**SUMMARY OF SUBMISSIONS: REVIEW OF EXISITNG WAGE ARRANGEMENTS FOR EMPLOYEES WITH DISABILITY**

This table is a summary of submissions lodged for the Annual Wage Review 2016–17 preliminary hearing into a review of existing wage arrangements for employees with disability.

| **No.** | **QUESTION** | **SUMMARY OF SUBMISSIONS** |
| --- | --- | --- |
| 1. | **Taking into account the historical and legislative development of special National Minimum Wage 1 (NMW1), is a special national minimum wage required to ensure minimum wage coverage for employees whose disabilities do not impact on their productive capacity?**  | [Australian Government](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/ausgovsub.pdf) (p. 8) submitted that s.294(3)(c) of the *Fair Work Act 2009* (Cth)(Act) excludes the NMW from covering employees with disability, so special NMW1 is necessary to provide a minimum wage for employees whose disability does not affect their productive capacity. [ACTU](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/actusub.pdf) (p. 42) submitted that “it is entirely inappropriate national policy” to maintain such a separate minimum wage, which is “at odds with ordinary conceptions of fairness”, but resolution of this issue was a matter of legislative amendment and the Commission should continue with current practice of wage-setting special NMW1 at the same rate as the NMW.[Ai Group](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/aigroupsub.pdf) (p. 11) supported maintaining special NMW1. [ACOSS](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/acosssub.pdf) (p. 4) restated its position from previous reviews, that “it should not be necessary to set a separate minimum wage for people with disabilities whose work capacity is assessed at 100%”, but acknowledged that this was a matter of legislative amendment rather than falling within the Commission’s powers.[ABI&NSWBC](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/abisub.pdf) (para. 5.4) considered the interaction between sections 12, 294(1)(b)(iii) and 294(3) of the Act, submitting that these sections compel the existence of special NMW1.[NDS](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/ndssub.doc) (p. 2) submitted that special NMW1 is no longer required, and “recommends that Special NMW1 be removed from future National Wage Case decisions.” |
| 2. | **Do current wage rates provide adequate incentives for employees with disability to participate in the workforce?**  | [Australian Government](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/ausgovsub.pdf) (pp. 8–9) submitted that the Supported Wage System (SWS) provided more favourable wage rates when compared to other types of income support (Newstart and Youth Allowance). They provided tables showing an increase in the number of SWS arrangements in recent years. They submitted that the Commission should not determine wages for people with disability to vary or offset incentives which flow from taper rates of governmental income support.[ACTU](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/actusub.pdf) (pp. 45–46) submitted that the Commission should exercise caution when dealing with special NMW1, especially the SWS component, which came about from extensive research, consultation and consensus. The ACTU suggested creating a new modern award targeting occupations of employees covered by SWS, but only after matter AM2013/30 has been decided.[Ai Group](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/aigroupsub.pdf) (p. 11) submitted that higher wage rates would “most likely lead to reduced workplace participation because the result would be fewer employment opportunities.”[ABI&NSWBC](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/abisub.pdf) (para. 5.5) submitted that current wage rates were “adequately set for employees with disability to participate in the workforce.”[NDS](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/ndssub.doc) (p. 2) submittedes may be receiving the equivalent of the NMW or greater.” |
| 3. | **Would any increases to wages for employees with disability impact employees’ access to employment?** | [Australian Government](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/ausgovsub.pdf) (p. 10) recommended that the Panel should carefully consider the potential risks to employment opportunities for people with disability in making any revisions to wage arrangements.[ACTU](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/actusub.pdf) (p. 47) noted that the nature and extent of the labour market for people with disability is different to the broader market, and recommended that it was “inappropriate to approach the task on the basis that common assumptions are applicable.”[Ai Group](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/aigroupsub.pdf) (p. 11) submitted that increases to wages for employees with disability “would adversely impact employees’ access to employment.”[ABI&NSWBC](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/abisub.pdf) (para. 5.6) submitted that, having consulted with its members on the issue, “an increase to wages will have a deleterious effect on the attractiveness of employees to employers regardless of their capacity.” [NDS](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/ndssub.doc) (p. 3) submitted that wage increases “would simply price employees and job seekers with disability out of an already difficult labour market.” |
| 4. | **Is it still appropriate to set the minimum wage for SWS employees at the income-free DSP threshold amount? If not, how should the threshold for these wages set?**  | [Australian Government](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/ausgovsub.pdf) (p. 11) submitted data on average SWS wage and hours, and noted that “most people employed on SWS are having their DSP [Disability Support Pension] reduced by some portion, and continue to participate in the workplace.” The submission suggested two advantages of this method of wage setting: 1. It ensures that people on SWS have as a minimum a gross income of their maximum achievable DSP rate plus 100% of their SWS earnings, and 2. It avoids interactions between government policy on how DSP should be adjusted for other income, and NMW policy for people on SWS.[ACTU](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/actusub.pdf) (p. 48) submitted that setting the SWS payment rate in this manner treats wages “as a welfare supplement”, makes the system “subject to gaming”, disadvantages workers who only have capacity to work a few hours, as well as disadvantaging workers on short term engagements of less than 12 weeks who may not be assessed. [Ai Group](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/aigroupsub.pdf) (p. 60) submitted that they have not identified any difficulties with the current arrangements of setting the minimum wage for SWS employees at the income-free DSP threshold.[ACOSS](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/acosssub.pdf) (p. 68) restated its position from previous reviews that the minimum wage rate under the SWS for employees with disability was too low, and proposed setting the minimum wage rate for special NMW2 as a percentage of the hourly NMW.[ABI&NSWBC](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/abisub.pdf) (para. 5.8) submitted that “having regard to the maintenance of employment opportunities for employees with a disability, the minimum wage for SWS employees should remain at the income-free DSP threshold amount.”[NDS](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/ndssub.doc) (p. 4) submitted that income supplementation for higher costs of living associated with disability was not a wage setting issue, but an issue more appropriately addressed through government social policy; and recommended no increase to the minimum wage under the SWS. |
| 5. | **What is the likely impact on employers of employees with disability to any changes in wage-setting arrangements or wage rates?** | [Australian Government](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/ausgovsub.pdf) (p. 13) acknowledged the trial of a modified SWS in Australian Disability Enterprises (ADEs) as part of matter AM2013/30. They submitted that the removal of the minimum wage floor for SWS employees in this trial may have an impact on the movement of employees between open employment and supported employment.[ACTU](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/actusub.pdf) (p. 12) submitted that due to the limited timeframe leading up to the preliminary hearing, they have been unable to develop a detailed understanding of the labour market for persons with disabilities whose productive capacity is affected by those disabilities.[Ai Group](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/aigroupsub.pdf) (p. 12) submitted that “[i]ncreases to wages would adversely impact upon … employees’ access to employment.”[ABI&NSWBC](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/abisub.pdf) (para. 5.10) submitted that “increases in the cost of employing employees with a disability will (as would be the case with any employee) likely have some negative effects on rates of employment.”[NDS](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/ndssub.doc) (pp. 3–4 ) submitted that employers would only be willing to pay employees with disability increased wages if there was a corresponding increase in skills or productive output, and that “a more long term perspective from policy makers that assists people with disability to retain their employment should be considered.” |
| 6. | **What additional research would parties like to be conducted in relation to wage setting for employees with disability?** | [Australian Government](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/ausgovsub.pdf) (p. 12) submitted, in relation to the trial of the modified SWS in ADEs, that “the results will enable parties in the FWC to see what works and what can be improved and will inform any additional work to be considered in the FWC.”[ACTU](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/actusub.pdf) (p. 7, p. 50) suggested the following topics for further research:* Modelling net disposable income effects at different numbers of working hours for DSP recipients versus other welfare recipients
* Study of distribution of hours of work for employees with disability at different assessed capacities and classifications
* Snapshot of common types of work performed by SWS employees who are award-free and in receipt of special NMW2
* Comparative study of the income support payments for employees with disability and the Newstart allowance.

[Ai Group](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/aigroupsub.pdf) (p. 12) submitted that the Commission should conduct research into the number and characteristics of employees with disability to whom existing wage setting instruments and arrangements apply.[ACOSS](https://www.fwc.gov.au/documents/sites/wagereview2017/consultations/acosssub.pdf) (p. 5) submitted that due to the complexity of issues, “the best way to proceed is to signal the direction of any proposed changes and seek submissions on matters of detail (especially the quantum of any increases or minimum benchmarks) in the next round of minimum wage consultations.” |

**List of abbreviations (in alphabetical order)**

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| ABI&NSWBC | Australian Business Industrial, New South Wales Business Chamber |
| ACCI | Australian Chamber of Commerce and Industry |
| ACOSS | Australian Council of Social Service |
| Act | *Fair Work Act* (2009) Cth |
| ACTU | Australian Council of Trade Unions |
| ADEs | Australian Disability Enterprises |
| Ai Group | Australian Industry Group |
| AWR | Annual Wage Review |
| Commission | Fair Work Commission  |
| DSP | Disability Support Pension |
| NDS | National Disability Services  |
| NMW | National Minimum Wage |
| special NMW1 | special National Minimum Wage 1 |
| special NMW2 | special National Minimum Wage 2 |
| SWS  | Supported Wage System |