

From: Mary Walsh <marywalsh6@bigpond.com>
Sent: Friday, 5 August 2022 9:20 PM
To: Chambers - Hatcher VP <Chambers.Hatcher.VP@fwc.gov.au>; 'Sunil Kemppi' <skemppi@actu.org.au>
Cc: 'Ashley Sherr' <Ashley.Sherr@sparke.com.au>; 'Emma Gruschka' <Emma.Gruschka@sparke.com.au>; Leigh Svendsen <leighs@hsu.net.au>; 'Peter Cummins' <peter.cummins@catholiccare.org>; 'Illy Rogers' <illy.rogers@catholiccare.org>; 'Ben Redford' <ben.redford@unitedworkers.org.au>; Nigel.ward@ablawyers.com.au; Kyle Scott <Kyle.Scott@ablawyers.com.au>; 'Claudia Simmons' <Claudia.Simmons@Ablawyers.com.au>; 'Kerrily Boulton' <Kerrily.Boulton@endeavour.com.au>; 'Kerrie Langford' <Kerrie.Langford@nds.org.au>; 'Chris Christodoulou' <chrisc@greenacres.net.au>; aedlegal@aed.org.au; 'Phillip Zlatkovic' <phillip.zlatkovic@aed.org.au>; Activ Advocacy Action Team <activationteam@gmail.com>
Subject: Draft Determination for Amendment to AM2014/286

Dear Associate and Parties, ,

We seek leave to file this Draft Determination for consideration during the current Hearings. This request was fore-shadowed at Page 7, Point 2 – “**Other Considerations – Rights @Work Clause**” in our submission filed under Directions dated 22 July, 2022. The proposed change is relatively modest and, we feel, necessary to protect the employees.

Justification for the Draft Determination

The intent of the Clause is:-

- (i) to ensure vulnerable employees **know** they are able to access support (external to the factory floor) for decision-making with employment matters and then
- (ii) for the employer to **provide the opportunity** for an affected employee to have that support available to them.

We attach the Employee Termination Notice issued by ACTIV the same day as the national media release.

This denied those employees of the opportunity to access the necessary supports they needed to deal with this workplace issue- at the time.

It affected 700 disabled employees at 7 different sites in Western Australia. Four of those sites are regional – Busselton, Bunbury, Geraldton and Kalgoorlie.

Regional areas don't have the same level of support services as the metropolitan and urban areas. But their need for support is identical.

Access to union & advocacy support for ADE employees is not readily available, so family advocacy and community support were the only alternatives.

Our Voice Australia is not a voice for service providers.

Neither is the **Activ Action Team**

We have a good working relationship with providers (employers) and the support services that assist disabled employees (our members).

The obligation on employers in this instance was met – but the lack of prior notice and opportunity to access supports- added another element of distress to the employees, and their family advocates.

There is a perception, and it's wrong, that all that's needed for intellectually disabled employees (our members) is an “*easy-read*” document.

A document advising an employee they are being “*sacked*”, made “*redundant*” and that their job, as they know it, will end is a “*significant workplace change*”.

An “easy-read” document is useless for this group of employees unless there is hands-on-support to help them understand it, at the same time.

The midst of a national media frenzy and community outrage is hardly the best climate for family advocates (the only source of advocacy) to deal with this issue.

We have members at those work sites. They banded together to support each other, the disabled employees and those who might not have support networks to help them.

The Family Advocacy Team is the response. The relationship to ACTIV is that the closures meant those families banded together to protect, advocate and support the redundant employees of those work sites.

In reading the attached Employee’s letter please be aware it is dated the same day as the national media release.

<https://www.abc.net.au/perth/programs/drive/activ-closes-seven-sites/13884230#:~:text=Disability%20services%20provider%20Activ%20announced,was%20consulting%20staff%20and%20employees.>

The current Federal/State transitional intervention was not announced for a further month, and resulted from community consternation and outrage.

<https://thewest.com.au/business/workplace-matters/activ-industrial-work-sites-get-18-month-reprieve-after-state-commonwealth-118m-funding-deal-c-7209407>

The crisis, for us, now, is to ensure that the employees are better protected, in the future, This is especially important as we finalise a new national wage system which will place further financial pressure on providers.

The majority of these ACTIV employees will not find jobs, as they knew them. Many will be diverted to “day-programs”.

That is not “work” and that’s how these employees understand it.

We provide our Draft Determination, the facts as to why this extra protection is needed for intellectually disabled employees and provide our suggested amendment.

In copying it to all parties, we trust they will understand why we feel it’s necessary.

We trust that, if the Full Bench allows its’ inclusion during these Hearings, that all parties will support it.

We welcome any suggestions they might have, after due consideration of our Draft Determination and Reasons – to improve its intent and outcome.

Thank you for your input and support.

Mary Walsh
Regional Co-ordinator & FWC Representative
Our Voice Australia



DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 YEARLY REVIEW OF MODERN AWARDS – SUPPORTED EMPLOYMENT SERVICES AWARD 2010

(AM2014/286)

XXXX

XXXX

XXXX

XXXX, XX XXXX 2022

4 yearly review of modern awards – Supported Employment Services Award 2010.

A. Further to the decision issued on XXX in AM2014/286 ([2022] FWCFB XXXX), the above award is varied as follows:

1. By varying clause 32 as follows:

32. Rights at work for supported employees

32.1 When dealing with employment matters affecting supported employees the employer shall take all reasonable steps to provide such employees with the information they require to exercise their employment rights.

32.2 Such reasonable steps will include, but are not limited to, the following:

- (a) providing information to supported employees of their right to be a member of the union and be represented in the workplace by a union representative;
- (b) providing information in relation to seeking information and or assistance from the Fair Work Ombudsman;

- (c) providing information **in a timely manner** to a supported employee about their right to have their nominee, guardian, carer, parent or other family member, advocate or union assist them in making decisions about employment matters.

32.3 In addition to those matters listed in clause 32.2 the employer shall take reasonable steps to provide the opportunity **in a timely manner** to the supported employee to have their nominee, guardian, carer, parent or other family member, advocate or union involved in or consulted or act as the employee's representative in employment matters that affect or may affect the supported employee's interests.

32.4 Such matters shall include but not be limited to the following:

- (a) consultation about significant workplace change under clause 29—Consultation about major workplace change;
- (b) consultation about changes to rosters or hours of work under clause 30—Consultation about changes to rosters or hours of work;
- (c) any dispute under clause 31—Dispute resolution or other grievance;
- (d) wage assessments under clause 18.1 and Schedule D—Supported Wage System;
- (e) any disciplinary matter; and
- (f) performance appraisals.

B. This determination comes into operation from XX XXXX 2022. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period that starts on or after XX XXXX 2022.

[Insert the Seal of the Fair Work Commission]

XXXX

16 May 2022

Dear Employee,

Re: Decision to change organisational structure



This letter is to tell you we are changing the **organisational structure**.

This means the jobs at Activ and how work is organised.

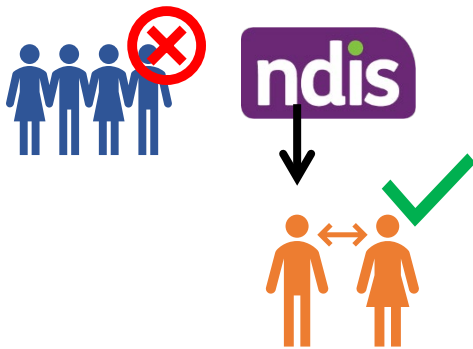


This letter confirms important details about the change.



Activ opened large employment sites for people with disabilities in 1957.

Since this time community ideas have changed. People now think large employment sites away from the public are not a good way to support people with disability.



The government has also changed the funding for employment supports and provides more funding for **smaller-ratio supports**.

These are supports for smaller groups of people per support worker.

Changes to Services

Activ has also decided to close these employment services sites:



- Bentley Employment Services
- Osborne Park Employment Services
- Rockingham Employment Services
- Bunbury and Busselton Industrial Services
- Geraldton Employment Services
- Kalgoorlie Employment Services



As a result of the changes to the organisational structure, it is likely that the job of Supported Employee will be made **redundant** at the above sites.

This means a job is no longer needed.

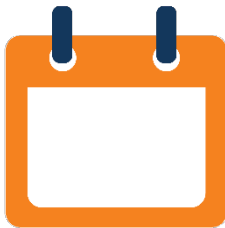
Meeting to talk about the proposed changes



We will have a **consultation meeting**.

This is when we talk about the changes and you can ask questions and tell us what you think.

We welcome your ideas on what we can do to avoid or reduce the impact of the proposed changes.



We will tell you when and where the meeting will be held.



At this meeting you can have someone you trust with you to support you, advocate for you or speak for you as your representative.

This person can be your parent, a guardian or another person you choose.

Suitable Alternative Employment



We will try and find you **Suitable Alternative Employment**.

This means a job at Activ that you can do and is reasonable for us to put you in.



Please look at the available jobs list given to you with this letter.



Please pay attention to the date applications close.

Please tell us before this time if you would like to be considered for one of these jobs.



For more information on these jobs please contact our Employment Team on:

- 9387 0483 or
- Employment@activ.asn.au



Or speak to your Employee Coordinator at your site.



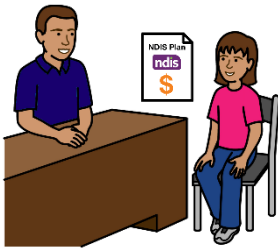
If your job is made redundant and we can't find you suitable alternative employment your employment with Activ will likely end by redundancy.



If your employment ends by redundancy you may get a redundancy payment.

You can ask for a summary of what you would be paid.

Meeting to Talk About Using Other Support Services



We will have a Support Services Meeting.

This is when we talk about how you can use your funding and the other services you can use.



You will be able to ask questions and get information on your options.

We will contact you to book a time to have this meeting.



At this meeting you can have someone you trust with you to support you, advocate for you or speak for you as a representative.



This person can be your parent, a guardian or another person you choose.

Information and Updates

We will give you regular updates. Information will be available:



- On the noticeboard at your site;
- On our online information hub campaign.activ.asn.au/employment;
- By speaking to your Employee Coordinator;
- By phoning our Employment line on 9387 0483 or
- By emailing Employment on Employment@activ.asn.au



Activ have a counselling service, if you would like support, you or your family can contact our free Employee Assistance provider on 1300 364 277.

This service is private, and they won't tell anyone what you talk about.



If you have any questions please speak to your Employee Coordinator or contact our Employment Team on Employment@activ.asn.au or 9387 0483.

Yours sincerely,

MICHAEL HEATH
CHIEF EXECUTIVE OFFICER

CC: employee's personnel file