

FAIR WORK COMMISSION

4 Yearly Review of Modern Awards

Supported Employment Services Award 2010

Matter No: AM2014/286

SUBMISSIONS IN SUPPORT BY GREENACRES DISABILITY SERVICES

CONSIDERATIONS

1. Greenacres Disability Services (**GDS**) contends that the Full Bench (the **Bench**) in reviewing of the Supported Employment Services Award (**SES Award**) should when deciding the best method of wage determination for supported employees do so having regard not only to the objects of the Fair Work Act but also have regard to the objectives set out in the Statement issued by her Honour Deputy President Booth in matter AM2013/30 on the 15th of October 2015.
2. GDS will contend that the issue of wage determination of supported employees in Australian Disability Enterprises (**ADE**) is complex and that the Fair Work Commission (**FWC**) must have high regard to the implications of its decision on both supported employees, their carers, and the organisations which employ them.

IMPLICATIONS OF THE SWS

3. GDS contends that the imposition of a productive output method of assessing wages (alone) such as the Supported Wage System (**SWS**) without looking at skills is inappropriate and not in keeping with the traditional way the Commission has historically determined wage outcomes for workers without disabilities.
4. GDS will bring evidence to show that if the SWS is the only wage assessment vehicle available to our enterprise it will lead to significant job losses if not closure. Such an outcome will devastate the lives of people with disabilities both economically and socially.
5. The effects for many people who have mental illnesses could be far worse than economic and social distress as for many coming to work, receiving ongoing support in a supportive environment where they can contribute not only to their own well being, the but the wellbeing of others is **paramount**.

THE PURPOSE OF ADE

6. GDS contends that the primary purpose of its enterprises is to provide the opportunity for people with disabilities to have employment in the absence of the market being able to provide a supportive and inclusive employment environment for them. In the vast majority of circumstances supported employees choose to work at GDS because it provides them not only the dignity of work but a non-pressure work environment where they form friendships and undertake social activities.
7. GDS will bring evidence to demonstrate that its enterprises do much more than run a commercial operation. Indeed it provides many other supports to their supported employees during working hours.

ADE CONSTRUCT JOBS FOR SUPPORTED EMPLOYEES

8. GDS contends that, given the nature of the undertakings and or contracts it has with its customers, the use of a productive output assessment system like the SWS is not appropriate and will make its operations completely unsustainable.
9. The SWS will greatly inflate the price of labour carrying out the simplest of tasks, and such increases will not be able to be passed on the customer. In these circumstances these contracts will be lost, along with the supported employees who carry out that work, including their trainers and supervisors

THE BENCH SHOULD PUT IN PLACE A WAGE DETERMINATION SYSTEM SIMILAR TO THE REST OF THE WORKFORCE, THAT IS, BASED PRIMARILY ON SKILLS

10. GDS believes that the Bench should have regard to the history of the development of classification structures in awards when determining wage assessment criteria and should apply the same principles to supported employees as they have to the rest of the workforce when looking at wage determination for supported employees.
11. GDS contends that supported employees' skills and capability are essential elements of contributing to a productive workplace and this needs to be a major consideration in the construct of any wage determination method for supported employees. Accordingly the Work Value Classification Tool (**WVCT**) proposed by Australian Business Industrial and the NSW Business Chamber is an appropriate default system that should be embedded in the award.

12. GDS believes the WVCT is a good and mainstream option moving forward as it is a more consistent approach in terms of wage determination for supported employees when compared to the rest of the workforce.

SWS INAPPROPRIATE FOR ADEs

13. GDS believes that determining wages based on how fast a person works is archaic and the FWC would not adopt this approach for workers without disabilities in ADE.
14. In particular because the SWS only measures against the task that a supported employee can safely carry out and not all the duties of a position it makes the SWS more perverse.
15. The SWS may be appropriate in circumstances where an employee can generally carry out most of the duties associated with a whole job, but because of their disability, may work slower as they take more care to complete the job to a quality standard.
16. GDS contends that it is inappropriate particularly for supported employees with intellectual disabilities in ADE who in many circumstances have limits on the types of work they can do safely. Such employees carry out low skill tasks and in many cases as a consequence can work reasonably quickly at different periods of time with ongoing support and training
17. The SWS was originally developed for open employment, and as such has not been embraced by the sector because of its inherent flaws.

THE BENCH SHOULD DECIDE ON A WAGE ASSESSMENT METHOD WHICH HAS REGARD TO WORK VALUE

18. GDS contends that all wage assessment tools for supported employees are predicated on a supported employee receiving something less than the full minimum hourly rate. Accordingly the role of the Bench is to determine which wage assessment method/s should be available to employers covered by the award which are fair and reasonable also having regard to the nature of ADEs and their purpose for which they exist.
19. Supported employees receive less than the full minimum rate of pay because they are not able in most circumstances to carry out all the duties/tasks of a person without a disability. GDS in most cases can only take on work which our supported employees are capable of doing. In many cases this is work which can be broken up into very basic tasks. Much of this work is of low value.

20. Supported employees require different degrees of greater supervision, ongoing training and ongoing personal support, than what you would expect of an employee without a disability.
21. An individual's disability can have an impact on what tasks they can safely carry out to a quality standard. These are issues which must be a consideration in any wage determination system. We believe our current GDS wage tool and the WVCT achieves this.
22. GDS contends and will bring evidence that it provides a range of supports and programs to their supported employees that other mainstream commercial businesses do not provide. Many of these supports and programs are all part of providing a holistic approach to supporting people with disabilities in the workplace.

INCOME AND JOB SECURITY ARE MAJOR FACTORS

23. GDS will bring evidence to show that when combining the wages of supported employees under the current GDS wage assessment tool combined with pension and other entitlements that most supported employees are much better off financially than if they were an employee without a disability being paid the minimum wage.
24. GDS contends and will bring evidence to show that if supported employees lose their jobs as a consequence of the a wage determination method that substantially increases wages they will on average be over \$130 a week worse off because of job loses.
25. GDS contends that job security for supported employees is a major part of their inclusion in Australian society.

WAGE DETERMINATION SHOULD BE EMBEDDED IN THE AWARD

26. GDS contends that whatever the method of wage determination might be in the future the Fair Work Commission should prescribe in detail the method or methods in the award and that such wage determination methods should only be subject to change by way of a variation to the award. By prescribing in detail the method by which employers will determine wages for supported employees, it places the onus on employers to justify their decisions, particularly if the supported employee, their advocate, union or carer raises a grievance in relation to the matter. It is for this reason that GDS fully supports the proposed new clause, "Rights at Work for Supported Employees" submitted by Our Voice Australia.

RIGHTS AT WORK FOR SUPPORTED EMPLOYEES

27. GDS contends that “Rights at Work for Supported Employees” clause for supported employees places additional obligations on employers to take reasonable steps to provide information to supported employees about their rights at work and to ensure that there are additional obligations on employers when dealing with matters that may be detrimental to the Supported Employee.
28. Education amongst supported employees and indeed their carers is very important to protect them against inappropriate employer practices or activities.
29. GDS believes the overwhelming majority of ADE are good employers who very much care for their supported employees but nonetheless there will always be occasions where this might not be the case and supported employees and their guardians, carers need extra education in this regard.

ADE –INCLUSIVE AND SUPPORTIVE

30. GDS contends and will provide evidence that people with disabilities who are employed at its enterprises feel socially included because of a range of factors not the least being the social interaction they have:
 - Getting to and from work
 - Interaction with the public and ADE customers
 - Interaction with fellow support workers
 - The use that their additional income above the pension to socialise outside work hours
 - The friendships and relationships they form
31. ADE are not hidden away from public scrutiny nor are supported employees not interacting with people without disabilities as some might have you believe.
32. Indeed GDS will bring evidence to show that supported employees who have tried working in open employment have felt excluded, isolated and non- supported.
33. GDS will bring evidence from independent third party verification teams that GDS fulfils all the requirements with respect to the positive outcomes that ADE provides to supported employees.

PENALTY RATES

34. GDS contends that the award should contain different penalty rates for the application of those enterprises where employees work in retail, catering and fast food. This is to ensure we can be competitive when and if we open on weekends. It should be noted the penalty rates structure sort is pre the recent decision on penalty rates which is subject to a Federal Court appeal. We only seek to use those penalty rates for those aspects of our business that carry on those activities that fall into retail and fast food.

APPLICATION OF AWARD

35. GDS supports the proposed changes to the application of the SES Award, as put forward by ABI/NSWBC and NDS with respect to the awards operation and who it covers.

36. With the new funding arrangements associated with the NDIS it is necessary that the SES Award legally operates in the way it was intended and not be inadvertently thwarted by new funding and support arrangements for people with disabilities introduced by the government because of the NDIS.

37. GDS contends that the changes to the application of the SES Award are particularly important for young people with a disability who are still at school who might be capable with support to do casual work after school hours.

GDS WAGE ASSESSMENT TOOL

38. GDS contends that its current wage assessment tool is a valid approach to determining wage levels for supported employees and will bring evidence to support this. Given the tool was established over 15 years ago we believe it requires an overhaul. In agreement with United Voice, however, only minor changes were made to the GDS tool as part of our 2014 Enterprise Agreement (the EA) on the basis that following the award review we would negotiate further changes to it. Over 50 organisations currently use the tool.

39. GDS contends that if our proposal is accepted that wage assessment options should be embedded in the award we would want to make changes to the tool which will make it easier to administer, understand and implement. GDS wants those employers who use the tool to have their obligations derived directly from the SES Award.

DECISION WITH GREAT CONSEQUENCES

40. GDS respectfully submits that the Bench not underestimate the consequences of its decision.
41. GDS contends that the decision of the Bench will be of major consequence to supported employees, their carers, the community and ADES in that order.
42. For GDS, closing our ADE or substantially restructuring with major job loses would save GDS nearly \$450,000 a year and free up capital. The consequences on our supported employees and indeed our support staff would be immense. Some of our supported employees have been with GDS for over 30 years and the average is over ten years.

Greenacres Disability Services

25 September 2017