



## **Submission to the Fair Work Commission: Response to the 16 April 2018 Statement - AM2014/286.**

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

This submission includes NDS' response to the Full Bench's provisional conclusions contained in its Statement of 16 April 2018 (**April Statement**), and is being provided in accordance with the Full Bench's further Statement of 11 September 2018 seeking additional submissions from parties with an interest in the review of the SES Award.

NDS seeks to lodge material addressing the key aspects of the design and implementation of the new wage assessment mechanism, as outlined in the April Statement.

To this end, we have developed a proposed design concept for the job sizing component of the Full Bench's proposed wage assessment mechanism, and a set of proposed definitions arising from this concept.

In conducting this work, NDS has requested and considered input from its members, and has also engaged with other relevant stakeholders in the SES Award process.

### **1. Merit of the provisional conclusions expressed in the April Statement**

The key provisional conclusions expressed by the Full Bench at paragraph 15 of the April Statement include:

*(10) The interested industry parties and the Commonwealth will be given an opportunity to participate in a conferral process conducted by a member of this Full Bench in order to design a new classification structure and wage assessment mechanism consistent with the above conclusions. This conferral process will include consideration of:*

- *the length of the phase-out period for the existing wage assessment tools;*

- *the establishment of objective criteria for the “sizing” of jobs performed by supported employees;*
- *how the SWS might be modified, or an analogous mechanism established, for the measurement of the output of a supported employee in a particular job; and*
- *transitional arrangements concerning existing wage rates and transitional time periods for ADEs with a demonstrated economic incapacity to pay.*

*(11) We consider it highly desirable that both elements of the new wage assessment mechanism be supported by the provision by the Commonwealth of trained and independent assessors. We therefore consider that the close involvement of the Commonwealth in the design of the detail of the new wage assessment mechanism would be in the public interest.*

*(12) The new wage assessment mechanism should be trialled early in the phase-out period to determine its wage cost impact and to identify any other difficulties before the Commission approves its inclusion in the Award.*

NDS supports and welcomes the Full Bench’s provisional conclusions regarding the need for, and proposed form of, a new wage assessment mechanism in the SES Award on the basis set out above.

NDS supports the concept of a single wage assessment methodology being adopted for supported employment, conditional upon the wage assessment mechanism which ultimately forms part of the SES Award:

- being fully tested by way of a trial program (as contemplated by the Full Bench at paragraph 15(12) in the April Statement); and
- being subject to an appropriate phase-in process (which we comment on below).

NDS also supports the concept of “job sizing”, as it ensures that work value considerations are taken into account when determining a supported employee’s pro-rata wage. This includes the recognition of:

- job-related skills;
- the complexity of work performed; and
- the degree of supervision necessary to perform these tasks.

#### Independent assessment/Commonwealth support

NDS also supports the Full Bench’s comments as set out above in relation to the involvement of the Commonwealth in both the design phase of the wage assessment

mechanism and in the provision of independent and appropriately qualified assessors.

## **2. Design and implementation of the new wage assessment mechanism**

Since the April Statement NDS has convened a working group of its membership to explore options for design and implementation of the new wage assessment mechanism, with particular emphasis on the concept of job sizing.

### **i. Job sizing**

NDS has drawn on the working group's work to produce the following documents:

- a design concept for the job sizing component of the Full Bench's proposed wage assessment mechanism (**Annexure A**); and
- a series of aligned definitions complementing the above (**Annexure B**).

### **ii. Output assessment**

An appropriate productive output assessment mechanism in line with the April Statement should be identified, which takes into account:

- the time an employee engages directly in work activities as opposed to non-productive time;
- internal employer data;
- benchmarking of output; and
- resolution of inconsistencies identified in the SWS demonstration project.

We have set out below some measures which would assist in identifying an appropriate output assessment mechanism.

## **3. Guidance from Full Bench and further conference process**

We note from the Full Bench's 11 September 2018 Statement that it proposes to issue a final decision in this matter (including in relation to the claims which were not the subject of the April Statement) and in light of submissions from some interested parties, the Full Bench does not consider that a further conferral process will be beneficial in this regard.

NDS respectfully submits that the Full Bench should now proceed to:

- confirm its provisional conclusions about the design of its wage assessment mechanism consistent with the April Statement; and

- direct interested parties to engage in a further (and final) series of conferences and/or submission process. The purpose of this would be to allow interested parties to confer further and provide final submissions on:
  - the specific details of the job sizing system;
  - the specifics of output assessment; and
  - proposals for implementation of the above.

While we have endeavoured to provide some suggested content in this regard by way of the annexures to these submissions, we recognise that at this point in time that these are intended to be a guide only. The advantages of the above approach are that:

- interested parties will benefit from having certainty about the broad design of the Full Bench's wage assessment mechanism when conferring and caucusing to engage in further conferences and/or provide further submissions; and
- the Full Bench will then benefit from the outcome of these conferences and submissions in coming to a final decision in this matter.

#### **4. Submissions on implementation**

Once the Full Bench has made a final decision on the SES Award wage assessment mechanism, we submit that there should be a period of testing of same and resulting wage outcomes. NDS considers that there is substantial merit in the Commonwealth overseeing the latter work, and that the testing be conducted over a suitable period of time in a representative sample of supported employment settings.

The Commonwealth Government should also advise the FWC how long the wage assessment mechanism would take to introduce across the supported employment sector. Given the magnitude of assessing the output of around 21,000 supported employees nationally (including the recruitment and training of any additional assessors required), NDS proposes that a three-year minimum phase in period would be appropriate .

NDS also submits that the Government undertake further work on the impact of any wage increases arising from the new assessment methodology *prior* to the phase in period commencing.

The Government should also develop policy responses addressing the issues of ADEs with an economic incapacity to pay during and after the transition, as well as longer term issues such as pricing and funding that enables the ongoing provision of supported employment under the National Disability Insurance Scheme.

NDS is also liaising with its membership and Australian Business Lawyers & Advisors about submissions the latter is filing in these proceedings on behalf of Australian Business Industrial and the NSW Business Chamber, and will provide further

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comment on these submissions during the further hearing days scheduled for 5 and 6 November 2018.

NDS looks forward to supplementing these submissions during the further hearing days, and constructively participating in any future work arising from the Full Bench's final decision in this matter.

## **October 2018**

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**National Disability Services (NDS)** is Australia's peak body for non-government disability service organisations, representing more than 1,100 non-government service providers. Collectively, NDS members operate several thousand services for Australians with all types of disability. Its members collectively provide the full range of disability services - from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.

## Annexure A:

### Proposed Job Sizing Methodology

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#### **Purpose:**

To consider a proposed methodology to “size” a job assigned to a supported employee as compared to the full award rate of pay at the applicable grade.

#### **Background:**

In April 2018 the Full Bench of the Fair Work Commission (FWC) released an interim Statement of their findings following the February 2018 Hearings for the review of the Supported Employment Services Award (SESA).

#### **Proposed Methodology Example:**

To demonstrate the proposed methodology, NDS examined the Engineering Position identified in Grade 2 of the current SES Award.

The indicative tasks relevant to a position in mainstream employment were identified (column A) and a weighting attached to each full task (column B), proportionate to the production process. Sub-tasks were identified within each of these tasks (column C) which were also weighted (Column D) as a proportion of the value of the entire task. See the table below.

In conducting a “sizing” of the job a supported employee is assessed on their ability to undertake each of the sub-tasks within the job’s tasks. In our example, the supported employee can perform 2 of the 3 sub-tasks in **Task 1** (column E). The entire task is weighted at 30% of the entire job (column B.1). Each of the sub-tasks is weighted at 33.33% and the supported employee is assessed as being able to complete 66.67% of the task (column G). This represents 20% (column H) of the entire job value (column B.6).

The process is repeated for each of the other tasks and the supported employee’s job size is determined. In our example the supported employee’s job size is 40% (column H.6).

Once the job sizing is determined, the supported employee would participate in a productive output assessment.

The Productive Output Assessment process is not covered in this paper.

A. Task	B. Weighting of entire Task	C. Sub-Tasks	D. Sub-Task Weighting	E. Tasks Supported Employee (SE) can perform	F. Tasks SE is assessed against	G. % of Sub- Tasks SE can perform	H. Weight of entire Task SE can perform
1. Repetition Work on semi-automatic machine	30%	Sub-Task 1	33.33%	√	√	66.67%	20%
		Sub-Task 2	33.33%	√	√		
		Sub-Task 3	33.33%	No	No		
2. Assembles components using basic written, spoken and /or diagrammatic instructions in an assembly line	20%	Sub-Task 1	25.00%	√	√	75%	15%
		Sub-Task 2	25.00%	√	√		
		Sub-Task 3	25.00%	No	No		
		Sub-Task 4	25.00%	√	√		
3. Uses selected hand tools	20%	Sub-Task 1	50.00%	No	No	0%	0%
		Sub-Task 2	50.00%	No	No		
4. Boiler Cleaner	10%	Sub-Task 1	50.00%	√	No	50%	5%
		Sub-Task 2	50.00%	No	No		
5. Uses hand trolley and pallet trucks	20%	Sub-Task 1	50.00%	No	No	0%	0%
		Sub-Task 2	50.00%	No	No		
<b>Total Size of Job (Job value)</b>	100%				<b>Total size of the Job for Supported Employee</b>		40%

## **Annexure B:**

### **Supported Employment Services Award Classification Structure – Definitions**

**Benchmark:** A predetermined rate of output of a good or service compliant with relevant specifications and/or quality standards against which the rate of output of a supported employee would be compared.

**Duty statement/Position description:** A document identifying a range of definable tasks that constitute a job performed by a fully competent employee, with the expectation the employee can perform different tasks as required. These documents are unique to a particular business and would be derived from the relevant Award Classification task and sub-task descriptors.

**Job:** A paid position performing tasks within a particular industry/sector. Ideally should involve production of some measurable output or outcome.

**Job sizing:** Step 1: Identification of the primary tasks and key sub-tasks within a job, using mainstream descriptors, that a fully competent employee could reasonably be expected to undertake and is the full job value. Tasks are then weighted according to their complexity and value to the production process. Step 2: The sub-tasks that a supported employee has the capacity to perform to an acceptable standard are then expressed as a percentage or fraction of their respective tasks and a resized job value is assigned. Step 3: The supported employee's productive output is then assessed against the benchmark for tasks they are actually required to perform (taking into account the proportion of work time generally spent performing them), expressed as a percentage or fraction of the resized job value determined in Step 2. The final pro rata wage is then calculated.

**Productivity:** The rate at which a set of inputs is converted into measurable outputs, compliant with relevant specifications and/or quality standards. The rate of output of a good or service compliant with relevant specifications and/or quality standards within a particular time period. Also referred to as "productive output".

**Skill:** The ability of an employee to perform a particular task to the required quality standard without (or with very limited) support, e.g. labelling, collating, palletising.

**Sub-task:** Elements or aspects of a task.

**Supervision:** Observing that an employee performs set tasks as directed, with intervention occurring as needed. Direction provided to an employee that informs them of the task(s) they are required to perform at a given time, occurring as needed.

**Support:** A regular and ongoing "input" provided by a support worker that enables an employee to complete a task, i.e. without the support the employee would not be able to complete the task independently, or to the required quality standard.

**Support worker:** A person employed by disability enterprise who provides direct work based employment support to a supported employee.



**Task:** An element of a job, one of a range of tasks that collectively constitute a job.

**Task complexity:** The number (or degree) of complicated sub-tasks that need to be performed to complete a task. Tasks within a job may vary significantly in complexity.

**Work value:** Considerations used to assess award wage rates, namely the nature of the work, the level of skill and responsibility involved in doing the work and the conditions under which the work is done. In supported employment this would include the complexity of the task(s) performed, the range of tasks performed, and the level of support required in order for the task(s) to be performed.