



12 September 2019

Michael Lye
Deputy Secretary
Disability and Carers
Department of Social Services

By Email: michael.lye@dss.gov.au

Dear Mr Lye

AM2014/286 – Supported Employment Services Award 2010

I refer to your correspondence dated 9 September 2019 concerning the above matter, in which you provided information concerning forthcoming funding changes which may affect Australian Disability Enterprises (ADEs), and sought advice as to whether the Department of Social Services should consult with the parties to the proceedings concerning this prior to the Commission issuing its decision. As you are aware, this matter is being heard by a Full Bench of the Commission consisting of myself, Deputy President Booth and Commissioner Cambridge. I have consulted with my Full Bench colleagues about your correspondence, and this letter constitutes our joint response.

The proceedings concerning the minimum wage structure for disabled employees in ADEs in the *Supported Employment Services Award 2010* (Award) has been ongoing for some time. The Full Bench has received extensive evidence and submissions from interested parties which has, among other things, addressed the level of wages payable to disabled employees in the context of the current financial and commercial position of ADEs. That position is critically affected by the degree of government funding which ADEs receive both directly and indirectly, and the proceedings before the Full Bench have been conducted within the framework of what was currently known and predicted concerning such government funding.

The Full Bench had, immediately before the receipt of your correspondence, reached a position whereby it intended to issue its decision in the matter within a 2-3 week timeframe. The decision which the Full Bench intended to issue had regard to the existing financial and commercial position of ADEs as earlier described and would involve significant modifications to the minimum wages structures in the Award.

It appears to us that your correspondence of 9 September 2019 is indicative of funding changes that may fundamentally alter the framework in which the proceedings have been conducted to date. We consider that it is likely to be necessary for the decision we make to take into account these changes, and that may render it necessary in turn for interested parties to be given an opportunity to make further submissions in relation to the variations, if any, to be made to the minimum wages structure in the Award in light of these changes.

It is of course a matter for the Department whether, when and to what extent it engages in consultation with interested parties in the ADE sector about the foreshadowed funding changes. However, in terms of the proceedings concerning the Award before the Full Bench, we consider that the appropriate course is for the Department to lodge with the Commission a publicly-available submission concerning the funding changes and their potential consequences for the outcome of the Award proceedings. If this is done in a reasonably timely way, the Full Bench would then consider postponing the publication of its decision and instead inviting interested parties to provide advice as to how they wish to proceed in light of the Department's submission.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'A. Hatcher', with a long, sweeping horizontal line extending to the right across the top of the signature area.

ADAM HATCHER SC
Vice President
Fair Work Commission