

From: Leigh Svendsen [mailto:leighs@hsu.net.au]

Sent: Monday, 31 July 2017 12:46 PM

To: AMOD

Cc: Chambers - Booth DP; Kairsty Wilson; Paul Cain; Stephen Bull; KEMP, James; Samantha French; Ben Fogarty

Subject: AM2014/286 Supported Employment Services Award

Dear AMOD

Attached please find proposed draft variations in the above award.

These variations reflect the agreement reached with the parties during conference

Regards.../ Leigh Svendsen

Senior National Industrial Officer | HSU National

Suite 46, Level 1, 255 Drummond Street, Carlton VIC, 3053

PO Box 98, Carlton South VIC 3053

ABN 68 243 768 561

m 0418 538 989

e leighs@hsu.net.au w www.hsu.net.au



FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

Part 2-3, Div 4 – 4 Yearly reviews of modern awards

(AM2014/286)

Supported Employment Services Award 2010

[MA000103]

Health and Welfare

DP BOOTH

[A] Schedule D of the Supported Employment Services Award 2010 is varied as follows:

[1] By deleting D.1 and replacing it with a new clause as follows:

D.1 This schedule defines the conditions which will apply to an employee with a disability where an employer uses the Supported Wage System as the approved wage assessment tool with respect to the employee.

[2] By adding in D.2 the following definition:

Workplace data means data collected by an employer with respect to an employee's productive capacity in accordance with the Supported Wage System Handbook.

[3] By deleting D.4.1, D.4.2 and D.4.3 and replacing them with the following new subclauses:

D.4.1 Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum hourly rate of pay. The applicable percentage will be the higher of:

(a) the assessed productive capacity of the employee determined in accordance with clause D.5 rounded to the nearest whole percentile; and

For example, if a Grade 2 employee is assessed in accordance with clause D.4.1 as having an assessed productive capacity of 66.8%, the employee will be paid 67% of the relevant minimum hourly rate of pay

- (b) 12.5%, if the assessed productive capacity of the employee determined in accordance with clause D.5 is less than 12.5%.

D.4.2 For the avoidance of doubt, there is no minimum amount payable to an employee per week.

[4] By inserting new subclauses D.5.3 – D.5.6 as follows:

D.5.3 The approved assessor will assess the productive capacity of the employee having regard to:

- (a) where an employer has collected workplace data with respect to an employee:
 - (i) the workplace data – 50% weighting; and
 - (ii) the data collected by the approved assessor in accordance with the Supported Wage System – 50% weighting;
- (b) otherwise – the data collected by the approved assessor in accordance with the Supported Wage System.

D.5.4 Where, in undertaking an assessment in accordance with D.5.3(a), there is a disparity between the overall productivity percentage calculated from the workplace data and the overall productivity percentage calculated from the data collected by the approved assessor of greater than 20%, the employee, employer and approved assessor may agree to collect additional data, as soon as practicable, to add to the existing workplace data and data collected by the approved wage assessor with respect to the employee for the purpose of undertaking the assessment in clause D.5.3(a).

D.5.5 If, in undertaking an assessment in accordance with D.5.3(a), including in circumstances where additional data is collected in accordance with clause D.5.4:

- (a) the disparity between the overall productivity percentage calculated from the workplace data and the overall productivity percentage calculated from the data collected by the approved assessor is 20% or less, then the productive capacity of the employee will be determined in accordance with D.5.3(a); or
- (b) the disparity between the overall productivity percentage calculated from the workplace data and the overall productivity percentage calculated from the data collected by the approved assessor is greater than 20%, then the productive capacity of the employee will be assessed in accordance with D.5.3(b) (that is, on the basis of the data collected by the approved assessor only).

D.5.6 In addition to an employee's general right to access clause 9 – Dispute resolution, an employee or an employer may:

- (a) raise a dispute in accordance with the dispute processes outlined in the Supported Wage System Handbook; and
- (b) after exhausting the process provided in D.5.6(a), raise a dispute in relation to the assessment of the employee's assessed productive capacity in accordance with clause 9 of this Award. In those circumstances, the Commission may, in exercising its powers under clause 9.4 of the Award, make a determination as to the employee's productive capacity, having regard to the reasonableness of the workplace data and the data collected by the approved assessor and fairness between the parties in all of the circumstances.

[5] By deleting the words 'certified mail' in D.6.2 and replacing it with 'email to the union's nominated address'

[6] By deleting the unnumbered paragraph at D.7 Review of Assessment, and replacing it with the following new subclauses:

D.7.1 Clause 14.4(g) of the Award does not apply.

D.7.2 For the purpose of clause 14.4(a) of the Award:

- (a) the wage assessment of each employee with a disability will be reviewed after 12 months' service with the employer since the initial assessment, and the rate of pay adjusted accordingly;
- (b) the wage assessment of each employee with a disability will be reviewed within a period not exceeding three years' service with the employer since the previous assessment, and the rate of pay adjusted accordingly; and
- (c) a wage assessment may be reviewed at the initiative of either the employee with a disability or the employer, once every six months and not more than four times every three years, and the rate of pay adjusted accordingly. Unless an employer and an employee agreed prior to 1 May 2017 to undertake reviews in other circumstances, such a review may only be initiated in circumstances where an employee has changed jobs or the processes involved in the work undertaken by the employee have changed.

[7] By deleting D.10.1-D.10.5 and replacing with new sub-clauses D.10.1-D.10.5 as follows:

- D.10.1 In order for an adequate assessment of the employee's capacity to be made, an employer will employ a person under the provisions of this schedule for a trial period of at least 13 weeks, but no longer than 26 weeks.
- D.10.2 During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum hourly rate of pay for a continuing employment relationship will be determined in accordance with D.4 and D.5.
- D.10.3 The employee must be paid at least 12.5% of the relevant minimum hourly rate of pay for each hour worked during the trial period.
- D.10.4 Once an assessment of capacity has been undertaken pursuant to clause D.5 and the employee's rate of pay is determined in accordance with clause D.4, the employer will apply any higher rate of pay determined in accordance with D.4.1 with effect from thirteen weeks after the commencement of the trial period.
- D.10.5 Work trials should include induction or training as appropriate to the job being trialled.

[B] The determination shall operate on and from xxx 2017

DEPUTY PRESIDENT