

FAIR WORK COMMISSION

Fair Work Act 2009

s 156 – 4 yearly review of modern awards

IN THE MATTER OF A REVIEW OF THE SUPPORTED EMPLOYMENT SERVICES AWARD 2010

AM2014/286

SUBMISSION OF THE ASSOCIATION OF EMPLOYEES WITH A DISABILITY INC (AED), UNITED WORKERS' UNION AND THE AUSTRALIAN COUNCIL OF TRADE UNIONS (ACTU)

1. The Full Bench statement [2022] FWCFB 6 identifies three issues:
 - (a) the clarity and workability of the drafting of the new wages structure set out in the attachment to their 30 March 2020 decision (the **March Decision**);
 - (b) the provisional quantum of the minimum wage rates for the proposed new Grade A and Grade B classifications set out in paragraph [372] of their 3 December 2019 decision (the **December Decision**); and
 - (c) the operative date for the new wages structure.
2. The parties to this submission have filed a position paper. This submission is intended to be read with that paper. The parties to this submission note that the AED has filed a submission pertaining to jurisdiction. On the footing the Fair Work Commission (the **FWC**) has authority to vary the *Supported Employment Services Award* (the **Award**) to include what are referred to in the AED submission as the Grade A and B terms, the parties to this submission focus upon the three issues nominated by the Full Bench in their statement.

Clarity and workability- general observations

3. The *Fair Work Commission New Wage Assessment Structure Trial Evaluation (Trial Report)*, demonstrates the existence of uncertainty amongst ADE staff who would undertake the classification exercise for Grades A and B.¹ Whilst no data is provided about the number and extent of the concerns of these ADE staff, the authors of the Trial Report identified uncertainty about interpreting the gateway requirements of proposed

¹ Trial Report, page 85-86, paragraph 5.1.2.

clause B.1.1.² The authors noted that they had received requests for clearer “step by step guidance on the gateway requirements and criteria within Grades A and B.”³

4. Task variation was also identified by the authors of the Trial Report with the result that employees with a disability could, it was observed, fall within a particular grade some of the time but not all of the time. Variation in roles and tasks meant that employees might fall within the skill levels of several award grades for work they are required to perform. These observations are antagonistic to the premise of clause B.1.1.
5. It is inferred that clause B.1.1 is informed by the view the Full Bench formed of what they described as the ADE “paradigm;”⁴ namely that ADE’s don’t arrange their workforces on the basis of a job structure that will allow the necessary work to be performed in the most productive and efficient fashion and then recruit person to fill those jobs. Rather, they create or tailor jobs in such a way that they are capable of being performed by a particular person with a particular disability or by persons with a class of disability. The Full Bench should re-consider this conclusion. There is no support for it in the Trial Report. There is evidence that contradicts it.
6. The evidence of Walter Grzentic, a highly experienced practitioner in the disability sector, is to the effect that ADEs operate on a commercial basis, creating roles and job descriptions to fit their production requirements and then assigning workers with a disability to these pre-defined roles and responsibilities.⁵ Donald Greer and Robyn Smith, two supervisors at ADEs give statements to similar effect, as does Sharon Dulac, another highly experienced practitioner in the disability sector.⁶ The experience of working in an ADE, given through the statement of supported employee Kate Last wholly supports the evidence that it is the practise in ADEs to assign workers to roles based on the needs of the ADE and not to tailor or create roles for the individual worker.⁷
7. For the purposes of the trial, a document was apparently used to guide classification. This document is described in the Trial Report as the “wage grade guidance document” (it is appendix 4 on page 177 of the Trial Report). The guidance document states that an employee's classification should be determined:

² Ibid.

³ Ibid, page 127.

⁴ December Decision, [248].

⁵ Witness Statement of Walter Grzentic dated 20 May 2022, [33]-[35].

⁶ Witness Statement of Donald Greer dated 20 May 2022 [10]-[14], [21]; Witness statement of Robyn Smith dated 20 May 2022 [7], [14]; Witness Statement of Sharon Dulac dated 20 May 2022 [9], [13].

⁷ Witness Statement of Kate Last dated 20 May 2022 [7], [10]-[11],

[B]ased on the work that they perform in their role, that is, the actual duties attached to their position that are required to perform their role.⁸

8. The existence of task and skill variation over more than one classification tells against the existence of a consistent and stable set of simple duties created in advance for a particular person and then attached to a position in which that person is employed. A recommendation of the Trial Report was that the FWC clarify (but cryptically “not over specify”) what constitutes “all major duties and tasks” because, the authors say, in an ADE context duties may change substantially based on contracts, seasons and/or rotating roles.⁹ Rather than a paradigm of simple, tailored, jobs matched to disability, this points instead to a paradigm of dynamic commerciality where ADE’s respond to the commercial imperatives generated by their contractual obligations and the work needs this creates. This is consistent with the evidence of Mr Greer and Ms Smith in particular, as well as Mr Grzentic and Ms Dulac. Mr Greer describes how commercial requirements inform and are translated into work design. Mr Grzentic charts the development of this practise in the ADE sector over a number of years, culminating in the present time where not only do commercial requirements determine work design, but also inform hiring and selection practises in relation to supported workers.

9. The Trial Report demonstrates a disconnect between the perception of management (who generally held the view that employees were classified correctly) and ADE staff who actually undertook the classification exercise (who were recorded as being “less positive” that this had been done consistently).¹⁰ Plainly, the view of those who actually undertake the classification exercise is to be preferred. The authors of the Trial Report implicitly reach this conclusion, stating:

There was general difficulty understanding the changes to wages Grades 1-7 and the 2 new Grades (A and B) outlined in the wage grade assessment guidance document that was provided. ADEs mentioned being unsure how to interpret the ‘gateway’ requirements, thinking that some supported employees fit into more than one grade, met the conditions of a grade some but not all of the time, or meet the conditions of the various grades where their duties varied. The lack of clarity about the guidance translated to questions about consistent interpretation and the application of the Grades. Interviews indicate that many ADE staff noted uncertainty about whether they consistently applied the Grades.¹¹

⁸ Trial Report, page 178.

⁹ Ibid, page 126.

¹⁰ Ibid, page 126.

¹¹ Ibid, page 13.

10. The Trial Report also identified a lack of understanding by employees of the new wage assessment structure.¹²

Workability

11. The ADE industry is characterised by a considerable diversity of work. This is apparent from the range of task indicia currently prescribed by schedule B of the Award and the changeability of duties referred to by the authors of the Trial Report.¹³ It is also demonstrated by the alignments with other awards proposed by the Full Bench for inclusion in the Award.
12. A workable classification scheme for this Award is one that establishes a safety net that produces consistent classification (and wage) outcomes across the range of employers and employments to which those classifications will apply. This is especially important for this workforce and draws particular attention to the modern awards objective in section 134(1)(g).¹⁴
13. If task variation resulted in employees falling within multiple classifications, the proposed Grade and B classifications could not achieve the fair and relevant safety net stipulated by section 134(1).
14. The risk of inconsistency is elevated by the proposed intrusion of individual factors or individual evaluations of disability through the “gateway requirements” of proposed clause B.1.1. Doing so risks conflating the value of work with the worth of the worker and affords the opportunity for subjective factors, biases or factors that bear no relation to work output, such as the “competency skills” that characterise the Greenacres wages tool, to bear upon classification of work. There is a history of this in ADE employment.¹⁵ Indeed, the Trial Report records “one-off suggestions” (whatever that means) that Grades A and B should include a definition of the intent of the grades and an indication of where people with particular disability types may fit within the grades.¹⁶ The latter notion is most extraordinary. Whilst it is not assumed that the Full Bench would adopt it, this together with the history of irrelevant competency factors bearing on wages in ADE employment are reasons to exercise caution in embracing classification rules that carry the potential for discrimination to seep into wage classification through personal

¹² Trial Report, page 9.

¹³ Trial Report, page 126.

¹⁴ The vulnerability of this cohort of employee is implicitly recognised by the inclusion of clause 9A – “Rights at Work for Supported Employees.”

¹⁵ See December Decision, [319]-[339].

¹⁶ Trial Report, [127].

evaluations by one person of what they might think is the work value that another has by reason of disability.

15. Individual capability¹⁷ is not an idea that finds ready expression in traditional conceptions of work value, including as codified by the FW Act. If it did, the price paid for work by an employer could be manipulated by the view taken by one employer from time to time of its workforce or some of them, rather than the level of skill and responsibility of the work itself. The minimum price for labour has never been set in this way.¹⁸
16. Award wage classifications do not concern themselves with an employer's employment purpose. Classification is matter for objective evaluation having regard to actual work performance.¹⁹ Respectfully, the different paradigm observed by the Full Bench appears to attribute probative weight to employer purpose, perhaps because, so the parties to this submission infer, the Bench viewed this perceived paradigm as exposing ADE employment as purely beneficial. This is not, however, an available frame of reference. Section 45(2) of the *Disability Discrimination Act* 1991 would not excuse a discriminatory wage characterised in this way.²⁰ Accordingly, even if Grades A and B could lawfully be included in the Award, the Full Bench could not be satisfied that doing so would "ensure" a fair and relevant safety net or minimum wages as this justification is foreclosed by the existing state of the law.
17. The FW Act itself does not assign any weight to the reasons or motivations of an employer for employment. Whilst it may be accepted, as postulated by the Full Bench,²¹ that modern award classifications have never contemplated specially created jobs aligned with the capacities of disabled persons, modern award classifications have never concerned themselves with employee individual capacity or capability at all or an

¹⁷ December Decision, [350].

¹⁸ *National Wage Case* 1989 (1989) 30 IR 81, 102, principle (a). The "working assumption" referred to in [350] pertains to the acquisition of new skills and competencies as the basis for movement between classifications: *Qube Ports Pty Ltd v McMaster* (2016) 248 FCR 414, [55]-[56] (Bromberg J).

¹⁹ *NSW Trains v Australian, Tram and Bus Industry Union* [2021] FCA 883, [120] (Flick J) citing Ludeke J in *J Fenwick & Co v Merchant Service Guild of Australia* (1973) 150 CAR 99 at 101-102.

²⁰ Context for the purposes of statutory construction includes the existing state of the law: *CIC Insurance Ltd v Bankstown Football Club* (1995) 187 CLR 384, 408 (Brennan CJ, Dawson, Toohey and Gummow JJ).

²¹ December Decision, [350].

employer's reasons for selecting the skills it wishes to include in its workforce.²² These are matters about which the instrument is agnostic.

18. The Full Bench should not alter the Award to include the Grade A and B classifications and their related provisions in the face of evidence that those provisions could result in inaccurate and inconsistent classification for employees with a disability.

Clarity

19. Grades A would apply to a "simple" task or tasks consisting of three sequential steps or sub-tasks. Grade B would apply to more than three sequential tasks or sub-tasks. Grade 2 applies to a "basic" task or tasks in accordance with defined procedures. Relevant ordinary meanings of "simple" include "easy to understand, deal with" and "not complex or complicated." A relevant ordinary meaning of "basic" is "something that is basic or essential."²³ Neither readily distinguishes the classifications on the basis of skill, as an aspect of the work value reasons stipulated by section 156(4). Neither justifies a work distinction that justifies the 80% and 33% difference in pay between Grades A and B (as currently proposed) and Grade 2. The distinction is based on the number of required tasks or sub-tasks. The concept of a "simple" and "basic" task and the concept of a "sub-task" are left to the employer to discern, despite the pay consequences of this for the employee. There is a risk of classification based on the lowest skill designated as a worker's work at the time of classification with the effect that the worker is remunerated for all the work they subsequently deliver at the rate fixed for Grade A. The classifications become the maximum rate of pay, not a minimum. This would perpetuate a wage injustice and allow the employer to retain the value of productive output it has not paid for.
20. In an industry characterised by a very wide diversity of work, there is no obvious justification for insisting upon three sequential steps or subtasks as the dividing line between a valuation that doubles the rate of pay for the classification that follows, as it does in the case of Grade B. As a matter of text, it is accepted that it is possible to observe a distinction in the level of responsibility between "regular" and "constant" monitoring. However, the practical distinction is hard to discern. Indeed, the Trial Report records the existence of staff confusion about how to interpret the meaning of "constant monitoring"

²² Respectfully, the Full Bench's observation also overlooks the fact that modern awards (as distinct from their classifications) have always taken account of the work effects of disability. The SWS has sat alongside modern award classifications since their inception.

²³ Macquarie Dictionary, online edition.

and “direct supervision.”²⁴ These fine distinctions do not “ensure” stability in award based classification or simplicity and suggest that they are not “easy to understand.”²⁵

21. The Full Bench has insufficient information about the nature of work across the Australian ADE industry to devise new work classifications for employees with a disability. The Bench should not authorise individualised assessments to intrude into classification. The personal attributes of a worker are normally matters that bear on whether to employ at all or to maintain employment.²⁶

Quantum

22. The issue of what the quantum of Grades A and B should be is not addressed by the Trial Report, save to identify that the wages approach of the Full Bench would, for most of the employee sample, result in a small wage increase.
23. The current proposal fixes \$7 per hour for Grade A and \$14 per hour for Grade B. The December Decision does not identify the basis for this proposal. It may be inferred that at least for Grade A the quantum is derived from the observation of the Full Bench that “the evidence demonstrates that supported employees under the SES Award earn, on average, about \$7 per hour.”²⁷ This seems to be reflected in the Trial Report.²⁸
24. The Full Bench has observed that clause 14.4 of the Award in its current form does not meet safety standards.²⁹ ADE employees are currently the lowest paid of any employee under the modern award system. It follows from what the Full Bench has said that the price of labour for this group of award reliant employees does not reflect award standards. The wages tools currently embraced by clause 14.4 of the Award have enabled ADE employers to, in effect, create a market price for labour that has baked in disadvantage. It would perpetuate wage injustice to replicate the substandard price of labour flowing from the failure of ADE wages to meet safety net standards.
25. The obligation of the FWC under section 134(1) is to “ensure” a fair and relevant safety net standards. Several observations flow from this:

²⁴ Trial Report, page 86.

²⁵ Section 134(1)(g).

²⁶ There is no suggestion that ADE employers do not have, or would not in an appropriate case utilise, their ordinary rights as an employer to address inadequate work performance. For example, under the *Bedford Employee Enterprise Agreement 2017*, disciplinary action may be taken for under performance. Termination of employment is available: clauses 29 and 30. [253].

²⁷ Trial Report, table A37, page 161.

²⁸ December Decision, [342].

²⁹

- (a) The existing sub-standard wages of ADE employees cannot guarantee a modern award instrument that establishes a safety net for employees that conforms to the FW Act.
- (b) No comparative methodology has emerged that would justify a derogation from existing principle concerning the fixation of minimum wages. Indeed, existing principle deprecates an award by award approach to minimum wage fixation based on considerations of fairness and stability. Additionally, the observed outcome of ADE staff referred to in the trial evaluation report that classification could result in multiple award grades engages the concern that the award specific approach to minimum wages contemplated by the wages structure proposed in the December Decision would distort relativities and might lead to disparate wage outcomes for award reliant employees with similar or comparable levels of skill.³⁰
26. The object of minimum wages instruments is to lift the floor of wages.³¹ Grades A and B would, as currently framed, would not achieve that object.
27. Both section 134(1) and section 284(1)(e) identify fairness as a quality that must attach to the minimum wages the FWC has ensured as part of the award safety net. This is a comparative idea. The Grade A and B terms would not establish any relativity with other award rates enjoyed by other award reliant Australian employees. This is inconsistent with principle.³²
28. Further, section 284(1)(e) prescribes a minimum wage objective as, “providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.”³³ Considerations of fairness necessarily invite comparisons when determining whether the Grade A and B terms would contribute to the range of minimums contemplated by section 284(1)(e). Having regard to the way in which minima are fixed for non-disabled workers, disabled workers not employed by ADEs, junior workers and employees to whom training arrangements apply, the Grade A and B terms are anomalous and comparatively unfair for at least two reasons.

³⁰ *Re Annual Wage Review 2012-13* (2013) 235 IR 332 at 352–353 [77].

³¹ *Re Annual Wage Review* (2018) 279 IR 215, [478].

³² *Paid Rates Review* (1998) 123 IR 240, 253.

³³ *FW Act*, s 284(1)(e).

- (a) Workers with a disability working in ADEs who are classified in Grades A or B would not have a wage fixed relative to other award rates, and would be subject to wage classification that takes account of individual capacities as well as individual productive output. The result is a lower wage base and lower actual remuneration worked out from that base.
 - (b) The Grade A and B terms would authorise a lower minimum base in all circumstances for the affected worker, including in the event that non-disabled workers did the same work as they did. Grade A and B could only be engaged in respect of workers who satisfy the impairment criteria of the SWS. The default position for everyone else is Grade 2. If both sets of workers do the same kind of work there is no value distinction. There is evidence that this occurs in the statements of Mr Greer and Ms Smith who, as supervisors, have observed the performance of work at a number of ADEs, and who make statements that in many ADEs the same work may be performed by supported employees as well as workers without a disability. Mr Grzentic gives evidence of the same observation.³⁴ Even if the disabled worker's productive output is less than the non-disabled worker in performance of the same work, the remuneration for this work is calculated from a much lower base for the disabled worker for reasons that include disability.
29. These matters demonstrate why there is no utility in the FWC giving consideration to revaluing ADE work on a basis that derogates from the settled industrial meaning of "minimum wages." Doing so could not confer the guarantee that section 134(1) of the FW Act requires, and for the affected employees may also have the effect of undermining the benefit of the annual wage review conducted under subdivision B of Part 2-6 of the FW Act. Unless properly fixed, the absence of a uniform relativity linkage with other award rates may impair the FWC's ability to apply the benefit of annual wage reviews to Grade A and B employees.

Alternative Grade 1 approach

30. The Full Bench should conclude that:

³⁴ Witness Statement of Walter Grzentic, [33].

- (a) The gateway requirements in proposed clause B.1.1 of annexure A to the March Decision are unstable and do not have a sufficient factual basis in actual work required and performed in ADE employment to sustain them.
 - (b) The work descriptions for Grades A and B are too narrow and do not adequately distinguish between what might amount to, “simple” (Grades A and B) work as distinct from “basic” work (Grade 2). Indeed, the evidence apparent from the trial evaluation report renders that distinction illusory. The Full Bench cannot be satisfied that there is a consistent, uniform, practice for the industry as a whole that corresponds with, and supports, the general finding contained in [248] of the December Decision. There is evidence against this finding as a premise of classification.³⁵
 - (c) The proposed removal of indicia from Grades 1 to 7 would render the classification exercise more opaque, although the employee parties to this submission support the alignments that would be included for each of the grades where those alignments are proposed.
 - (d) The wages approach canvassed in the December Decision would not result in a minimum wage for employees with a disability within the settled meaning of that phrase.
31. These conclusions stand in the way of a finding by the Full Bench that it is necessary to include the Grade A and B classifications in the Award.
32. It is submitted that there is no need for new classifications at all. A Full Bench in [2010] FWAFB 1980 (Giudice J presiding) identified a method in a case where, due to disability, an individual worker’s capacity did not, after training, rise to the skill level comprehended by Grade 2. The Bench concluded that Grade 1 of the Award could continue to apply in this event on an ongoing basis. At the time, the Award ostensibly provided for such an outcome.³⁶ This no longer appears to be the case. The text of the Grade 1 descriptor in annexure A to the March Decision would require alteration, albeit that the necessary textual changes would be minimal.
33. The Full Bench approach to Grade 1 is to be preferred for the following reasons:

³⁵ Witness statement of Walter Grzentic, [33]-[34]; Witness statement of Sharon Dulac, [13]-[14].

³⁶ [2010] FWAFB 1980 at [18] – [19].

- (a) It carries less of a risk of marginalisation through under-classification, a matter that the Full Bench was concerned about in [2010] FWAFB 1980 at [18] and arises here on the outcomes of the Trial Report.
 - (b) It does not depart from the architecture of the present wage setting scheme, which involves classification of work. It would operate within the existing parameters of the Award and the FW Act.
 - (c) Classification at Grade 1 for a period exceeding the initial three months (unlike classification at Grades A and B) still carries with it an impetus to train the worker in a way that assists them to positively progress through the classification structure.
 - (d) Classification responds to the skills the employee manifests in productive output in response to training. If new skills are acquired, progression occurs in a manner that is consistent with principle.³⁷
 - (e) It would fix a minimum wage for employees with a disability in a manner that is consistent with the settled meaning of “minimum wages.” Employees pay would be determined in the same way as the Second Special National Minimum Wage, albeit that the SWS would in the form contained in schedule D to the Award. Grade 1 has a stable, transparent and consistent relativity with the National Minimum Wage, including for the purposes of Annual Wage Reviews.
 - (f) The approach is simple and stable.
34. This approach would permit retention of the SWS in the modified form included in the Award and align this Award with all other modern award instruments and the second special National Minimum Wage order in their application to the “employee with a disability” cohort of worker.
35. No fundamental flaw was discerned with the SWS by the authors of the Trial Report. The recommendation is for clarifications and adjustments.³⁸ One ADE who uses the SWS told the authors of the Trial Report that the trial had improved the accuracy of its benchmarking and assessments.³⁹ The authors of the Trial Report record that 85% of

³⁷ *Qube Ports Pty Ltd v McMaster* (2016) 248 FCR 414, [55]-[56] (Bromberg J).

³⁸ Trial Report, page 13-14.

³⁹ *Ibid*, page 127.

ADE staff, management representatives and SWS independent assessors considered that the SWS was consistently applied.⁴⁰

Operative Date

36. ADE employers have had the benefit of wage tools this Full Bench has concluded do not meet FW Act standards for more than 2 years. It is apparent from the trial evaluation report that there are at least 5 ADE employers that are utilising the SWS for wage determination.⁴¹ The report does not say for how long this has occurred. It is assumed that the SWS in the modified form contained in schedule D is the method being used. This has formed part of the Award since 2017. The fact the SWS is being used by ADE employers undermines any suggestion that ADEs, as an industry, would necessarily be extinguished if the SWS applied to properly fixed minimum rates became the Award standard. So do the matters referred to by the parties to this submission in their position paper under the heading “The impact and relevance of overall labour costs.” A similar conclusion arises from evidence that there are ADEs who use other modern awards to employ labour. Mr Grzentic gives several examples.⁴² Ms Duluc’s evidence is that she is aware of ADEs who pay the national minimum wage and remain viable.⁴³
37. Subject to power, the FWC should set a short operative date for a varied award. There is no justification for allowing ADE employers to retain substandard wages for an extended period.

20 May 2022

M. Harding SC

S. Kemppi

⁴⁰ Ibid, page 87, paragraph 5.2.

⁴¹ Ibid, Table A3, page 138.

⁴² Witness statement of Walter Grzentic, [19].

⁴³ Witness statement of Sharon Duluc, [9].

**IN THE MATTER OF A REVIEW OF THE SUPPORTED EMPLOYMENT
SERVICES AWARD 2010**

Fair Work Act 2009 s 156 – 4 yearly review of modern awards

WITNESS STATEMENT OF KATE LAST

I, Kate Last of work address [REDACTED]
[REDACTED], state as follows:

Introduction

1. I am currently employed by Endeavour Foundation, in their Keon Park factory, as a packer on a production line, on a part-time basis. I commenced in this role on 2 May 2011 at Scope which was taken over by Endeavour Foundation. I am not sure what year this happened.
2. Endeavour operates disability services businesses throughout Queensland, NSW and Victoria. Endeavour employs people with disabilities, who earn a low wage. I am a supported employee.
3. I know that as a supported employee, I am employed under the Supported Employment Services Award. I know this because I have been told in employee meetings. I know that I am paid a lower wage than other workers on the production line, such as other workers and supervisors, who do not have a disability.

Work Performance at Endeavour Foundation

4. I am a production employee. The work I do is on a production line in a factory environment.
5. There are supervisors that oversee the work on the production line(s). There are also team leaders (which I used to be). Team Leaders are supported wage employees who are tasked with maintaining production line workflow by assisting workers who may have fallen behind to get back on track. They also help provide instructions and demonstrate how to do production line tasks to other workers and assist with supervisor duties if the supervisors are absent.
6. Mel (the factory manager) who oversees the floor and Carole (a supervisor) are the main lines of authority. They are the ones who tell us what to do.

7. At the commencement of each shift I am told by the supervisor what task or job I am to do for that shift. I cannot choose what to do or change to a different duty. The allocation of tasks does not cater for any of the employees' needs.
8. One example of the work I do is packing sugar sticks into boxes. I sometimes weigh the sugar sticks because I am faster than some of the other employees. We also pack twelve (12) boxes into one big box to be loaded onto the pallets. I understand that the pallets are then sent to supermarkets or other retailers where the products are sold. We pack the products according to the instructions we are given.
9. I have been a Team Leader in the past and regularly assisted with team leader duties in my role. I tended to help other workers with their production line duties when I saw they were having difficulty. For example, on the sugar packing production line, I have done this by: assisting other employees with stacking and ordering boxes; providing more sugar packets for those who have run out, and grabbing more boxes for co-workers in wheelchairs. I have also tapped and closed up packaging on behalf of co-workers who may have fallen behind to get them back on track.
10. My roommate, Kerri-Anne, who also works with me, has done the same job nearly every time that she has worked on the floor. That job involves measuring piece of string which are used to hold salami together. Kerri-Anne was not allowed to swap this job for another duty after she asked to change.
11. From what I see at work, Endeavour does not put the employees on jobs that they can do. It is all about the job that Endeavour wants done - such as packing sugar sticks or muesli bars into boxes. We, as the supported employees, do not have a say as to where we work or what job we are given.
12. In 2008, I was sacked from the ADE. I had been working as a Team Leader but experienced difficulties because there were adjustments made on the packing line. These adjustments were changed quite quickly. My supervisor thought I was deliberately defiant, but my brain struggled to comprehend the change in information that quickly. Because of this, I was sacked. I challenged the sacking and was eventually reinstated, but it took 3 years for this to happen.
13. During or around August 2019, I was assaulted by a co-worker on two occasions. I have not worked following the second time. I am now on WorkCover.

14. Due to the COVID pandemic, I have been unable to work. We are now in the process of arranging my return to work with my employer, my advocate and the insurer. This is possible following the removal of the strict working conditions that occurred due to the pandemic

Disability

15. I have an intellectual disability. I can read, write and verbalise my emotions. I have difficulty retaining information which I describe as an 'invisible intellectual disability'. Once I understand the information relating to a task, I can complete the task but sometimes I need the task to be reiterated for memory purposes.
16. I think there are twenty (20) employees on each belt. I work with people who have a range of disabilities, including autism, non-verbal disabilities and physical disabilities (e.g. wheelchair bound). The skills each employee has ranges from being able to work independently to requiring substantial assistance or being limited to one task.
17. I would like to be a team leader once again. My employer does not believe I am capable for this role however I believe that I am, provided I get the necessary training and support. Support would mean training to perform any new duties and routines. Necessary support for me is ensuring that the new routine is reinforced through reminders, supportive co-workers, and positive reinforcement.
18. When I first started working in the factory, I was paid \$2 per hour. I know my wage depends on how productive I am. At the moment, I am on about \$8 an hour. Even though I and some of my co-workers might face difficulties in a non-supported employment role, I believe that I am not paid the amount I deserve for my time and effort in my role at the factory. I do not believe that this is fair.
19. I am worried that the low wages I do receive might be lowered even more in the future. It is difficult not knowing how much I am to be paid in the future as I have to pay bills.
20. I made this statement by telling Jery Goebel and Kairsty Wilson from the AED what I wanted to say. Ms Wilson and Mr Goebel then read out the contents and asked me if I agreed with them – which I did.

Kate Last

Friday, 20 May 2022

**IN THE MATTER OF A REVIEW OF THE SUPPORTED EMPLOYMENT
SERVICES AWARD 2010**

Fair Work Act 2009 s 156 – 4 yearly review of modern awards

WITNESS STATEMENT OF DONALD GREER

I, Donald Greer of work address [REDACTED]
[REDACTED] state as follows:

Introduction

1. I am currently employed by Minda Incorporated as a vocational services officer on a permanent, full-time basis. I started working for Minda in around 2004, initially in their Blackwood assisted living facility, and since around January 2006 within their commercial enterprises division.
2. My employer, Minda, is a disability services organisation that operates throughout South Australia. To my understanding, Minda owns or is associated with another organisation called SA Group Enterprises, and the two organisations operate at least somewhat jointly with some employees interchangeably being described as working for one or the other.
3. Sometimes, people who perform my job are called “team leaders” rather than vocational services officers. This appears to be a difference in name only, though I have always considered myself a vocational services officer. I am employed to provide support and supervision to supported employees, as well as meeting production requirements.
4. Minda and SA Group Enterprises to my knowledge operate a number of different businesses that employ people with disabilities on a supported wage, typically referred to as supported employees, in a range of different occupations and industries. They also employ staff like me to provide support and supervision to these supported employees.
5. I work within packaging services, one of the various services that Minda and SA Group Enterprises operate. Within packaging, there are approximately 170 supported employees, some of whom are part-time and others are full-time. There are approximately 10 staff in management and administration. There are also

approximately 15 support staff, including vocational services officers / team leaders, and “line leaders”.

6. Line leaders are workers who are employed for production purposes. Line leaders are non-disabled workers who perform the same work as the supported employees. The purpose of hiring Line leaders is to ensure that we can meet our production deadlines for the jobs that are required to be done.
7. To my knowledge, line leaders are not required to have any qualifications with regard to disability support work, unlike vocational services officers. They do not perform the supervisory or support functions for supported employees that we do, only production work (which, as stated above is identical in character to the work performed by workers in supported employment).
8. I am employed under *the Minda Incorporated Enterprise Agreement No. 9, 2016*.
9. The supported employees I work with are employed under the Supported Employment Services Award. One of the reasons I know this is that I have been involved in discussions for many years about bringing workers in supported employment under the Enterprise Agreement. This has never come to pass, and so Minda’s workers who are in supported employment remain under the Award. The Line Leaders that I have referred to above are also not covered by the Enterprise Agreement, and are provided wages and conditions according to the Award.

Work Performance at Minda/SA Group Enterprises

10. The work I do involves commercial packaging jobs for company clients of Minda / SA Group Enterprises. These jobs will vary depending on client requirements but involve the packaging of commercial products and components according to the particular instructions for the job.
11. For example, one of our regular customers is a major national electrical appliance company. They will send us a purchase order, which states what they require us to do for the job, including what they may require us to supply and what they will supply.
12. Management or administrative staff put together a work order, and the paperwork is then provided to vocational services officers, who use this to provide instructions to the supported employees on the work that they will be required to perform.

13. In this example, the job might be to package components for light switches – so the components might include screws and caps, to be packaged into small plastic bags. There might be anywhere between (for example) 1,000 or 10,000 sets of these that need to be packaged, with 4 of each component in each package.
14. This sort of job is required for a customer like this to operate their commercial business, so the job will have deadlines that the customer requires us to meet. The customer pays Minda or SA Group Enterprises for the packaging services that we provide, so it is important that we meet these deadlines consistently.
15. We typically work in groups, there is supposed to be a ratio of 2 support workers to 10 supported employees in my area, but in practice I am often working with up to 20 supported employees at a time.
16. Working with these supported employees involves a few different aspects, including providing general support and oversight to ensure that they understand how to perform the tasks required for the particular job we are running. This can involve giving visual cues if a supported employee is unsure, or providing assistance if they encounter any difficulty.
17. Some supported employees will require very little assistance or support once they know what to pack for the particular job. If a supported employee requires a lot of assistance or support, it may mean that they simply end up performing the work at a slower pace. In that case, we would usually just provide less work for them, with other supported employees or the line leaders essentially picking up any slack
18. If a supported employee is unable to perform the job at all, usually they will be assigned to a different job instead. This is usually at the discretion of the vocational services officer based on their observations of the work, however the different job they are assigned to will be dependent upon the other work that needs to be done at that point in time, with an aim to find something easier based on what is available.
19. As well as these support functions, I typically perform the same duties as the supported employees, working directly alongside them. As we have production deadlines and output requirements, I am expected and required to contribute to production as well as the supported workers.

Disability

20. The types of disabilities of some of the supported employees I work with include autism spectrum disorders, foetal alcohol syndrome, Down syndrome, and various intellectual disabilities or low learning skills. I also work with some sight or hearing impaired supported employees.
21. In my observation, supported employees are not assigned work on the basis of the nature of their disability. Rather, they are just assigned the work and vocational services officers will work with them as needed to ensure they can perform the work.
22. I sometimes see supported employees disappointed that they haven't been assigned a particular job (that they may prefer to do), because they are instead assigned jobs based on the work that is required to be done for customers.

Donald Greer

Friday, 20 May 2022

**IN THE MATTER OF A REVIEW OF THE SUPPORTED EMPLOYMENT
SERVICES AWARD 2010**

Fair Work Act 2009 s 156 – 4 yearly review of modern awards

WITNESS STATEMENT OF ROBYN SMITH

I, Robyn Smith of work address [REDACTED]
[REDACTED], state as follows:

Introduction

1. I am currently employed by Minda Incorporated, as a vocational services officer on a permanent, full-time basis. I commenced in this role in approximately 2015, prior to which I was a disability support worker with Minda since around 2009.
2. Minda operates disability services businesses throughout South Australia, alongside another organisation called SA Group Enterprises that I understand it is associated with. These organisations employ people with disabilities, who earn a supported wage and who are typically referred to as supported employees.
3. I am employed under the Minda Incorporated Enterprise Agreement No. 9, 2016.
4. The supported employees I work with are employed under the Supported Employment Services Award. I know this because I am aware that the idea of bringing supported employees under the Enterprise Agreement has been discussed at the workplace but has not happened so far.

Work Performance at Minda/SAGE

5. I work within packaging services. We perform commercial jobs for company clients, involving packing items, or in some cases unpacking and repacking items to specific requirements. Repacking might need to happen because items were not previously packed to requirement, or sometimes because new labels need to be added to components or because customer requirements have changed.
6. One example of a client is a company that makes pet treats. A typical job for them might be packing a certain number of pet treats into bags. This is a job that the pet treat company would pay Minda or SA Group Enterprises to perform by a certain deadline required for the client's business.

7. The client would tell us the requirements of the job, which gets passed down by a manager to vocational services officers, who then use this to provide instructions to the supported employees about how to perform the job.
8. I usually work in small groups with 3 supported employees. For “high-behavioural” supported employees who require a greater degree of support from me, I will often work 1-on-1. Some other vocational services officers work in groups of 1-to-10 or even more.
9. I am employed to supervise and support these supported employees. In practice, this usually means performing the same work that they are performing, alongside them, or “running the job” with them. I help to train and oversee the supported employees in their work and ensure that the work is getting done on time, but most of the work I perform is the same as the work of the supported employees.
10. Along with supported employees and support staff like myself, there are line leaders who are employed to get production work done. Line Leaders are employed to perform the same work as supported employees, to ensure that production targets are met.
11. These line leaders are not workers with a disability, they are not in supported employment, nor are they support staff for the supported employees. As far as I know, they are not required to hold any qualifications in disability support, like vocational services officers are. They are just there to get the production work done.

Disability

12. I work with supported employees who have a range of disabilities, including many with Down syndrome, autism spectrum disorders, ADHD, and some with cerebral palsy, visual impairments or hearing impairments.
13. One supported employee I work with in particular is able to work to a very high standard and at a fast speed. As a result, he and I will move around to a lot of different jobs. This is unlike most supported employees, who are given a job and remain in the job for months or years at a time.
14. From what I see at work, the individual abilities of these supported employees are not taken into account in the jobs that they are assigned. Rather, they are given work based on the jobs that need to be done to meet client demand.

15. In some cases, a supported employee will simply not be able to perform the job that is required. In these cases, a vocational services officer usually notifies the area supervisor and the supported employee is found an easier job depending on what is available. Usually, they will be swapped out with another supported employee so that production deadlines are not impacted and to keep groups at a consistent size.
16. I see many supported employees who would like to perform a range of different jobs that best make use of their skills however, they are simply assigned work based on what work needs to be done.
17. The main difference in work from supported employees is simply the speed with which they can accurately perform the job. Some can do so very quickly, and we depend on these supported employees to help complete work on time. Others will be performing the same work, just at a slower speed.

Robyn Smith

Friday, 20 May 2022

**IN THE MATTER OF A REVIEW OF THE SUPPORTED EMPLOYMENT
SERVICES AWARD 2010**

Fair Work Act 2009 s 156 – 4 yearly review of modern awards

WITNESS STATEMENT OF WALTER GRZENTIC

I, Walter Grzentic of [REDACTED], state as follows:

Introduction

1. I am the Director of Disability Expertise Australasia (DEA).
2. DEA is a disability consultancy, which I co-own. We specialise in disability employment, employment related assessments for people with disability and National Disability Insurance Scheme (NDIS) consultancy services.
3. DEA continues to be contracted by the Department of Social Services (DSS), to deliver National Panel of Assessor (NPA) services in south-east Australia and far north Queensland. These include the following services:
 - a. Supported Wage System (SWS) assessments
 - b. Ongoing Support Assessments (OSA)
 - c. Workplace Modifications Assessments (WMA)
4. In order to deliver these services, DEA contracts over 20 NPA accredited assessors and networks with other NPA providers and assessors throughout Australia.

Work Experience

5. I have worked in the disability sector since the early 1980's, including in senior roles within the sector. I have been directly involved in wage assessment for disabled employees, including in the Australian Disability Enterprise (ADE) sector.

Exposure to ADEs

6. My major exposure to ADE's has been in:

- a. Melbourne and regional and rural Victoria
 - b. Other parts of south east Australia, that are serviced by DEA NPA
 - c. Involvements with ADE staff, from around Australia, during my numerous FWC related roles, from 2014 to late 2020.
7. My first exposure to ADE's was from about 1981 to about 1989 when I was working in a Community Living Support Service (CLSS). The CLSS had the operational objective of successfully transitioning people with a disability from living in large institutions to living independently in the community. Part of the operational objective involved, for some of these people, facilitating work in an ADE. This process included liaison with ADE's, to identify appropriate jobs, negotiate commencement of employment arrangements and ensuring supported employees settled into life working at the ADE.
 8. In those discussions, the ADEs would identify the work that needed to be done, and then we would discuss placing an individual in that role. At the time there wasn't a complete skills analysis like you would see in a modern workplace; instead they would try people on the existing jobs to see if they could perform the role.
 9. Between about 1990 and 1998 I was the Manager of the SkillShare Disability Access Support Unit. SkillShare was a previous labour market program, aimed at upskilling people, prior to placing them in employment. I initiated a variety of job preparation pathway courses, that provided opportunities for people with a disability to achieve foundational work skills, prior to being placed in employment. This included collaborative partnerships with ADE's.
 10. Between about 1999 and 2008, I was the manager of the Disability In-Service Training Support Service (DISTSS). The DISTSS provided learning and development services to the entire Victorian non-government disability sector. As a part of this role, I worked closely with disability sector CEO's and senior management, some from organisations that operated ADE's.
 11. Around this time, competency-based Training Packages and courses were introduced. Some of these focussed on the competencies required to be an ADE staffer and work education/preparation courses for people with a disability, aimed at achieving readiness to enter the workforce. As part of my work, we initiated cutting edge customised learning interventions that addressed specific group and individual needs, including developing multi-media Ready4work Disability Support Work Induction and Agency

Training Plan Resource Kits, which were utilised by disability organisations, including ADE's.

12. In late 2012, the Federal Court of Australia handed down a decision (*Nojin v Commonwealth of Australia*) relating to wage assessments for supported employees. My understanding of that decision is that the Federal Court ruled that the Business Services Wage Assessment (BSWAT) – a method of wages assessment for supported employees - was discriminatory.
13. Following this decision, I was approached by a number of Victorian ADE's that requested my advice around transitioning from using the BSWAT to using other wage assessment tools.
14. In October 2014, the Department of Social Services (DSS) BSWAT Employment Response Section, invited me to be a Supported Wage System (SWS) Subject Matter Expert (SME) to provide information and advice to the various parties involved in the Fair Work Commission (FWC) conciliation (AM2013/30) process.
15. From then onwards I have virtually had a continuous involvement, in numerous FWC hearings, processes and trials. This has included:
 - a. In early 2015 I contributed to the development, planning, implementation and evaluation of the Australian Disability Enterprise (ADE) Productivity Wage Assessment Study. This study involved trialling 30 SWS assessments in three ADE's, located in three different states.
 - b. From late 2015 and throughout 2016, I contributed towards the national modified SWS (MSWS) Trial, that originally targeted involving 200 supported employees, working in 20 ADE's. This included:
 - i. Providing SWS assessment process specific advice and expertise, specifically to the FWC Working Group, and all Trial stakeholders
 - ii. Co-developing training resources and co-facilitating MSWS Trial professional development, for SWS assessors, ADE staff, and DSS staff (2 in-person professional development sessions – in Melbourne and Adelaide)
 - iii. Co-developing and co-managing Modified SWS Trial Assessor attraction, selection and induction processes

- iv. Supporting, coaching and mentoring SWS assessors throughout the MSWS Trial period
 - v. Contributing to Supported Employment Services Award (SESA) SWS Guideline amendments, resources and policy developments
16. In February/March 2017, I was one of the two SWS Consultant Assessors that planned, conducted and reviewed the MSWS Demonstration Project. This project involved trialling MSWS assessments in three NSW ADE's. This included:
- a. Undertaking benchmarking processes, conducting MSWS assessments, validation of all available data, briefing participating Demonstration Project Observers and stakeholders and progressive reporting briefings, throughout the demonstration
 - b. In consultation with Demonstration Project Steering Committee, participating ADE's and DSS staff, compiling and presenting detailed MSWS Demonstration Report to FWC in Sydney, on two occasions
 - c. Liaising throughout the MSWS Demonstration Project, with all FWC Conciliation observers and DSS representatives
17. In late 2017 and in the first half of 2018, I made a significant contribution to the development of the DSS Learning Centre SESA SWS 5 online modules, which are still utilised for SWS assessor, Disability Employment Service (DES) and ADE staff training.
18. In early 2020, I was invited to be a Supported Wage System (SWS) Subject Matter Expert (SME) for the 2020 Fair Work Commission (FWC) Modified SWS in ADE's Trial. I worked with DSS staff and other Trial stakeholders, to scope and develop all aspects of the intended Trial training, for SWS assessors and ADE staff. From March 2020, the progress of the Trial was significantly impacted on by the COVID-19 pandemic. In November 2020, I had to resign from my Trial role, due to my escalating family caring duties.

Experience as an SWS Assessor, including in an ADE Setting

19. I am an experienced SWS assessor that continues to perform numerous SWS assessments, including in ADEs. Some of these ADE's use the Supported Employment Services Award, whereas others use other Modern Awards or enterprise agreements.

Examples of ADEs that use other awards are Cleanforce, which uses the Cleaning Services Award; Uniting Fire and Clay, which uses the Manufacturing and Associated Industries Award; and NQ Green Solutions, which uses the Gardening and Landscaping Award as well as the Waste Management Award.

20. I have personally undertaken over 2000 SWS assessments in various industries and for various job roles and over 200 SESA SWS assessments, for diverse ADE operational functions. This has included numerous diverse manufacturing (e.g., assembly, pick & pack, operating machinery etc.), cleaning, gardening, car washing, warehousing, agriculture, administration and office support services, accommodation, hospitality, retail, and others.
21. This includes assessing supported employees working alone, and in a team, both in indoor and outdoor work roles. As a result of working collaboratively with the ADE sector, I achieved preferred SWS assessor status for numerous Victorian ADE's.
22. I continue to train, coach and mentor the 20 Disability Expertise Australasia (DEA) SWS assessors and numerous other NPA providers and their SWS assessors. With my guidance, the DEA assessors have conducted over 400 SESA SWS assessments, in a variety of ADE's, in several states.

ADEs Operations

23. The business model of ADEs has changed considerably in the time that I have been working in the sector.
24. Four decades ago, when I first started collaborating with ADE's, I observed that the ADEs were grateful for any commercial contracts they could get. At that time, they were competing for lower end outsourced contracts, that had variable to low profitability.
25. As the years went on, ADEs adopted more sophisticated commercial practises that involved securing business by building partnerships with commercial entities and pitching at value added "higher end" contracts. Examples of some of the more profitable business activities that have been targeted by ADE's since this business shift include gardening, cleaning, catering/hospitality, niche "value added" products and services. ADEs now compete on matters such as quality, customer service and value-additions. Based on my experience and observations of ADEs, they strive to be profitable.

26. Employment in ADEs operates in a similar way to the general labour market and in mainstream employment. ADEs produce goods and services with a commercial value in response to market demand. Supported employees make a productive contribution to the output of ADEs.
27. ADE's do not operate in a different paradigm. Although they are required to provide employment for people with disability, ADE's operate commercially to earn income for their business. ADE's are subject to the same economic business considerations as other enterprises.
28. A pertinent example of a profitable ADE operator is Greenacres. The Greenacres 2019/2020 Annual Report (available here: https://www.greenacres.net.au/wp-content/uploads/2021/04/Greenacres_annualreport_2019-20_web.pdf). The annual report discloses significant assets/equity (about \$23 million) and an annual operating profit of just over \$1.1 million. The CEO's overview states:
- Our ADE was the big winner during these troubled times. We had an upsurge of work in body bags and cold storage packs. With the help of Jobkeeper the ADE had a great financial result.
29. Prior to the introduction of the NDIS the Commonwealth Government was the principal source of ADE funding. It provided funding to ADEs using a case-based funding model. This funding has now transitioned to ADE supported employees receiving a NDIS Plan. The NDIS Plan includes the funding to provide the necessary support for those working in ADEs. ADE's now invoice supported employees NDIS Plans, for the ADE provided services. This has changed how ADE's get their funding.
30. From my observations of ADEs over a long period, ADEs are commercial enterprises that hold contracts and perform the work arising under those contracts, usually for profit.

ADE Wages Structure

31. ADE's provide some people with disabilities with valuable employment opportunities in a supported environment. ADEs are funded to provide these support services.
32. From my observations of working within and around ADEs for an extensive period of time, I have noticed the following practises with respect to setting of wages and conditions at ADEs:

- a. Some ADEs set wages and conditions according to *the Supported Employment Services Award*.
- b. Some ADEs set wages and conditions under Enterprise Agreements.
- c. Some ADEs may set wages using a combination of methods – for example, by paying supported employees under the award and workers without a disability under an enterprise agreement.
- d. A number of ADEs continue to use wage assessment methods similar to those considered to be discriminatory in the case that I have mentioned above while others have phased these out already.
- e. The ADE business model includes payment of significantly higher wages for senior management, professional and administrative staff who are non-disabled.

Working at ADEs

33. ADEs do not operate by seeking business opportunities that are able to be performed by supported employees. In recent years, the majority of ADE's, have changed their employee recruitment and now tend to recruit supported employees who are more capable of meeting increased expectations as to employee capacity and work performance functionality. ADEs have increasingly complex work requirements and recruit workers, including supported employees, to meet those requirements. A common method of doing this, once a contract is secured, is to undertake a task analysis to plan how they can most effectively and efficiently, fulfil the contract requirements. This initially involves the non-disabled ADE staff performing and completing the product development or delivering the service. From this, the various skills that are required to perform and complete the task are identified. Workers are then assigned to specific processes based on the ADE employer's knowledge of the workforce and the skills it has available. I have heard the best performing disabled employees referred to as the "A Team" and others referred to as the "B Team" and, others who are less capable as the "C Team". At times, I have observed non-disabled casual staff working with disabled employees doing the same work as them to fulfil contracts.

34. Some ADE work is amenable to the creation of a work team comprised of supported employees with differing skills and who have complementary skills. An example drawn from my experience of observing the operations of ADEs is an assembly contract. In this example, the ADE wins an assembly contract to assemble a men's shaving kit. A skills analysis is undertaken that results in 10 supported employees working on a production line at a long table. The shaving kit has a number of components that need to be assembled. At one end of the table, the first couple of supported employees compile the flat pack into a box. This box is then passed onto the next work station, where another supported employee correctly places the first item into the kit, to the required quality specifications. The kit is then passed onto the next station, where the next process occurs. At the end of the table, the kit is checked for quality accuracy. Other employees then complete the kit display packaging. At the end of the table, staff double check the required quality specifications. If there any errors, they can easily identify as to which employee has made a mistake, and the ADE Team Leader/Supervisor, will give the relevant employee feedback and re-train them, as to what is required, or they move the employee to another process.
35. The work is arranged to meet the assembly objective of the contract with the least error rate. With the intended modified SESA, some of these supported employees may be classified as in Grade A and others in Grade B, subject to which work role they perform from time to time.
36. Employees with a disability in mainstream employment, also perform either a simple task or tasks, consisting of up to three sequential steps or sub-tasks, any of which may involve the use of jigs or equipment or tools with basic functionality, under direct supervision and constant monitoring.
37. Employees with a disability in mainstream employment, also perform a simple task or tasks, consisting of more than three sequential steps or sub-tasks, each of which may involve the use of mechanical or electric equipment or tools, under direct supervision with regular monitoring.

Walter Grzentic

Friday, 20 May 2022

**IN THE MATTER OF A REVIEW OF THE SUPPORTED EMPLOYMENT
SERVICES AWARD 2010**

Fair Work Act 2009 s 156 – 4 yearly review of modern awards

WITNESS STATEMENT OF SHARON LOUISE DULAC

I, Sharon Louise Dulac of [REDACTED] state as follows:

Introduction

1. I commenced working in Employment Service provision for people with disabilities in 1992 and have consistently been employed in various capacities in Disability Employment Services since this time.
2. I have significant experience in placement and support of people with a wide range of disabilities and capability levels, in both open employment and ADE environments.
3. In both environments I have assisted in development of employee task and role descriptions, identifying tasks to suit individual abilities and assisting ADE services and other employers with task analysis, benchmarking and setting performance standards.
4. I have recruited and trained assessors in SWS, modified SWS, FWS and BSWAT wage assessment tools. Some ADE business operations, in which I have experience include packaging, garden maintenance, administration – archiving, firewood cutting, catering, packaging and sales, printing, food preparation and packaging, manufacture of timber products, steel fabrication, sewing, cleaning and recycling services.
5. I have also assisted participants in a self-employment capacity undertaking simple repetitive tasks including mowing and shredding services. I have facilitated various trials and demonstration projects in relation to wage setting for People with Disabilities in both open and supported employment environments and been engaged in a consultancy capacity by Dept of Social Services reviewing wage assessment tools in ADE's, demonstrating assessment models and in an advisory capacity to the Fair Work Commission.
6. I am familiar with several wage assessment tools, both productivity and competency based and some incorporating both aspects. I have conducted a considerable number of wage assessments in both ADE and Open employment environments.

7. I have read the decision of the Fair Work Commission dated 3 December 2019 (the **FWC SES Award Review**)
8. ADE's provide employment to people with disabilities who because of their disability, their support requirements or by individual choice find these services their best option for employment access. As stated in paragraph 245 of the FWC SES Award Review, some ADE's also provide additional services to their employees including life skills, vocational training, counselling, behavioural support and transport assistance. Apart from vocational training, these additional services are accounted for and funded in individual participant NDIS packages and provided by the ADE or other external services.
9. While ADEs provide employment as I have described, most no longer operate on the social services models of the past. The vast majority are viable commercial businesses who tender for commercial contracts and target contracts suited to their workforce. I am aware of a number of ADEs who pay the National minimum wage and remain viable.
10. It has been my observation that ADEs undertake a wide range of business ventures and have evolved over time in line with availability of contracts. At times of contract change some employees can require retraining to fit to a changing business model and others are able to transfer skills more easily to a wide variety of tasks. Given the changing environment with the introduction of NDIS funding, ADE services now require employees to have existing funding for support in line with their needs and target employees with skills relevant to meet commercial contract obligations.
11. The Fair Work Commission proposes that the Wage Grades, A and B would apply to a created position consisting of tasks and a level of supervision that has been tailored or adjusted to meet the circumstances of the employee's disability and which does not fall into Grades 1–7. Supervision is funded based on the level of need through NDIS employment support packages and paid to ADE's to provide support on an assessed needs basis.
12. It is true that some ADE employees have limited skills and require adaptations to fit into the workforce. However, this is not specific to the ADE environment. There are long-term ADE employees with significant disabilities whose commercial output is minimal. However, these employees are a small component of the workforce and new recruits are offered employment based on business needs. Given access to NDIS funding for options other than employment, some of these employees are electing to undertake reduced hours and / or options other than work, options which few had access to prior to the introduction of NDIS funding. All employees in ADE services are required to have a NDIS funding package which allows for payment of any support required at work, hence additional costs relevant to employing people with significant needs are covered by the individuals NDIS funding and not as an additional cost to the ADE service.
13. In my experience ADE's are tendering for the same commercial contracts as other private businesses. They are often able to tender at a lower price, due to

the lower wage costs paid to employees with disabilities. Many ADE's have significant investment in infrastructure to undertake work in their usual contract space, and while products and contracts may vary, they are generally within the scope of existing expertise. As with any new employee, the task range, position and subsequent training requirements of disabled employees are adapted to fit the needs of the business within the capacity of the individual employee.

14. Many employees with disabilities in both open employment and ADE settings undertake work which involves simple sequential tasks, which may be part or all of the usual work they do. When Disability Employment Services seek positions for their participants in open employment, they often do so in a reverse marketing capacity, whereby they seek employment specifically suited to their participant's needs. For example, there are multiple employees across the country engaged by supermarkets whose sole role is to pick up discarded boxes following other staff members who are locating stock to shelves. Many employees in these positions are paid at the level entry rate of a full award wage, while others may be paid a productivity-based wage as assessed through the Supported Wages System. The effect of this process is to match a person to a pre-existing role, or part of a pre-existing role, that the employer (whether in open employment or ADE employment) is willing to employ them to do, a role is not created for the worker.
15. Page 10 ARTD report states, "it is important to note that wages of supported employees (affected by the new wage assessment structure) constitute a smaller proportion of turnover than the wages of non-supported employees (unaffected by the new wage assessment structure)" Page 70 "On average, supported employees constitute 71% of all employees in ADEs in the Trial. While supported employee payroll makes up a lower proportion of turnover than payroll for other employees."
16. While it is true that some employees in ADE's undertake simple sequential tasks, in my observation the number of employees in the ADE environment who require significant role modification is a small percentage of the overall workforce and generally reflects employees with overall low productivity rates. I estimate this number to be between 10 and 20%. This is reflected in the ARTD report, on page 9, which indicates "without the minimum wage floor, 16% of supported employees would have received less than \$3.59 per hour". This should indicate that if the proposed model of grading was implemented that a small number of employees would be affected. However, the ARTD report indicates that 63 % of employees with a disability would fall into Grade levels A & B and consequently have their wage base set below the National minimum wage. This discrepancy and also the lack of clarity on what constitutes a simple sequential task, has the capacity for the majority of ADE employees to be classified at either level A or B and consequently have their base hourly rate set below the national minimum wage.
17. Grade 2 of the SES Award which currently applies to the majority of SESA employees indicates that employees "...will perform a basic task or tasks in accordance with defined procedures under direct supervision. Such employees

will understand and undertake basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults.” From this descriptor it indicates that this covers basic tasks and the main consideration may be if a person is able to identify errors although it appears reasonable that quality checking could be assisted by paid support staff and any items not meeting quality requirements be excluded for productivity based assessment.

18. ADE employers are unique in that the majority of employees (71%) have a disability. Many services have however successfully made the transition to paying wages based on the National Minimum Wage and continue to operate, flourish, and provide increased opportunities for people with disabilities to access employment in the ADE environment.

Sharon Louise Dulac

Friday, 20 May 2022