



Submission to the Fair Work Commission: Support for variation determinations - AM2014/286.

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

NDS seeks to lodge further evidence in support of our variations requesting the inclusion of updated definitions of **Employee with disability** and **Supported employment service**. In addition, we do not oppose the variation determination lodged by Australian Business Industrial and the NSW Business Chamber that seeks the inclusion of the Schedule I - Work Value Classification Tool (WVCT).

Productive output assessments and skills recognition

NDS and its members remain of the view that pro rata wages solely determined by productivity assessments are problematic in supported employment settings. Productive output assessments are too simplistic and do not take into account the commercial and economic considerations associated with operating a Disability Enterprise.

Disability Enterprises have raised strong concerns about attempting to determine employee productive output in group work and production line settings in particular. These concerns arose when modifications to the Supported Wage System were being investigated and are examples of where it is difficult to isolate a rate of an individual employee's productive output.

NDS and its members are of the view that observable, measurable and relevant work related skills must be taken into account when determining a supported employee's pro rata wage.

In the wider economy and labour force, possession of skills (or the ability to acquire such skills) remains the most important factor in determining an employee's suitability for a job. It is a mainstream concept currently underpinned by the Australian Core Skills Framework (ACSF). In addition the ACSF includes a separate classification mechanism that can be utilised when an employee (or individual) suffers intrinsic mainstream (or core) skills deficits due to, for example, an intellectual disability.

Disability Enterprises argue that employee advancement is dependent on the acquisition of work related skills that enable the performance of more complex jobs or tasks.

Productive output assessments may also result in a perverse outcome where an employee's productive output rate might be reduced due to them performing a more complex task (requiring specific skills).

The vast majority of Australian workers are not paid a wage based on their rate of productive output; indeed unions fought a long battle to have piece rate wage methodologies removed from consideration in industrial Awards for workers without disability.

Some workplace related knowledge and competencies were identified in Grade 1 of the SES Award in 2010. These include:

- Information on the employer's business
- Conditions of employment
- Introduction to supervisors and fellow employees
- Training and career path opportunities
- Worksite layout
- Work and documentation procedures
- Occupational health and safety
- Equal employment opportunity
- Quality control/assurances

The concept of competency had previously been incorporated into the various national training packages and the Australian Qualifications Framework (AQF). Units of competency were used to specify the standards of performance required in the workplace and included associated assessment requirements.

The concept of competency has since been superseded in the AQF and national training packages by the introduction of the ACSF. This change in terminology from "competency" to "skill" is of particular relevance to the SES Award review.

Ideally, a framework that identifies skills should be applied to the duties of supported employees. This then raises the question of whether or not there should be a specific classification structure in the Award for supported employees. Australian Business Industrial and the NSW Business Chamber seek to address this issue with their Work Value Classification Tool (WVCT).

In summary, NDS and its members believe there is a strong case for the inclusion and assessment of clearly observable, measurable and relevant elements of supported employee work related skills. We consider the WVCT provides an additional mechanism to allow this and therefore are not opposed to its inclusion in the SES Award.

Definition of supported employees

Over recent years the government's Welfare Reform agenda has introduced changes that impact on the eligibility of individuals to receive the Disability Support Pension (DSP). These changes have directly affected individuals currently participating or intending to work in a Disability Enterprise as a supported employee.

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The two groups impacted are:

- Individuals currently applying for the DSP; and
- Individuals under 35 who were granted the DSP between 2008 and 2011

New applications for DSP post 2012:

As of January 2012 to qualify for the DSP a person must have a physical, intellectual or psychiatric impairment that attracts an impairment rating of at least 20 points under the revised impairment tables.

From 3 September 2011 – new DSP recipients who do not have a severe impairment¹ must demonstrate that they have actively participated in a Program of Support (POS).

What this means:

Until a person completes the Program of Support consisting of 18 months in total over a 3 year period and has demonstrated that they were unable to improve their capacity to prepare for, find or maintain work during that period they are ineligible to receive the DSP. This effectively precludes the individual from coverage by the SES Award as the current definition states:

employee with a disability means a national system employee who qualifies for the disability support pension as set out in sections 94 and 95 of the Social Security Act 191 (Cth), or who would be so qualified but for paragraph 94 (1)(e) or paragraph (1) (c).

This definition also precludes individuals testing their eligibility for DSP from undertaking a program of support in a Disability Enterprise, even though supported employment is a defined POS under the Social Security Act.

Under 35 and granted DSP between 2008 and 2011:

As part of the 2014-2015 budget announcements, the government commenced a review of people under 35 who were granted DSP between January 2008 and September 2011 and who do not have a severe impairment. As a result of the review if it is determined that the person:

- does not have a severe impairment
- has a capacity to work with intervention within 2 years of at least 8 hours per week, and
- does not have a dependent child under the age of 6;

They will be deemed to become a reviewed 2008-2011 DSP Starter.

¹ Severe disability is defined under the Social Security Act the person impairment is of 20 points or more under a single Impairment table.

As a 2008-2011 DSP Starter the individual will continue to receive their DSP but will also be required to undertake and actively participate in a POS. An individual can meet the POS requirements by participating in employment with a Disability Enterprise. If at the end of the POS the individual is deemed to not meet the DSP eligibility criteria they will be moved onto Newstart Allowance and no longer be deemed an employee with a disability as defined under the SES Award. Regardless of an individual's productive output, the employer would be required to pay the minimum wage.

The changes to DSP and the transition to full scheme of the National Disability Insurance Scheme (NDIS) 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:

Employee with disability means a national system employee, being persons:

- (a) For whom competitive employment at or above the relevant award wage is unlikely; and*
- (b) Who, because of their disabilities, need substantial ongoing support to obtain or retain paid employment; and*
- (c) Meets the disability requirement in order to qualify for the Disability Support Pension; and / or*
- (d) Is eligible for support under the NDIS.*

Employer Eligibility to use the SES Award

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 Disability Services Act 1986 (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 NDIS.

Consequently, NDS proposes the inclusion of the following definition, replacing the previous definition in the Award:

Supported employment service is an enterprise for which the majority of their employees meet the definition of *Employee with disability* as defined in this Award.

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National Disability Services is the peak industry body for non-government disability services. Its purpose is to promote and advance services for people with disability. Its Australia-wide membership includes 1100 non-government organisations, which support people with all forms 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.