



**Australian Government**  
**Department of Social Services**

Vice President Hatcher  
Fair Work Commission  
Level 10, Terrace Tower  
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Dear Vice President Hatcher

**Concerning matter AM2014/286 Supported Employment Services Award 2010**

I refer to the questions asked by the Full Bench of the Fair Work Commission (Commission) on 16 February 2018 during hearings on the four yearly review of *Supported Employment Services Award 2010* (SES Award).

There are almost 20,000 people with disabilities currently employed in Australian Disability Enterprises (ADEs). The Department of Social Services (the Department) is committed to protecting the jobs of these employees and ensuring they can continue to access meaningful and gainful employment. The National Disability Insurance Scheme (NDIS) will support this through funding supports to assist participants with employment, where these are beyond the requirements of employment services and employers. The Department's responses to the questions are below.

*1. What is the purpose of the 8 November 2017 letter from Kathryn Campbell CSC, Secretary of the Department of Social Services?*

*In particular, what is meant by the statement, 'The Government will continue to follow the proceedings in the Commission and ensure future policy settings allow for the ongoing viability of Australian Disability Enterprises for employees, their families and carers, and the businesses, while also meeting Australia's obligations under international law'?*

*For example, there has been an estimate that if the Commission made the decision to mandate the SWS as the sole wage assessment tool for the ADE sector it would have a sectoral cost of \$78 million dollars per year. Does the letter mean that the Government would partly or wholly contribute funding to make up for that cost?*

The purpose of the 8 November 2017 letter was to clarify that the preference expressed in the Department's letter of 16 August 2017, in relation to wage assessment tools in the SES Award, did not constitute a concluded Government position.

The letter was also intended to reassure supported employees, their families and carers, and ADEs that the Department's policy development would seek to support, as far as reasonably possible, the ongoing viability of the supported employment sector.

The Australian Government has provided significant funding to the supported employment sector in recent years to support ADEs transition to new wage assessment tools, adjust to a potentially higher wage environment and transition to the NDIS. This funding includes tapering



wage supplementation and access to funding support for business improvement advice and future business planning. Any decision to provide additional funding support would be a matter for Government to consider in the context of the industrial landscape, including wage-setting arrangements.

The Department would like to see any new wage-setting arrangements protect the interests of the 20,000 people with disability currently employed in ADEs. The Department will closely consider any decision of the Commission with a view to ensuring that any changes to policy settings promote the rights of persons with disability, including the right to work, and are consistent with Australia's domestic and international legal obligations, including relevant Articles of the *United Nations Convention on the Rights of Persons with Disabilities* and the *International Covenant on Economic, Social and Cultural Rights*.

*2. Exhibit 64 had attached to it an extract from a submission, which the Australian Government made in 2006 to the Australia Fair Pay Commission, under the Workplace Relations Act, concerning minimum wages for the disabled sector. Paragraphs 11.95 through to 11.98 of that submission, on pages 366 through to 367, expressed the view that the SWS was not an appropriate wage assessment tool for the supported employment sector. Does this remain the position of the Government or does it now have a different position, which it wishes to articulate?*

The Department reiterates that wage setting is a matter for the Commission and parties. The landscape in which ADEs operate has changed since that submission was written. In particular, the Department acknowledges the impact of the Federal Court's decision in *Nojin vs the Commonwealth of Australia* [2012] FCAFC 192 and the removal of the Business Services Wage Assessment Tool (BSWAT). On that basis, regard should be had to the context in which the comments in the 2006 submission were made.

In addition, the Department acknowledges that the SWS has now been modified, with the consent of all parties, following a lengthy conciliation process, in AM2013/30, and the four-yearly review.

*3. Given that the SWS is a tool developed by the Department, is it accepted that the Commission has the power to, through a variation to the Award, determine any further modifications to the SWS, which it would consider appropriate?*

Yes, it is accepted that the Commission has the power to vary the SES Award to determine further modifications to the SWS, if the Commission considers that appropriate.

*4. Noting the Department's letter of 8 November 2017, which stated, 'The Government believes that this is a matter for the Award parties and the Fair Work Commission', would the Commonwealth continue to support whatever wage assessment matters are determined by the Commission, through the financial support to independent assessors to work in the ADE sector to implement such a tool? Would the Commonwealth be in a position or interested in doing that if the tool incorporated features other than productivity?*

The Department only funds the assessments of the SWS, and will continue to fund these for the modified SWS starting from 1 July 2018.

Whether, and to what extent, the Commonwealth would fund assessments of a different wage mechanism is a decision for Government to make, subject to the Commission's decision. Any Government decision would necessarily consider the environmental context, including the degree of legal certainty in relation to the application of a wage assessment tool or tools.

*5. Regarding Disability Maintenance Instrument (DMI) funding, is it intended for the future to continue the transfer of the equivalent quantum of DMI funding into an individual's NDIS plan and have that available on an ongoing basis to ADEs, or whether that is a transitional arrangement?*

As part of the NDIS planning process, consideration of funding to support a participant's engagement in employment may be included in their participant plan, where it is considered reasonable and necessary.

The use of DMI funding levels is expected to be a transitional approach for the NDIS. Existing NDIS arrangements are:

- existing ADE employees continuing in the same organisation attract funding in their NDIS plans replicating their historic DMI funding level;
- new ADE employees or current ADE employees moving to a different organisation will have funding in their NDIS plan, which will be the average DMI funding level of the relevant ADE outlet, expressed as average outlet price.

The National Disability Insurance Agency is exploring alternate service design and pricing for full scheme (from 1 July 2019), taking into account any outcomes of the Department's consultations and policy development on the future of supported employment.

Yours sincerely



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