

**From:** Mary Walsh [<mailto:marywalsh6@bigpond.com>]

**Sent:** Thursday, 27 July 2017 5:15 PM

**To:** AMOD

**Cc:** [mlcinitaly@gmail.com](mailto:mlcinitaly@gmail.com); Nell Brown; [estelleshields@hotmail.com](mailto:estelleshields@hotmail.com); [mjbuck2@telstra.com](mailto:mjbuck2@telstra.com)

**Subject:** Variations to the SESA - Modern Award Review AM2013/30 & AM2014/286

**To Whom it May Concern**

In accordance with the directions of the Fair Work Commission we provide our request for consideration of the proposed variations – as listed

This submission builds upon our initial submission dated 29 August, 2016.

It is submitted on behalf of our workers with intellectual disability – their families and carers – in supported employment services throughout Australia.

Mary Walsh

Regional & FWC Representative

Mary Walsh  
PO Box 133, DRUMMOYNE  
Tel: 0418 887 976



# Our Voice Australia



## SUBMISSION TO THE FAIR WORK COMMISSION;

### REVIEW OF THE SUPPORTED EMPLOYMENT SERVICES AWARD, 2010-AM2014/286

Further to our earlier submission dated 29 August, 2016 we appreciate this opportunity to formalise our issues in accordance with the Fair Work Commission processes and also express our appreciation for our inclusion in the conciliation processes representing our family members who work in Australian Disability Enterprises.

The conciliation processes of AM2013/30 and now AM2014/286 have been very helpful in broadening our understanding of the industrial issues that affect our sons and daughter and the families who support them.

We understand that the Hearings have been scheduled outside the school/Christmas holiday periods and express our thanks for that consideration.

Our organisation does not claim to represent those workers in supported employment options who have self-advocacy skills. We represent family members who have a level of intellectual disability which creates a lack of informed legal decision-making capacity, complex support needs and a lack of self-advocacy skills. In particular, they are employed in Australian Disability Enterprises in all States and all regions.

The existing Award acknowledges that this group of people require representatives due to vulnerability. In most cases that is the family/ family carer or duly appointed guardians. Family advocacy remains a life-long need.

We have, from our limited industrial background, studied the Exposure Draft of the Supported Employment Award 2016 as republished 20 December, 2016.

We provide the following summary of matters on behalf of our members.

### PART 1 – Application and Operation of this Award

#### 2. DEFINITIONS

**Employee with a disability:** This blanket label does not recognise the needs of those we represent, but we recognise the difficulty in re-defining that term to ensure our family members receive the additional support they require in the workplace.

We would support the definition as proposed by National Disability Services in conciliation discussions i.e.

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

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

We submit that our members require additional supports within the industrial environment that should probably be recognised in Part 4 Wages and Allowances, Part 6 Leave and Public Holidays and Part 7 Consultation and Dispute Resolution

The National Disability Insurance Scheme (NDIS) funds individuals, not services. Only by recognising the need for entitlement legislation to complement rather than contradict existing definitions, (which harken back to the introduction of the Disability Services Act, 1987), will we prevent re-occurrences of industrial problems that have created great stress and insecurity for our sons and daughters, their families and carers in more recent times.

### Nominee

**Centrelink** accepts nominee status of the primary carer, or the chosen representative as does both **Medicare** and the **National Disability Insurance Scheme**. This allows for the representation of people who cannot self-represent given that Guardianship law is not harmonised in Australia. Each state or territory has different legislation to this effect. Some states see it as a natural progression and others more recently, do not. In Australia once a person turns 18, it is a minefield, but **nominee status** is accepted in Commonwealth law.

The SESA Award is Commonwealth and therefore ‘nominee’ should also be inserted in all aspects of the award that require decisions and legal obligations.

### PART 4 - WAGES & ALLOWANCES

**Supported Employee Superannuation : Clause 18.5** . This clause within the Exposure Draft states that “where an employee with a disability is being paid less than \$450.00 per month in accordance with Clause 16, contributions for such employees will be either **3%** of their ordinary times earnings of **\$6 pw**- whichever is the greater” Parties responding to the Exposure Draft are *“asked to consider whether the amount of \$6pw is still appropriate....”*

Our considered response is as follows:-

We contend that the retirement needs of our members with disability would be better met by a superannuation product which has a zero insurance component because:-

- (a) Our family members already have a permanent, lifelong disability;
- (b) The existing level of disability ensures a Government pension for life; and
- (c) The removal of fees for the disability insurance component, within the superannuation product, would increase the end benefit at retirement age, and is a % increase that is equivalent to the current percentage of fee component for disability insurance within standard superannuation products.

The Exposure Draft further states that dependent on the individual circumstances of the employer/employee, contributions must be made to one of the following superannuation funds or its successor

- (a) Australian Super,
- (b) Any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12<sup>th</sup>. September, 2008, provided the superannuation fund is an eligible choice fund

Our research indicates that such a zero-insurance superannuation product is not yet available through Australian Super, but we are aware that they are considering releasing such a product in the future.

We are also aware that such a product is already available from other superannuation funds, but we are not in a position to make comment on existing arrangements of service providers and superannuation funds prior to September, 2008.

Accordingly, we believe that more work needs to be done on both these fronts:-

1. Reducing the internal superannuation product fees to maximize the retirement funds for our family members by removal of the disability insurance component
2. Researching the beneficial impact of the NDIS (which is still not fully implemented) on reducing daily living costs for our family members. Any reduction in living costs could allow for increased voluntary contributions by workers and/or their families into superannuation – as they see fit.

We support maximizing industrial benefits for our workers – in both wages and superannuation – to top up their disability support pension entitlements. It could well be that if the suggested research provides additional benefits – as they should – then future superannuation increases as determined by the Commission and other parties – would be such as a to ensure the continued viability of the services used by our disabled family members.

#### **Part 4 – Wages and Allowances**

Part 4 – Provision is made within the Exposure Draft for workers under 18 years of age as it should.

15.3(i) – Annualised salary ;

16.8 – Documentation of Assessment

#### **Part 6 – Leave and Public Holidays**

21.7(b) (ii) - Annual leave in advance 21.8(e) – Agreements – formal and signed

This assumes, however, that all workers (juniors) under 18 years of age require representation by a registered organisation, parent or guardian and/or authorised representative but an adult worker (over 18 years of age) requires no such representation.

An authorised representative in legal financial terminology requires both legal qualifications and a license, whilst parents are, usually, automatically guardians for their children until aged 18 years.

However, our members, whilst they might be chronologically legally adult, often lack the necessary skills, communication or capacity to make informed decisions about complex matters. They can also lack self-advocacy skills and legal capacity before the law. Guardianship is now rarely given to parents/families as it is regarded as a breach of rights unless a person is at risk.

The SESA Award is Commonwealth and therefore ‘nominee’ should be inserted in all aspects that require decisions and legal obligations.

## **Part 7 – Consultation and Dispute Resolution**

### 26 – Consultation about major workplace change

26.1 (a) – major change as listed in this clause requires the employer to notify the employees who may be affected by the proposed changes and their “representatives”- if any. But, who are their “representatives? And, given that some might have no family – only their service provider looking after their industrial (and often personal) needs - that is a subjective clause that is subject to challenge.

26.1(b) – significant effects. – same requirement

### 26.2 – Employers to discuss change

26.2(a) their “representatives, if any”. Should include ‘nominee’.

26.2 (c)- ...”must provide in writing to the employees concerned and their representatives, if any”. Should include their ‘nominee’.

27.2 (a), (b) and (c) repeats this requirement. Yet – the Award does not instruct on how to meet the requirement .

### 28 Dispute resolution

This section provides a process/processes to be followed by all parties in the event of a dispute about ‘a matter under this award’.

28.5 states that “An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause“. In Commonwealth law nominee is also accepted.

We have neither the industrial legislative knowledge nor access to legal counsel to phrase our suggested solution in industrial terminology, because we are not resourced by either Federal or State Government advocacy funding.

Accordingly we make our submission conscious of the issues but not necessarily of how to phrase the suggested solutions within the Award as part of the Modern Award Review. There are many references to the need for “representatives” (we suggest including nominees) throughout the nominated sections we have listed so we cannot encapsulate the entirety of our concerns in any particular Part, Clause or sub-Clause.

**Employee with a Disability** is a very broad descriptor. We must ensure that the separation from the much lower needs of the more than 4 million people in Australia who data suggests are living with disability or impairment but whose disability is not considered as needing supports under NDIS Legislation, is firmly acknowledged in the description. We feel that the definition of Employee with a Disability should be widened within “Definitions”. If we accept that this is not the most appropriate section of the Award to ensure future protection for our family members with disability then the issues initially surface in Part 1 - Application and Operation of this Award introduces.

### 6.1 Award Flexibility for Individual Arrangements

6.4. Requires any agreement between the individual employee and the employer to be in writing and signed by the employer and the individual employee represented by the employee’s parent (suggest this includes nominee) or guardian - but some of our workers have neither.

6.7 provides for a written proposal to the employee and recognises that the employer is obliged to take measures for any employee's lack of understanding of the English language.

6.10 refers to the right to make an agreement between an employer and individual employee but where is the protection for an individual employee lacking the capacity to make an agreement because of the nature of their disability? We suggest the inclusion of representative and/or nominee.

## **Part - 2 .10 Part-time Employment**

2.10.5 and 10.6. Again require agreements, in writing, as does any variation of that written agreement.

To deal with these anomalies we received assistance from a member of the Fair Work Commission Conciliation group – Chris Christodoulou- of Greenacres. He assisted us with the draft, as discussed with our members. As agreed in conciliation, it was then provided to the Health Services Union (HSU) for comment. To date we have had no response.

It has been called “Rights at Work for Supported Employees” and is provided as part of our submission for consideration by the Commission and all parties.

- (a) When dealing with employment matters affecting supported employees the employer shall take all reasonable steps to provide such employees with the information they require to exercise their employment rights.
- (b) Such reasonable steps will include but are not limited to the following;
  - (i) Providing information to supported employees of their right to be a member of the union and be represented in the work-place by a union representative.
  - (ii) Providing information in relation to seeking information and assistance from the Fair Work Commission.
  - (iii) Providing information to a supported employee about their right to have their guardian, carer, parent/family member, advocate or union assist them in making decisions about employment matters.
- (c) In addition to those matters listed in clause/sub clauses the employer shall take reasonable steps to provide the opportunity to the supported employee to have their guardian, carer, and/or parent family/member (nominee) to be involved in employment matters that may be prejudicial to the supported employees' interests.
- (d) Such matters shall include but not be limited to
  - i) Significant workplace change
  - ii) Grievances, including disputes under Clause 28
  - iii) Redundancies
  - iv) Disciplinary matters
  - v) Performance Appraisals
  - vii) Wage Assessments

## viii) Enterprise Bargaining

(e) The supported employee, their parent/family member, carer or guardian (include nominee) shall be informed that they can seek further advice from a Union, Fair Work Ombudsman, advocacy group or any other such person or organisation they believe would help them make informed decisions about employment matters

We don't know where this would best fit but it is the agreed position of our members and is, therefore, included for consideration by all parties.

**Schedule D**

We accept the inclusion of the Supported Wage System and the Modified Supported Wage System as optional Wage Determination Systems attached to the Award under consideration.

As family of ADE workers with disability, we accept that open employment suits some people, not all, for many, and varied reasons.

We endorse the supported employment model of service for those who need it and those for whom open employment is not a practical or obtainable option. Working in an ADE is not mandated, it is based on the individual's choice of employment options and on the very considered needs of each individual worker.

We feel that work must be ongoing with the Commonwealth so that current ADE employees can retain an ADE employment option, while having access to open employment resources, if they so choose. Having access to open employment resources maximizes individual opportunity for workers who might be better suited to open employment- provided they can return to their former ADE employment workplace – if the experience is not as successful as expected – or hoped. .

We trust that our suggested issues will make the SESA 2016 more robust and more secure for our workers with disability, and assist their families and carers to continue their supportive and caring roles.

We wish to stipulate that our support of the SWS and the Modified SWS should not be construed as an endorsement of productivity based wages to the exclusion of other industrially approved tools that have been designed for use by our family members with disability in their respective Australian Disability Enterprises - wherever they operate.

**About Our Voice Australia**

Our Voice Australia Inc is a parent-led national representative group. We are run by the families of our members with an intellectual disability or complex needs. We are collaborative disability family advocacy. This means a partnership between family members with disability and the families who support them.

We are a representative voice for the needs of people with developmental/intellectual disability and/or complex needs. We operate as a systemic advocacy organisation to protect the rights of our members. Our main focus is on people with intellectual disability, including people with moderate to severe intellectual disability and/or complex support needs. The latter have been excluded from the National Advocacy Program as a separate and distinct group. Australia's systems advocacy takes a universal view of disability and our family members' different needs are given scant recognition.

We advise Government on the impact of social policy initiatives and suggest new strategies, models or reforms as appropriate. As a peak national body we advocate for the voice of the family to be heard as the representative voice for our family member who cannot self-represent.

Our Voice Australia is built upon the principle that our family members have a right to be heard on policy that affects them. We do not accept that all people with disability have the same needs by the mere fact of having a disability.

Our Voice is a voice for our families, and our family members with disability, in a partnership to provide one voice on policy matters to decision-makers at all levels.

25th July, 2017

Regional Representative –



Mary Walsh  
PO Box 133, DRUMMOYNE  
Tel: 0418 887 976



Contact: **Mary Walsh**

email: [marywalsh6@bigpond.com](mailto:marywalsh6@bigpond.com)