

From: Chambers - Hatcher VP

Sent: Tuesday, 31 October 2017 9:34 AM

To: 'KEMP, James'; Stephen.bull@unitedvoice.org.au; Leigh Svendsen; fogarty@denmanchambers.com.au; kirsty.wilson@aed.org.au; cainpaul@icloud.com; craig.rawson@ags.gov.au; abigail.cooper@ashurst.com; nigel.ward@ablawyers.com.au; emily.baxter@nswbc.com.au; chris@greenacres.net.au; MarkW@greenacres.net.au; pfrench@disabilitylaw.org.au; samanthaf@pwd.org.au; Anthony.rohr@maiwel.com.au; Smith_c1@optusnet.com.au; Steve.burgess@flagstaffgroup.com.au; Roy.rogers@flagstaffgroup.com.au; lmooney@dsa.org.au; mlcinitaly@gmail.com; mjbuck2@telstra.com; estelleshields@hotmail.com; hdickens@dsa.org.au; kerrie.langford@nds.org.au; bree.willsmore@dss.gov.au; johnharvey@greenacres.net.au; marywalsh6@bigpond.com; mpatrick@disabilitylaw.org.au; Skillsmaster275@outlook.com; cnewbold@actu.org.au; Rowena.Freeland@dss.gov.au; Sina.Mostafavi@Ablawyers.com.au; joe.murphy@ablawyers.com.au; cwatts@actu.org.au; 'robk@accessindustries.com.au'; Noni Lord; 'Paul Musso'

Subject: Re: AM2014/286 – Supported Employment Services Award

Dear Parties,

Re: AM2014/286 – Supported Employment Services Award

Consistent with the previous submissions of the interested parties, unless there is any submission otherwise the Commission proposes to make the attached order for this determination on **Tuesday 7 November 2017**.

Kind regards,

Helen Hamberger

Associate to Vice President Hatcher

Fair Work Commission

Tel: (02) 9308 1812

Fax: (02) 9380 6990

chambers.hatcher.vp@fwc.gov.au

Level 10 Tower Terrace

80 William Street

East Sydney NSW 2011

www.fwc.gov.au



DRAFT DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—*Supported Employment Services Award 2010*

(AM2014/286)

SUPPORTED EMPLOYMENT SERVICES AWARD 2010

[MA000103]

Social, community, home care and disability services industry

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT BOOTH
COMMISSIONER CAMBRIDGE

SYDNEY, XX OCTOBER 2017

Four yearly review of modern awards – Supported Employment Services Award 2010 – Supported Wage System Schedule.

A. Further to the decision issued in this matter on 10 October 2017([\[2017\] FWC FB 5073](#)) the above award is varied as follows:

1. By deleting Schedule D—Supported Wage System and inserting the following:

Schedule D—Supported Wage System

D.1 This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award.

D.2 In this schedule:

approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the

Social Security Act 1991, as amended from time to time, or any successor to that scheme

relevant minimum wage means the minimum wage prescribed in this award for the class of work for which an employee is engaged

supported wage system means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

SWS wage assessment agreement means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

D.3 Eligibility criteria

D.3.1 Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

D.3.2 This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

D.4 Supported wage rates

D.4.1 Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Assessed capacity (clause D.5)	Relevant minimum wage
%	%
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

D.4.2 Provided that the minimum amount payable must be not less than **\$84** per week.

D.4.3 Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.

D.5 Assessment of capacity

D.5.1 For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

D.5.2 All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

D.6 Lodgement of SWS wage assessment agreement

D.6.1 All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

D.6.2 All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

D.7 Review of assessment

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.

D.8 Other terms and conditions of employment

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this schedule will be entitled to the same terms and conditions of employment as other workers covered by this award on a pro rata basis.

D.9 Workplace adjustment

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee's

capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

D.10 Trial period

- D.10.1** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- D.10.2** During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- D.10.3** The minimum amount payable to the employee during the trial period must be no less than **\$84** per week.
- D.10.4** Work trials should include induction or training as appropriate to the job being trialled.
- D.10.5** Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause D.5.

2. By deleting Schedule D—Supported Wage System and inserting the following:

Schedule D—Supported Wage System

- 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.

- D.2** In this schedule:

approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme

relevant minimum wage means the minimum wage prescribed in this award for the class of work for which an employee is engaged

supported wage system means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

SWS wage assessment agreement means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

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

D.3 Eligibility criteria

D.3.1 Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

D.3.2 This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

D.4 Supported wage rates

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 percentage; and
- (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.

D.5 Assessment of capacity

D.5.1 For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

- D.5.2** All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.
- 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 clause D.5.3(a), there is a disparity of greater than 20% between the overall productivity percentage calculated from the workplace data and the overall productivity percentage calculated from the data collected by the approved assessor, the employee, employer and approved assessor may agree to collect additional data. The additional data should be collected as soon as practicable and added to the existing data 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 clause 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 clause 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 clause D.5.3(b).
- 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 clause D.5.6(a), raise a dispute in relation to the assessment of the employee's assessed productive capacity in accordance with clause 9. In those circumstances, the Commission may, in exercising its powers under clause 9.4, 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.

D.6 Lodgement of SWS wage assessment agreement

D.6.1 All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

D.6.2 All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by email to the union's nominated email address and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

D.7 Review of assessment

D.7.1 Clause 14.4(g) does not apply.

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

- (a) the wage assessment of each employee will be reviewed after 12 months' service with the employer since the initial assessment, and the rate of pay adjusted accordingly;
- (b) subsequently, the wage assessment of each employee 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 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.

D.8 Other terms and conditions of employment

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this schedule will be entitled to the same terms and conditions of employment as other workers covered by this award on a pro rata basis.

D.9 Workplace adjustment

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee's

capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

D.10 Trial period

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 clause D.4 and clause 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 clause 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. Item 1 of this determination comes into operation from **XX October 2017**. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period that starts on or after **XX October 2017**.

C. Item 2 of this determination comes into operation from **1 July 2018**. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period that starts on or after **1 July 2018**.

VICE PRESIDENT

Printed by authority of the Commonwealth Government Printer

<Price code A>