropriate by Manufacturing Skills Australia and endorsed by the National Skills Standards Council; or
- where an employee has a qualification, clause 24.3(b)(iii) applies.

[B.3.1(b)(iii) varied by PR995121 ppc 19Mar10]

(iii) **Engineering Associate/Technician** is a generic term which includes technical officers in a wide range of disciplines including laboratories and quality assurance, draughting officers, planners and other para-professionals.

(c) the National Metal and Engineering Competency Standards Implementation Guide especially Table 2 of that guide which shows the alignment between old and new titles under the Australian Qualifications Framework (e.g. Advanced Certificates are now known as National Diplomas and Associate Diplomas as National Advanced Diplomas).

(d) clause 24.3(c)

B.3.2 Supervisor/Trainer/Coordinator

(a) Supervisor/Trainer/Coordinator—Level I

- (i) A Supervisor/Trainer/Coordinator—Level I is an employee who is responsible for the work of other employees and/or provision of structured on-the-job training. Such an employee has completed a qualification at AQF III level or above, of which at least one third of the competencies are related to supervision/training, or equivalent.
- (ii) Notwithstanding the above definition an employee who is mainly engaged to perform work supervising or coordinating the work of other employees and who has sufficient additional training beyond that of those coordinated or supervised so as to enable the employee to perform work within the scope of this level must be classified at this level.

(b) Supervisor/Trainer/Coordinator—Level II

- (i) A Supervisor/Trainer/Coordinator—Level II is an employee who is responsible for the supervision and/or training of Supervisor/Trainers/ Coordinators—Level I. Such an employee has completed an AQF IV or V qualification or equivalent of which at least 50% of the competencies are in supervision/training.

B.3.3 Wage Group: C14

[B.3.3(a) varied by [PR995121](#) ppc 19Mar10]

(a) Engineering/Manufacturing Employee—Level I

[B.3.3(a)(i) varied by [PR995121](#) ppc 19Mar10]

- (i) An Engineering/Manufacturing Employee—Level I is an employee who is undertaking up to 38 hours induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, occupational health and safety, equal employment opportunity and quality control/assurance.
- (ii) An employee at this level performs routine duties essentially of a manual nature and to the level of their training:
 - performs general labouring and cleaning duties;
 - exercises minimal judgement;
 - works under direct supervision;
 - is undertaking structured training so as to enable them to work at the C13 level.

B.3.4 Wage Group: C13

[B.3.4(a) varied by [PR995121](#) ppc 19Mar10]

(a) Engineering/Manufacturing Employee—Level II

[B.3.4(a)(i) varied by [PR995121](#) ppc 19Mar10]

- (i) An Engineering/Manufacturing Employee—Level II is an employee who has completed up to three months structured training so as to enable the employee to perform work within the scope of this level.
- (ii) An employee at this level performs work above and beyond the skills of an employee at the C14 level and to the level of their skills, competence and training:
 - works in accordance with standard operating procedures and established criteria;
 - works under direct supervision either individually or in a team environment;
 - understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults;
 - understands and utilises basic statistical process control procedures;
 - follows safe work practices and can report workplace hazards.

B.3.5 Wage Group: C12

[B.3.5(a) varied by [PR995121](#) ppc 19Mar10]

(a) Engineering/Manufacturing Employee—Level III

[B.3.5(a)(i) substituted by [PR995121](#) ppc 19Mar10]

- (i) An Engineering/Manufacturing Employee—Level III is an employee who has completed an Engineering Production Certificate I or Certificate II in Engineering or equivalent so as to enable the employee to perform work within the scope of this level.
- (ii) An employee at this level performs work above and beyond the skills of an employee at the C13 level and to the level of their skills, competence and training:
 - is responsible for the quality of their own work subject to routine supervision;
 - works under routine supervision either individually or in a team environment;
 - exercises discretion within their level of skills and training;
 - assists in the provision of on-the-job training.

B.3.6 Wage Group: C11

[B.3.6 substituted by [PR995121](#) ppc 19Mar10]

(a) Engineering/Manufacturing Employee—Level IV

Laboratory Tester

- (i) An Engineering/Manufacturing Employee—Level IV is an employee who has completed an Engineering Production Certificate II or Certificate II in Engineering—Production Technology or equivalent so as to enable the employee to perform work within the scope of this level.
- (ii) A Laboratory Tester is an employee who has completed a Certificate II, or equivalent, in Sampling or Measurement so as to enable the employee to perform work within the scope of this level.
- (iii) An employee at this level performs work above and beyond the skills of an employee at the C12 level and to the level of their skills, competence and training:
 - works from complex instructions and procedures;
 - assists in the provision of on-the-job training;
 - co-ordinates work in a team environment or works individually under general supervision;
 - is responsible for assuring the quality of their own work;

- in a laboratory the employee performs basic/simple routine tests under close supervision and communicates results of those tests to the appropriate personnel.

B.3.7 Wage Group: C10

[B.3.7(a) varied by [PR995121](#) ppc 19Mar10]

(a) Engineering/Manufacturing Tradesperson—Level I

[B.3.7(a)(i) substituted by [PR995121](#) ppc 19Mar10]

- (i) An Engineering/Manufacturing Tradesperson—Level I is an employee who holds a trade certificate or tradespersons rights certificate or equivalent as an:
- Engineering Tradesperson (Electrical/Electronic)— Level I;
 - Engineering Tradesperson (Mechanical)— Level I;
 - Engineering Tradesperson (Fabrication)—Level I;
 - Furnishing Industry Tradesperson Level I;
 - Floor Finisher and/or Floor Coverer Tradesperson;
 - or equivalent;

and is able to exercise the skills and knowledge of the engineering trade so as to enable the employee to perform work within the scope of this level.

[B.3.7(a)(ii) varied by [PR995121](#) ppc 19Mar10]

- (ii) An Engineering/Manufacturing Tradesperson—Level I works above and beyond an employee at the C11 level and to the level of their skills, competence and training:
- understands and applies quality control techniques;
 - exercises good interpersonal and communications skills;
 - exercises keyboard skills at a level higher than the C11 level;
 - exercises discretion within the scope of this classification level;
 - performs work under limited supervision either individually or in a team environment;
 - operates lifting equipment incidental to their work;
 - performs non-trade tasks incidental to their work;
 - performs work which while primarily involving the skills of the employee's trade is incidental or peripheral to the primary task and facilitates the completion of the whole task, provided that such incidental or peripheral work does not require additional formal technical training;

- inspects products and/or materials for conformity with established operational standards.

[B.3.7(b) substituted by [PR995121](#) ppc 19Mar10]

(b) Engineering/Manufacturing Systems Employee—Level V

[B.3.7(b)(i) substituted by [PR995121](#) ppc 19Mar10]

- (i) An Engineering/Manufacturing Systems Employee—Level V is an employee who, while still being primarily engaged in Engineering/Manufacturing work applies the skills acquired through the successful completion of an Engineering Production Certificate III or Certificate III in Engineering—Production Systems or equivalent in the production, distribution, or stores functions so as to enable the employee to perform work within the scope of this level.

[B.3.7(b)(ii) varied by [PR995121](#) ppc 19Mar10]

- (ii) An Engineering/Manufacturing Employee works above and beyond an employee at the C11 level and to the level of their skills, competence and training:
- understands and applies quality control techniques;
 - exercises good interpersonal communications skills;
 - exercises discretion within the scope of this classification level;
 - exercise keyboard skills at a level higher than the C11 level;
 - performs work under limited supervision either individually or in a team environment;
 - inspects products and/or materials for conformity with established operational standards.

B.3.8 Wage Group: C9

[B.3.8 substituted by [PR995121](#) ppc 19Mar10]

(a) Engineering/Manufacturing Tradesperson—Level II

- (i) An Engineering/Manufacturing Tradesperson—Level II is an:
- Engineering Tradesperson (Electrical/Electronic)—Level II; or
 - Engineering Tradesperson (Mechanical)—Level II; or
 - Engineering Tradesperson (Fabrication)—Level II; or
 - Furnishing Industry Tradesperson Level 2; or
 - equivalent.

who has completed the minimum training requirements specified in clause B.2.1 of Schedule B or equivalent.

- (ii) An Engineering/Manufacturing Tradesperson—Level II works above and beyond a tradesperson at the C10 level and to the level of their skills and competence and training performs work within the scope of this level:
- exercises discretion within the scope of this classification;
 - works under limited supervision either individually or in a team environment;
 - understands and implements quality control techniques;
 - provides trade guidance and assistance as part of a work team;
 - operates lifting equipment incidental to their work;
 - performs non-trade tasks incidental to their work.

(b) Engineering/Laboratory Technician—Level I

- (i) An Engineering/Laboratory Technician—Level I is an employee who has the equivalent level of training of the C9 level Engineering/Manufacturing Tradesperson or equivalent so as to enable the employee to apply skills within the scope of this level. The skills exercised by the Engineering/Laboratory Technician—Level I are in the technical field including draughting, planning or technical tasks, including in a laboratory, requiring technical knowledge.
- (ii) At this level the employee is engaged on routine tasks in the technical field. In a laboratory the employee performs basic laboratory duties using written, spoken or diagrammatic instructions and/or basic quality control assurance procedures and techniques under general supervision—either individually or in a team environment.

B.3.9 Wage Group: C8

[B.3.9(a) substituted by [PR995121](#) ppc 19Mar10]

(a) Engineering/Manufacturing Tradesperson—Special Class Level I

[B.3.9(a)(i) substituted by [PR995121](#) ppc 19Mar10]

- (i) An Engineering/Manufacturing Tradesperson—Special Class Level I means a:
- Special Class Engineering Tradesperson (Electrical/Electronic)—Level I; or
 - Special Class Engineering Tradesperson (Mechanical)—Level I; or
 - Special Class Engineering Tradesperson (Fabrication)—Level I; or
 - equivalent.

who has completed the minimum training requirements specified in clause B.2.1 of Schedule B or equivalent.

[B.3.9(a)(ii) varied by [PR995121](#) ppc 19Mar10]

- (ii) An Engineering/Manufacturing Tradesperson—Special Class Level I works above and beyond a tradesperson at the C9 level and to the level of their skills, competence and training performs work within the scope of this level:
- provides trade guidance and assistance as part of a work team;
 - assists in the provision of training in conjunction with supervisors and trainers;
 - understands and implements quality control techniques;
 - works under limited supervision either individually or in a team environment;
 - operates lifting equipment incidental to their work;
 - performs non-trade tasks incidental to their work.

[B.3.9(b) varied by [PR995121](#) ppc 19Mar10]

(b) Engineering/Laboratory Technician—Level II

[B.3.9(b)(i) substituted by [PR995121](#) ppc 19Mar10]

- (i) An Engineering/Laboratory Technician—Level II is an employee who has the equivalent level of training of the C8 level Engineering/Manufacturing Tradesperson Special Class—Level I or equivalent so as to enable the employee to apply skills within the scope of this level. The skills exercised by the Engineering/Laboratory Technician—Level II are in the technical field including draughting, planning or technical tasks requiring technical knowledge.
- (ii) At this level the employee is required to exercise judgment and skill in excess of that required at the C9 level under the supervision of technical or professional staff.

B.3.10 Wage Group: C7

(a) Engineering/Manufacturing Tradesperson—Special Class Level II

[B.3.10(a)(i) substituted by [PR995121](#) ppc 19Mar10]

- (i) An Engineering/Manufacturing Tradesperson—Special Class Level II means a:
- Special Class Engineering Tradesperson (Electrical/Electronic)—Level II; or
 - Special Class Engineering Tradesperson (Mechanical)—Level II; or
 - Special Class Engineering Tradesperson (Fabrication)—Level II; or
 - Higher Engineering/Manufacturing Tradesperson; or
 - equivalent.

who has completed the minimum training requirements specified in clause B.2.1 of Schedule B or equivalent.

[B.3.10(a)(ii) varied by [PR995121](#) ppc 19Mar10]

- (ii) An Engineering/Manufacturing Tradesperson—Special Class Level II works above and beyond a tradesperson at the C8 level and to the level of their skills, competence and training performs work within the scope of this level:
- is able to provide trade guidance and assistance as part of a work team;
 - provides training in conjunction with supervisors and trainers;
 - understands and implements quality control techniques;
 - works under limited supervision either individually or in a team environment;
 - operates lifting equipment incidental to their work;
 - performs non-trade tasks incidental to their work.

(b) Engineering/Laboratory Technician—Level III

[B.3.10(b) substituted by [PR995121](#) ppc 19Mar10]

- (i) An Engineering/Laboratory Technician—Level III is an employee who has the equivalent level of training of the C7 level Engineering/Manufacturing Tradesperson—Special Class Level II or equivalent so as to enable the employee to apply skills within the scope of this level. The skills exercised by the Engineering/Laboratory Technician—Level III are in the technical field including draughting, planning or technical tasks requiring technical knowledge.
- (ii) At this level the employee is engaged in detail draughting and/or planning or technical duties requiring judgement and skill in excess of that required of a technician at the C8 level under the supervision of technical or professional staff. The employee in a laboratory is able to troubleshoot at a basic level and perform a range of quality control and/or research and development tests with only general supervision.

B.3.11 Wage Group: C6

(a) Advanced Engineering Tradesperson—Level I

- (i) An Advanced Engineering Tradesperson—Level I means an:
- Advanced Engineering Tradesperson (Electrical/Electronic)—Level I; or
 - Advanced Engineering Tradesperson (Mechanical)—Level I; or
 - Advanced Engineering Tradesperson (Fabrication)—Level I;
- who has completed the minimum training requirements specified in clause B.2.1 of Schedule B or equivalent.
- (ii) An Advanced Engineering Tradesperson—Level I works above and beyond a tradesperson at the C7 level and to the level of their skills, competence and training performs work within the scope of this level:

- undertakes quality control and work organisation at a level higher than for the C7 level;
- provides trade guidance and assistance as part of a work team;
- assists in the provision of training to employees in conjunction with supervisors/trainers;
- works under limited supervision either individually or in a team environment;
- prepares reports of a technical nature on specific tasks or assignments;
- exercises broad discretion within the scope of this level;
- operates lifting equipment incidental to their work;
- performs non-trade tasks incidental to their work.

(b) Engineering/Laboratory Technician—Level IV

[B.3.11(b) substituted by PR995121 ppc 19Mar10

- (i) An Engineering/Laboratory Technician—Level IV is an employee who has the equivalent level of training of the C6 level Advanced Engineering Tradesperson—Level I or equivalent so as to enable the employee to apply skills within the scope of this level. The skills exercised by the Engineering/Laboratory Technician—Level IV are in the technical field including draughting, planning or technical tasks requiring technical knowledge.
- (ii) At this level the employee is engaged in detail draughting and/or planning and/or technical duties requiring judgement and skill in excess of that required of a technician at the C7 level under the supervision of technical and/or professional staff.

B.3.12 Wage Group: C5

(a) Advanced Engineering Tradesperson—Level II

- (i) An Advanced Engineering Tradesperson—Level II means an:
 - Advanced Engineering Tradesperson (Electrical/Electronic)—Level II; or
 - Advanced Engineering Tradesperson (Mechanical)—Level II; or
 - Advanced Engineering Tradesperson (Fabrication)—Level II;who has completed the minimum training requirements specified in clause B.2.1 of Schedule B or equivalent.
- (ii) An Advanced Engineering Tradesperson—Level II works above and beyond a tradesperson at the C6 level and to the level of their skills, competence and training performs work within the scope of this level:
 - provides technical guidance or assistance within the scope of this level;

- prepares reports of a technical nature on tasks or assignments within the employee's skills and competence;
- has an overall knowledge and understanding of the operating principle of the systems and equipment on which the tradesperson is required to carry out their task;
- assists in the provision of on-the-job training in conjunction with supervisors and trainers;
- operates lifting equipment incidental to their work;
- performs non-trade tasks incidental to their work.

(b) Engineering/Laboratory Technician—Level V

[B.3.12(b) substituted by [PR995121](#) ppc 19Mar10]

- (i) An Engineering/Laboratory Technician—Level V is an employee who has the equivalent level of training of the C5 level Advanced Engineering Tradesperson—Level II or equivalent so as to enable the employee to apply skills within the scope of this level. The skills exercised by the Engineering/Laboratory Technician—Level V are in the technical field including draughting, planning or technical tasks requiring technical knowledge.
- (ii) At this level the employee is required to exercise judgment and skill in excess of that required at the C6 level. In a laboratory the employee is required to use judgment and problem solving skills to perform a range of routine and non-routine tests and to make modifications (within limits) to existing formula.

B.3.13 Wage Group: C4

(a) Engineering Associate/Laboratory Technical Officer—Level I

[B.3.13(a) varied by [PR995121](#) ppc 19Mar10]

- (i) An Engineering Associate/Laboratory Technical Officer —Level I means an employee who works above and beyond a technician at the C5 level and who has completed the minimum training requirements specified in clause B.2.1 of Schedule B or equivalent and is engaged in:
 - making of major design drawings or graphics or performing technical duties in a specific field of engineering, laboratory or scientific practice such as research design, testing, manufacture, assembly, construction, operation, diagnostics and maintenance of equipment facilities or products, including computer software, quality processes, occupational health and safety and/or standards and plant and material security processes and like work and/or developing test procedures or manuals from test standards and like work; or
 - planning of operations and/or processes including the estimation of requirements of staffing, material cost and quantities and machinery requirements, purchasing materials or components, scheduling, work study, industrial engineering and/or materials handling process.

B.3.14 Wage Group: C3

(a) Engineering Associate/Laboratory Technical Officer—Level II

[B.3.14(a) substituted by PR995121 ppc 19Mar10]

- (i) An Engineering Associate/Laboratory Technical Officer—Level II means an employee who works above and beyond an Engineering Associate/Laboratory Technical Officer at the C4 level and who has successfully completed the minimum training requirements specified in clause B.2.1 of Schedule B or equivalent and is engaged in:
- performing draughting, planning or technical duties which require the exercise of judgment and skill in excess of that required by an engineering associate at the C4 level; or
 - possesses the skills of an Engineering Associate/Laboratory Technical Officer—Level I in a technical field and exercises additional skills in a different technical field; or
 - is a laboratory employee who, with limited supervision, applies the full range of laboratory skills to individual projects and is involved in the supervision and training of other laboratory workers; or
 - is a laboratory employee who applies specialised technical skills, in addition to the full range of laboratory skills, to specific projects with minimum supervision.

B.3.15 Wage Group: C2(a)

(a) Leading Technical Officer

[B.3.15(a)(i) varied by PR995121 ppc 19Mar10]

- (i) A Leading Technical Officer means an employee who works above and beyond an Engineering Associate/Laboratory Technical Officer—Level II at the C3 level and has successfully completed a national advanced diploma or equivalent and sufficient additional training so as to enable the employee to perform work within the scope of this level. An employee at the C2(a) level is able to perform or coordinate work in more than one engineering, scientific or technical field, or performs duties in a technical, engineering or scientific field which requires the exercise of judgement and/or skill in excess of that required of an Engineering Associate/Laboratory Technical Officer—Level II.
- (b) Principal Engineering Supervisor/Trainer/Coordinator**
- (i) A Principal Engineering Supervisor/Trainer/Coordinator means a Supervisor/Trainer/Coordinator who has completed a national advanced diploma or equivalent of which at least 50% of the competencies are in supervision/training and who when engaged at this level:

- possesses a sound knowledge of occupational health and safety, industrial relations, and communications processes and is able to use this knowledge in training and leading the work of others;
 - possesses a general knowledge and awareness of the administrative, business, and marketing strategies of the enterprises.
- (ii) Indicative of the tasks which an employee at this level may perform are as follows:
- plans, writes and delivers training programs for all engineering/production employees, apprentices, trainees, trade and lower technical levels;
 - plans and directs the work of engineering/production employees especially in new work organisation environments (e.g. group work arrangements, CIM production techniques).

B.3.16 Wage Group: C2(b)

[B.3.16 substituted by PR505533 from 24Dec10]

Principal Technical Officer

- (a) A Principal Technical Officer works above and beyond an employee at the C2(a) level and has successfully completed sufficient additional training to enable the employee to perform work within the scope of this level in addition to a national advanced diploma or equivalent. Within organisational policy guidelines and objectives a principal technical officer:
- (i)
- performs work requiring mature technical knowledge involving a high degree of autonomy, originality and independent judgment;
 - looks after and is responsible for projects and coordinating such projects with other areas of the organisation as required by the operation of the organisation;
 - is responsible for the coordination of general and specialist employees engaged in projects requiring complex and specialised knowledge;
 - plans and implements those programs necessary to achieve the objectives of a particular project;
 - in the performance of the above functions, applies knowledge and/or guidance relevant in any or all of the fields of designing, planning and technical work as required by the operation;

- operates within broad statements of objectives without requiring detailed instructions; or
- (ii)
 - performs work at the above level of skill in a particular technical field;
 - has as the overriding feature of their employment the ability to perform creative, original work of a highly complex and sophisticated nature;
 - provides specialised technical guidance to other employees performing work within the same technical field.

[B.3.16(a)(ii) inserted by [PR995121](#) ppc 19Mar10; B.3.16(a)(ii) renumbered as B.3.16(b) by [PR505533](#)]

- (b) In a laboratory, a Principal Technical Officer will exhibit and use technical principles, research and development skills as well as interpersonal/supervisory skills in the co-ordination of a specialist laboratory team.

B.4 Indicative Tasks for employees covered by clause 24.3(c)

[B.4 inserted by [PR995121](#) ppc 19Mar10]

- B.4.1** For an employee covered by clause 24.3(c) the following indicative tasks identified for a particular classification are to be used as a guide in classifying the employee. These tasks operate in conjunction with clauses B.1–B.3.
- B.4.2** For the purposes of clause B.3.4 (level C13) the following are the indicative tasks which an employee at this level may perform:
- assembles components using basic written, spoken and/or diagrammatic instructions in an assembly environment;
 - repetition work on automatic, semi-automatic or single purpose machines or equipment;
 - basic soldering or butt and spot welding skills or cuts scrap with oxyacetylene blow pipe;
 - use selected hand tools;
 - boiler cleaning;
 - maintains simple records;
 - repetitive packing in standard containers;
 - uses hand trolleys and pallet trucks;
 - assists in the provision of on-the-job training;
 - non-trades cleaning up of wooden floors, punching of nails and sanding of wooden floors by machine or hand and/or application of all types of sealers and plastic coatings on wooden floors.
- B.4.3** For the purposes of clause B.3.5 (level C12) the following are the indicative tasks which an employee at this level may perform:

- operates flexibility between assembly stations;
- operates machinery and equipment requiring the exercise of skill and knowledge beyond that of an employee at level C13;
- non-trade skills;
- basic tracing and sketching skills;
- receiving, despatching, distributing, sorting, checking, packing (other than repetitive packing in a standard container or containers in which such goods are ordinarily sold), documenting and recording of goods, materials and components;
- assists in the provision of on-the-job training;
- basic inventory control in the context of a production process;
- basic keyboard skills;
- advanced soldering techniques;
- boiler attendant;
- operation of mobile equipment including fork-lifts, overhead cranes and winch operation;
- ability to measure accurately;
- assists one or more tradespersons;
- welding which requires the exercise of knowledge and skills above level C13;
- operate (i.e. serve as a burner of) a single tunnel kiln or a downdraft kiln;
- sewer and/or gluer and/or seamer of carpets, linoleums or other coverings;
- powder coating and tinting under supervision.

B.4.4 For the purposes of B.3.6 (level C11) the following are the indicative tasks which an employee at this level may perform:

- uses precision measuring instruments;
- machine rigging (certificated), setting, loading and operation;
- inventory and store control including licensed operation of all appropriate materials handling equipment, use of tools and equipment within the scope of basic (non-trades) maintenance, and computer operation at a level higher than that of an employee at level C12;
- intermediate keyboard skills;
- basic fault finding skills;
- performs basic quality checks on the work of others;
- licensed and certified for fork-lift, engine driving and crane driving operations to a level higher than level C12;

- assists in the provision of on-the-job training;
- has a knowledge of the employer's operation as it relates to production process;
- lubrication of production machinery equipment;
- operate (i.e. serve as a burner of) more than one tunnel kiln;
- operates a multipress complex;
- operates a FEL (clay and ceramics industry) in excess of three cubic metres;
- bulk paint tinting and resin manufacturing.

B.4.5 For the purposes of clause B.3.7 (level C10) the following are the indicative tasks which an employee at this level may perform:

- approves and passes first off samples and maintains quality of product;
- works from production drawings, prints or plans;
- operates, sets up and adjusts all production machinery in a plant including production process welding to the extent of training;
- can perform a range of maintenance functions including removing equipment fastenings, use of destructive cutting equipment, lubrication of production equipment, and running adjustments to production equipment;
- operates all lifting equipment;
- basic production scheduling and materials handling within the scope of the production process or directly related functions within raw materials/finished goods locations in conjunction with technicians;
- understands and applies computer techniques as they relate to production process operations;
- first class engine drivers' certificate;
- high level stores and inventory responsibility beyond the requirements of an employee at level C11;
- assists in the provision of on-the-job training in conjunction with tradespersons and trainers;
- has a sound knowledge of the employer's operations as it relates to the production process.

Attachment D

NATIONAL EMPLOYMENT INITIATIVES FOR PEOPLE WITH DISABILITIES: EXECUTIVE SUMMARY

NATIONAL EMPLOYMENT INITIATIVES FOR PEOPLE WITH DISABILITIES: EXECUTIVE SUMMARY

Department of Community Services and Health

Labour and Disability Workforce Consultancy

A DISCUSSION PAPER

CHRIS RONALDS with assistance from the Labour Research Centre

Australian Government Publishing Service Canberra

FOREWORD

Minister for Community Services and Health

I am pleased to release this important discussion paper on national employment initiatives for people with disabilities.

The discussion paper was commissioned by my predecessor, Dr Blewett, as part of the Federal Government's disability reform agenda. Prepared by Ms Chris Ronalds, with assistance from the Labour Research Centre, the paper addresses the following issues:

- the determination of appropriate wages for workers with more severe disabilities;
- unionisation of workers with disabilities;
- equal employment opportunity and affirmative action; and
- the adequacy of legal protection for employment and working conditions.

The issues canvassed in the discussion paper will interest governments, unions, employers, community organisations, people with disabilities and their families. I therefore invite interested organisations and individuals to send me written submissions on the paper by **30 November 1990**. Submissions should be forwarded to the Minister for Community Services and Health, Parliament House, Canberra ACT 2600.

I have asked Ms Ronalds and the Disability Advisory Council of Australia (DACA), in conjunction with the various State and Territory Disability Services Advisory Committees, to undertake widespread community consultation on the paper, particularly with people with disabilities. I will also be asking the Steering Committee which assisted Ms Ronalds in preparing the report to provide feedback on the report from their constituent groups.

I am confident that the discussion paper will contribute to the further development of the Government's social justice agenda for people with disabilities.

Brian Howe MP

Minister for Community Services and Health

Minister Assisting the Prime Minister for Social Justice

August 1990

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OVERVIEW

Background

The Commonwealth Government provides a significant amount of support to many people with disabilities, both through income support and employment support.

The barriers to participation in the general labour market by people with disabilities have been recognised in three Commonwealth Government reviews. The recommendations from those reports form the basic foundation for this discussion paper.

In September 1983, the then Minister for Social Security, Senator Don Grimes, initiated the Handicapped Programs Review, to examine all Commonwealth Government programs delivering special services for people with disabilities. A particular focus was on the programs delivered by the Department of Social Security. In late 1984, a substantial proportion of these programs were transferred to the newly- created Department of Community Services.

The Report of the Handicapped Programs Review, *New directions*, was released in May 1985 and contained recommendations covering 52 areas. A major recommendation was the enactment of new legislation, and this was implemented with the passage of the *Disability Services Act 1986*.

The Commonwealth Government has proceeded with a number of other initiatives in relation to policies and programs involving people with disabilities. These include the Social Security Reviews Issues Paper No.5, *Towards enabling policies: income support for people with disabilities* and the work of the Disability Taskforce.

In November 1989, Dr Neal Blewett, the then Minister for Community Services and Health commissioned a consultancy to address four major issues in relation to the employment of people with disabilities. These issues were:

- payment of productivity-based wages;
- unionisation of workers with disabilities;
- EEO and affirmative action legislation; and
- adequacy of legal protection for employment and working conditions.

A discussion paper was released as the final product of the consultancy. This is a summary of that discussion paper. Copies of the discussion paper and this summary can be obtained from the Commonwealth Department of Community Services and Health in each capital city.

Disability Services Act

The *Disability Services Act 1986 (DSA)* is based on six objects which form the basis for the construction and the administration of the Act. Two relevant objects which underpin this paper are:

(c) to ensure that services provided to persons with disabilities

(ii) enable persons with disabilities to achieve positive outcomes, such as increased independence, employment opportunities and integration in the community;

(f) to achieve positive outcomes, such as increased independence, employment opportunities and integration in the community for people with disabilities who are of working age by the provision of comprehensive rehabilitation services.

These objects are developed further in the principles and objectives of the Act, which were released in June 1987. The Act provides the basis for funding services to people with disabilities which further the objects and the principles or objectives. There are nine types of services which have been approved as meeting the needs of people with disabilities, and these include supported employment and competitive employment training and placement.

There are 269 sheltered workshops funded currently under DSA, and there are approximately 11,000 people with disabilities employed in these workshops.

There are 253 activity therapy centres (ATCs) funded currently under the DSA and approximately 11,000 people with disabilities work in or attend ATCs. Sheltered workshops and AICs are engaged in a transition process to meet the requirements of the DSA by improving range and quality of services available to people with disabilities. Supported employment services provide employment opportunities for people with disabilities who would not be able to perform paid work in the general labour market without ongoing support. Some typical models include enclaves, specialised businesses, mobile work crews and individual supported jobs.

Competitive employment training and placement services (CETPs) have been established to assist people with disabilities to obtain and maintain award wage jobs in the general labour market.

Barriers to employment

There are a number of barriers which prevent or inhibit people with disabilities from entering the general labour market. These include:

- employer behaviour;
- family concerns;
- access to premises;
- transport;
- type of job;
- job design;
- training and ongoing support; and
- income support

SKILLS BASED WAGES

Central to the issue of achieving increased integrated employment opportunities for some people with more severe disabilities is the need to address the issue of the determining of appropriate wage payments.

To ensure that the benefits of integration into the general labour market are realised, a fair and equitable system of measuring skills and productivity and paying a reasonable wage needs to be developed. This development will assist people with more severe disabilities who are unable to work at competitive norms. No system currently exists which enables the effective measurement of productivity and the payment of a productivity based wage. As such a system is central to ensuring opportunities for workforce participation by people with more severe disabilities, existing systems need to be analysed and directions for future policy developments proposed.

A number of major, and inter-connected, issues need to be addressed. There is little to be gained from a wages policy which limits the access of workers with more severe disabilities to integrated employment opportunities. This limitation occurs if wages are set at a level which makes it difficult for organisations to employ people with more severe disabilities as the financial cost to the organisation in wages does not correlate with the financial returns generated by the work processes undertaken by the person with disabilities. Also, wages policy must ensure that the level of possible wage does not act as a disincentive to entrance into integrated employment, through the impact of the income support system.

There is a clear need to develop a new system to ensure all workers with disabilities are paid an equitable wage which recognises their work and their contribution to society. The development of such a system must be informed by an examination of the systems which currently operate both for general wage fixation and for skills based wages.

Previous work in the area of wages for people with disabilities has used the term "productivity based wages". An example of the pertinent issues in the discussion paper led to the conclusion that the term is no longer appropriate, as it is too narrow to encompass all types of variations envisaged. Consequently, the term "skills based wages" is used to describe the possible future direction for wages policy for people with severe disabilities. This is in line with the terminology being used in the industrial relations arena during the award restructuring processes. 'Productivity based wages' is used in an historical context.

Target group

Obviously, the target group for any new wage policy is not all people with disabilities in the general labour market. There are already many people working on or above full award wages and they will not be affected by such a policy.

The target group to potentially benefit from such a policy are only those workers who, because of the nature or extent of their disability, are unable to operate competitively in the labour market as their level of skills is not the same as their coworkers. Their level of skills may be limited or restricted by a variety of factors, including the effects of their disability, job design, job duties, access and training. The level of skills may increase over a variety of times, depending on the same range of factors. There will be some people with more severe disabilities who need a skills based wage for a limited period only, while they are trained to perform the full range of job duties. Others may need such a wage for the entire time they work in that job, as the limiting or restricting factors may result in their level of skills not being able to be increased to the level of their co-workers.

Current situation

The concept of productivity based wages currently has limited application in Australian industry. Although the recent national wage case decisions of the Australian Industrial Relations Commission have been broadly concerned with level of productivity, these have been negotiated at the industry or enterprise level and subject to ceilings imposed by the commission. In a few industries, there is an element of individual productivity based wages. These industries, such as the textile, clothing and footwear industry, operate predominately on a piecework basis, but the piece rates do not determine the minimum wage of workers in these industries.

There are a number of general factors which will affect the likely employment opportunities for some people with
<https://www.humanrights.gov.au/publications/national-employment-initiatives-people-disabilitie...> 30/11/2017

- areas of job growth;
- gender segmentation and segregation;
- part-time work;
- flexible working arrangements;
- award restructuring;
- work redesign; and
- technology.

People with disabilities who currently are employed are p under one of four wage systems. The first system, which applies to the majority of workers with disabilities, is full award wages. The second, which applies to an extremely small number, is working with a slow worker permit for some proportion of an award wage. The third, which applies to most holders of slow workers permits, is a proportion of award wage supplemented by government income support, usually the invalid pension. The fourth is receipt of an income support supplemented with a wage payment. This last option applies to workers in sheltered workshops and some workers in supported employment programs.

With the exception of those who receive full award wages there are serious problems with each of these options. For the majority of people working with slow worker permits, wage levels are considerably lower than award rates. None of the permit holders examined exceeded the wage level at which eligibility for a pension ceases, but it is conceivable that some of the 3 per cent who earned more than 80 per cent of the appropriate wage rate may have voluntarily removed themselves from the pension as the pension payments would be extremely low. Removing pension eligibility for the other 97 per cent is clearly not an option. The wage income of most worker permit holders is insufficient to cover living costs.

For this group of permit holders, receipt of income support may make them vulnerable to unscrupulous employers who are prepared to pay minimal wages regardless of the worker's level of skills. The absence of effective monitoring arrangements in the permit system contributes to this vulnerability.

The major issue is that of ensuring that people with disabilities have access to integrated employment opportunities in the general labour market. There are greater difficulties presented to all involved parties where the person has severe disabilities. Insistence on full award wages for all workers will mean that many will not have this access, as employers will not be able to provide jobs for workers who are not as skilled as their co workers.

There may be a need for a system of wage supplementation or income support available in such circumstances, so the person with disabilities with lower levels has access to an equitable disposable income.

As none of the systems which currently operate is wholly satisfactory, the way is open to design an improved and effective system.

Developing a skills based wage system

There is an obvious need for standard methods of assessment, implementation, monitoring and evaluation, review and renewal processes and settlement of disputes to operate throughout Australia . The current systems run by state governments are not able to meet the needs of workers with disabilities who are able to work productively but at a reduced skills level. A new system needs to be developed to facilitate access for such workers into the general labour market.

Therefore, it is recommended that:

R4.1 The Commonwealth Government establish a national and comprehensive system of skills based wage assessment processes which enable the same principles and structures to apply to all relevant parties around Australia,

R4.2 AND that the Government negotiate with state governments to enable the current systems to be repealed so that the new system can operate in a clear manner and there be access to only one avenue of assessment.

A new system of job evaluation and skills assessment needs to be developed, which is value-free and which represents an accurate method of assessing the workers capacity in relation to other workers performing the same tasks.

R4.3 A working party be convened to undertake development of a system of measurement of skills for workers with disabilities in the target group. It should comprise representatives of relevant government departments, including the Departments of Community Services and Health, Social Security, Employment, Education and Training and Industrial Relations, as well as representatives of disability consumer groups, supported employment services, sheltered employment providers and of the union movement and private sector employers. As the Victorian Department of Labour conducts assessments as part of its slow worker permit system and currently is reviewing the system, a representative from that department should be invited to participate also.

One of the initial objectives of this working party would be to determine the most appropriate approach for determining the method of establishing the guidelines for skills based wage assessment processes.

One approach could be to establish a sub-committee of experts in the area of job evaluation and work design. They could cooperatively work out benchmarks for skills assessment, critically analyse the operation of current systems to ensure they do not disadvantage or discriminate against people with disabilities and develop appropriate mechanisms for monitoring and reviewing the level of skill increases.

There are several different legislative or administrative options which could be used to establish a national assessment system. These are:

- Commonwealth legislation;
- a standard clause in all federal and state awards; and
- standard guidelines on assessment developed by the Commonwealth Government and legislative amendments negotiated with individual states.

While the second option is a feasible and workable system it requires a longer implementation period. Therefore, it appears that the first option would provide the most effective and workable scheme for the benefit of workers with disabilities who need such a scheme, employers, unions and government as well as the community in general. Therefore, it is recommended that:

R4.4 Any new assessment system include the following components: the assessment of the level of skills of the individual worker, the processes and the parties to be involved and the methods of review and reassessment to be utilised and possibly the creation of a permit and the methods of issuing individual permits.

R4.5 AND the Commonwealth Government establish or adapt an agency to issue, monitor and review the new assessment and possible permit system and establish methods of assessment of the level of skills of the worker with disabilities.

If a national assessment scheme is implemented, there will need to be a responsible agency to administer the scheme. Therefore, it is recommended that:

R4.6 The assessment procedures should be placed in the industrial relations arena and be part of the duties of the registrar of the Industrial Relations Commission.

To ensure the proposed national assessment scheme is administered effectively and efficiently, there will need to be sufficient staffing resources.

Therefore, it is recommended that:

R4.7 The agency responsible for administering the new assessment system be provided with sufficient additional resources to create positions for skills assessment liaison officers to act as independent assessors of level of skills, and resources be made available for them or another appropriate agency to conduct publicity and educative programs to promote the employment of workers with disabilities and the concept and availability of skills based wages and provide relevant training for other staff.

Any skills based wage system introduced to enable the employment of non-competitive workers with disabilities in competitive work settings will require special provisions to ensure it cannot become part of the wage determinations process of competitive workers, whether disabled or not.

It seems most appropriate that the applicant for assessment is the worker. The assessment form would contain the name of the worker and the employer, the job to be performed and the proportion of the award wage to be paid. It would apply to that job and that employer only.

A review and renewal system would need to be built into the assessment procedures. It appears that an initial review every three months within the first six months of the operation of the assessment would be essential. Review periods and renewal periods after that could be made at different times depending on considerations relating to individual workers, but an annual review would be essential. Also, there would need to be an opportunity for a review to be requested by one of the parties, when it is perceived that the skill level has increased.

In the unlikely event that there is any dispute on the assessment result, the usual processes established under the industrial relations system could be activate.

Wage policy proposals

There are three essential elements to an effective skills based wage system:

- access to jobs;
- equity for individual workers;
- acceptance by employers, unions and the general community.

There are five policy options for developing an appropriate skills based wage.

Option A: Skills based wage

This option entails payment of a skills based wage only. It has the advantage of delivering a wage outcome commensurate with the skill level of the worker and could provide an incentive for the worker to increase skill levels. It has the disadvantage of potentially delivering wages below the level for a reasonable standard of living.

Option B: Skills based wage plus income support payment

This option recognises that a skills based wage may be below the tapered cut-off point which should enable continued receipt of some income security payment. As many people with disabilities work part-time, this option would ensure there is an income safety net through access to income support for such workers. This should apply also to people with disabilities who work full-time but are assessed as having a low level of skill and so receive low wages.

An advantage for employers is that they would be involved with the payment of the wages part of the policy only, and so the workers with disabilities would not require special administrative measures and the employer would not be required to submit any information to a government bureaucracy.

This option would provide incentives to individual workers, because as they increased their skill level and hence their wages they would be provided with an opportunity to cease to receive income support. Also, it increases the workers range of choices and hence flexibility.

Option C: Skills based wage plus employment subsidy

In this option, the total income received is equivalent to the appropriate award wage rate. The skills based wage component is paid according to the revised scheme. The employment subsidy component is assessed as the difference between the skills based wage and the appropriate award wage rate. The employer would pay the worker full award wage, and receive an employment subsidy paid by the govern merit.

One advantage of this option for workers on a skills based wage is that it ensures that they receive the same level of income as their co-workers.

There are some disadvantages. Employers may also be loathe to participate in a system which required them to do more paperwork and be subjected to closer bureaucratic scrutiny. Employees who were in receipt of an award wage equivalent might not be encouraged to increase their skills, as there would be no incentive to do so in the form of increased income. However, for workers who are not able to increase their skill level after appropriate training, this may not present any disincentive to increase skill level but provide a recognition of that situation.

This option would also provide a total income equivalent to the appropriate award wage with the advantages canvassed under Option C. It has the same disadvantages as Option C, except the automatic exclusion to DSS payments would not be included. This would provide significant advantages to part-time workers, who could be disadvantaged under Option C.

Option E: Skills based wage plus employment subsidy with total wage outcome equivalent to a minimum wage

A modified Option C could be considered. In this option, a skills based wage component would be paid as an employment subsidy, but instead of the total wage being equivalent to the award rate it would be equivalent to some minimum wage rate.

This option erases most of the advantages of Option C and further entrenches discrimination against people with disabilities. It has, however, the additional advantage of being possible to implement in a period of expenditure restraint. Also, it would benefit most workers who currently hold slow worker permits by delivering a proper skills assessment and better wage levels. Payment of a minimum wage would also provide an incentive for the worker to increase skills and have the capacity to leave the program.

Potential target group

A skills based wage system will not apply to all workers with disabilities. Its potential is for a small sub-group only.

To determine the potential target group for the new policy proposals, it is necessary to set the parameters of the analysis. The major determinants include the level of disability and age. Other relevant factors include the state of the labour market, the timing of the implementation, gender differentials, access to premises, transport and aids and appliances.

There are no reliable data on the probable skill level of people with disabilities or the anticipated skill level after training or with support. Consequently, it is not possible to make any firm predictions on the range of skill levels for people who are able to obtain employment on a skills based wage.

Through its funding mechanisms, the Department of Community Services and Health could develop information systems to enable it to analyse program data and use that data for further research.

Therefore, it is recommended that:

R4.8 The Department of Community Services and Health develop information systems, particularly in relation to people with disabilities utilising the new employment service types, on the demography of the group, covering such areas as age, level and type of disability, gender, skill level, previous employment history, previous pension or benefit history, occupation, industry and wage level.

There is no accurate measurement of the probable size of the potential target group for a skills based wage.

Using the 1988 ABS Survey on Ageing and Disability it is assumed that no more than 50 per cent of severely and moderately handicapped people eligible or qualified to receive invalid pension or sheltered employment allowance would come within the target group. Also, age would also be a significant factor affecting opportunities to enter the general labour market. For the older age groups, it is likely that less than 50 per cent would come within the target group. Hence, it is assumed that the maximum potential client group would be 50 per cent of those aged 15-29 with severe and moderate handicaps, 40 per cent of those aged 30-44 and 30 per cent of those aged 45-59.

This produces a total of 119,800 who would have any chance of entering the labour force on a skills based wage, if such an opportunity was available to them.

However, such a scheme would be voluntary. For a wide range of factors, many people would choose not to participate. Hence, it is further assumed that at any point the likely take-up would be no more than 50 per cent. That would mean that there was a maximum potential target group of approximately 60,000.

Costs and benefits

The data in the discussion paper indicate that almost all single people are financially advantaged under a skills based wage and an employment subsidy (Option C). A small proportion on the highest level of skill (80 per cent) and an award wage of less than \$290 would be marginally disadvantaged under the subsidy option.

Married people with a low level of productivity and a high award wage would be financially advantaged under the subsidy option. In all other cases, they would be financially advantaged under a skills based wage and a part pension (Option D) because of the higher rate of pension.

In all cases, a married person with two dependent children would be financially advantaged under the pension option (Option B) rather than the subsidy option (Option C), again because of the higher rate of pension.

There could be significant costs and benefits to the Commonwealth Government. The costs relate to a comparison between current levels of expenditure through the income support system and those further incurred by an employment subsidy scheme. The costs to the government vary depending on the status of the person, that is whether they are single, married or married with dependent children.

Net program costs

The costings in the discussion paper include the variables for the three main options. Option B includes the savings on pension through the impact of the tapered income test, the net effect on taxation receipts and outlays associated with displaced people moving onto unemployment benefit.

Option C includes the outlays in employment subsidy, the total savings on pension, the net effect on taxation receipts and outlays associated with displaced people moving onto unemployment benefit. Option D includes the outlays in employment subsidy, savings in pension through the impact of the tapered income test, the net effect on taxation receipts and outlays associated with displaced people moving onto unemployment benefit.

Option B would entail increased Commonwealth Government expenditure in the lower ranges of award wages. This is primarily because the reduction in pension outlays are less than the loss of taxation revenue and outlays on unemployment benefit. As the level of award wage increases, savings on pension increase at a greater rate than the loss of taxation revenue. Unemployment benefit remains constant. Above an award wage of around \$310-360, the Option results in an increasing level of savings to the Government except where the 80 per cent skill level is excluded. In that situation there is Government expenditure involved at all award wages, although the expenditure decreases as the award wage increases.

Option C would result in savings to the Government in the lower range of award wages, in some cases significant savings. This is because the savings on pension and increased taxation revenue far outweigh outlays on subsidy and unemployment benefit. As the level of award wage increases, outlays on subsidy increase at a greater rate than taxation revenue. As award wages rise, the Option eventually results in Government expenditure. When the lowest skill level of 20 per cent is excluded, then savings occur up to an award wage of \$390. When the highest skill level of 80 per cent is excluded, then expenditure rises once the award wage is over \$290.

Option D would result in Government expenditure for all levels of award wage. Outlays on unemployment benefit and subsidy exceed the reduction in pension outlays and increases in taxation revenue. As the award wage increases above \$250, the savings associated with pensions and increased taxation revenue rise at a greater rate than the outlay on subsidy until an award wage of around \$320 (unemployment benefit remains constant). At this point, the pension cuts out for those in full-time employment, slowing the rate of increase in savings associated with the pension. This point is when the Option involves the least Government expenditure. Beyond \$320, the cost of the option increases. When the lowest skill level is excluded, then the costs are between \$1,300-\$1,800. If the highest skill level is excluded, then the costs increase significantly and are between \$2,800-\$3,800.

The other initial outlay for the Commonwealth Government would be the costs of administration.

EQUAL EMPLOYMENT OPPORTUNITY

There are other issues, apart from wages, which need to be examined when considering the opportunities for people with disabilities to enter and remain in the general labour market. These issues include access to jobs, promotion, training and the other terms, conditions and benefits of employment.

One method of addressing any disadvantage or discrimination which a person with disabilities may face in

Anti-discrimination legislation deals with a situation after the event has occurred and provides rights and remedies through redress. The legislation establishes a series of acts of unlawful discrimination on specified grounds and covers a number of areas, including employment. A person who considers that they have been unlawfully discriminated against can make a complaint to an independent statutory agency. That agency will investigate the complaint and endeavour to settle it. Settlement can include the payment of compensation or damages, reinstatement or promotion or an order that the other party cease any further acts of discrimination.

EEO and affirmative action policies and legislation are a proactive approach to the elimination of discrimination and the development of a workforce based on the principles of equality and equity of access and participation.

In the policy discussion paper, *Affirmative action for women* (AGPS, 1984), the Commonwealth Government defined affirmative action as:

A systematic means, determined by the employer in consultation with senior management, employees and unions, of achieving equal employment opportunity. Affirmative action is compatible with appointment and promotion on the basis of merit, skills and qualifications. It does not mean women will be given preference over better qualified men. It does mean men may expect to face stiffer competition for jobs. This is not discrimination.

This definition is used in the discussion paper.

Affirmative action programs are part of a broader EEO strategy. These programs and strategies are aimed at eliminating all forms of discrimination against the identified target group and in promoting the concepts and practices of EEO. This involves an examination of the intentional and unintentional impact of employment policies and practices on the target group and the implementation of a program to eliminate the impact and to redress the disadvantages that have arisen. This ensures that the employment policies and practices are fair and equal for all employees and applicants for employment.

Anti-discrimination legislation

At a Commonwealth level and in four states, there is legislation addressing the issue of unlawful discrimination in employment against people with intellectual and physical disabilities. This legislation was passed in recognition of the particular issues confronting people with disabilities in relation to the labour market and the effects of the behaviour and attitudes of employers and co-employees about the capacity of individuals to undertake employment or certain types of employment.

Regulations under the *Human Rights and Equal Opportunity Commission Act 1986* provide the Commission with the power to investigate discrimination in employment on seven grounds, covering disability, which includes physical, mental, intellectual and psychiatric disability, impairment and medical reports. The regulations became operative on 1 January 1990.

The effect of the regulations is that the Commission may investigate and attempt conciliation of any complaint. If conciliation is unsuccessful, then the Commission may report to the Attorney-General. A complaint may be made in writing by an individual alleging an act or practice that constitutes discrimination. Also, the Commission may be requested by the Attorney-General to exercise these powers.

There is anti-discrimination legislation on the ground of physical impairment and intellectual impairment in New South Wales, Victoria and Western Australia. There is similar legislation in South Australia on the ground of physical impairment.

The Acts make it unlawful to discriminate on the ground of impairment and define direct and indirect discrimination. The employment provisions cover applicants for employment and employees. They also cover commission agents, contract agents, partnerships and membership of trade unions.

There are a series of exceptions which are based on a concept of "reasonable adjustment" or "reasonable accommodation". This means that it is not unlawful to discriminate where the changes or modifications required by the person with a disability can not reasonably be made in the circumstances, or where the person is not capable of doing the job because of the nature of their disability.

A person who considers that they have been unlawfully discriminated against on the ground of disability in <https://www.humanrights.gov.au/publications/national-employment-initiatives-people-disabilitie...> 30/11/2017

conciliated. If conciliation is not successful, or for several other reasons, the complaint may be referred to a quasi-judicial tribunal for a hearing. Usually, this hearing is conducted in public and all parties are legally represented.

There have been a number of major tribunal and court decisions which have interpreted the various state anti-discrimination laws, and some of these have involved the impairment provisions in the area of employment.

These cases demonstrate that most focus has been on people with mild disabilities and on people who have acquired their disabilities after birth, frequently in work related accidents. Members of the target group of the discussion paper have not been involved in litigation and have made limited use of the confidential complaint mechanism either.

EEO Policies and legislation

There is no specific EEO or affirmative action legislation which covers people with disabilities in private sector employment.

In relation to the Australian Public Service, government departments are responsible for eliminating unjustified discrimination against people with disabilities under the EEO provisions of the *Public Service Act 1922*. They must report annually to the Public Service Commission.

A department is required to make "reasonable adjustment" to the job environment to minimise any adverse effect of a person's disability at work. It is only justifiable not to do so where "undue hardship" can be demonstrated. The EEO guidelines set out some general principles for making adjustments whenever it is necessary, possible and reasonable.

There are two specific programs run for people with disabilities. The Intellectual Disability Access Program (IDAP), by regulation under the Public Service Act, allows discrimination in the appointment process in favour of a person who has an intellectual disability and who is recruited through IDAP. This means that the person is considered on individual merit, rather than through competition in the open, standard selection process.

The second program is run under the Australian Traineeship Scheme, which has a requirement that 5 per cent of traineeships are reserved for members of groups classified as disadvantaged on a CES assessment. The CES definition includes people with disabilities.

The *EEO (Commonwealth Authorities) Act 1987* covers most Commonwealth statutory authorities and includes the same definition of "designated group" and some of the general provisions as the Public Service Act. Authorities are required to lodge an annual report covering the development and implementation of their EEO program with either the relevant Minister or with the Public Service Commission.

In New South Wales and Western Australia, there is specific legislation requiring government departments and statutory authorities to prepare and implement EEO management plans and lodge them annually with the Director of equal opportunity in public employment. In Victoria, there is a general provision relating to government departments, with no monitoring or enforcement mechanisms.

Future strategies for EEO

The protection and promotion of the rights of people with disabilities is an important principle which needs widespread acceptance and recognition within the community. Employment provides access to many other benefits of life, and can improve a person's quality of life substantially.

One barrier is the discrimination by some employers and coworkers against an applicant for a position or an employee with disabilities. The protection of the rights of such workers or potential workers must be protected.

A national and comprehensive scheme would be the most appropriate approach, so that the rights and remedies available to a person are not determined by place of residence. Such a scheme would need to address the disadvantages and deficiencies of the current systems and adopt an innovative approach to overcome these shortcomings. The provision of an adequate legal framework is an essential step in securing the appropriate rights and remedies for people with disabilities. It is not the only avenue for change, but it provides an important catalyst in creating full and equal access and participation in the labour market.

R6.1 That the Commonwealth Government pass national, comprehensive legislation which provides that people with disabilities have the right to employment without discrimination and that an employer must establish that any discrimination was reasonable in the circumstances.

R6.2 AND that extension to other appropriate areas be considered.

R6.3 Such legislation address the issues of definitions of disability and incorporate effective complaint-making and complaint-handling mechanisms to ensure they meet the special needs of people with disabilities, including provisions for group actions and for others to institute complaint proceedings on behalf of an individual or group of people with disabilities.

R6.4 In any development of national, comprehensive legislation to provide rights in employment and other areas for people with disabilities, consideration be given to providing direct access to the Federal Court for a hearing when conciliation can not or should not proceed and that a determination by the Human Rights and Equal Opportunity Commission not be established as an integral part of the process.

R6.5 In any development of national, comprehensive legislation to provide rights to employment for people with disabilities, a clause similar in terms to section 33 of the Sex Discrimination Act be included to enable the development and implementation of EEO and affirmative action strategies for people with disabilities.

It is recognised that the Commonwealth Parliament can only pass legislation which is authorised under the Constitution. There are a range of powers which could be used. In relation to employment, the "corporations" power provides the most comprehensive coverage as to enable laws to be made with respect to "foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth". The "banking" and "insurance" powers and the "trade and commerce" power could provide a further series of planks. Also, the "external affairs" power could provide some Constitutional basis.

The second major part of the strategies for future developments is in the area of EEO and affirmative action policies and programs.

The barriers which prevent or inhibit people with disabilities from full and equal participation in the workforce need to be addressed in a national comprehensive manner. While anti-discrimination legislation provides some remedies for unlawful discriminatory practices and actions, there is a demonstrated need for targeted, specific programs to create employment opportunities for people with disabilities.

Therefore, it is recommended that:

R6.6 The Commonwealth Government explore all potential strategies in relation to the development and implementation of EEO and affirmative action programs in both private and public sector employment, including local government, to provide opportunities for full and equal integration into the general labour market for people with disabilities.

In order to implement this recommendation, a range of strategies need to be explored. These are canvassed below.

Strategy 1: Amend Affirmative Action Act

Some disability consumer groups have recommended that the Affirmative Action (EEO for Women) Act be amended to cover people with disabilities.

The Act is designed to address the structural barriers confronting women in the labour market.

The major barriers for people with disabilities at present is access to jobs and promotions. These barriers arise partly because of employer and community perceptions about the capacities of people with disabilities to work and stereotyped notions and behaviour which form the basis of these perceptions.

Therefore, it appears that it is not appropriate at this stage to amend the Affirmative Action Act because it is designed to address different labour market issues, although there is some marginal overlap.

Strategy 2: Contract compliance

"Contract compliance" is the term used to describe a program which is conducted in the USA. The basic requirement is that companies which do business with the Government over a certain value must have an affirmative action program for specified groups. There is a similar program in Canada.

These programs are based on the concept that the Government has the right to determine the terms and conditions of any contract between itself and another party. The Government further demonstrates its commitment to the overall principles of EEO or employment equity by declining to do business with private sector companies or sections of companies which do not comply also with these principles.

This area needs to be further explored within the Australian context. A program could be introduced whereby contractors for tenders over a certain value and with a certain number of employees could be required to demonstrate that they were conducting an affirmative action or EEO program of recruitment, selection, promotion, training, etc. for people with disabilities. The organisation which currently supervises the tender processes or a body specialising in EEO principles could administer the program. The program could cover not only government departments, but also statutory authorities.

One disadvantage of the proposal is that the purchasing role of the government in its various guises is limited in terms of the industries with which it contracts. The major part of the purchases are from different parts of the manufacturing sector. There also is some involvement with the construction industry, the transport and storage industry and the finance and banking industry.

Strategy 3: Targetted government grants and subsidies

The Commonwealth Government provides a range of funding to private sector companies, such as special assistance programs, export development grants, research and development grants, etc. These could be "tied" so that a company over a certain size, either by the number of employees or some other determinant such as payroll tax, or one that receives a certain size grant or subsidy has to participate in a special recruitment program to provide a designated number or proportion of jobs for people with disabilities. If the company did not agree, then they would be ineligible for the grant.

A second method of tying Commonwealth Government grants is placing conditions on grants received by the state governments. Grants provided for particular purposes, such as road construction, could be used to provide employment opportunities for people with disabilities.

One disadvantage is that this isolates particular industries and does not have the advantages of a program which focusses on all industries.

Strategy 4: Tax subsidy or rebate

Employers could volunteer to participate in a targetted employment program, and could be entitled to some form of subsidy or rebate to cover the costs.

However, this would run counter to recent changes to the tax system to standardise rebates and subsidies. Also, it may be unnecessary. The Australian Commissioner of Taxation has issued a taxation ruling which covers expenses incurred by an employer when implementing an affirmative action program.

Strategy 5: Expansion of IDAP

The existing Intellectual Disability Access Program (IDAP) covers Commonwealth Government departments only. This program could be expanded by expanding the target group of employers to be covered.

One important component of this program is that it addresses the fundamental issue of access to jobs. However, the focus of the program at present is on people with intellectual disabilities, and as such it appears to have too narrow a base to be expanded in any comprehensive sense.

Strategy 6: Targetted access program

A broadly based targetted access program designed to address the needs of people with intellectual, physical or multiple disabilities to enable them to gain access to the general labour market could be developed and implemented.

This program could be targetted in several different ways, particularly in relation to employer groups, industry groups and participants. One focus could be on the type of employers to be involved in the program. The program
<https://www.humanrights.gov.au/publications/national-employment-initiatives-people-disabilitie...> 30/11/2017

could initially be implemented in Commonwealth Government departments, statutory authorities and wholly-government owned corporations.

Another focus could be on private sector employers. This could be determined on the basis of size or by industry, or by an amalgamation of both factors.

However, an initial focus determined by the size of the workforce could limit the impact in cities and towns without any or many large employers. This could arise particularly in smaller country towns, where employment opportunities generally and particularly for people with disabilities is limited already.

An alternate focus could be on key industries or key jobs. Some industries are engaged in a higher overall growth rate in terms of new jobs than others. Therefore, an initial focus could be on such industries as construction, transport and storage and finance, property and business services.

Similarly, some occupations are undergoing more vigorous employment growth than others. Therefore, an initial focus could be on the occupations of salespersons and personal service workers and labourers and related workers.

The other major focus could be on the participants in such a program. There is a strong argument that the initial focus should be on younger people, as they have most to benefit in the long-term through access to the labour market. This would reduce their dependence on long-term income support and enable them to participate more fully in an integrated community. One initial focus could be on people aged 6-25, with a higher age range of up to aged 30 being developed at a later stage. This would not mean that people outside the proposed age range would be excluded, but that the primary focus would be on the nominated range.

A further focus could be on women participants, to ensure that there was no gender bias in the targetting, either in an assessment of an individual's capacity to perform a job or in the particular job which women should be targetted towards. A target of a 50 per cent participation rate by women could be established to ensure women with disabilities are provided with the same opportunities as their male counterparts.

A targetted program enables employers to examine the structure of their workforce and determine where there are suitable openings for people with disabilities and then take positive steps to recruit or promote people to those positions. The numerical or proportionate target would be set with the assistance of external indicators which provide information on the available pool of potential employees and the type of employment they were seeking or were capable of performing.

Strategy 7: Targetted DSA funded programs

The Department of Community Services and Health funds a number of competitive employment training and placement programs and supported employment programs under the DSA. These are required to meet the principles and objectives of that Act.

One area of development could be to require these services to target particular industries or particular jobs, which are identified in that geographical location as being in a growth phase. The proportion of placements and training could be set to meet local requirements. Currently, the department enters into a contract with each individual service under section 10 of the Act. That contract could be adapted to include clauses which require the service to focus on identified industries or jobs. Such a requirement would be a condition of their ongoing funding, and be linked to the targetted access program. This would not mean that their activities were exclusively in the targetted areas, but a proportion of their activities would be required to meet the targets.

A further focus of targets could be to ensure that the participation rate of women was equal with that of men. A target of 50 per cent participation rate by women could be included in the terms and conditions of funding and would enable an emphasis on the particular needs of women with disabilities.

Strategy 8: Expanded training and work experience programs

There are a range of programs funded by the Commonwealth and state governments which provide training, both on and off the job, and work experience. These programs could be adapted so that a proportion of places were reserved for people with disabilities.

Strategy 9: Pre-employment training programs

young people with disabilities. The program could be aimed at providing skills, including writing job applications and interviewing skills.

Strategy 10: Employer education campaign

There appears to be some employer resistance to the employment of people with disabilities. In order to address the issues which arise from misconceptions and stereotyped notions about the potential for the opportunities for people with disabilities, there could be a targeted information campaign.

Strategy 11: Campaign for job redesign

A major issue for people with disabilities is the lack of information and knowledge by employers about the potential for job redesign. Some employers in Australia have undertaken such redesign activities and have opened opportunities for workers with disabilities. It appears that there is a need for information on such programs to become more widely available so that employers can benefit from the activities of others.

An information campaign which encouraged employers to examine employment opportunities in a creative manner through the use of examples could provide an important lead. A network of employers could be established to ensure that there were benefits available on a broader scale when an individual employer made some adjustments.

Strategy 12: Work attendant carer scheme

For some people with physical disabilities, working is not a possibility because they need a level of personal care throughout the day which is not available in the general labour market. One mechanism for providing some further employment opportunities for that group of people with physical disabilities could be the establishment of a work attendant carer scheme.

This would mean that a person would be employed specifically to assist an individual or several individuals with their personal care needs while they are at work. For example, this may require visiting the person several times per day to assist with toileting or providing daily transport to and from work. If there were several people who require such services with one employer or within a convenient distance, the attendant may be able to provide assistance to that group.

Strategy 13: Affirmative action agency education campaign

One particular target group for EEO and affirmative action programs is women with disabilities. Under the Affirmative Action Act, the Director of Affirmative Action conducts various different education campaigns. She could develop a program aimed at encouraging women with disabilities, especially young women, to broaden their choice of occupation when making decisions about potential jobs. Also, she could develop a program aimed at private sector employers to highlight the issues relating to the special needs of women with disabilities in the general labour market.

Strategy 14: Community education campaign

There have been a number of general campaigns aimed at educating the community about the abilities and potential of people with disabilities. A new campaign could be specifically employment related and aimed at ensuring that employees, families and others understood their responsibilities in the elimination of discrimination on the ground of disability. It could demonstrate the advantages of working in an integrated environment for all parties involved and focus on the abilities of certain categories of workers.

Strategy 15: Family support network

It is clear that family support is essential for addressing the personal issues confronting a person with disabilities entering the general labour market, whether they are leaving sheltered employment or not. One method of reducing those potential problems is through a network of family support.

Key local parents could be used as the basis for such a network. They could be used as positive role models for other parents and supporters and could be involved through an active program of contact with other families.

Strategy 16: Transport review

There are many issues in relation to transport for people with disabilities, and many variables such as geographical location, type of disability and level and type of public transport. The absence of accessible public
<https://www.humanrights.gov.au/publications/national-employment-initiatives-people-disabilitie...> 30/11/2017

The Minister for Community Services and Health could write to the Minister for Transport and request that the issue of transport for people with disabilities be put on the agenda of the Transport Ministers Conference and dealt with as a priority.

Strategy 17: Disability rights officer

People with disabilities have rarely used the complaint mechanisms under anti-discrimination legislation, for a variety of reasons.

An agency administering existing state anti-discrimination legislation could apply for funding under the DSA for a short term grant, for example for two years, to focus on the disability provisions of the legislation. The objective of such a project would be to ensure that the rights provided under the legislation and the manner in which complaints are dealt with and the type of action or results which can be achieved become better known amongst the target group.

UNIONISATION

For many people, workforce participation includes union membership and the opportunity to participate in union affairs. The vast majority of workers in supported or sheltered employment are not union members.

The principles and objectives of the Disability Services Act provide that people with disabilities have the same rights as other members of Australian society. These rights include the opportunity to have access to paid employment and its associated conditions, rights and responsibilities. Access to membership of trade unions is an important aspect of working life for many people.

The fundamental issue to be addressed is to ensure that workers with disabilities are able to exercise the same rights as other workers and are able to join trade unions and participate fully in all activities and undertake all the responsibilities of membership of that union when they chose to do so. This issue means that the related issues of access to membership and barriers to both membership and participation need to be examined.

Workers in sheltered employment have the same rights to organise collectively and join trade unions as other workers. Also, they have the right to seek to be covered by an industrial award or part of an award through the appropriate registered trade union. Although union activity in sheltered employment has been limited, there are indications that this is changing.

There is one union specifically for workers with disabilities in sheltered employment. However, in line with the principles and objectives of the DSA, it does not seem appropriate for the development of any more generic unions. Workers with disabilities should be encouraged to join the appropriate mainstream union.

Even where people with disabilities are working in the general labour market, they can confront barriers to joining and participating in union affairs.

These barriers or perceived barriers include:

- lack of information available to people with disabilities on the role of trade unions;
- lack of information available to trade unionists on disability;
- perceptions of trade unionists that there will be communication difficulties with people with disabilities;
- perceived difficulties that people with severe disabilities will not have the legal capacity to enter into a contract with a union;
- the level of dues payable when a worker is on a low wage level;
- potential for demarcation disputes where sheltered workshops are involved in a range of work usually covered by different unions;
- effect of union rules and hence coverage in relation to sheltered employment;
- opposition in the general community to the role of trade unions; and
- effect of sheltered workshops being excluded from industrial relations legislation.

Future directions for unionisation

There are a range of strategies which could be implemented to address these barriers and perceived barriers.

Option 1: Information for workers with disabilities

There is an apparent need for information on the advantages of union membership to be presented to workers with disabilities. The information could explain the way unions operate and the benefits and responsibilities of membership.

This project could be jointly organised through the Department of Community Services and Health, the ACTU and state trades and labour councils. It could be funded under the Disability Services Act (DSA).

Option 2: Information for unionists

Union officials and union members require information to address stereotyped views about people with disabilities. Methods of communicating effectively with workers with disabilities need to be further developed. Also, information on particular issues which arise in relation to workers with disabilities and particular workplaces need to be developed.

One method of addressing these issues is to develop some training material. The cost of developing a training manual and of printing and distribution could be funded under the DSA, as it would conform with the principles and objectives.

Option 3: Trade union training

TUTA performs a major role in the training of union officials and elected workplace representatives. There are two approaches which could be developed by TUTA.

A special section on members with disabilities could be incorporated into all general training courses conducted by TUTA. A second approach could be the development of a specific course designed to address the special issues of members with disabilities, such as appropriate communication and consultation mechanisms and the abilities of such members.

The cost of developing the special section of the general course and the special course could be funded under the DSA, as it would conform with the principles and objectives.

Option 4: Union resources

An important issue is the availability of resources within unions and trades and labour councils to explain to workers with disabilities the advantages of joining a trade union and to service any specific needs once they become members.

A union or council could apply for funding under the DSA for a short-term grant to employ a Disability Access Officer for a particular period, for example two years, to develop strategies to inform potential members of their right to join a union and the advantages of membership.

Option 5: Increased ACTU involvement

The ACTU could undertake a specific project to encourage affiliates to give priority to the issue of recruiting workers with disabilities into the union movement by providing appropriate information and advice to individual unions and working with TUTA to develop suitable training material.

The ACTU could apply for funding under the DSA to be able to engage the necessary resources and people to undertake such a project.

LEGAL ISSUES

There are a number of legal issues which affect workers with disabilities.

Definition of "employee"

Under common law principles, it appears that a 'master and servant' relationship exists between *management* and workers with disabilities in sheltered employment, and that a contract of service exists.

Other statutory obligations

For workers with disabilities in sheltered employment, it appears that as an employment relationship exists they
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- workers compensation;
- occupational health and safety;
- annual leave;
- long service leave;
- maternity and adoption leave;
- compassionate leave;
- dismissal and suspension;
- exemption from awards; and
- direct deductions from wages.

The issue of a contract of employment between the management of sheltered workshops and workers with disabilities needs to be addressed. While some workshops have written contracts, many appear not to have such a document. The advantage of a written contract is that it provide clear and concise information to both parties to the contract, and to the supporters and advocates of people with disabilities.

Therefore, it is recommended that:

R9.1 Contracts entered into between the Department of Community Services and Health and the management of sheltered workshops and supported employment have as a term that it is a condition of funding that all new entrants to the workshop or clients of the service be provided with a written contract of employment and that all existing workers with disabilities be provided with a written contract of employment by December 1992 and that the written contracts be in a form which is easily understood and which covers all the terms and conditions of employment.

This would ensure that both parties are in an equitable situation and that there was a clearly defined set of terms and conditions of employment which were binding on both parties and were in a form which could be easily understood.

FUTURE DEVELOPMENTS

There is not one single factor but a range of factors, some of which interlink, which need to be addressed. If the principle that people with disabilities should have the right to full and equal access to and participation in the labour market is accepted, then it must be accepted also that strategies need to be designed to remove or reduce these barriers to their participation. Without such action, the present limitations and restrictions will continue. If these issues are not addressed while the workforce undergoes restructuring and transformation, then the interests of people with disabilities will be ignored and the necessary changes will not be incorporated. Specific measures to address these issues will further the implementation of the objects, principles and objectives of the Disability Services Act (DSA).

The recommendations in the discussion paper are designed as a comprehensive approach to the major issues and priorities in further developing opportunities for people with disabilities to be integrated into the general labour market without discrimination, disadvantage or disincentives.

Co-ordinated approach

While most recommendations are separate and could be divided up for the purposes of implementation, this would lose the overall focus of the discussion paper. Therefore, they should be considered within the framework in which they were developed - that is, as separate parts of an overall strategy.

To achieve the primary focus, it is proposed that a plan of action be developed and that it be called the "National Employment Initiatives for People with Disabilities".

The plan would have four major objectives:

1. To further develop employment opportunities for people with disabilities in the general labour market.
2. To establish effective mechanisms to eliminate any discrimination, disadvantage or disincentive which confront people with disabilities when endeavouring to enter, re-enter or remain in the general labour market.
3. To implement consultative mechanisms to identify an agreed course of action resulting from the recommendations in this discussion paper.

The plan should be divided into two parts to canvass separately the wages issue and the other three issues EEO, unionisation and legal issues.

The rationale for this proposal is that the issues surrounding the recommendations on future developments in the area of wages involve a range of government and non-government parties which have a specific and identified role to play in consultations.

Part 1 Wages

The first part of the plan should address the issues of skills based wages. The nature of these issues appears to indicate that the initial forum to consider the recommendations and further courses of action is the Disability Taskforce.

The taskforce could develop a co-ordinated Commonwealth Government response to the recommendations, as all relevant Commonwealth Government departments are represented on the taskforce. The major role played by the Department of Community Services and Health in identifying the need for these policy issues to be addressed should be continued in the process of identifying future policy options and strategies. The other departments with a clear and identified involvement in the area are the Department of Social Security, the Department of Employment, Education and Training and the Department of Industrial Relations.

During the course of developing a co-ordinated Government response, it will be necessary to consult with parties outside government, particularly the ACTU, employers' representatives and disability consumer and provider groups. The taskforce could nominate the most appropriate departments and individuals to undertake that process, possibly through the establishment of a special committee. Also, it will be necessary to consult with state governments in relation to establishing any new assessment system and the inter-relationship between the existing slow worker permit systems and any such new system.

The initial priority during this process should be to progress the methods of assessment for any skills based wage system (see recommendation 4.3). Unless and until there is a system which is acceptable to all parties and which does not further entrench discrimination against people with disabilities, then there can be no positive progress to implement any national, comprehensive changes to existing structures.

Under the auspices of the Disability Taskforce, the relevant departments, particularly the Department of Community Services and Health, should establish a working party to examine the issues and establish a consultancy to develop guidelines for the assessment process. The consultancy could utilise the experience of placement services and others involved in the existing slow worker permit system and in the assessment systems used in the general labour market. Workers with disabilities on slow worker permits could be approached to ascertain whether they would be willing to participate in a pilot study. While there are only approximately 150 such workers around

Australia, they represent an identified pool of people involved in the process.

At the conclusion of the work of the consultancy and the working party, a set of guidelines could be issued which present a comprehensive and workable solution to the assessment process. These guidelines would address the pertinent range of issues and present practical methods of assessing a worker's skill level without bias or discrimination.

After that process has been undertaken, a new system for establishing a skills based wage system could be established.

Part 2 EEO, unionisation, legal issues

The framework and timelines for the recommendations and strategies on EEO, unionisation and legal issues can be seen as being part of a unified package. Therefore, consultations and future developments can be structured as an integrated approach. The initial priorities should be in relation to the targetted access program (strategy 6) and the campaign for job redesign (strategy 11). Taken together, these two strategies provide a complementary underpinning to meet the overall objectives of the plan. They enable a focus on initiatives to demonstrate the capacities and capabilities of people with disabilities and their abilities to enter the general labour market. When linked with anti-discrimination legislation on the ground of disability (recommendations 6.1, 6.2, 6.3), they will provide a comprehensive framework for future developments. Consequently, the development and passage of such legislation should be a priority also.

Other developments could be undertaken initially by the Department of Community Services and Health as an
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could work in the work attendant carer scheme (strategy 12), the employer education campaign (strategy 10), the community education campaign (strategy 14) and the family support network (strategy 15). Also, recommendation 9.1 in relation to introducing written contracts of employment between workers and management in sheltered employment and supported employment could be initiated through discussions with relevant bodies.

Contact could be established with the Affirmative Action Agency (strategy 13) and the Minister for Transport (strategy 16) to establish their responses to the proposed strategies. As the Department of Community Services and Health initiated this discussion paper, the preliminary contact should be undertaken by officers of that department.

Similarly, contact could be continued with the ACTU, trades and labour councils and some relevant national unions to explore the methods of implementing the recommendations in chapter 8 and the response of those bodies to the recommendations. As the Department of Community Services and Health initiated this discussion paper, the preliminary contact should be undertaken by officers of that department.

Consultation processes

Specific action for a number of different options or strategies should be undertaken simultaneously with wider consultative processes. This report has been framed as a discussion paper, and while it makes some recommendations they are based on an assumption that there will be further discussion amongst and between interested parties and the community prior to implementation.

Effective national consultation processes around such a discussion paper can be difficult to organise to achieve the maximum results for the resources and time expended. While the role of different parties in some of the recommendations, options and strategies is recognised, the consultation processes must cover all areas raised in this discussion paper.

Some consultation methods can disadvantage some groups. For example, response by way of written submissions can advantage larger, well-organised groups with resources to prepare submissions and disadvantage smaller groups or individuals without the organisational capacity to undertake such work. This is especially so given the target group of this report. Also, larger groups have expended considerable resources in the preparation of submissions and oral evidence to the Senate Standing Committee on Community Affairs.

A consultation process is proposed to meet the needs of all parties and in recognition of the particular needs of the target group.

The department could establish a steering committee, chaired by an independent expert, to oversee the consultation processes and provide a focus for the results of the processes.

Representatives of all major parties could be included on this committee. It is recognised that all other parties have access to established avenues to consult their membership and providing responses. However, people with disabilities, their supporters and advocates are not necessarily part of any organisations.

To ensure that people with disabilities are provided with a mechanism to participate in the consultations, forums could be held in each state or major region. These could be held three months after the distribution of the discussion paper, to allow time for the recommendations to be debated generally.

While there are various mechanisms to arrange such forums, it appears that there are two feasible options. One would be for the department's state offices to arrange the forums. An alternate approach would be for the department to fund a disability consumer group or a combination of groups in each state or region to organise the forum on its behalf. The latter option may allow more flexibility in response and broaden the potential audience for the forum.

The results of the discussions at the forum could be fed back to the steering committee, and it would be anticipated that at least one steering committee member would be able to attend each forum. This would ensure that the committee's final analysis reflects those discussions.

While that process was occurring, the other parties could be involved in the preparation of their own responses through consultation with their membership.

After those processes had been undertaken, a targeted national conference could be held. The steering committee would be responsible for the overall organisation of the conference and such matters as development

The rationale behind this proposal is that a smaller, targeted conference after a period of general discussion means that the responses are related to the recommendations and enable a coherent analysis to be presented to government. This would reflect the views and responses of all interested parties and individuals to the content of the discussion paper.

A brief report on the outcome of the consultation processes could be prepared, through the auspices of the steering committee. This report could identify priorities and could raise other issues which had arisen during the course of the consultations but which were not canvassed in this discussion paper. It must be stressed that these processes will relate only to the issue of employment initiatives for people with disabilities, and not to other issues which are relevant for this group.

Resources

The immediate resource implications are for the Department of Community Services and Health in relation to the development and implementation of a range of consultative mechanisms, including working with and through the Disability Taskforce. There are resource implications for a number of the options and strategies, including staffing resources at a bureaucratic level and funding of agencies outside the Commonwealth Government to undertake some of the duties and functions.

To ensure that any implementation is effective and able to achieve its objectives, there must be a commitment of adequate resources from all parties involved in the various processes.

Responsibilities

The range of factors, options and strategies which are analysed in this report means that there is no single identifiable party which carries the sole responsibility for any implementation of the options and strategies in this discussion paper. Rather, there are a number of different parties which have varying roles to play.

The Commonwealth Government has a clear role in terms of the delivery of services and the implementation of new and existing policies, programs and legislative provisions. State governments have a similar, and sometimes overlapping, role in some areas and an independent role in others.

People with disabilities and their parents, supporters and advocates have responsibilities to ensure that they are aware of changes which could improve the economic well-being and other areas of life for people with disabilities by *any* increase in their opportunities to enter the general labour market.

Disability consumer and service provider groups have responsibilities in the same area, although their primary focus and methods used to transmit information and advice may differ.

The major parties in the general labour market also have responsibilities to ensure that that market operates without discrimination and disadvantage towards people with disabilities. The two main parties are the trade union movement and its constituent members and employers' representatives and their constituent members.

The Australian community also has a major role to play in eliminating discrimination against people with disabilities, in assisting in creating opportunities in integrated workplaces and in actively participating in, and supporting, programs and policies designed to achieve that objective.

If this inter-meshing of responsibilities is accepted and acted upon by all the identified parties, then the future development and implementation of pro-active policies and programs for workers and potential workers with disabilities will be able to be realised.

Conclusion

The strategies and priorities discussed in this chapter have been developed to provide a focus to the on-going work in the area of increasing integrated employment opportunities for people with disabilities and are put forward as a possible framework for that to continue.

The principles which underpin the discussion paper and which the recommendations, options and strategies seek to implement provide a comprehensive framework for further developing employment opportunities for people with disabilities. They need to be adopted by all relevant parties and while the responsibilities for different approaches may vary, there needs to be a co-ordinated path to be pursued so that these principles will be achieved.

Attachment E

Cleaner Duties Statement

You will be required to carry out the following duties.

1. Empty bins every day
2. Vacuum clean all carpeted office areas every second day and spot clean every other
3. Sweep and mop floors in canteen and hallways every day
4. Strip and polish flooring in canteen and hallways once a month
5. Sweep and mop toilet floors using
6. Clean and disinfect toilet bowl and basin every day
7. Restock daily toilet paper, hand soap and toilet paper
8. Dust all accessible flat surfaces with a damp cloth once per week
9. Clean and polish mirrors

Tasks involved in each of these duties.

1. Empty bins every day

- Locate desk bins in offices, canteens and toilets
- Empty waste in 82 litre garbage bags
- Ensure bin liners are replaced if soiled or damp
- Secure garbage bags and throw in the dumpster at the back of the building

Safety Hazards – Check for leakage to ensure any slip hazards and sharp items that can cause injury.

2. Vacuum clean all carpeted office areas every second day and spot clean every other

- Check Vacuum cleaner to ensure in safe working order
- Empty vacuum bag if full and replace
- When vacuuming make sure you cover all accessible areas

Safety Hazards – Ensure vacuum power lead is not a trip hazard to yourself and others.

3. Sweep/ vacuum and mop floors in canteen and hallways

- If vacuuming follow task number 2
- Sweep accessible areas and pick up waste with a dustpan
- Ensure correct colour coded mop and bucket (Green) is used on floors
- Ensure correct cleaning products are used and ratio is measure as per safety instructions on label
- Signage placed on area prior to mopping the area
- Ensure mop is squeezed so that excess water is removed
- After each use mops to be cleaned and buckets emptied ready for next day

Safety Hazards – Slippery floors, clear signage at all times, correct mop and bucket used as well as clear understanding on cleaning products.

4. Strip and Polish floors in hallways and canteens once per month

- Check equipment to ensure in safe working order
- Ensure correct scouring brush is attached to machine
- Strip and polish accessible areas

Safety Hazards – Ensure power lead is not a trip hazard to yourself and others. Ensure equipment is operated safely as per instruction

5. Sweep and mop toilet floors

- Sweep accessible areas and pick up waste with a dustpan
- Ensure correct colour coded mop and bucket (Red) is used on floors
- Ensure correct cleaning products are used and ratio is measure as per safety instructions on label
- Signage placed on area prior to mopping the area
- Ensure mop is squeezed so that excess water is minimal
- After each use mops to be cleaned and buckets emptied ready for next day

Safety Hazards – Slippery floors, clear signage at all times, correct mop and bucket used as well as clear understanding on cleaning products.

6. Clean and disinfect toilet bowl and basin every day

- Ensure correct cleaning products are used and ratio is measure as per safety instructions on label
- Clean basins with cleanser and rinse bowls
- Scrub toilet bowl with toilet brush and disinfectant toilet bowl
- Urinals to be rinsed and urinal tablets to be replaced if needed

Safety Hazards – Slippery floors, clear signage at all times, correct colour cloths (Red) to be used as well as clear understanding on cleaning products.

7. Restock daily - toilet paper, hand soap and paper towelling

- Locate stock items to be restocked
- Open dispensers and restock paper towelling /or toilet paper in the correct side up
- Ensure dispensers are closed securely to avoid spillage
- Open soap dispensers and replace soap cartridge if completely empty

Quality Check – Ensure all paper items are not jammed in dispensers to cause over fill

8. Dust all accessible flat surfaces with a damp cloth once per week

- Wipe all accessible areas with damp green cloth ensuring excess water is at removed

9. Clean and polish mirrors in toilet amenities

- Ensure correct cleaning products (Window cleaner) is used as per safety instructions on label

Safety Hazards - Clear understanding on cleaning products

All cleaning products to be stored in a safe manner and equipment to be packed away each day.

Attachment F

Ryan Park MP

Member for Keira



23 August 2017

Mr Chris Christodoulou
Chief Executive Officer
Greenacres Disability Services
PO Box 1419
WOLLONGONG NSW 2500

Dear Chief Executive Officer

Thank you for your correspondence outlining your concerns surrounding a proposed application to the Fair Work Commission to change the assessment of wages in Australian Disability Enterprises (ADE).

I understand the proposed changes to shift from skills based to productivity based wage outcomes threatens the jobs of thousands people with disabilities in the Illawarra as it is likely to negatively impact on the viability of the current employment model.

Any action on this matter is for the local Federal Members of Parliament to consider on its merits however I would like to offer this correspondence as a letter of support that could be submitted alongside any application made to the Fair Work Commission.

Greenacres Disability Services is an exemplary organisation providing critically important jobs to people with disabilities in Wollongong and the Shoalhaven. My involvement with Greenacres has helped me to understand the value of the purpose, social interaction and routine people derive from their jobs and their interaction with Greenacres.

Greenacres is a backbone organisation in the Illawarra selflessly caring for vulnerable members of the community. Without its valuable services a segment of our community would have little opportunity for meaningful employment and broader engagement in society.

I encourage the Fair Work Commission and all parties involved to review any proposal to change the current wage model with significant rigour and diligence to avoid unintended consequences. I implore the Commission to prevent changes that would likely result in the loss of any jobs for people with disabilities or the closure of the very not-for-profit organisations that dedicate their time and resources to provide employment.

I understand the proposal to the Fair Work Commission will be met with considerable opposition from Greenacres and other Disability Services Enterprises as they strive to protect a wages model that will keep the maximum number of people gainfully employed.

I support the position of Greenacres Disability Services to avoid changes that will lead to the loss of any jobs for people with disabilities or the closure of any Disability Services Enterprises.

Please do not hesitate to contact me at my office on (02) 4285 1588 if you would like to discuss the matter further.

Yours sincerely



Ryan Park MP
Member for Keira
Shadow Treasurer
Shadow Minister for the Illawarra



The Hon Jane Prentice MP
Assistant Minister for Social Services
and Disability Services
Federal Member for Ryan

MC17-011189

Mr Chris Christodoulou
Chief Executive Officer
Greenacres Disability Enterprises
2/4 Ralph Black Drive
NORTH WOLLONGONG NSW 2500

Dear Mr Christodoulou

Thank you for your email of 27 September 2017, also to the Minister for Social Services, the Hon Christian Porter MP, regarding supported employment and wage assessment tools. Your email was referred to me as the matter falls within my portfolio responsibilities.

I understand that representatives from the Department of Social Services (the Department) replied to your correspondence and visited Greenacres Disability Services (Greenacres) on 9 November 2017. I trust this engagement with the Department provided you an opportunity to discuss your concerns. I encourage your continued engagement with the Department on these matters.

You may be aware the Department wrote to the Fair Work Commission on 8 November 2017, to clarify that the Department's indication of a preference in relation to other wage tools in the *Supported Employment Services Award 2010* did not constitute a concluded Government position. The Australian Government believes that this is a matter for the Award parties and the Fair Work Commission. I understand the Department does not intend to make any further submissions.

The Government will continue to follow the proceedings in the Fair Work Commission and ensure future policy settings allow for the ongoing viability of ADEs while also meeting Australia's obligations under international law.

Thank you for your invitation to visit Greenacres. My Office will be in contact to arrange a suitable time for a visit.

Yours sincerely


JANE PRENTICE
Assistant Minister for Social Services and Disability Services
29 NOV 2017



**SENATOR CAROL BROWN
LABOR SENATOR FOR TASMANIA
SHADOW MINISTER FOR DISABILITY AND CARERS**

**HON SHARON BIRD MP
FEDERAL MEMBER FOR CUNNINGHAM**

**STEPHEN JONES MP
SHADOW MINISTER FOR REGIONAL COMMUNICATIONS, REGIONAL
SERVICES, TERRITORIES AND LOCAL GOVERNMENT**

Chris Christodoulou
CEO
Greenacres
2/4 Ralph Black Drive,
NORTH WOLLONGONG NSW 2500

Dear Chris

Labor supports Australian Disability Enterprises

Thank you for contacting me to discuss the challenges currently facing Australian Disability Enterprises (ADEs).

Labor supports Australian Disability Employers and recognises their vital role as employers of people with disabilities. We also acknowledge and value the training, life skills and social opportunities that people with disabilities access through their employment by ADEs. In addition Labor strongly supports ADEs providing pathways to open employment.

We understand that there is anxiety in the sector due to the forthcoming Modern Award Review and issues arising from the transition to the NDIS.

Labor believes the current Government has actually failed in its responsibility to support employees, their carers and families and the ADEs by not working jointly with the industry to address these fears. Labor believes that ADEs should receive real and practical support from Government to maintain viability in this complex changing employment and workplace environment and in the context of the NDIS. A more active role in developing solutions is called for rather than the "hands-off" approach the current Government has now adopted.

Labor will follow the Fair Work Commission proceedings closely and will ensure that the Government is held to account in ensuring the ongoing viability of ADEs and the valuable work they do.

Please be assured that Labor will continue to support ADEs and the people who work in the enterprises, and will continue to call for the Government to take real action to ensure on-going viability.

We look forward to our visit to your enterprise on January 17 next year and to meeting with you, your employees and management.

Yours sincerely



Senator Carol Brown



Hon Sharon Bird MP



Stephen Jones MP

7 December 2017

FAIR WORK COMMISSION

4 Yearly Review of Modern Awards

Supported Employment Services Award 2010

Matter No: AM2014/286

STATEMENT OF HEATH ALEXANDER DICKENS

I, Heath Alexander Dickens, of 76 Harley Crescent, Condell Park, New South Wales, state as follows:

BACKGROUND

1. I am employed as the Business Service Operations Manager of Disability Services Australia Limited (DSA) an Australian disability enterprise (ADE) providing supported employment services.
2. This is my third statement in this matter. My first statement, dated 22 September 2017, was filed on 25 September 2017. My second statement was dated and filed on 21 November 2017.

STATEMENT OF PAUL CAIN DATED 21 NOVEMBER 2017

3. I have reviewed a copy of the statement provided by Paul Cain, filed and dated 21 November 2017.

Response to paragraphs 220 to 246 of Mr Cain's statement

4. In response to paragraph 220 of Mr Cain's statement, my comment made in my first statement, namely "*Employees working in open employment have their wages assessed and set by the SWS*" was made in the context of this particular matter, and the discussion and commentary I provided in my statement with regard to:
 - (a) employees with a disability;
 - (b) the operation of the Supported Wage System (SWS); and
 - (c) to contrast with the situation in most ADEs, which do not use the SWS.
5. I do not believe that my comment would mislead the Fair Work Commission, nor was this my intention.
6. I concur with Mr Cain that there are some people who have a disability, and whose disability does not prevent them from working at the full award rate. These people do not have their wages assessed under the SWS.

7. In the footnote number 44 to paragraph 228 of Mr Cain's statement, it states that "most" employers in open employment that engage an employee with a disability, have only one person on a supported wage in their employ. This is consistent with my experience in open employment. From a practical perspective, the single employee with a disability is a small percentage of the business' means of production. In my experience, it is for this reason that employers in open employment are able to employ someone with a disability on a wage, assessed under the SWS, which does not necessarily reflect the person's productive capacity or the value of the persons work per se. Open employers have far greater capacity to absorb a wage of a single employee that does not necessarily relate to their "productive value" to the business.
8. The situation in open employment is very different to the situation in an ADE where people with a disability are the only means of production and jobs are heavily modified to accommodate the workers' abilities.
9. At paragraph 231 of Mr Cain's statement, he states that the SWS is "*not about speed, but rather about the volume and quality of work.*" From my perspective, an area of contention is the "quality" aspect of a supported employee's performance. In my experience working at DSA, the very essence of supported employment is to modify, customise and "break down" roles to accommodate the supported employees' abilities and minimise the complexity of their tasks in order to ensure that they are able to achieve a level of quality in their performance of the task. To imply that this high level of customisation of supported employees' tasks is comparable to the level of customisation that occurs in open employment is not an accurate reflection of what happens in open employment compared with ADE employment.
10. In addition, to state, as Mr Cain does in paragraph 239 of his statement, that jobs in open employment are being modified to the same extent as in ADEs is, with respect, fundamentally incorrect.
11. Jobs are modified in open employment. However, this does not occur to the same extent as it does within an ADE environment.
12. I have first-hand experience working in both open employment services and in supported employment services. In my experience, jobs in supported employment are modified to a significantly greater degree than in open employment. In most cases, in open employment jobs are hardly modified or re-designed at all.

13. This is highlighted by a discussion paper recently released by the Department of Social Services entitled, "Ensuring a strong future for supported employment". Page 16 of this document lists the key differences between open and supported employment in Australia. The Department notes that, in relation to supported employment "*ADEs create employment opportunities through designing jobs around the individual abilities of people with a disability. ADEs provide significant workplace modifications to accommodate the abilities of their workforce.*" Whereas, in relation to open employment, the Department notes that "*[g]enerally a job will not be redesigned for a DES participant, rather a DES provider will focus on finding a 'good job match' for the participant's abilities*". A copy of the Department of Social Services Discussion Paper is attached to this statement at **Annexure "A"**.
14. At paragraph 246 of his statement, Mr Cain asserts that the recent modifications to the SWS "*were not made to address differences in employment setting*". This statement is misleading. The agreed modifications to the SWS arose as a result of a lengthy conciliation process whereby employers identified aspects of the SWS that they believed made it inappropriate to apply in the context of supported employment in an ADE. The background context and subsequent modifications to the SWS were made directly in relation to the different employment settings.

Response to paragraphs 28 to 31 of Mr Cain's statement

15. I would also like to respond to paragraphs 28 to 31 of Mr Cain's statement.
16. In these paragraphs, Mr Cain appears to imply that the funding ADEs receives from the Commonwealth Government provides enough support to, in effect, compensate or supplement the persons productivity by funding the ADEs to provide the support that supported employees need in an ADE. The funding is intended to cover the cost of ADEs proving the ongoing support needs of employees with a disability. However, the reality is that it does not cover this cost. Even with significant support many supported employees are only able to achieve a very limited level of productivity.
17. At paragraph 31 of his statement, Mr Cain states that:

The SWS requires the assessment of an employee's performance to be undertaken while receiving the same level of support and supervision that would be reasonably available to other people who do not have a disability. This ensures a fair and accurate assessment of productivity against an agreed performance standard to achieve an award rate of pay based on typical workplace expectations rather than

introducing into the assessment disability related factors that are dealt with from other funding sources.

18. However, it is misleading (and frankly unrealistic) to assert that because ADEs are funded to support people in the workplace, this has no relevance to a person's work performance and should not be taken into account.
19. The level of support provided to a supported employee, specifically to achieve a certain level of performance, is directly relevant to the employee's performance. It is a direct input that enables the employee to achieve a certain level of performance. In other words, it enhances the employee's levels of performance, therefore it is a crucial component to be considered when assessing an employee's performance. To ignore a specific, continuous input that enables a person to achieve a level of performance, or supplements their performance, leads to an inaccurate assessment of the person's performance under usual circumstances.
20. Given this, I contend that the support a person receives to perform a job is inextricably linked to their performance. It does not logically follow that because a person's performance has been supplemented, or enabled, due to a funded support it is therefore irrelevant. In fact, the challenge for any wage assessment under these conditions is to ascertain what part of the performance is due solely to the employee, thus determining the appropriate wage level, and what part the support provided is responsible for the level of performance.
21. Mr Cain's statement at paragraph 31 that "*disability related factors that are dealt with from other funding sources*" is also incorrect. The government funding provided for support only pays for a portion of support provided to supported employees. Employee supports are funded by a combination of government funding and income derived from commercial activities.
22. Also in paragraph 31, Mr Cain states "*Support funding for employees in ADEs is considerable*". This statement is misleading.
23. The funding levels provided to ADEs (a current average of \$11,800 per employee/per annum) is considerably lower than funded supports that would otherwise be apportioned to a typical supported employee with an intellectual disability in other settings (i.e. outside of supported employment in an ADE). For example, a supported employee with an intellectual disability who would, in the majority of cases, qualify under the NDIS for non-employment support funding e.g. Day Program funding, would receive an average hourly funding rate of \$31.00 per/hour. Currently, the average hourly rate of funding for supported employees in

an ADE is \$9.86 (based on national funding per annum and average hours worked by employees in ADEs).

24. The funding Mr Cain refers to, by its very nature, ensures a level of support and supervision that would not be *"reasonably available to other people who do not have a disability"*. The high level of supervision provided to supported employees exists right up to, and immediately following, an assessment. In my first-hand experience with SWS assessments, the employees' work performance is assessed during 3 x 15 minute intervals. This method of assessment ignores the person's usual working circumstance and presumes that this is how the person usually works. In my opinion this is a key flaw of the SWS methodology when applied to a person who requires continuous support to perform their job.
25. The overwhelming majority of employees in ADE supported employment require constant supervision and assistance to enable them to perform their job. This is patently not the case for people who do not have a disability.
26. This is also, in my experience, a key difference between employees with a disability in open employment. In my experience with open employment, a key condition of employment from employers is that employees with a disability do not require significant levels of supervision. In most cases this is because open employers do not have the resources to provide constant supervision.
27. The fact that 4 per cent of DES participants have an intellectual disability illustrates the threshold most employers have regarding the need for ongoing supervision.

General response to Mr Cain's statement

28. Throughout his statement (including in paragraph 217) Mr Cain repeatedly states that the SWS assesses the performance of an employee against the *"quality and quantity of work to be achieved to earn the full rate of pay for a job task for the relevant classification of work"*.
29. In the majority of cases however, employees in supported employment are doing jobs or tasks that have been significantly modified or broken-down to the extent that it would be unfeasible to employ a person on a full award rate to complete such a job or task. This fact does not lend itself to a genuine like-for-like comparison such as described by Mr Cain.
30. For example, at DSA we have employees whose primary task is to unpack a shipper (i.e. a box) of items and place them on the work table for the next person in the process to

complete more intricate aspects of the overall task (in this case further unpack items, re-label the product and re-pack the product into individual packaging).

31. The employees undertaking the unpacking part of the process have been assigned to this task due to their inability to complete the more complex parts of the process. However, the unpacking aspect of the job is only a very small part of the overall job for which our customer is charged (the customer pays a unit price for the entire job, they are not charged per aspect of the task).
32. Under these circumstances it would be almost physically impossible for a person to achieve the quality and quantity of work to earn the full award rate for completing this specific task – it simply does not earn enough income for any employer to employ someone at full award rate to only complete this task.
33. In my opinion, it is fundamentally incorrect for the SWS method of assessment to assume a person would be employed at a full a full award rate to complete such a drastically modified or reduced task. It is a false premise under which the SWS methodology is applied.
34. Further to this, in paragraph 199 of his statement Mr Cain states *“The SWS has demonstrated in open employment and in ADEs since 1994 that it is an appropriate pro-rata wage assessment for people with significantly disability who require ongoing support”*. I am unsure of the evidence Mr Cain has relied upon to draw this conclusion.
35. In my opinion, the following differences between open employment and supported employment conflict with the inference that because the SWS has worked in open employment it will work in supported employment:
 - (a) a very small sample in open employment, i.e. currently only a very small proportion of people in open employment have their wages assessed by the SWS, whereas all employees in supported have their wages assessed by a pro-rata wage assessment tool;
 - (b) in open employment the person is the only employee of the business being paid an SWS assessed wage;
 - (c) open employment is a business that employs (usually) one person with a disability, compared to an ADE where every employee has a significant disability;
 - (d) two very different levels of supervision requirements, i.e. between open employment, where a basic level of supervision is provided, compared to supported

employment, where a significant level of constant supervision is provided to every employee; and

(e) limited levels of job modification or job break-down in open employment compared to significant levels of job modification and break-down in supported employment.

36. Due to these reasons I believe Mr Cain's assertion that because the SWS has been used in open employment it therefore follows that its use in supported employment is flawed.

STATEMENT OF ROBERT MCFARLANE DATED 21 NOVEMBER 2017

37. I have reviewed Robert McFarlane's statement dated 21 November 2017.

38. In response to paragraph 28 of his statement, Mr McFarlane states that by allowing an employee with a disability in open employment to complete "*essential basic tasks*" it often allows "*other workers to spend more time on more complex tasks equally important to business efficacy*".

39. In my view, this again highlights the difference between supported employment and open employment. This is because the overwhelming majority of workers in supported employment in an ADE have a significant disability. ADEs do not have the option of assigning the simple tasks to just one of their employees and allowing the other employees to get on with running the business. Employees with a disability are an ADEs business. Nearly all complex tasks are completed by people with significant disabilities and are modified or broken-down in supported employment to allow employees to participate in the workplace.

40. Throughout Mr McFarlane's statement he refers to several ADEs whose employee's wages are assessed under the SWS. I am unable to comment on the veracity of his statement in regard to these ADEs as I note there is no information or statements specifically from these ADEs themselves. I am however aware of ADEs whom have made submissions to the Fair Work Commission in this matter outlining the adverse impact the adoption of the SWS has had on their organisations.

41. In paragraph 40 of his statement, Mr McFarlane states that some employers "*have gone down the job creation path on their own initiative, motivated by ideas of social responsibility*".

42. In my experience with employers in open employment, social responsibility is the biggest contributing factor to those employers creating a position for a person with significant disabilities. The wage rate these employees are paid are often a minor consideration for

these employers due to the employee comprising a very small part of their workforce (mostly they are the only employee paid under the SWS). In my opinion, the methodology and associated wage outcomes under the SWS would come under far greater scrutiny from these employers if every one of their employees had a significant disability and who were the business' sole means of production.



Heath Alexander Dickens

14 / 12 / 2017

Date



Australian Government
Department of Social Services

Discussion paper

Ensuring a strong future for supported employment

December 2017



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Ministers' Preface

Supported employment has a strong legacy in Australian communities, providing real social benefit to people with disability, their families and carers. Across Australia, there are around 20,000 supported employees, predominantly with moderate to severe disability.

The economy also benefits from their employment. Deloitte Access Economics in 2011 found that closing the employment gap between people with disability and people without, by as much as a third, could boost Australia's Gross Domestic Product by \$43 billion over the decade.

During the financial years 2015-16 to 2019-20, the Government has built on our commitment to supported employment, providing more than \$1.3 billion in funding. This includes funding to assist Australian Disability Enterprises (ADEs) during a period of significant adjustment. ADEs have been supported to respond to a changing industrial relations environment, while also preparing to take advantage of the National Disability Insurance Scheme (NDIS).

Within the NDIS, there are opportunities for the more than 170 existing ADEs, and new and emerging providers, to offer employment support and provide greater access to Disability Employment Services.

In 2016-17, the National Disability Insurance Agency (NDIA) reported that 16 per cent of NDIS participants aged 15 to 24 years and 26 per cent of NDIS participants aged 25 years and over were in paid employment. We expect more NDIS participants will aspire to work and can be supported to do so in the future.

As the Minister for Social Services and Assistant Minister for Social Services and Disability Services, we want to ensure future Government policy allows for supported employment, while also meeting Australia's commitment under international law to promote the rights of persons with disabilities to work.

This Discussion Paper is a chance for you to have your say. It builds on the work of the Disability Employment Taskforce in 2015 and complements reforms to Disability Employment Services that we announced in May 2017 to increase the employment of people with disability.

We invite you to continue working with us to ensure a strong future in supported employment for people with disability.

The Hon Christian Porter MP
Minister for Social Services

The Hon Jane Prentice MP
Assistant Minister for Social Services
and Disability Services

7 December 2017

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Introduction

Supported employment plays a vital role in improving the social and economic participation of many people with disability in Australia.

A greater quality of life is enjoyed by people who experience a sense of economic contribution and earn their own discretionary income from employment.

The 2011 Deloitte Access Economics report, *'The Economic Benefits of Increasing Employment for People with Disability'* concluded that Australia would increase its Gross Domestic Product by \$43 billion if the employment gap between people with disability and people without were reduced by one third.

The Australian Government spends over \$220 million each year to support around 20,000 people, with moderate to severe disability, to receive employment support in their workplace.

Funding to support these employees is transitioning to the National Disability Insurance Scheme (NDIS). The NDIS re-envisages how people with disability receive support, allowing more choice and control over how, when and where supports are provided, and gives people with disability certainty they will receive the supports they need over a lifetime. This presents new opportunities for people with disability to choose their supports, and for providers of employment supports to operate in the growing open market of the NDIS.

While the disability employment landscape is changing, the Government is committed to supporting people with disability to work where they have the capacity to do so. The number of people with disability receiving 'employment supports' in full scheme NDIS is expected to grow significantly beyond the existing cohort of 20,000 supported employees.

This is good news for people with disability and good news for the Australian economy. It provides current Australian Disability Enterprises (ADEs) an opportunity to continue supporting employees in a new NDIS market.

Purpose of the discussion paper

This discussion paper describes the future landscape for supported employment and asks how the sector can position itself to transition to the full scheme of the NDIS.

It intends to continue a conversation with supported employees, their families and carers, services providers and advocates about how the Government can support people with disability to work. It builds on the work of the 2015 Disability Employment Taskforce and the May 2017 announcements to reform Disability Employment Services (DES).

This discussion paper invites input from interested stakeholders on the following areas:

- principles to guide the Government's future policy direction for supported employment
- strategies to support employment participation for people with disability
- strategies to support employers and service providers to provide effective employment opportunities
- strategies to facilitate greater choice and control for NDIS participants.

People with disability and their families and carers, ADEs, employers of people with disability, peak bodies and other interested stakeholders are invited to make a written submission on any or all of the questions raised in this discussion paper.

All submissions will be considered in future policy development.

Submissions are to be uploaded on **engage.dss.gov.au** by **9 March 2018**.

The Department of Social Services (DSS) will treat all submissions as **non-confidential**, unless clearly indicated. Please keep your responses succinct where possible. You may choose to respond to all or a selection of the questions within this paper.

What is the landscape for employment of people with disability in Australia?

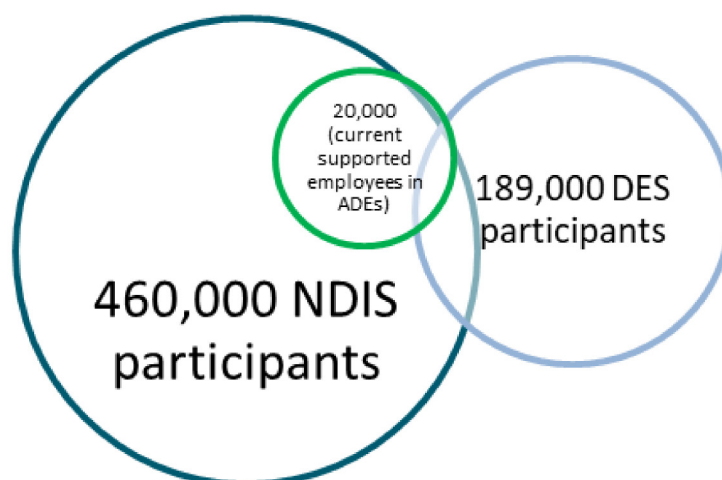
According to the Survey of Disability, Ageing and Carers (SDAC), in 2015 there were over 2.1 million Australians with disability of working age. Of this group, only 53.4 per cent were in the workforce or actively seeking work, compared to 83.2 per cent for people with no disability. Furthermore, only 25 per cent of people with a profound or severe core activity limitation were active participants in the labour market. This means that over a million Australians of working age with disability were outside the workforce and there is significant scope to support more people with disability into employment.

The Australian Government is committed to its obligations under the United Nations Convention on the Rights of Persons with Disabilities to provide equitable access to work. To fully support and enable the right of people with disability to work, the Government is working to ensure that supports are available.

The National Disability Strategy 2010–2020 provides a ten-year national policy framework for all levels of government to improve the lives of people with disability. Outcome three of the Strategy focuses on economic security, a critical element of which is employment.

Despite significant investment by the Government in employment services, the labour force participation rates for people with disability have remained largely unchanged for the past 20 years. DSS estimates around 237,000 Disability Support Pension (DSP) recipients of working age may be eligible for employment assistance, and are not participating in employment, education or an employment assistance program.

The terms ‘open’ and ‘supported’ employment have been used to describe the different employment settings and employment supports available to people with disability to enable them to participate in work, or to build capacity for work.



'Supported' employment generally refers to employment in enterprises that have as their primary purpose employment of people with disability, and where the majority of employees have disability. There are often mixed industries within enterprises to cater for their employees, and there are higher levels of job customisation.

'Open' employment refers to employment where the jobs are open to all people, with or without disability. People with disability who wish to receive assistance to find employment in the open labour market can register with a DES provider.

Funding for 'supported' employment is transitioning to the NDIS. Many NDIS participants are, and will be, eligible for employment services to achieve or remain in employment. The shift to open employment may increase over time as NDIS participants take advantage of new opportunities through the NDIS to address their immediate support needs and build capacity to find, trial and maintain open employment.

The Government will invest around \$5 billion in employment services and supports for people with disability over the next four years through DES and ADEs as they transition to the NDIS.

For the purposes of this discussion paper, the key focus is supported employment. Its interface with open employment services and settings is important to fully understand the options available to supported employees as NDIS participants.

Commonwealth employment services for people with disability

jobactive is the Government program supporting more Australians into work, including people with disability. It connects job seekers with employers and is delivered by a network of *jobactive* providers in over 1,700 locations across Australia. Through a *jobactive* provider, people with disability can access the same range of supports that are available to all Australians, to assist them to find and keep a job. *jobactive* providers offer flexible and tailored services to meet a job seeker's assessed needs. There are currently around 800,000 job seekers receiving assistance in *jobactive*, of which around 200,000 are registered as having a disability.

Disability Employment Services (DES) is the Government's specialist open employment program for people with disability whose disability is assessed as the main impediment to them gaining employment.

There are two separate sub-programs within DES. These are:

1. Employment Support Services for job seekers with permanent disability and an assessed need for regular ongoing support in the workplace, and
2. Disability Management Services for job seekers with disability, injury or health conditions who are not expected to need long-term support in the workplace but may need irregular flexible support to keep a job.

The program in its current form was introduced on 1 March 2010. Through DES providers, the program delivers a suite of employment services to people with disability, injury or health condition, in the open labour market.

Services provided through DES include: allied health services to assist people to improve their work capacity, assistance with job search, résumé preparation, and support for education and training. Related initiatives in open employment provide wage subsidies and targeted employer engagement. These supports are tailored to each individual to help them into long-term, sustainable work. Participating in DES also satisfies mutual obligation requirements for people on some types of income support who are required to actively look for work in order to receive their payments.

There are currently around 189,000 participants in DES. DSS currently contracts 117 DES providers in around 2,000 sites, across 110 non-remote geographical areas nationally. Since March 2010, there have been over 375,000 job placements.

DES providers are not funded to employ the people with disability who they support to seek employment. Rather DES providers offer support to enable participants to prepare to access and maintain work in open employment. Following community consultation, key changes will be implemented from 1 July 2018, to improve DES performance.

Profile of DES Participants

- 44 per cent of DES participants have a physical disability
- 38 per cent have a psychiatric disability
- Four per cent have an intellectual disability
- DES participants must have an assessed current or future work capacity of eight hours per week as determined by an allied health professional via an Employment Services Assessment or a Job Capacity Assessment (ESAt/JCA)
- DES participant ages range from under 20, to over 65, with an average age of 43
- 78 per cent of DES participants are accessing Newstart or Youth Allowance
- 11 per cent are accessing the DSP
- Over 95 percent of DES participants are paid a full award wage, and
- At any given time there are 189,000 DES participants accessing support through DES providers that are collectively paid up to \$800 million annually.

DES funding

From financial years 2017-18 to 2021-22, the Government will invest over \$3.4 billion in DES and associated services to assist people with disability to gain employment in the open labour market.

Under the banner of DES, the Government also funds a range of services targeted to support employers to employ people with disability, referred to as Employment Assistance and Other Services, which includes the Employment Assistance Fund, the Supported Wage System, the Wage Subsidy Scheme and the National Disability Recruitment Coordinator.

Service fees are paid to DES Providers to cover the services delivered to DES participants while receiving employment assistance.

DES Outcome Fees are paid in recognition of the amount of work DES Providers do to assist each participant to find quality employment that suits their individual skills and interests.

Ongoing support for DES participants in the workplace can be provided in a range of ways:

- flexible ongoing support is paid at \$400 for each instance of support, up to six instances in any six-month period
- moderate and high ongoing support in the workplace attracts fees of up to \$13,200 annually. Moderate ongoing support may include 12 instances over six months and high ongoing support up to 24 instances in a six-month period. The modes of contact and time supporting a participant are not prescribed.

Work Based Personal Assistance

Work Based Personal Assistance is predominantly accessed through the NDIS. However, DES providers also offer Work Based Personal Assistance with fees paid at \$35 per hour for Work Based Personal Assistance provided by the DES Provider and \$45 per hour for assistance purchased from another provider.

Supported employment and Australian Disability Enterprises

The Government's supported employment program for people with disability is the Disability Employment Assistance (DEA) program.

DEA funding for existing supported employees who are eligible for the NDIS is transitioning to the NDIS. Under the DEA program, case-based funding, which has been in place since 2004, is provided according to an online assessment used by ADEs to record the work-related support needs of a supported employee to maintain their employment.

ADEs employ and deliver support to around 20,000 supported employees. ADEs employ people with moderate to severe disability to engage in a wide variety of work and offer: social, behavioural and cognitive assistance; physical and personal care; communication and workplace environment assistance and adjustment; special medical assistance and other assistance to connect with other services.

ADEs have historically operated with funding for a capped number of clients. With opportunities for market expansion under the NDIS, ADEs are well positioned to attract more employees, where their commercial businesses provide opportunity to do so.

The NDIS transforms the way in which the disability services market operates. Participant choice and control is a central pillar of the NDIS, which will change the nature of the relationship between consumers and service providers. Due to the scale of the reform, the maturing of the new NDIS disability services market is expected to take up to ten years.

By the end of 2017, over 8,000 supported employees are expected to have transitioned to the NDIS. In total, around 19,000 supported employees of the existing 20,000 will be transitioned by the time the NDIS is at full scheme.

The NDIS is expected to reach full scheme by mid-2020 with the number of people receiving 'employment support' in full scheme expected to grow significantly beyond the existing number of people working in supported employment.

The National Disability Insurance Agency (NDIA) is currently mirroring the ADE case-based funding model and is considering whether pricing controls for employment support are required.

Profile of supported employees

- 70-75 per cent of supported employees have an intellectual disability
- The average weekly wage for a supported employee is \$121.72
- The average hourly rate is \$5.61, with wages ranging from \$1.00 per hour to full award wage
- All supported employees qualify for DSP
- The pension income test free area (including for DSP) from 1 July 2017 is \$168 per fortnight for singles and \$300 per fortnight for couples combined
- Supported employees must be able to work a minimum of eight hours of work per week as determined by employer, employee and family and carers
- The average hours worked are 23 per week
- Supported employee ages range from under 20, to over 65, with 41 the average age, and
- The average cost of employment support from the Government per supported employee is \$11,800.

Supported employment sector funding

For existing supported employees in ADEs, over \$1.3 billion in funding is allocated between 2015-16 and 2019-20. Over \$220 million per year is available through the DEA Program and associated initiatives, which deliver employment supports. Over \$180 million has been made available in transitional funding support to assist the sector to adjust to higher wages, and undertake business planning for the future and the transition to the NDIS.

Funds supporting ADEs to access business improvement advice have been fully committed. Use of wage supplementation has been low while industrial relations issues associated with wage assessment are under consideration by the Fair Work Commission.

	2015-16 \$m	2016-17 \$m	2017-18 \$m	2018-19 \$m	2019-20 \$m	Total \$m
Service Delivery funding						
Disability Employment Assistance (CBF)	221.817	211.263	221.271	227.177	232.173	1,113.701
Quality Assurance Payments	1.047	1.096	1.077	1.052	1.076	5.348
CBF Program Support	10.415	0.78	3.000	0.000	0.000	14.195
Total						1,133.24
Transitional support funding						
BSWAT Wage Supplementation and Case Management	6.861	2.400	26.390	52.807	42.737	131.195
New Wage Tool (Varied SWS)	0.978	15.322	7.754	7.777	0.000	31.831
Business Improvement	8.986	6.014	1.008	1.014	0.000	17.022
Total						180.048



Annual average employment support and transitional funds available on per person basis

Supported employment funding

Currently ADEs are funded for a capped number of places, with a price per place for each person with a disability. This case-based funding is paid monthly in arrears to the ADE while the supported employee remains in employment.

Current case-based funding core fees – 2017-18	Amount (GST exclusive)	
Intake Fee	\$634	
Employment Assistance Fee (or Pre-DMI Fee) (per month, for up to 12 months)	\$634 (up to a maximum of \$7,608)	
Employment Maintenance Fee	Amount Per Month	Amount Per Annum
DMI ¹ Level 1	\$375	\$4,500
DMI Level 2	\$634	\$7,608
DMI Level 3	\$953	\$11,436
DMI Level 4	\$1,264	\$15,168

There are a number of supplementary payments to ADEs, which are additional to case-based funding.

	ARIA Classification:	Amount Per Month	Amount Per Annum
Current Rural and Remote Service Supplement	Highly Accessible:	Nil.	Nil.
	Accessible:	\$1,509	\$18,108
	Moderately Accessible:	\$3,017	\$36,204
	Remote:	\$4,526	\$54,312
	Very Remote:	\$6,029	\$72,348

¹ The Disability Maintenance Instrument (DMI) is an online assessment used by ADEs to record the work-related support needs of a supported employee to maintain their employment. The DMI provides a score for a supported employee, which translates into one of four funding levels for support with 'DMI Level 1' being the lowest funding level (representing lower support needs) and 'DMI Level 4' the highest (representing higher support needs). The DMI is not aligned to the number of hours worked. For example, an employee working eight hours who is assessed at a 'DMI Level 4' will receive the same funding as a supported employee working 25 hours who is also assessed at a 'DMI Level 4'.

Work-based personal assistance also attracts an additional fee for services.

**Work Based
Personal
Assistance
(2015-2018)**

Either:

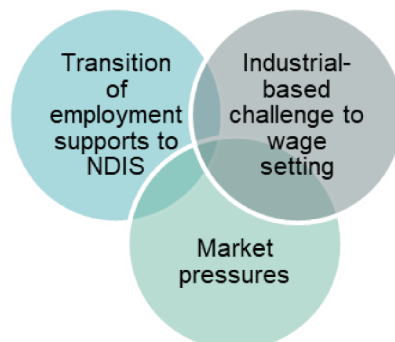
- \$35 per hour where the work based personal assistance is provided by an Approved Support Worker from within the Outlet
- or
- \$45 per hour where the work based personal assistance is purchased from a second agency, and is provided up to a maximum of 10 hours per week.

Key differences between the current operation of open and supported employment in Australia

Supported Employment – Australian Disability Enterprises	Open Employment – Disability Employment Services
<p>ADEs receive funding to assist directly employing people with disability and particularly to provide the supports those people need at work.</p> <p>ADEs act as a link, helping people with moderate to severe disability gain training and experience to confidently step into open employment or to continue in supported employment if they choose.</p> <p>ADEs create employment opportunities through designing jobs around the individual abilities of people with disability. ADEs provide significant workplace modifications to accommodate the abilities of their workforce. The majority of an ADE’s workforce has a disability.</p> <p>Once placed in an ADE, a supported employee generally immediately commences in a job role.</p> <p>An ADE will adjust a supported employee’s daily job tasks to suit their abilities, meaning an equivalent open employment job role may not be completed by one ADE employee.</p> <p>A supported employee will often receive daily access to employment and personal care supports by support staff embedded within (and employed by) the ADE. This allows for a greater intensity and frequency of support that can be provided to individuals.</p>	<p>DES providers are not funded to directly employ people with disabilities looking for work; rather they are funded to help those people gain employment readiness, to then gain employment with employers looking for workers in the open labour market.</p> <p>Generally a job will not be redesigned for a DES participant, rather a DES provider will focus on finding a ‘good job match’ for the participant’s abilities. A DES participant may also access wage subsidies available through <i>jobactive</i>.</p> <p>A DES participant is generally not working with a majority of staff with disability, but rather in a mainstream workplace.</p> <p>On entry to DES, a participant is generally not yet employed.</p> <p>A participant can receive services and assistance to prepare for work, build workplace skills, undertake training, find work, change jobs, and access workplace modifications. Most DES participants who achieve employment exit the program as independent workers.</p> <p>Once a DES employment placement has been made, a DES provider may provide varying levels of ongoing employment support and personal assistance to DES participants (i.e. flexible, moderate or high ongoing support). Support contacts are usually <u>not</u> provided on a daily basis.</p>

Challenges faced by the supported employment sector

The current disability employment landscape presents three challenges for supported employees and the businesses that employ and support them.



Transition of employment supports to the NDIS

The NDIA is currently replicating DSS case-based funding for assessed support levels for existing ADE workers, regardless of hours worked. The allocation of funds in individual participant plans does not yet accommodate all case-based costs (e.g. remote services delivery).

The future market will be 'demand driven' meaning ADEs and other organisations must market themselves as providers of employment for all NDIS participants who have a component in their package to purchase employment supports.

The Government envisages a more open market in a mature NDIS, and stronger pathways may be established between 'open' and 'supported' employment.

In an open NDIS market, the need for supported employment pricing controls is not yet resolved.

Industrial relations based challenge to wage setting

In recent years, ADEs have experienced uncertainty about the way they calculate wages due to the ceasing of the use of the Business Services Wage Assessment Tool (BSWAT) in 2015.

The finding of the Full Federal Court of Australia in December 2012, of indirect discrimination in the use of the BSWAT for two supported employees in *Nojin v the Commonwealth* may have implications for the use of other wage tools.

The Fair Work Commission is considering the removal of all competency-based wage tools through the Modern Award Review to the *Supported Employment Services Award 2010*, the relevant industrial award for enterprises offering supported employment.

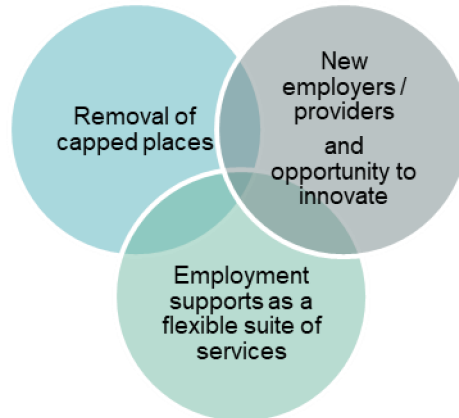
Business pressures

ADEs are subject to significant challenges apart from wage pressures. Some ADEs are engaged in declining industries at risk of digitalisation, off-shore processing, and mechanisation and automation, while many ADEs operate with small profit margins.

Regional and remote ADEs are likely to be at greater risk of viability challenges from other locational economic factors, including unemployment, participation rates, local industry concentration, and relative economic disadvantage.

Opportunities for the supported employment sector

The rollout of the NDIS to full scheme presents opportunities for existing and new businesses to expand and diversify, as they offer greater choice in employment settings and supports available to NDIS participants.



Removal of capped places

Supported employment places will no longer be capped under the NDIS. This means increased opportunities for businesses wishing to offer employment to more participants and/or specialise in delivering employment supports for this growing cohort.

New employers/providers and opportunity to innovate

There will be increased opportunity for new providers to offer employment and deliver employment supports. Employers and support providers will not be constrained by the employment settings and support models that operated under case-based funding.

Existing and new providers will have opportunities to engage in innovative service delivery.

Employment supports as a flexible suite of services

Opportunities to deliver an expanded suite of services to supported employees will be possible, acknowledging many ADEs already offer a broad range of services.

Some businesses may choose to explore the provision of more seamless service transition between supported and open employment, as a person's capacity to work improves.

What will the supported employment landscape look like at full scheme roll out of the NDIS?

In consultation with supported employees, their families and carers, employers, advocates and other interested stakeholders, the Government will consider policy options to underpin a strong future for supported employment, guided by the following foundational principles:

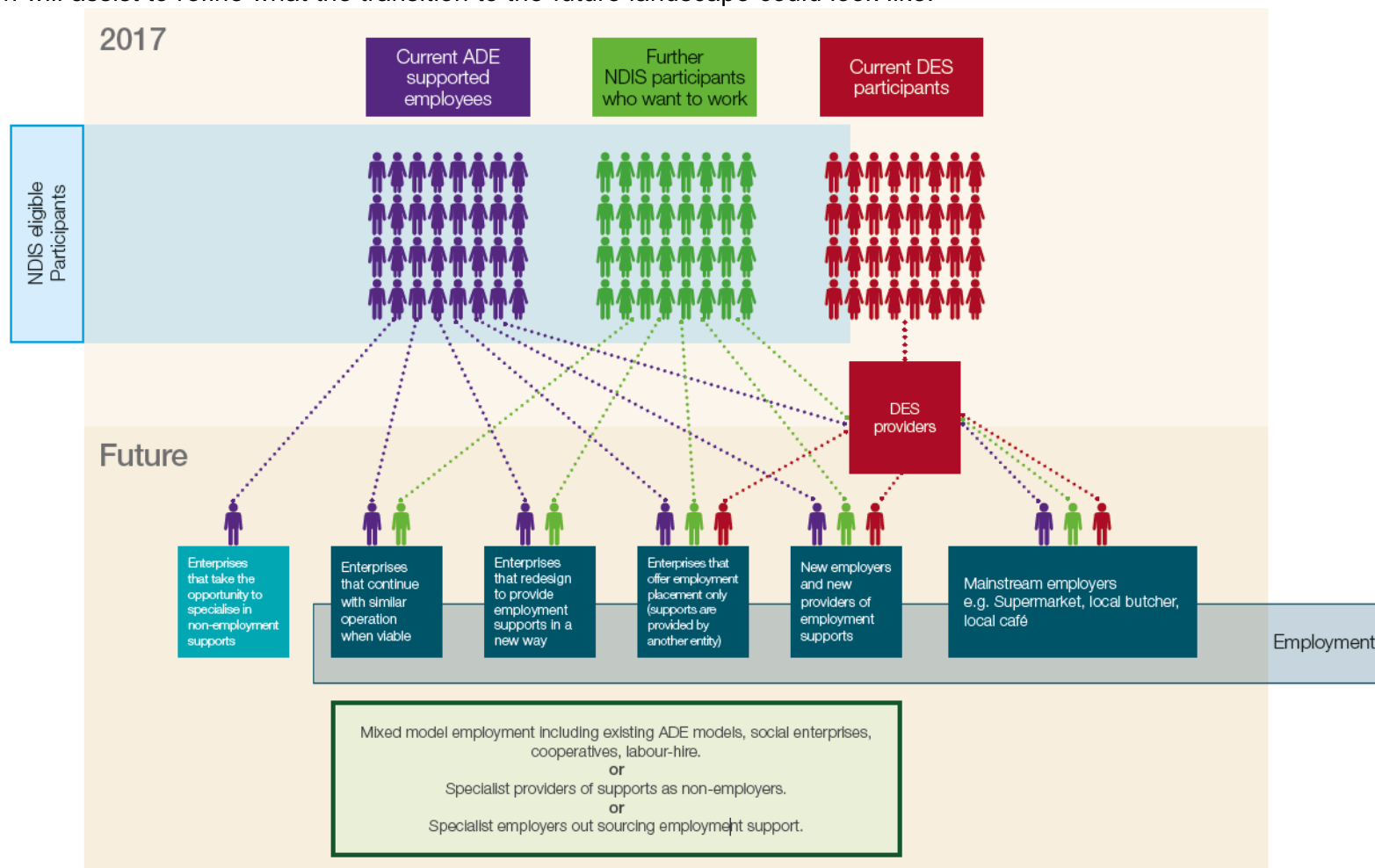
- **An ‘employment first’ approach for all NDIS participants of working age** – strengthening employment outcomes for people with disability, with support from their families and carers, educators and NDIS Local Area Coordinators and planners, so that employment opportunities are available through a range of pathways which suit their working preferences.
- **A diversity of employers providing employment supports** – building market capacity for new employers in the market offering labour-hire, social enterprise cooperatives and other diverse employment models.
- **Strong and viable disability enterprises** – with ADE transition and reform supported through sustainable NDIS funding in participant plans and pricing controls for employment supports.
- **Employees and employers have certainty about industrial wage setting** – resolution of matters before the Fair Work Commission provides confidence to ADE businesses and new employers in the market when accessing available industrial provisions designed to promote the employment of people with disability.

Have your say on the guiding principles

- 1. Are there other principles, which should guide the Government’s policy direction for supported employment?***

Transition to the future landscape

The diagram below shows the expected movement of employees, including the increase of employees accessing employment supports in the NDIS and the expected opportunities for employer/providers. These examples demonstrate what is already occurring in the NDIS, and where there is real opportunity for growth and diversification among current businesses and for new employer/providers in the market. Consultation will assist to refine what the transition to the future landscape could look like.



Discussion Topics

Strategies to support employment participation for people with disability

What employee experiences may look like in the future

At full scheme NDIS, participants who are in supported employment are both a consumer of employment-related supports and an employee of a business. However, the NDIS also allows participants of the scheme 'choice and control' over who they work for, and which employer best supports them to reach their maximum potential in work.

Where ADEs continue to operate a similar model, supported employees may continue to access those supports from their employers. However, in an emerging market, it is also likely that some employees will choose to access their supports from other providers.

In the early stages of NDIS transition, employee experiences have included:

- current ADE employees who choose to remain in their current employment
- current ADE employees who transition to new employment opportunities (either supported employment or open employment), because of their preference or because the ADE no longer provides employment supports in the NDIS
- current ADE employees who transition to non-employment options
- NDIS participants who are not currently employed and have approached the NDIS for employment supports, and
- a modest number of ADE employees have commenced in DES and participate concurrently in both programs.

Challenges in getting there

How people with disability understand and are best able to exercise choice and control is a key challenge for the NDIS. Understanding the intersections between the employment relationship and the consumer relationship is crucial.

While ADEs actively support and promote employee transition to open employment, the number of supported employees that move into open employment is small. The number of supported employees that remain after moving into open employment is smaller still.

Allowing flexible complementary servicing between DES and ADEs has provided some employees with the security of maintaining ADE employment while they look for open employment. To ensure participation in DES is appropriate, ADE employees must meet the usual eligibility requirements for DES including having an Employment Services Assessment (ESAt) or Job Capacity Assessment (JCA) which confirms they have the capacity to work for at least eight hours per week in open employment with support from a DES provider. The take-up of complementary servicing has been modest, suggesting work could be done to better promote or target this option more effectively for eligible supported employees.

Work could also be done to look at transitional options to support participants who may not be DES eligible but would like support to explore open employment options.

Have your say - Discussion questions

- 2. *What is a 'good' participation outcome for a supported employee and how can good outcomes be measured?***
- 3. *What do supported employees most value about working in an ADE?***
- 4. *Why do most supported employees transition back to supported employment from open employment?***
- 5. *How can more supported employees be provided the opportunity to choose open employment?***
- 6. *Why is participant access to concurrent DES and ADE support services so low?***
- 7. *What is the role a supported employer can play in building employee capacity for transition to open employment?***
- 8. *What will attract NDIS participants to employment opportunities in the future?***

Strategies to support employer/providers to offer effective employment opportunities

What employer/provider experiences may look like in the future

In the future there will continue to be opportunities for current ADEs and new NDIS sector market entrants to employ people with disability and/or offer the supports that enable them to participate in employment.

ADE experience in the NDIS to date shows that not all ADEs will choose to operate as they have done in the past.

ADE Reform

Some ADEs have accessed funds to seek business improvement advice, including advice on how to reform their businesses. For example, some ADEs have created labour-hire arrangements where groups of supported employees are placed in other commercial businesses.

In a growing market, there are also opportunities for ADEs to leverage procurement opportunities, and with uncapped places, expand or change their business model.

Some ADEs have taken the opportunity to capitalise on marketing to offer non-employment supports and attract associated funding available through the NDIS, allowing continued support to NDIS participants and ongoing business viability.

There is also opportunity for ADEs to specialise as providers of employment supports for people with disability, as supported employees are 'placed' in other commercial businesses.

Some ADEs have accessed funds to assist in making independent business decisions to exit the employment market and close their businesses. New providers of employment and employment supports

It is expected market forces will provide opportunities for new, viable organisations to develop and offer supports, with participants accessing sustainable NDIS funding for employment supports.

Options to encourage new providers or start-ups offering these supports, and testing of innovative employment models, could be considered by Government for future development.

Challenges in getting there - existing employers and providers

ADEs continue to face a range of challenges relating to wage pressures, declining industries, locational economic factors and small profit margins.

Strategies have been implemented in the past to encourage ADEs to reform their business models and address other viability challenges, with mixed success. Any future support would need to be carefully developed to provide a clear pathway for transformation, over a defined period, and tied to future DES or NDIS funding models.

The experience of social enterprises and other entities established to support people with disability at work, could inform future possible strategies. Government investment, or industry adjustment, could be targeted to capitalise on successful models, which provide good outcomes for supported employees.

Wage supplementation has been made available for ADEs that choose to transition to a productivity-based wage assessment tool, being the Supported Wage System (SWS) or varied SWS, once in effect. However, use of the supplementation has been limited and wage uncertainty continues to undermine ADE confidence and business planning.

Consideration is being given to whether pricing controls for 'employment supports' for existing supported employees and new market entrants will be needed, and how providers can navigate the NDIS and DES funding system when supporting participants who choose to transition between supported and open employment.

Have your say - Discussion questions

- 9. *How are ADEs marketing their services to an expanded market of potential NDIS participants?***
- 10. *What is the range of NDIS supports that ADEs currently offer?***
- 11. *What costs would be involved for ADEs that choose to:***
 - a) reform to more open employment models?***
 - b) redevelop as service providers offering other NDIS supports?***
 - c) specialise in the provision of employment support as a non-employer?***
- 12. *Should the Government have a role in supporting new market entrants and start-ups in the short-term?***
- 13. *What investment, or industry adjustment will promote viable expansion in the employer/provider market?***
- 14. *How could employer/providers share learnings of their success and failures within a competitive market?***
- 15. *How can wage supplementation be better targeted?***

Strategies to facilitate greater choice and control for NDIS participants

The role of the NDIA into the future

The NDIS provides support and assistance, including financial assistance, to people with disability to aid them in exercising choice and control in pursuit of their goals.

This includes supporting people with disability to participate in and contribute to social and economic life to the extent of their ability. Reasonable and necessary supports for people with disability can be provided to develop and support their capacity to undertake activities that enable them to participate in the community and maintain employment.

People with disability should also be supported to receive assistance outside the NDIS, including support to coordinate services accessed under the NDIS and with mainstream employment services, such as DES.

Challenges in getting there

In the initial transition phase for existing supported employees that are eligible for the NDIS, participants' employment supports are generally reflecting the supports they currently receive in their ADE, with funding mirroring case-based funding.

The NDIA has a market stewardship role to encourage providers to invest in delivering NDIS services including employment services. However, the NDIA does not find work for participants.

In order for businesses of all sizes and types to sustainably grow and innovate under the NDIS, and promote their services to existing and future NDIS participants, there needs to be clarity about market development.

Different planning approaches for various age cohorts may present opportunities for greater choice in employment to suit a range of working preferences and life stages. For example, for younger people and those entering the workforce (including options available through School Leaver Employment Support (SLES)), for established or mature aged workers, and for employees transitioning to retirement.

Have your say - Discussion questions

- 16. How can the NDIS enable an employment first approach in planning?**
- 17. How do current assessment processes drive the inclusion of employment supports in an NDIS participant's plan?**
 - a) Are existing employment assessment processes appropriate for NDIS participants?**
- 18. Are there different approaches to planning that could be explored for different groups of supported employees (e.g. younger workers, established workers, retirement transition)?**
 - a) How could SLES better support school leavers to build skills and confidence in order to move from school to employment?**
- 19. What role could or should an NDIA Local Area Coordinator or planner have in linking participants to an employment opportunity?**
- 20. What role could or should NDIA market stewardship have in developing a market with a range of employment, other support, or participation options for existing supported employees?**

Next steps

The discussion paper invites you to have your say.

DSS intends to undertake a range of consultation activities to engage directly with:

- Australian Disability Enterprises
- Supported employees
- Families and carers of current supported employees
- Disability Employment Services Providers
- The National Disability Insurance Agency (NDIA)
- Providers of employment supports, registered with the NDIA
- Peak organisations representing disability services
- Advocates representing people with disability and lived experience of disability, and
- Other stakeholders identified in consultation with the Department.

Your input will help inform policy development. Workshops and interviews will allow for exchange of information, experiences and insights to ensure a better understanding of the needs of around 20,000 supported employees and future NDIS participants seeking employment across Australia.

The Government and DSS understand the importance of ensuring that any future changes to supported employment policy are fair, thoroughly discussed, planned and smoothly implemented for employees, their families and carers, and ADEs.

The consultation period

The consultation period for this discussion paper is open from:

7 December 2017 to 9 March 2018.

Interested individuals and organisations are invited to provide written submissions to DSS through engage.dss.gov.au by **9 March 2018**.

The closing date for uploading submissions is **5:00pm Friday 9 March 2018 (AEDT)**.

Consultation timeline

December 2017	Discussion paper released for consultation until 9 March 2018
January / February / March 2018	Targeted consultation workshops
February / March 2018	Interviews with supported employees – subject to ethical approval for engaging with vulnerable people
March / April 2018	Review of submissions to the discussion paper

FAIR WORK COMMISSION

4 Yearly Review of Modern Awards

Supported Employment Services Award 2010

Matter No: AM2014/286

FURTHER STATEMENT OF STEPHEN CHARLES BURGESS

I, Stephen Charles Burgess, of 254 Nolan Street, Unanderra, New South Wales, state as follows:

BACKGROUND

1. I am the Group Manager - People, Culture & Support Services of The Flagstaff Group Limited (Flagstaff).
2. I have submitted a previous statement to the Fair Work Commission, dated 21 September 2017 and filed on 25 September 2017.

RESPONSE TO PAUL CAIN'S STATEMENT DATED 21 NOVEMBER 2017

3. I have reviewed the statement of Paul Cain, dated 21 November 2017.

Response to paragraphs 90 to 118 of Mr Cain's Statement

4. In response to paragraphs 91 to 93 of Mr Cain's statement, it is true that many people with disabilities are suitable for appropriate roles in open employment subject to the appropriate supports being in place. However, in my experience, I have not seen many instances to support a suggestion that employers in the open labour market have the ability and wherewithal to provide the right level and type of support. Open employment employers are generally not sufficiently resourced, qualified or experienced to provide the level of supports that a person with a significant disability would require.
5. I agree that it is important that the Fair Work Commission is not inadvertently misled by statements, just as it is equally important that the Commission is not misled by single paragraph snippets from an extensive and detailed document such as the Evaluation of Disability Employment Services (DES) 2010-2013 as referenced by Mr Cain.
6. In response to paragraph 94 of Mr Cain's statement, whilst the suggestion could be made that the Disability Employment Service (DES) may be well placed to provide such support, the



final paragraph in section 7.2 of the Evaluation of Disability Employment Services (DES) 2010-2013 (the Evaluation Report) referenced by Mr Cain states the following:

Peak organisations recognised that few DES providers had the specialist skill sets and competencies required to support participants with moderate intellectual disability and the consultations highlighted the need for specialist services to help these participants achieve and maintain substantial employment.

7. I note Mr Cain's further comments from section 7.4 entitled 'Appropriateness of a fee loading for participants with moderate intellectual disability' in the Evaluation Report where Mr Cain specifically includes the quote "There is no doubt that this is a group of job seekers with exceptionally high needs, who face considerable odds in the open labour market. What appears to set them apart is the body of evidence of their potential to succeed given the right type of service".
8. In my view, this quote, if it is to be considered as a supportive submission for people with intellectual disability being readily able to enter the open employment environment, is somewhat tempered when section 7.4 is read in its entirety. This is particularly the case when this section includes findings such as:
 - (a) Three elements are said to characterise high quality services for this group: high expectations, person-centred goals, and collaboration between service providers (Grigal et al., 2011). Along with specialist practical supports there must be a strong conviction that people with significant intellectual disability can succeed in open employment.
 - (b) The importance of job customisation is also emphasised because people with more severe intellectual disability are rarely able to fill advertised vacancies:

"This approach is designed to result in employment where job tasks are carved from an existing job or created to match the skills and accommodation needs of the job seeker so that the employer's operation is helped in a specific way. Thus, the individual has a 'customised' job description that did not exist prior to the negotiation process, along with other negotiated conditions of work, such as productivity expectations or work schedules." (Luecking 2011: 262)

- (c) Job customisation requires a much deeper level of interaction between disability employment initiatives and employers. This is employer engagement at a local, often personal, level.

"Employers cited the value of competent disability employment professionals who helped identify operational improvements as a key reason for hiring and retaining employees with intellectual disability and multiple disabilities, in spite of the fact that their employment was contingent on significant customization of job duties and conditions of work ... Continuing campaigns to 'raise employer awareness' will have limited effect on actual employer hiring behaviour without simultaneous improvements in connecting employers to actual applicants with intellectual disability." (Luecking 2011: 265)

- (d) The notion of becoming 'work ready' through a period of employment assistance does not translate as easily for this group as for other job seekers. A person with significant intellectual disability can, with considerable intervention, become ready to perform a specific set of tasks in a given workplace but their lack of adaptive behaviours means that readiness for one job does not confer readiness for similar jobs and work environments.

9. As noted by Mr Cain, in my first statement, I stated that Flagstaff employs supported employees who have significant barriers to securing employment in the open employment market, however it is my view that 'significant barriers' is not limited to barriers as a result of a person's disability, and that such barriers also include a lack of vocational skills which ADEs are, in my opinion and experience, particularly well placed to provide.
10. In paragraph 96 of Mr Cain's statement it is stated that I have inferred that "there is a proposal before the Fair Work Commission for the payment of "close to, or actual, minimum wages" for employees with disabilities in ADEs." I contend that no such inference is made. I made this statement based on internal wage modelling undertaken by Flagstaff.
11. In paragraph 98 of Mr Cain's statement he states "The statement at paragraph 87 suggests that the jobs of employees with disability are not part of a "complete job". This is not so". Paragraph 87 of my original statement does **not** suggest that that the individual tasks undertaken by supported employees are not part of a complete job. In fact, this is the case. Flagstaff routinely undertakes 'Job Customisation' (a recognised process as outlined in the Evaluation of Disability Employment Services (DES) 2010-2013 referenced by Mr Cain) in

order to create roles for people with a disability. We almost always break down a role into separate isolated tasks, which are based on the tasks that a supported employee is able to perform.

12. For example, in a non-automated commercial laundry, a person without a disability may be hired to work as a Production Assistant where, as part of their normal shift, they may be expected to receive soiled lined, sort the linen into appropriate wash cycle piles, prioritise loads based on production needs, transport the linen to washing machines, program a wash cycle, monitor that cycle, removed the washed product, transfer it to a dryer, monitor the dryer cycle, perform regular & routine cleaning of the washing machines & dryers (i.e. lint filter cleaning), process linen through ironers, fold washed items, correctly count the items into piles, place the laundered items into the correct customer dispatch bags, correctly place the bags into dispatch/storage locations, and process & prepare customer orders for dispatch.
13. At all times during every aspect of each task, the person would be required to apply varying quality control techniques. However, Flagstaff's commercial laundry customises that traditional role by breaking the role down into individual tasks for our supported employees to undertake one task (or sometimes more than one task) that is within their capacity and within the limitations of their disability. For instance, a person with low functioning autism may not only be physically capable, but may also psychologically prefer, to efficiently & continually undertake one repetitive task such as placing linen through an ironer but may not be able to undertake multiple and/or regularly changing tasks.
14. In response to paragraph 106 of Mr Cain's statement, from my 12 years of experience of working with people with a disability in a factory and production based environment, any comparison between the myriad of regular behavioural, emotional and vocational challenges experienced by many of supported employees with the occasional productivity bottleneck or machinery failure that may be experienced in an automated environment is disingenuous in the extreme. The issues faced by supported employees in an ADE environment are not comparable in any way with issues faced with machinery in an automated environment.
15. The Automation bottlenecks referenced by Mr Cain can be resolved by immediate equipment replacement, immediate staff replacement, allocation of additional tasks to other staff, re-location of plant and equipment or immediate re-programming of equipment. None of these are options available to ADEs in a supported employment environment.



16. In response to paragraph 115 of Mr Cain's statement, I say that my concern is the unknown level of potential wage increases should the SWS be implemented as the **only** wage tool option.

17. As referenced paragraph 47 of section 6.7 of Attachment D to Mr Cain's statement:

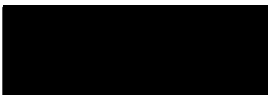
A sample of 450 assessments (10%) for June 1997 to June 2000 showed 89 clients were assessed once, 146 clients were assessed twice and 22 clients were assessed three times or more during the period. For the clients receiving multiple assessments 58.5% of subsequent assessments resulted in no change, 31.6% resulted in an increased rate of assessment and 9.8% resulted in a decrease.

Response to paragraphs 28-31 of Mr Cain's statement

18. Mr Cain is correct in his observation that the Commonwealth provides funding to ADEs to provide Employment Assistance to supported employees and the amounts he provides are also accurate. However, it is a common, albeit incorrect, assumption that such funding is sufficient and what Mr Cain does not provide however; is the comparison between funding and the actual costs of providing this Employment Assistance.

19. Previously funded by the Department of Social Services (**DSS**), Employment Assistance funding is now in the domain of the National Disability Insurance Agency under the National Disability Insurance Scheme (**NDIS**) and the inadequacies of the NDIS funding model are acknowledged by the NDIA, are subject to protracted negotiations by the National Disability Sector, are regularly reported in the media and certainly recognised by both Providers and Participants.

20. Indeed it is also worth noting that on 7 December 2017 members of the National Disability Service (**NDS**) were informed by the NDS that, in response to industry concerns, the NDIA will implement an immediate response for organisations in financial stress as a result of NDIS payment delays. I point this out to emphasise that the Commonwealth model for funding of supports for people with a disability could be better described as 'broken' rather than sufficient and/or efficient.



21. Whilst advocates who are not delivering actual funded supports may inadvertently believe funding is sufficient, it is my experience that actual providers, particularly ADEs, will overwhelmingly report a significant level of underfunding which has been the subject of dissent and concern from the sector for many years.
22. I have heard the “you get funded for that” argument many times now as an active participant in the conciliation process and it is frankly disheartening when people infer that Government funding for workplace support has direct relevance to supported employment wages but those same people do not, or will not, consider other regulatory workplace legislation and requirements that directly affect wages and which, without judgement, make no allowances or exceptions for workplaces employing people with a disability.
23. An example of this is the current WHS legislation which, again without judgement, does not recognise the additional requirements, resources and indeed risk appetite, incurred by an ADE when employing some people with a disability. Lost Time Injuries (LTIs) have a direct impact on Workers Compensation Insurance premiums and I am personally aware of instances of LTIs that have occurred as a direct result of the person’s disability.
24. No level of Commonwealth funding is provided to meet these other regulatory requirements and I do not accept that employers in open employment would readily absorb and accept the WHS and Workers Compensation risks that ADEs have as an everyday reality in their operations.

Response to paragraph 43 of Mr Cain’s statement

25. ADEs do receive funding to train and develop the work capacity of individuals with disability to maximise their productivity, including skills and strategies to stay on task.
26. However, as Mr Cain groups “skills and strategies to stay on task” as a subject of development in work capacity, I am somewhat confused by Mr Cain’s opinion that “an assessment of this behaviour does not help to measure job skills or determine classification”.
27. Rather, in my view, an assessment of skills after training is a legitimate, practical and fair measure of a person’s job skills as is demonstrating the skills required to undertake the inherent requirements of a role, or Job Customised ‘task’ in determining classification.
28. In my experience, an open employment environment would almost certainly expect any worker doing any role to be able ‘to stay on task’, indeed I believe the appetite for a more

generous and supportive approach for employees who are not able to meet this expectation is generally confined to ADEs, although this expectation is not acknowledged or recognised in any Commonwealth funding.



Stephen Charles Burgess

14.12.2017

Date