

FILLING GAPS IN COVERAGE FOR SCHOOL BASED APPRENTICES AND TRAINEES AND THE SUPPORTED WAGE SYSTEM– PROPOSED APPROACH AND MODEL CLAUSES

Proposed approach

Any variation of wage rates in transitional awards in light of the recent Australian Fair Pay Commission decision provides the opportunity at the same time to, to insert provisions for:

- school-based apprentices in every award that covers the employment of apprentices but that does not already include specific provisions for school-based apprentices;
- school-based trainees in every award that covers work done by trainees, but that does not already include provisions for school-based trainees; and
- the Supported Wage System (SWS) in all awards that do not already make provision for the SWS.

It is proposed that in all instances the Commission would take this action pursuant to clause 62(1) of Schedule 6 of the *Workplace Relations Act 1996* whether or not the application for wage increases specifically seeks these provisions.

Model clauses for school-based apprentices

The proposed provision to be inserted into awards for school-based apprentices is provided at Attachment A. The provision was originally drafted by the Australian Chamber of Commerce and Industry and the Australian Council of Trade Unions. It was adapted from and based on the model clause endorsed by a Full Bench of the Commission in 2000.¹ The proposed provision was also used by Commissioner Smith as part of the Commission's systematic process of reviewing key awards of its own motion to include arrangements for school based apprentices.

Where an award contains provisions for apprenticeships, the Commission would vary the award to include the provisions for school-based apprenticeships contained in Attachment A, if they are not included already.

Model clauses for school-based trainees

For school-based traineeships, it is proposed that the standard provision that is currently in many awards that adopts the National Training Wage Award (NTW Award) be inserted in any award where a traineeship can potentially be undertaken in relation to the work covered by the award, but the award does not currently adopt the NTW Award.

¹ Australian Industrial Relations Commission, Part-time Apprenticeships – Endorsement of Model Clauses, Decision, 6 March 2000, Print S3850.

If this is not feasible in a particular award, an alternative provision that adopts only the school-based trainee provisions of the NTW Award could be inserted into the award instead.

The standard provision currently contained in many awards that adopts the NTW Award is provided at Attachment B.² The attachment also includes an example of a variation to the standard which adopts only the school-based trainee provisions.

The SWS model clause

In 1994, a consent application for endorsement of model award provisions for the SWS was made to the Commission, by the ACTU, ACCI and the Australian Government. The Commission approved the SWS model clause [Attachment C] to be inserted in federal awards. It provides the legal basis for the assessment and payment of pro-rata wages based on an assessment of the employee's skills and productive capabilities using the SWS.³

² See for example subclause 4.2.8 in the Metal, Engineering and Associated Industries 1998, AW789529CRV.

³ Australian Industrial Relations Commission, Supported Wage System for People with a Disability, Decision 1831/94, S Print L5723.

ATTACHMENT A

'MODEL' SCHOOL-BASED APPRENTICESHIP CLAUSE

- (a) This clause shall apply to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this clause while also undertaking a course of secondary education.
- (b) The hourly rates for full-time junior and adult apprentices as set out in this award shall apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.
- (c) For the purposes of (a) above, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice is paid is deemed to be 25% of the actual hours each week worked on-the-job. The wages paid for training time may be averaged over the semester or year.
- (d) The school-based apprentice shall be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.
- (e) For the purposes of this sub-clause, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.
- (f) The duration of the apprenticeship shall be as specified in the training agreement or contract for each apprentice. The period so specified to which the apprentice wage rates apply shall not exceed six years.
- (g) School-based apprentices shall progress through the wage scale at the rate of 12 months progression for each two years of employment as an apprentice.
- (h) These rates are based on a standard full-time apprenticeship of four years. The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.
- (i) Where an apprentice converts from school-based to full-time, all time spent as a full-time apprentice shall count for the purposes of progression through the wage scale. This progression shall apply in addition to the progression achieved as a school-based apprentice.
- (j) School-based apprentices shall be entitled pro-rata to all of the conditions of employees under this award.

ATTACHMENT B

Trainees

The parties to this Award shall observe the terms of the National Training Wage Award 2000, as amended.⁴

Alternative Provision:

Trainees

The parties to this Award shall observe the terms of the National Training Wage Award 2000, as amended in so far as they relate to school-based trainees.

⁴ From subclause 4.2.8 in the Metal, Engineering and Associated Industries 1998, AW789529CRV.

Supported Wage System Model Clause

1.1 Workers eligible for a supported wage

(a) This clause defines the conditions which will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this agreement/Award. In the context of this clause, the following definitions will apply:

(i) "Supported Wage System" means the Commonwealth Government System to promote employment for people who cannot work at full Award wages because of a disability, as documented in "[Supported Wage System: Guidelines and Assessment Process]".

(ii) "Accredited Assessor" means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.

(iii) "Disability Support Pension" means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.

(iv) "Assessment instrument" means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

1.2 Eligibility criteria

(b) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this agreement/Award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.

(The clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this agreement/Award relating to the rehabilitation of employees who are injured in the course of their current employment).

The Award does not apply to employers in respect of their facility, program, undertaking service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are receiving or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or under Section 12A of the Act, or if a part only has received recognition, that part.

1.3 Supported wage rates

(c) Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this Award/agreement for the class of work which the person is performing according the following schedule:

Assessed capacity (sub-clause (d))	% of prescribed award rate
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(Provided that the minimum amount payable shall be not less than \$64 per week).

* Where a person's assessed capacity is 10 per cent, they shall receive a high degree of assistance and support.

1.4 Assessment of capacity

(d) For the purpose of establishing the percentage of the Award rate to be paid to an employee under this Award/agreement, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:

- (i) the employer and a union party to the Award/agreement, in consultation with the employee or, if desired by any of these;
- (ii) the employer and an accredited Assessor from a panel agreed by the parties to the Award and the employee.

1.5 Lodgment of assessment instrument

- (e) (i) All assessment instruments under the conditions of this clause, wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Industrial Relations Commission.
- (ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the Award/agreement, is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within 10 working days.

1.6 Review of assessment

(f) The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

1.7 Other terms and conditions of employment

(g) Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the provisions of the clause will be

entitled to the same terms and conditions of employment as all other workers covered by this Award/agreement paid on a pro-rata basis.

1.8 Workplace adjustment

(h) An employer wishing to employ a person under the provisions of this clause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

1.9 Trial period

(i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

(ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.

(iii) The minimum amount payable to the employee during the trial period shall be no less than \$64 per week.

(iv) Work trials should include induction or training as appropriate to the job being trialed.

(v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause (c) hereof.