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2011 LIV Community Lawyer of the Year Award | 2013 Tim McCoy Award | 2014 HESTA Social Impact Award
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16 March 2018

Email : chambers.hatcher.vp@fwc.gov.au

Vice President Hatcher
Fair Work Commission
80 William Street
Woolloomooloo NSW 2011'

Dear Associate

Re: AM2014/286 – SUPPORTED EMPLOYMENT SERVICES AWARD 2010

We refer to the letter from Australian Business Lawyers and Advisors Pty Ltd (**ABL**) dated 23 February 2018 . In paragraph 2.1, Mr Ward and Mr Zevari state:

“Our clients have considered the question of external assessment. While this is a feature of the Government’s SWS regime it is not a feature that applies in any other workplace to simply classifying an employee into a modern award classification structure. As such our clients see no practical reason why this sector should operate differently to all others and do not support external persons being required to classify employees”

We understand that ABL does not support external assessment. That view is expressed above. We are concerned though that in setting out the basis for that view, ABL has mis-described the role of the SWS assessor. Its error is to suggest, as it does in paragraph 2.1, that a function of the SWS assessor is to classify employees under the Award. This is incorrect. We have written to correct this misapprehension.

Simply stated, it is no part of the SWS assessor’s function to classify an employer’s employees in the appropriate Award Grade. That function is performed by the employer. The SWS handbook (exhibit 10) makes this clear on page 19. There, it is stated:

“The appropriate classification for the position is determined by the provisions of the relevant industrial instrument.” The SWS assessor simply records the classification that the employer has already assigned to the employee’s job.”

We trust that this is of assistance to the Commission.”

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If you have any queries in relation to the above, please email us at noni.lord@aed.org.au or leave a voicemail message on (03) 9639 4333 with some convenient times for us to return your call.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kairsty Wilson'. The signature is fluid and cursive, with the first name 'Kairsty' written in a larger, more prominent script than the last name 'Wilson'.

Kairsty Wilson
Principal Legal Practitioner
AED Legal Centre