

**FAIR WORK COMMISSION**

**4 Yearly Review of Modern Awards**

***Supported Employment Services Award 2010***

**Matter No: AM2014/286**

**FURTHER SUBMISSIONS**

**AUSTRALIAN BUSINESS INDUSTRIAL AND THE NSW BUSINESS CHAMBER**

1. We act for Australian Business Industrial (**ABI**) and NSW Business Chamber (**NSWBC**) in the above proceedings.

**Issue**

2. The Commission is considering whether to defer handing down its reserved decision in this matter concerning the classification of work and associated pay rates for employees with disabilities working in ADEs as part of the 2014 4 Yearly Review of modern awards on the application of Mr Michael Lye, Deputy Secretary, Disability and Carers, Department of Social Services (**DSS**) arising from a letter sent to the Fair Work Commission (**Commission**) dated 9 September 2019 (**DSS Letter**).
3. The application is curious as it is not an application to re-open the hearing of the matter but rather for the Commission to defer handing down a reserved decision (which respectfully appears likely to have been written) for 12 weeks while the Commonwealth discuss the on-going implementation of the NDIS scheme into the sector with various industry participants.
4. The DSS Letter acknowledges that the DSS is agnostic about the approach the Commission takes to wage setting; this was confirmed in proceedings before the Commission on 23 October 2019 by the advocate for the DSS.
5. There is no proper reason to further defer the handing down of the Commission's reserved decision in this matter and in fact good reason to deliver the decision without further delay.

## **Long History**

6. This matter has a long history which is set out in **Annexure A** to these submissions.
7. The underlying controversy in the industry dates back to 2013 and has been alive since the commencement of the 2014 4 Yearly Review of modern awards.

## **4 Yearly Review**

8. The matter, in its current form, is part of the 4 Yearly Review of modern awards arising from section 156 of the *Fair Work Act 2009* (**FW Act**) commenced in 2014.
9. The Commission in its Statement of 16 April 2018 ([2018] FWCFB 2196, formed the preliminary view that the Supported Employment Services Award 2010 (**SES Award**) in its current form did not meet the modern awards objective set out in section 134 of the FW Act (refer [15]) and went on to explain how it could.
10. In broad terms the Commission's preliminary view was that:
  - (a) the SWS and MSWS were not appropriate for setting wages in an ADE;
  - (b) the list of proprietary tools in the SES Award were not appropriate; and
  - (c) a classification structure (with associated minimum rates of pay) with certain specific features should be inserted in the SES Award.
11. The Commission has an obligation as part of the 4 Yearly Review to "ensure" that modern awards meet the modern awards objective.
12. In the context of this matter, we have a preliminary view expressed by the Commission some 18 months ago that the SES Award does not meet the modern awards objective, how it could and this respectfully continues to require resolution.
13. Section 577 of the FW Act supports the view that this should not be unduly or unnecessarily delayed.

14. Relevantly the underlying issue confronting the industry, as far back as 2013, is still not resolved; what is the proper way to set wages for persons with a disability working in an ADE following the demise of BSWAT.

#### **DSS/Commonwealth Role**

15. The DSS and/or the Commonwealth has played a less than helpful role throughout the proceedings.

16. The DSS and/or the Commonwealth have been invited on numerous occasions to participate more fully in proceedings and have shown a reluctance to do so.

17. Set out in **Annexure B** is a summary of this 'involvement'.

#### **NDIS**

18. The current application is not actually about the case before the Commission but rather about a separate matter concerning the general implementation of the NDIS funding scheme to ADE's.

19. Members of ABI and NSWBC are involved in these discussions and will continue to be involved for months to come.

20. These discussions are not about what happens after the Commission's decision is handed down but rather about NDIS funding transition at large.

21. These discussions are definitely not about wage support or subsidisation as is evidence by the DSS Letter.

22. The NDIS is not a new matter and was the subject of consideration in the proceedings.

23. Set out in **Annexure C** is a summary of NDIS references during the proceedings.

#### **No Proper Basis to Delay**

24. There is no merit in terms of section 134 and the modern awards objective in deferring handing down the Commission's reserved decision further.

25. In fact, it would assist the industry to know what the Commission's approved wage determination method is while it engages with the DSS in broader NDIS funding discussions.
26. What the Commission proposed, in general terms, in the 16 April 2018 Statement was not industrially controversial.
27. It sought to provide employers and employees in the sector with a modern award setting out a classification structure with associated rates of pay in distinction to utilising external assessment tools.
28. Ultimately how this is configured is a matter for judgement in the exercise of discretion by the Commission in the context of section 134, 156, 139, 284 and 577 of the FW Act.
29. In the context of the 4 Yearly Review, no proper purpose is served by delaying the handing down of the Commission's reserved decision further.

#### **SES Award Coverage**

30. The DSS Letter raises a question about SES Award coverage.
31. ABI and NSWBC are currently discussing this issue with members.
32. As a matter of principle employees who currently have the benefit of modern award coverage should not lose it through some administrative definitional change to industry sectors.
33. Accordingly, ABI and NSWBC will shortly conclude its member consultation and if required apply to vary the SES Award to ensure that the scope of the current coverage clause is maintained.



**Australian Business Lawyers & Advisors**

**For Australian Business Industrial and NSW Business Chamber**

**6 November 2019**

Annexure A

SESA FWC Proceedings

DATE	EVENT	REFERENCE
<b>23 December 2013</b>	Section 160 Application filed by HSU and United Voice following <i>Nojin</i> to: 1. remove BSWAT; 2. have other approved wage assessment tools reviewed by Commission; and 3. ultimately have the SWS as the sole wage assessment tool	ABLA subs dated 2 March 2015
<b>27 February 2014</b>	AGS on behalf of DSS wrote to AMOD stating they were acting on behalf of the DSS and stated they had applied to AHRC for an exemption under s.55 of the DDA for all existing ADEs	AGS letter dated 14 February 2014
<b>28 February 2014</b>	First conference listed for 28 February 2014 before DP Booth	FWC NOL
<b>28 February 2014</b>	FWC vacated directions and adjourned proceedings pending decision of AHRC in an application made by the DSS for an exemption from the DDA	FWC Directions
<b>5 May 2014</b>	FWC asked parties what directions they seek since AHRC published decision	FWC email on 5 May 2014
<b>23 May 2014</b>	ABI submitted that matter should be adjourned to 4 yearly review	ABI subs dated 23 May 2014
<b>20 June 2014</b>	FWC listed matter for hearing before Full Bench for 20 June 2014. Directions were published for outline of subs and subs in reply for an adjournment of proceedings to 4 yearly review	FWC NOL and Directions
<b>20 June 2014</b>	Hearing was heard before Full Bench Result of hearing was that DP Booth will organise conference	Transcript 20 June 2014
<b>21 August 2014</b>	DP Booth was intending to visit Greenacres on 25 April 2014 in Wollongong for informal on-site inspection but was postponed	FWC email on 21 August 2014
<b>15 September 2014</b>	Conciliation before DP Booth where she presented PowerPoint slides for interest-based bargaining	3 October 2014 email
<b>5 November 2014</b>	Conference before DP Booth	FWC NOL

<b>DATE</b>	<b>EVENT</b>	<b>REFERENCE</b>
<b>2 December 2014</b>	Conference before DP Booth	FWC NOL
<b>10 December 2014</b>	Conference before DP Booth	FWC NOL
<b>16 December 2014</b>	Conference before DP Booth	FWC NOL
<b>17 December 2014</b>	Conference before DP Booth	FWC NOL
<b>23 January 2015</b>	Statement of Commission [2015 FWC 618] invited interested parties to file outlines of variations they wished to pursue in Group 3 and 4 (SESA is Group 4)	ABLA subs dated 2 March 2015
<b>16 February 2015</b>	Conference before DP Booth	FWC NOL
<b>2 March 2015</b>	ABLA and interested parties filed subs by 2 March 2015 asking for the BSWAT issue to be considered in the 4 yearly review	ABLA subs dated 2 March 2015
<b>25 April 2015</b>	Telephone conference conducted before DP Booth	FWC email 23 April 2015
<b>27 April 2015</b>	Conference before DP Booth	FWC NOL
<b>27 April 2015</b>	Temporary s.55 exemption under DSS	DSS Correspondence dated 27 April 2015
<b>1 May 2015</b>	Notice of exemption from DSS	DSS Correspondence dated 1 May 2015
<b>6 May 2015</b>	Conference before DP Booth where consent variation to remove BSWAT was discussed	FWC NOL
<b>3 June 2015</b>	FWC circulated consent variation to remove BSWAT	Correspondence from FWC dated 3 June 2015
<b>5 June 2015</b>	Consent variation to remove BSWAT	MA000103 PR568011
<b>22 July 2015</b>	Update of progress from DSS BSWAT Employment Response Section	Correspondence from FWC dated 22 July 2015
<b>7 August 2015</b>	DSS BSWAT Employment Response Section update regarding KPMG and Technical Group	
<b>26 August 2015</b>	Telephone Conference before DP Booth	FWC NOL
<b>31 August 2015</b>	Directions published by FWC regarding KPMG working group	Correspondence from FWC dated 31 August 2015

DATE	EVENT	REFERENCE
<b>2 September 2015</b>	Directions published by FWC regarding extension for transitional period for BSWAT	FWC Directions
<b>15 September 2019</b>	Directions issued with extended BSWAT transitional period until 29 February 2016	
<b>15 October 2015</b>	Conference before DP Booth	FWC NOL
<b>15 October 2015</b>	Statement [2015] FWC 7134 published by DP Booth stating progress in conciliation <ul style="list-style-type: none"> <li>• June 2014 - FB conferred</li> <li>• Conciliations throughout 2014/2015 involved - UV, HSU, ACTU, NDS, ABL, disability advocacy representatives, ADEs and representatives of parents and carers with "the DSS observing"</li> <li>• Parties put forth shared objectives and DP Booth stated conciliations will continue</li> </ul>	FWC Statement
<b>11 December 2015</b>	Telephone conference conducted before DP Booth	FWC NOL
<b>22 February 2016</b>	Conference before DP Booth	FWC NOL
<b>18 April 2016</b>	Telephone conference conducted before DP Booth	FWC NOL
<b>22 August 2016</b>	Conference before DP Booth	FWC NOL
<b>19 October 2016</b>	Conference before DP Booth	FWC NOL
<b>17 November 2016</b>	Conference before DP Booth	FWC NOL
<b>19 December 2016</b>	Telephone conference conducted before DP Booth	FWC NOL
<b>14 March 2017</b>	Conference before DP Booth	FWC NOL
<b>20 March 2017</b>	Conference before DP Booth	FWC NOL
<b>27 March 2017</b>	Conference before DP Booth	FWC NOL
<b>3 April 2017</b>	Conference before DP Booth	FWC NOL
<b>10 April 2017</b>	Conference before DP Booth where DP Booth combined AM2016/268 and AM2013/30	FWC NOL
<b>21 April 2017</b>	Conference before DP Booth	FWC NOL
<b>21 April 2017</b>	ABI submitted draft determination	ABI subs dated 21 April 2017
<b>8 May 2017</b>	HSU and UV discontinue s.160 application AM2013/30 and pursue substantive claim to remove all competency components contained in remaining wage assessment tools (or the tools themselves) and created AM2014/286	HSU submissions
<b>29 May 2017</b>	Conference before DP Booth - was named AM2014/286 at this point	FWC NOL

DATE	EVENT	REFERENCE
<b>29 May 2017</b>	Statement [2017] FWC 2928 published by Justice Ross stating that unions wanted to discontinue and will constitute a new bench with C Cambridge, DP Booth and another member	Statement
<b>9 June 2017</b>	Mention before Justice Ross regarding statement [5] and [39]	FWC NOL
<b>19 June 2017</b>	Mentions/Directions before VP Hatcher	FWC NOL
<b>10 July 2017</b>	Directions published for substantive matters to be listed on 5-9 Feb and 12-16 Feb for hearing of substantive matters. Parties are to file draft determinations by 21 August 2019 Evidence etc before 25 September 2017 Parties opposing variation should file 12 November 2017 Subs in reply due 11 December 2017	FWC Directions
<b>21 August 2017</b>	ABI filed Proposed Variations	ABI submissions dated 21 August 2017
<b>25 September 2017</b>	ABI filed submissions	ABI submissions dated 25 September 2017
<b>10 October 2017</b>	FB Decision [2017] FWCFB 5073 - variation to amend Schedule D of the award which sets out parameters for SWS in an ADE - there have been modifications to those parameters Commission is satisfied it is appropriate and variation will take effect on 17 October 2017 (ended up taking effect on 1 July 2018)	FWCFB Decision
<b>10 October 2017</b>	FB Determination MA000103 PR596711 modifying SWS	FWCFB Determination
<b>8 November 2017</b>	FB Determination MA000103 PR597498 extending start till 1 July 2018 instead of 17 October 2019	
<b>15 December 2017</b>	VP Hatcher published Statement [2017] FWC 6775 regarding orders for production	FWC Statement
<b>22 December 2017</b>	Mention/Direction before FB	FWC NOL
<b>5 February 2017</b>	Hearing Day 1: Opening Submissions	FWC Timetable
<b>6 February 2017</b>	On-site inspection	FWC Timetable
<b>7 February 2017</b>	On-site inspection	FWC Timetable



<b>DATE</b>	<b>EVENT</b>	<b>REFERENCE</b>
<b>8 February 2017</b>	Hearing Day 4: Witness Evidence	FWC Timetable
<b>9 February 2017</b>	Hearing Day 5: Witness Evidence	FWC Timetable
<b>12 February 2017</b>	Hearing Day 6: Witness Evidence	FWC Timetable
<b>13 February 2017</b>	Hearing Day 7: Witness Evidence	FWC Timetable
<b>14 February 2017</b>	Hearing Day 8: Witness Evidence	FWC Timetable
<b>15 February 2017</b>	Hearing Day 9: Closing Submissions	FWC Timetable
<b>16 February 2017</b>	Hearing Day 10: Closing Submissions	FWC Timetable
<b>February 2018</b>	During hearing 178 exhibits tendered	FWC Exhibits List
<b>23 February 2018</b>	ABI Questions on notice	ABI submissions 23 February 2018
<b>16 April 2018</b>	FWCFB Statement [2018] FWCFB 2196 Made a provisional conclusion that the modified SWS and SWS and proprietary tools were not appropriate and that the award did not meet the modern awards objective	FWCFB Statement
<b>28 May 2018</b>	Mention/Direction for FB for options moving forward	FWC NOL
<b>4 July 2018</b>	DSS wrote submission stating 0.95 million towards any trial	DSS letter
<b>11 September 2018</b>	FWCFB Statement [2018] FWCFB 5712 inviting parties to make submissions regarding provisional view and any design and implementation of new wage mechanism	
<b>19 October 2018</b>	ABI filed submission regarding design	ABI Submissions dated 19 October 2018
<b>28 November 2019</b>	ABI filed supplementary submission regarding design	ABI Submissions dated 28 November 2018
<b>29 November 2018</b>	FWCFB Hearing	FWC NOL
<b>30 November 2018</b>	FWCFB Hearing	FWC NOL
<b>9 September 2019</b>	DSS writes to FWC regarding SWS and NDIA funding	Letter from DSS
<b>25 September 2019</b>	VP Hatcher writes to DSS regarding SWS and NDIA funding	

<b>DATE</b>	<b>EVENT</b>	<b>REFERENCE</b>
<b>14 October 2019</b>	NDS Submission	NDS Submission dated 14 October 2019
<b>21 October 2019</b>	ABI Submission	ABI submission dated 21 October 2019
<b>22 October 2019</b>	DSS Submission	DSS Submission dated 22 October 2019
<b>23 October 2019</b>	Report Back hearing before FB	FWC NOL

Annexure B

SESA Department of Social Services Involvement

DATE	EVENT	REFERENCE
27 February 2014	AGS on behalf of DSS wrote to AMOD stating they were acting on behalf of the DSS and stated they had applied to AHRC for an exemption under s.55 of the DDA for all existing ADEs	AGS letter dated 14 February 2014
15 October 2015	Statement [2015] FWC 7134 published by DP Booth stating progress in conciliation <ul style="list-style-type: none"> <li>• June 2014 - FB conferred</li> <li>• Conciliations throughout 2014/2015 have been represented - UV, HSU, ACTU, NDS, ABL, disability advocacy representatives, ADEs and representatives of parents and carers with “the DSS observing”</li> <li>• Parties put forth shared objectives and DP Booth stated conciliations will continue</li> </ul>	FWC Statement
31 October 2014	DSS provided DP Booth background information around the consultations DSS ran in 2013 about the future of wage assessments in supported employment and also the Convention on the Rights of Persons with Disability comments re BSWAT, SWS and a future tool.	BSWAT Employment Resource Team - DSS
1 December 2014	BSWAT Employment Resource Team response to DP Booth asking for the Cth to consider providing travel assistance to advocates participating in FWC process. Stated that they provide funding to AED Legal Centre	BSWAT Employment Resource Team - 1 December 2014
3 December 2014	Provided PowerPoint overview of SWS	PowerPoint provided on 3 December 2014
1 May 2015	Notice of exemption from DSS	DSS Correspondence dated 1 May 2015
12 June 2015	DSS emailing DP Booth to state that DSS advised of ADEs who had not transitioned to a non-BSWAT tool	Email of 12 June 2015
16 July 2015	Updated DSS email with BSWAT update regarding KPMG for consultancy	Email 16 July 2015

DATE	EVENT	REFERENCE
6 August 2015	DSS email with BSWAT update - discussing KPMG technical group	Email 6 August 2015
4 July 2018	DSS wrote submission stating 0.95 million towards any trial	DSS letter
9 September 2019	DSS writes to FWC regarding SWS and NDIA funding	Letter from DSS
25 September 2019	VP Hatcher writes to DSS regarding SWS and NDIA funding	
22 October 2019	DSS Submission	DSS Submission dated 22 October 2019

Thursday 15 February 2018 - Transcript

[https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/150218\\_am2014286.htm](https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/150218_am2014286.htm)

PN5725

VICE PRESIDENT HATCHER: And will the Department be making a submission?

PN5726

MR THOMPSON: No, your Honour.

PN5727

VICE PRESIDENT HATCHER: All right. But you'll be here tomorrow in case we want to ask you questions?

PN5728

MR THOMPSON: We will be here, yes.

PN5729

VICE PRESIDENT HATCHER: Excellent news.

16 February 2018 - Transcript

[https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/160218\\_am2014286.htm](https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/160218_am2014286.htm)

PN426

MR THOMPSON: All right. My instructions are that the Commonwealth will not be making any submission today. However I have also been instructed that if the Commission has any specific questions that it would like to put to the Department we would be happy to take those on notice and come back to the Commission with a written response.

PN427

VICE PRESIDENT HATCHER: All right, there's a few matters. Firstly, I think all the members of the Bench might have some questions, but I have three primary questions. The first is regarding the letter which was addressed to me dated 8 November 2017 from the secretary from the Department, and particularly what the government means in the last paragraph of that letter – this is exhibit 8, when it says that if - - -

PN428

MR THOMPSON: Your Honour, perhaps if I can interrupt.

PN429

VICE PRESIDENT HATCHER: Yes.

PN430

MR THOMPSON: The instructions on that particular matter, the Department has no further information to provide.

PN431

VICE PRESIDENT HATCHER: Let me ask the question first and then you can tell me that. I mean, this letter has been sent for some purpose and I want to understand what the purpose is. So you've said that "the government will ensure future policy settings, allow for the ongoing viability of ADE's for employees, their family and carers and the businesses while also meeting the Australia's obligations under international law." So that proposition has been volunteered to the Commission and we need to know what it means. For example, there's been an estimate that if the Commission made the decision to mandate the SWS as the sole wage assessment tool for the ADE sector it would have a sectoral cost of 78 million dollars per year. Does the letter mean that the government would partly or wholly contribute funding to make up for that cost?

PN432

MR THOMPSON: Thank you for the question, your Honour. As mentioned, my instructions on that particular point are that at this point in time the Department has no further information to provide but I will relay those comments.

PN433

VICE PRESIDENT HATCHER: The proposition is said to be the government's proposition so presumably some instruction might need to be taken from the relevant minister.

PN434

MR THOMPSON: Yes. We will seek instructions on that.

28 November 2018 - Transcript

<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/291118-am2014286.pdf>

PN288

VICE PRESIDENT HATCHER: Mr Barker.

PN289

MR BARKER: Thank you, your Honour. The Commonwealth is present here today to make itself available to provide any factual or clarifying information that may be of assistance to the parties and the Commission. We do seek to reserve an opportunity to make any closing submissions in the course of submissions over the two days, if any issues arise that we feel it's appropriate to comment on.

PN290

Your Honour, in submissions by AED Legal, we understand your Honour had a question about the capacity of the Commonwealth to provide SWS assessments for all supported employees. Should the Commission make a decision to retain only the modified SWS in the award, the Commonwealth would need to consider what steps it would take to enable access to SWS assessments to the 20,000 odd supported employees. It's not clear to the Commonwealth that this option of having only the modified SWS in play, is currently being considered.

PN291

VICE PRESIDENT HATCHER: Well, I asked that question because not so much in relation to the modified SWS, but the provisional views contained in the April statement and I'm looking at obviously paragraph 9 and particularly paragraph 9(b) envisage some sort of across the board process of independent assessments. That's why the question I obviously raise it is, in the event that we decided to give effect to that provisional views, would the Commonwealth be in a position to provide the resources to allow that to happen? And obviously if the answer is no, well, then it may mean that the provisional view is not practicable.

PN292

MR BARKER: Yes. Well, your Honour, whether the Commonwealth or the government will support any new wage assessment mechanism and provide funding to the implementation of assessments under any new mechanism is a decision for the government to make - I don't mean government, I mean cabinet. **The government can't make a decision on this matter until the features of any new wage assessment mechanism are known and the government has had an opportunity to consider them.** (emphasis added)

PN293

As part of the process of consideration, while the government has an idea of the cost of performing say an SWS type assessment, the cost of any job sizing assessment is unknown at the moment because the features of that assessment are unknown. In any decision made by government other factors will be considered such as - well, will likely be considered, such as compliance with the Disability Discrimination Act, compliance with international obligations and any other implications that might arise with the Commonwealth, including any exposure to the Commonwealth of legal or legislative challenges to the tool and so on.

PN294

So unfortunately, we're not in the position to make a decision on funding or support for the tool.

PN295

VICE PRESIDENT HATCHER: On one level that's understandable, but it does create for us a circularity, that is we don't know whether to give fresh to the provisional view in the absence

of the necessary government support to make it happen. That is, on one view it might turn out to be a futile quest if at the end of the day the Federal Government doesn't like what we do and isn't prepared to support it.

PN296

MR BARKER: Yes, I appreciate the difficulty, your Honour. PN297 VICE PRESIDENT HATCHER: No answer. Anything else Mr Barker?

PN298

MR BARKER: Not unless - - -

PN299

VICE PRESIDENT HATCHER: I take it that at this stage, having seen the provisional view back in April, the Commonwealth has no submission to make about any possible difficulty vis-a-vis the Disability Discrimination Act or Australia's international obligations? You're not here to put up a red flag, as it were?

PN300

MR BARKER: Yes.

PN301

VICE PRESIDENT HATCHER: Because if you are, we need to know about it.

PN302

MR BARKER: Yes, so the Commonwealth doesn't have a position as yet on that.

PN303

VICE PRESIDENT HATCHER: When you say as yet, what do you mean by that? Because this statement has been out there for six months.

PN304

MR BARKER: Yes, but the features of the tool are not known. Perhaps we can base some issues for the consideration of the Commission at this point in time.

PN305

VICE PRESIDENT HATCHER: Points such as?

PN306

MR BARKER: These issues arise under the international law, in the international law context. The first is the Commonwealth understands that the Commission intends - with the job sizing aspect of the new mechanism to take account of the degree of support necessary to allow the employee to perform their tasks. This is a provisional conclusion, paragraph 15(ix)(a). The Commonwealth notes that the cost of employment support in the workplace is covered by the Department through a case based funding and that will transition - or responsibility for funding will transition to the NDIA.

PN307

Funding for employment support in the workplace will for the majority of existing supported employees, be provided through individualised employment support funding in the NDIS participant packages. When considering the detail of the job sizing assessment, the Commonwealth respectfully suggests that the Commission has regard to Australia's international obligations, particularly under article 27(1)(a) and (b) are the convention on the rights of persons with disabilities, namely to take appropriate steps to prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, and to protect the rights of persons with disabilities including providing equal opportunities and equal remuneration for work of equal value.

PN308

Given the proposed mechanism like all wage assessment tools, will calculate wages for disabled persons in a way different than wages would be provided to persons without disabilities, is the potential for article 27(1) to be infringed. However, if the proposed wage assessment mechanism treated persons with disabilities different to persons without disabilities, it may still be compliant with Australia's obligations under the convention, if it constituted legitimate differential treatment.

PN309

Assuming that the principle of legitimate differential treatment applies to this convention in broad terms, this would require consideration of whether the proposed mechanism is aimed at achieving a legitimate purpose, is based on objective and reasonable criteria and is proportionate the aim to be achieved. With respect, the proposed mechanism appears aimed at achieving a legitimate purpose, namely the encouragement of employment of persons with disabilities by accurately assessing their remuneration in a manner that is consistent with their capacity to work.

PN310

However, the Commonwealth, respectfully suggests that the Commission considers where the proposed mechanism would be proportionate to this aim or another legitimate aim, if employees received a reduction in their wages for the employment support they require when the cost of that support is already funded through the Department or the NDIS.

PN311

Further, if the proposed mechanism is deemed proportionate in this regard, the Commonwealth respectfully suggests that the Commission considers whether there is a potentially disproportionate impact of the mechanism on employees with disabilities who have generally high support needs, noting that 75 per cent of employees in ADE's have an intellectual disability.

PN312

The second point we wish to raise is we observed that the implementation of the Commission's proposed mechanism may exacerbate existing wage and equities for people with disability. One person with disability employed under the SES Award could be remunerated significantly differently from another person with disability doing the same or a very similar job, but employed under a different modern award and assessed using the SWS.

PN313

Having regard to the potential for such significant wage disparities, the Commonwealth respectfully suggests that the Commission has regard to whether its proposed approach is



based on reasonable criteria and therefore whether it constitutes legitimate differential treatment for supported employees.

PN314

Now of course, much will depend upon the precise design of any new wage mechanism, but we do note that with the transition to the NDIS, we are entering a new frontier and it may be the case that new organisations come into the market and provide employment support for persons covered by the NDIS and they may not be traditional ADE's, and may not fall outside the coverage of the award. So we may have a situation where we have a greater number of what are not supported employees working in a different environment, and potentially covered by different modern awards.

PN315

We also ask that the Commission consider the potentially compounding effect that this might have on intellectually disabled employees who have higher support needs as well. We note that as I've noted, compliance with international law obligations is a matter that will be considered by government or likely to be considered by government when deciding whether to support the implementation of assessments.

PN316

If your Honour pleases.

Annexure C

References to the NDIS during the proceedings

DATE	REFERENCE	SOURCE
<b>AED LEGAL CENTRE DOCUMENTS</b>		
21 November 2017	<p>People with significant disabilities, both in ADEs and mainstream employment, are eligible for National Disability Insurance Scheme (<b>NDIS</b>) plans which are presently or will in the future provide funding to purchase support services necessary to facilitate and enable workforce participation. The current DES Work-Based Personal Assistance scheme that funds up to 10 hours of support from a personal attendant for workers with significant disabilities to assist with using public transport, eating, toileting, or secretarial tasks like phone or internet access is being progressively moved across into <b>NDIS</b> as it rolls out across Australia. Employer Assistance Fund (EAF) dollars though Job Access are available for ADE employees if they require special equipment or structural modifications in the workplace to enable satisfactory work performance.</p>	<p>Statement of Robert MacFarlane  <a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-ws-cain-macfarlane-svendsen-211117.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-ws-cain-macfarlane-svendsen-211117.pdf</a></p>
16 July 2018	<p>With this in mind, there are two preliminary factual conclusions referred to in the Statement (i.e. the Full Bench’s Statement dated 16 April 2018 [2018] FWCFB 2196) that we consider to be of particular significance and about which we wish to advance the following two submissions:</p> <p>(a) Insofar as the last sentence of [15(1)] of the Statement may be read as suggesting that ADE’s are the only organisations that are capable of or do make the adjustments for employees with a disability (as defined by the SESA), we contend otherwise. The evidence supports findings that open employment employers do so too for employees with the same or similar disabilities and that a majority of those who use open employment have significant intellectual disabilities and, like ADE employees, are supported in their employment by the <b>NDIS</b> and by other Commonwealth funding.</p> <p>(b) - <i>not relevant</i></p>	<p>Submissions  <a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-aed-andors-160718.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-aed-andors-160718.pdf</a></p>

DATE	REFERENCE	SOURCE
<b>DEPARTMENT OF SOCIAL SERVICES DOCUMENTS</b>		
9 March 2018	There are almost 20,000 people with disabilities currently employed in Australian Disability Enterprises (ADEs). The Department of Social Services (the Department) is committed to protecting the jobs of these employees and ensuring they can continue to access meaningful and gainful employment. The National Disability Insurance Scheme ( <b>NDIS</b> ) will support this through funding supports to assist participants with employment, where these are beyond the requirements of employment services and employers.	<a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-dss-090318.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-dss-090318.pdf</a>
9 March 2018	The Australian Government has provided significant funding to the supported employment sector in recent years to support ADEs transition to new wage assessment tools, adjust to a potentially higher wage environment and transition to the <b>NDIS</b> .	<a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-dss-090318.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-dss-090318.pdf</a>
9 March 2018	<p>As part of the <b>NDIS</b> planning process, consideration of funding to support a participant's engagement in employment may be included in their participant plan, where it is considered reasonable and necessary. The use of DMI funding levels is expected to be a transitional approach for the <b>NDIS</b>.</p> <p>Existing <b>NDIS</b> arrangements are:</p> <ul style="list-style-type: none"> <li>- existing ADE employees continuing in the same organisation attract funding in their <b>NDIS</b> plans replicating their historic DMI funding level;</li> <li>- new ADE employees or current ADE employees moving to a different organisation will have funding in their <b>NDIS</b> plan, which will be the average DMI funding level of the relevant ADE outlet, expressed as average outlet price.</li> </ul> <p>The National Disability Insurance Agency is exploring alternate service design and pricing for full scheme (from 1 July 2019), taking into account any outcomes of the Department's consultations and policy development on the future of supported employment.</p>	<a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-dss-090318.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-dss-090318.pdf</a>
9 September 2019	On the basis that future National Disability Insurance Scheme ( <b>NDIS</b> ) pricing, alone or in conjunction with Australian Government funding, may enable ADEs to adopt the SWS tool, the Department is considering consulting with parties to the proceedings.	<a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-corr-dss-250919.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-corr-dss-250919.pdf</a>

DATE	REFERENCE	SOURCE
21 October 2019	There is a detailed explanation of the NDIS at paragraphs 25 to 38, 46 and 47 in the DSS submissions dated 21 October. I have attached a copy to this document.	<a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-dss-221019.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-dss-221019.pdf</a>
<b>GREENACRES DOCUMENTS</b>		
25 September 2017	[36] With the new funding arrangements associated with the <b>NDIS</b> it is necessary that the SES Award legally operates in the way it was intended and not be inadvertently thwarted by new funding and support arrangements for people with disabilities introduced by the government because of the <b>NDIS</b> .	Greenacres Submissions <a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-gds-250917.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-gds-250917.pdf</a>
19 October 2018	[15] Since the introduction of the <b>NDIS</b> more and more supported employees are wanting some of these activities in work time. Whilst funding can be received to provide such activity these supports take supported employees away from workplace production.	Greenacres Submissions <a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-gds-191018.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-gds-191018.pdf</a>
<b>KOOMARRI DOCUMENTS</b>		
21 November 2017	If the Modified SWS is the only option to assess wages, it may result in higher wage outcomes, which could affect the viability of our ADE operation to the extent that we may have to cease operation of the ADE resulting in a loss of jobs of many of our disability support workers and all of our supported employees.  Such an outcome would also have a negative financial impact on the rest of our disability support operation as all of Koomarri's operations, especially the ADE, currently operate in a financial model with a low cost margin due to the <b>NDIS</b> price set market.	Koomarri Submissions <a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-koomarri-211117.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-koomarri-211117.pdf</a>

DATE	REFERENCE	SOURCE
<b>NATIONAL DISABILITY SERVICE DOCUMENTS</b>		
September 2016	NDS recommends that the SES Award 2016 identify that organisations previously funded by DSS to provide supported employment services (ADEs) will in future employ individuals eligible for funded supports under the National Disability Insurance Scheme (NDIS). The SES Award 2016 should identify the relevant phase in timetable of the NDIS up to and including its scheduled full introduction in 2019-20, as DSS funding for organisations providing supported employment will phase out in accordance with this timetable.	NDS Submissions <a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-nds-300916.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-nds-300916.pdf</a>
September 2016	The NDIS will entail a significant expansion of the market for disability services, including supported employment, and it will enlarge participants' choice over the services and supports they receive. Under current arrangements, the funded places available in supported employment organisations are capped. Under the NDIS, this cap is effectively removed. In this context, situations may arise where NDIS participants want supported employment but do not have an existing local ADE which they can access. In response to this demand, disability service organisations which currently do not provide supported employment may expand their services to include supported employment. There is a case, therefore, for SES Award coverage of new providers of supported employment.	NDS Submissions <a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-nds-300916.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-nds-300916.pdf</a>

DATE	REFERENCE	SOURCE
21 April 2017	<p>The NDIS will also effectively redefine the eligibility of employees and jobseekers in supported employment settings. People with disability eligible for the NDIS will be able to seek funded employment supports in their participant plan, ensuring they will be able to access supported employment, among a range of possible options. ...</p> <p>NDS recommends that the SES Award 2016 identify that organisations previously funded by DSS to provide supported employment services (ADEs) will in future employ individuals eligible for funded supports under the National Disability Insurance Scheme (NDIS). The SES Award 2016 should identify the relevant phase in timetable of the NDIS up to and including its scheduled full introduction in 2018-19, as DSS funding for organisations providing supported employment will phase out in accordance with this timetable.</p>	<p>NDS Submissions</p> <p><a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2016286-30-sub-nds-210417.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2016286-30-sub-nds-210417.pdf</a></p>
21 April 2017	<p>Under the NDIS, employment programs are replaced with individualised funding. Consequently, supported employment models will be provided in a far wider variety of settings.</p> <p>There may be situations that arise where people with disability who have been employed in supported settings (e.g.an ADE) may be able to obtain employment with another employer. These workers, or new jobseekers with disability, may be eligible for employment support funding under the NDIS. In these situations, there may be a strong case for ongoing SES Award coverage of those workers or jobseekers with disability. NDS is interested in gauging if parties to the SES Award review are willing to examine the merits of this proposal.</p>	<p>NDS Submissions</p> <p><a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2016286-30-sub-nds-210417.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2016286-30-sub-nds-210417.pdf</a></p>
July 2017	<p>As supported employment funding shifts from DSS to the NDIS, the ongoing status of organisations funded under the Disability Services Act 1986 (Cth) is in question. NDS is recommending that the new Award includes ongoing recognition of these organisations' right to continue to operate under the SES Award and that a relevant definition of employers covered by the SES Award 2016 be inserted. The clauses that identify employers covered by the Award include clauses 4.1 and 4.2 in the exposure draft.</p>	<p>NDS Submissions:</p> <p><a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2016286-sub-nds-310717.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2016286-sub-nds-310717.pdf</a></p>

DATE	REFERENCE	SOURCE
September 2017	<p>The changes to DSP and the transition to full scheme of the National Disability Insurance Scheme (<b>NDIS</b>) will affect the eligibility of people with disability to access supported employment. Consequently, NDS proposed the inclusion of the following definition, replacing the previous definition in the Award:</p> <p><b>Employee with disability</b> means a national system employee, being persons:</p> <p>(a) For whom competitive employment at or above the relevant award wage is unlikely; and</p> <p>(b) Who, because of their disabilities, need substantial ongoing support to obtain or retain paid employment; and</p> <p>(c) Meets the disability requirement in order to qualify for the Disability Support Pension; and / or</p> <p>(d) Is eligible for support under the NDIS.</p>	<p>NDS Submissions:  <a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-nds-250917.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-nds-250917.pdf</a></p>
September 2017	<p>The other variation that NDS has proposed is the definition of Employer eligibility to use the SES Award. As the funding for organisations providing supported employment shifts from DSS to the NDIS, the <i>Disability Services Act 1986</i> (Cth) is no longer relevant. NDS is recommending that the new Award includes ongoing recognition of these organisations' right to continue to provide supported employment services. Therefore a new definition of employers covered by the SES Award 2016 will need to be included. The clauses that identify employers covered by the Award include clauses 4.1 and 4.2 in the exposure draft. These definitions will recognise that supported employers' government funding arrangements and the eligibility and access criteria for their employees with disability will change due to the introduction of the <b>NDIS</b>.</p>	<p>NDS Submissions  <a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-nds-250917.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-nds-250917.pdf</a></p>

DATE	REFERENCE	SOURCE
14 December 2017	<p>[14] There are two major developments affecting supported employees that justify changes to the definition above. These are:</p> <ul style="list-style-type: none"> <li>- The amendments to social security legislation that require people with disability with assessed work capacity to participate in a program of support before being deemed eligible to receive the DSP (these were described in more detail in our submission to the Commission posted on its website on 25 September 2017).</li> </ul> <p>The introduction of the <b>NDIS</b> which fundamentally changes the way government funding is allocated for people with disability working in supported employment.</p>	<p>Dr Ken Baker Witness Statement</p> <p><a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-ws-nds-141217.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-ws-nds-141217.pdf</a></p>
14 December 2017	<p>[23] There is no ongoing recognition of the DSA under the arrangements for people with disability who are NDIS participants with funded supports to access supported employment. This is not a "may occur" scenario; it has been underway since mid-2015. The new DSS discussion paper "<i>Ensuring a strong future for supported employment</i>" identifies the following statistics: "<i>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.</i>"</p>	<p>Dr Ken Baker Witness Statement</p> <p><a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-ws-nds-141217.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-ws-nds-141217.pdf</a></p>
14 December 2017	<p>[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).</p>	<p>Statement of Heath Dickens</p> <p><a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-ndsandors-141217.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-sub-ndsandors-141217.pdf</a></p>



DATE	REFERENCE	SOURCE
14 October 2019	We consider it imperative that the Full Bench releases its decision as soon as possible, for several reasons. Firstly, an assertion by DSS in its most recent correspondence about the new <b>NDIS</b> pricing for supported employment appears to conflate provision of that pricing with an enhanced ability of ADEs to meet increased supported employee wage costs. We continue to respectfully submit that <b>NDIS</b> pricing covers only the cost of ongoing support provision for employees with disability, as opposed to supplementation of their wages. In our view, there should be no link between the two.	NDS Correspondence <a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-corr-nds-141019.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014286-corr-nds-141019.pdf</a>
<b>TRANSCRIPT - 10 APRIL 2017</b>		
10 April 2017	PN1029  MR CHRISTODOULOU: Because it talks about - under the award it does talk about being eligible for DSP. Some school kids are not on the DSP. They might be eligible but maybe they haven't applied. They certainly will be eligible for the NDIS now that the funding's going to change, but again, the award doesn't actually talk about NDIS.	<a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/100417_am2014286-am201330.htm">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/100417_am2014286-am201330.htm</a>
10 April 2017	PN1275  MS LANGFORD: Which is - this is not the exposure draft. Okay. I suppose one of the concerns going forward is that as Australian Disability Enterprises' funding moves from being under the Disability Services Act and actually moves to the NDIS, we want to make sure that organisations are still able to refer to the SESA Award going forward in perpetuity basically. That's our concern. That definition needs to change so that employers actually can refer to the Act.	<a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/100417_am2014286-am201330.htm">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/100417_am2014286-am201330.htm</a>
10 April 2017	PN1288  MS LANGFORD: Yes, it is. So that's the concern, because going forward organisations won't be funded under the Disability Services Act. They will actually be funded under the NDIS and it's not services, it's actually individuals are funded. That's the dilemma.	<a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/100417_am2014286-am201330.htm">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/100417_am2014286-am201330.htm</a>

DATE	REFERENCE	SOURCE
10 April 2017	<p data-bbox="467 250 564 277">PN1313</p> <p data-bbox="467 304 1106 725">MS SVENDSEN: If we need my consent at all, but can I say that we won't object to changing it when we need to change it; but I'm really cagey about changing it before we actually see what's going to happen in terms of how those things are going to be defined. At the moment you're still defined under that section of the Act even though NDIS is starting to roll out. I mean, in the areas that NDIS is rolled out, ADEs are still defined under section 7 of the Disability Services Act so we don't need to change it until it changes in the Act.</p> <p data-bbox="467 808 564 835">PN1314</p> <p data-bbox="467 862 1098 969">MS LANGFORD: We have had some concern though from some members who have fully transitioned now into the NDIS.</p>	<p data-bbox="1131 250 1394 436"><a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/100417_am2014286-am201330.htm">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/100417_am2014286-am201330.htm</a></p>

DATE	REFERENCE	SOURCE
10 April 2017	<p data-bbox="467 250 568 277">PN1336</p> <p data-bbox="467 304 1098 533">MR CHRISTODOULOU: Because the concern will be that as soon as the NDIS takes over that funding arrangement and starts to fund either individual clients or whatever and they no longer have an agreement with the department, then they may not technically be covered by the award.</p> <p data-bbox="467 613 568 640">PN1337</p> <p data-bbox="467 667 1102 1048">MR KEMP: Although strictly this is something where in all of this space the Commonwealth hasn't provided advice. We have in the past funded ADEs to seek legal advice themselves. The Commonwealth, while we can get legal advice as has happened in these hearings, we're not able to share detail because it's Commonwealth advice and so I think it's something that ADEs would probably want to seek their own advice on, legal advice, about application of the Act.</p> <p data-bbox="467 1128 568 1155">PN1338</p> <p data-bbox="467 1182 1102 1294">What you're asking is whether or not this award will apply to you, vis-a-vis the Disability Services Act, and that's not something that - - -</p> <p data-bbox="467 1375 568 1402">PN1339</p> <p data-bbox="467 1429 1075 1576">MR CHRISTODOULOU: Well, let me ask it another way. Forget about the legal advice. Is it the intention of the Commonwealth that ADEs be able to operate under an NDIS environment?</p> <p data-bbox="467 1657 568 1684">PN1340</p> <p data-bbox="467 1711 991 1783">MR KEMP: Yes, well, that is what I had said previously.</p>	<p data-bbox="1131 250 1394 439"><a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/100417_am2014286-am201330.htm">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/100417_am2014286-am201330.htm</a></p>

DATE	REFERENCE	SOURCE
<b>TRANSCRIPT 21 APRIL 2017</b>		
21 April 2017	<p>PN2176</p> <p>MS LANGFORD: Could I just probably respond to that, Sam, is going forward when, you know, ADEs are no longer funded by DSS; that there won't be guidelines that are being developed in terms of, or contracts between the Australian Disability Enterprise or the Commonwealth, that literally this will be a business who will be an employer who is employing somebody who will be attracting funding under the NDIS and so there will be the quality framework and the things that sort of drive how an organisation can actually provide that support but there won't be guidelines as per se actually as to outlining that, so - - -</p>	<p><a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/210417am2014286.pdf.htm">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/210417am2014286.pdf.htm</a></p>
<b>TRANSCRIPT 29 NOVEMBER 2018</b>		
29 November 2018	<p>PN307 (Ken Baker)</p> <p>Funding for employment support in the workplace will for the majority of existing supported employees, be provided through individualised employment support funding in the NDIS participant packages. When considering the detail of the job sizing assessment, the Commonwealth respectfully suggests that the Commission has regard to Australia's international obligations, particularly under article 27(1)(a) and (b) are the convention on the rights of persons with disabilities, namely to take appropriate steps to prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, and to protect the rights of persons with disabilities including providing</p>	<p><a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/291118-am2014286.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/291118-am2014286.pdf</a></p>
29 November 2018	<p>PN310 (Ken Baker)</p> <p>However, the Commonwealth, respectfully suggests that the Commission considers where the proposed mechanism would be proportionate to this aim or another legitimate aim, if employees received a reduction in their wages for the employment support they require when the cost of that support is already funded through the Department or the NDIS.</p>	<p><a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/291118-am2014286.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/291118-am2014286.pdf</a></p>

DATE	REFERENCE	SOURCE
29 November 2018	PN314 (Ken Baker)  Now of course, much will depend upon the precise design of any new wage mechanism, but we do note that with the transition to the NDIS, we are entering a new frontier and it may be the case that new organisations come into the market and provide employment support for persons covered by the NDIS and they may not be traditional ADE's, and may not fall outside the coverage of the award. So we may have a situation where we have a greater number of what are not supported employees working in a different environment, and potentially covered by different modern awards.	<a href="https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/291118-am2014286.pdf">https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/291118-am2014286.pdf</a>
<b>TRANSCRIPT 8 FEBRUARY 2018</b>		
	See <b>PN730 to PN758, PN1392, PN1712 to PN1719</b>	
<b>TRANSCRIPT 9 FEBRUARY 2018</b>		
	See <b>PN1984, PN2158 to PN2160, PN2506, PN2563</b>	
<b>TRANSCRIPT 12 FEBRUARY 2018</b>		
	See <b>PN2747 to PN2803, PN2850 to PN2867, PN3467 to PN3472</b>	
<b>TRANSCRIPT 13 FEBRUARY 2018</b>		
	See <b>PN3927 to PN3932</b>	
<b>TRANSCRIPT 15 FEBRUARY 2018</b>		
	See <b>PN5338 to PN5339</b>	
<b>TRANSCRIPT 16 FEBRUARY 2018</b>		
	See <b>PN169 to PN182, PN443 to PN445, PN481</b>	