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To: AMOD <AMOD@fwc.gov.au>

Cc: Emma Gruschka <Emma.Gruschka@sparke.com.au>; SEpolicy <SEpolicy@dss.gov.au>

Subject: AM2014/286 - 4 yearly review of modern awards - Supported Employment Services Award 2010 [SPARKE-MATT.FID6015583]

Dear Awards Team,

Further to direction 1 of the Directions issued by the Full Bench on 31 March 2022 in the above matter, please find **attached** the submissions on behalf of the Commonwealth of Australia as represented by the Department of Social Services.

If you have any questions, please let us know.

Kind regards

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FAIR WORK COMMISSION

Four yearly review of modern awards *Supported Employment Services Award 2020 [AM2014/286]*

SUBMISSIONS OF THE COMMONWEALTH AS REPRESENTED BY THE DEPARTMENT OF SOCIAL SERVICES

22 April 2022

INTRODUCTION

1. These submissions are made by the Department of Social Services (the **Department**) on behalf of the Commonwealth of Australia in response to the direction published by the Fair Work Commission (**FWC**) on 31 March 2022.
2. The Department's interest in the Four Yearly Review proceedings with respect to the *Supported Employment Services Award 2020* (the **Award**) arises from the its responsibilities in respect of the following:
 - a. overall policy responsibility regarding employment for people with disability, including those working in supported employment settings;
 - b. policy responsibility and ongoing management of the Supported Wage System (**SWS**);
 - c. managing the National Panel of Assessors (**NPA**). Through the NPA, assessors are funded to complete a range of assessments, including SWS under the Award.
3. These responsibilities mean the Department is in a position to inform the FWC on the potential implications arising from changes to the Award contemplated by the FWC.
4. In addition, the Government has announced a \$67 million measure to support organisations to transition to a new wage-setting environment once a final decision has been reached by the FWC. Once the FWC's final decision is made, the Department will develop advice for government (in consultation with the sector) on the most appropriate and effective use of the funding to support organisations to transition to the new environment.
5. The Department's submissions focus on implications of Award variations proposed in the Full Bench's decision in December 2019 (**Proposed Approach**). They will also address, where appropriate, matters raised in the submissions of other parties - to the extent those matters are within the Department's purview.
6. The matters outlined below have relevance to the Full Bench's exercise of its powers in this matter, having regard to the modern award objectives.

IMPLICATIONS OF PROPOSED CHANGES TO AWARD

Costs of Proposed Approach

7. A \$67 million measure has been announced to support organisations to transition to a new wage-setting environment. The Department acknowledges that the transition to a different Award structure will require significant communication and education from across the sector. However, the Department can make no submissions as to the particulars of how this support package is spent as this would pre-empt a decision of government. The Department will engage in industry consultation before developing advice for government.
8. The Department currently funds the costs of SWS assessments via the NPA. Assessments are undertaken both in supported employment (under a modified version of the SWS available in the current Award) and open employment (under other modern awards).
9. Under the current version of the Award:
 - a. There are currently around 20,000 assessments undertaken each year (around 16,000 for workers in ADEs, plus 4,000 for workers in open employment).¹
 - i. An average of approximately 5,200 SWS assessments are undertaken by NPA providers annually. Of these 5,200 assessments, around 25 per cent (or around 1,250) take place in Australian Disability Enterprise (**ADE**) settings, and the other 75 per cent (almost 4,000) take place in open employment settings. The cost of these assessments is approximately \$3 million per year.
 - ii. Approximately 14,750 workers in ADEs are currently assessed using one of the 21 other assessment tools approved for use under the Award. These assessments are undertaken by ADE staff and are not funded by the Department.
10. In its December 2019 decision, the Full Bench of the FWC highlighted a number of the virtues of the SWS, including it being “*transparent and comprehensible to disabled employees and their families*”, being a process that is impartial and independent and being “*financially supported in its operation by the Commonwealth Government*”.²
11. Under the Proposed Approach, if NPA assessors were undertaking approximately 20,000 assessments each year, based on current pricing, the assessment costs of this change could increase to approximately \$12 million annually. It is foreshadowed there will be additional costs on top of this to implement the change such as recruitment and training of new assessors.
12. Based on these figures, if the Proposed Approach is adopted, the demand for external assessments would increase by 1280% of current levels for ADEs per year.

¹ These figures are based on the current NPA assessment data and estimates relating to the number of supported employees working in ADEs.

² *4 yearly review of modern awards—Supported Employment Services Award 2010* [2019] FWCFB 8179 at [347]

Capacity of NPA

13. Anecdotal feedback from NPA providers indicates the assessor workforce is already strained due to competition for similar skill sets in other similar markets.
14. Changes to the NPA program will be required to enable demands arising from the Proposed Approach to be met³. However, any submissions by the Department as to possible changes to the NPA program would pre-empt a government decision on these matters. In addition, reforms to the NPA program implemented by government may be impacted by the timing of implementation of changes to the Award and the tight labour market already present. These factors may mean that the Department's ability to expand the assessor workforce is significantly restricted.

The Trial Report

15. The report arising from the trial of the Proposed Approach dated 24 November 2021 (**Trial Report**) recommends funding be provided for ADEs to absorb wage increases. The Department cannot offer submissions as to how transitioning may be supported, as this would pre-empt a decision of government.
16. A sufficient transition period would be needed to implement Proposed Award reforms and build the assessor workforce. The Report suggests '*a few years*' will be required for the transition after the FWC's final determination. The Department does not disagree with this assessment but notes specific timeframes for a transition period should have regard to the practical and financial implications of the Proposed Approach (or other Award changes) and include consideration of matters such as those outlined in these submission.
17. In the submissions by the Australian Council of Trade Unions (**ACTU**), United Workers' Union (**UWU**), Association of Employees with Disabilities (**AED**) and the Health Services Union (**HSU**) dated 16 March 2022, submissions were made as to on the limitations of the Trial Report. The Department submits it is a matter for the FWC as to how much weight it affords to the Trial Report. To assist the FWC with its assessment, the Department submits:
 - a. The Trial was commissioned to understand what:⁴
 - i. is needed to ensure consistent application of the new wage assessment structure;
 - ii. is needed to ensure a successful transition to the new wage assessment structure;
 - iii. impact the new wage assessment structure will have on the financial viability of ADEs; and
 - iv. impact the new wage assessment structure will have on worker earnings and hours and the interaction with the Disability Support Pension (DSP).

³ The Department notes that any necessary reforms to the NPA would likely be funded separately from the \$67 million support measure.

⁴ Fair Work Commission New Wage Assessment Structure Trial Evaluation Report, page 7.

- b. It was not anticipated the Trial Report would address matters beyond the scope for which it was commissioned.
- c. The Trial design was produced in consultation with a steering committee which contained representatives from all the employee groups (specifically the ACTU, UUU, AED⁵, HSU and Our Voice), employer groups (Australian Business Industrial, NSW Business Chamber, Greenacres Disability Services and National Disability Services), the FWC and the Department;
- d. The Trial Report sets out, in detail at page 8, the limitations of its evaluation; and
- e. Ultimately trials (of any nature) are necessarily, constrained by their scope, and cannot anticipate, address or assess all possible variables and eventualities.

18. The Department remains willing to assist the FWC with information on the matters addressed in these submissions.



Debbie Mitchell

Deputy Secretary
Disability and Carers
Department of Social Services
22 April 2022

⁵ Noting that the AED suspended their membership to the steering committee following a legal challenge being made.