



21 February, 2022.

Supported Employment Services Award 2020 (AM2014/286)

Pursuant to the above, and in accordance with the directions therefrom (*Fair Work Commission Directions dated Sydney, 15 February, 2022*), we provide our position statement in relation to this matter. Our position statement is underpinned by, and relies upon, the following irrefutable facts:-

- (1) Australian Disability Enterprises (ADE's) have a dual focus of (i) **employment** and (ii) **social**.
- (2) The majority of employees have intellectual disability as their primary disability.
- (3) Intellectual disability in national employment spheres is approximately 3.5% of the disability population – refer <https://engage.dss.gov.au/new-disability-employment-support-model/>
- (4) The Supported Wage System (SWS) was never designed for ADE's but was developed for open (mainstream) employment.
- (5) Our Voice Australia has been recognised as the legitimate voice for our disabled family members working in the ADE's since 2004.
- (6) Social policy, and outcomes, are outside the ambit of the independent industrial umpire (FWC), but have always, historically, been recognised by it. Refer [359] in [2019] *FWCFB8179*.

Our position statement to the ARTD Report (The Report) is provided from the perspective of the workers, their families and carers. Whilst we accept The Report is based on “**work value**”, our position is based on the worker's perspective of “**the value of work**”. That value is supported by their families and carers, by Australian communities, by all levels of Government and the Fair Work Commission itself.

The Aims of The Report (*1.3.1page 19*) were “**to understand the practicality and cost impact of the FWC's preliminary determination, as well as identify transitional arrangements, including supports required and recommended timeframes.**”

The Report confirms a lack of understanding by the supported employees about how their wages are worked out now – or would be in the future. We would go further and comment that the lack of understanding is not restricted to the workers but can also extend to their family carers and other support networks, if such networks exist. For many of our members it has never been about the money. The ADE is not just a job – it's their life. The DSP is their safety net.

4(a) Our overall position statement is, as follows:-

The Report does not provide sufficient confidence that this proposed new wage restructure will have any greater chance of success than the 2016 modification of the SWS, without a practical and workable injection of funding by the Department of Social Security (DSS) to overcome the financial impact

If that hurdle is overcome, the suggested wage restructuring will not work without re-structuring the sector, putting the disabled workers front and centre of the exercise, capitalising on, and expanding, the under-utilised benefits within the sector, and reducing the risks that encircle it.

We have formulated a national concept which cannot be delivered in the current, limited space. The Concept provides an embryo to be considered by all interested parties, because the historical band-aiding in the past 2 decades has not been successful. Only by understanding the reasons for the failures can we ensure any success for the projected wage restructure, whatever the final industrial outcome.

Our Concept is both national, and evidence based, builds on our involvement over the past 35 years, puts the workers first, and is needed to ensure that our Rights @ Work Clause in the Award is workable, practical and not just tokenistic. We provide a brief overview of our change management concept on page 5. Widespread job losses are unacceptable.

A detailed overview of why the Concept, which requires a restructure of the wider sector, is required, is available should the Fair Work Commission request it.

4(b)

[9] (1) By linking the Aims of The Report, with the outcome of The Report and accepting that the cost impact is both unacceptable and unsustainable, we respond as follows:-

1(i) The 3 key limitations of the Trial (page 8) pose critical implementation outcomes because the bar has been set to no reduction in current wage, with further ceilings on a minimum wage.

(ii) The Report confirms there are challenges with consistency and accuracy in the use of the SWS (Page 12). By clarification email with DSS dated 23-02-2022, we are advised *“This was based off interviews with the subject matter experts for the Trial who advised us of these challenges, including in supported and open employment. The SWS is accepted as the base tool, despite the existing flaws, so significant re-shaping is still necessary.*

(iii). Introducing the two Grades does not seem to have provided either clarity or workability. The Report does not indicate which of the previous Grades 1-7 was the most commonly used level. Consequently we question the lack of operational clarity about where the employees fit, within the Grades and existing Levels 1-7. The Report confirms this confusion. Perhaps there should be more Grades, and/or different levels within the two Grades. The aim was to modernise the Award, remove the existing wage tools and reshape the SWS to compensate for the removal of the competency factor contained within the tools being removed – i.e.- use a wage tool that relies totally on productivity.

(iv) The Report confirms there is confusion around the Grading “gateway”, and the lack of a consistent comparator. We are particularly concerned about the reported difficulties of timing duties and tasks associated with the 8 business activities listed on page 92. The listed businesses are core business for many ADE’s. Some of these core activities will be seasonal, some will be contract driven in a climate of fierce commercial competition, and all will have “unproductive” time. Productivity and quality are critical to business output, but the starting point of that is to ensure, as much as possible that the proposed wage structure is workable, meets the varied needs of worker capacity, competency and limitations. We don’t believe, in its current form, that the re-structure does that.

(v) The key component to wage determination is assessing the competency and productivity of the worker, for the task, sub-task, duty, chore, whatever. Whilst supporting independent assessment, the costs of doing that assessment, of training the assessors, of supporting the employees through the processes and communicating the processes and changes are not a key component of The Report. The estimated physical quantum, is 161 services, needing 16355 assessments @ 5 hours per person, plus the travel and ancillary costs associated therewith. If the Federal Government provides the necessary finances to cover the wage shortfall, there is no workability and/or practicality without addressing the issues of assessor availability, inculcating the ADE concept within those assessors, the training, travel and supports costs for same - and the quantum of these costs as part of the overall cost implications

4b [9] (2) – Minimum Wage. [372] [2019] FWCFB 8179

In supporting the concept of a minimum wage, the two Grades have a ceiling of \$7 for Grade A and \$14 for Grade B, we question that there is sufficient flexibility within those ceilings, and 2 Grades for the ADE dual focus. There is an acknowledged lack of a consistent comparator for the various duties/tasks, a lack of ADE concept trained assessors, and assessors per se, yet the only differentiation between the Grades is

- (a) “**constant**” monitoring for Grade A changing to “**regular**” monitoring for Grade B,
- (b) “**three sequential actions**” - Grade A changing to “**more than three sequential actions**” -Grade B
- (c) The use of “**mechanical or electrical equipment or tools**”. – Grade B

The wage difference between the two Grades is significant. Whilst every ADE is different and exists because a job has been created to meet the limitations of the employees in that ADE, there are some ADE’s providing some similar, industry products. Equally, a generalisation of capacity and wage determination should ensure that the more highly skilled are not penalised on the perceived basis of equity for those with less capacity. The costs of benchmarking have always been ruled out as too expensive.

We have stated that the current Grades need re-consideration with, perhaps, more grades, more levels within the grades, or maybe an adjustment of the ceilings. Ultimately, the categorising of the wage entitlements must meet the necessary standards, but it makes no sense to the workers, their families or carers, for wage levels which price the whole business out of the market and cause widespread unemployment, great personal distress and community disbelief. The workability and practicality of the proposed new wage structure must meet the commercial and social criteria for a vulnerable cohort whose safety net is their DSP.

4b[9](3) – Operative date for the new wages structure. [2019]FWCFB 8179

At best The Report suggests transition could take “*a few years*”. We agree. The ADE employees, their families and carers have lived through the exercise of introducing a new hybrid tool into the supported

employment sector. We have lived the insecurity, the fear, the denigration and all it encompasses. We cannot emphasise too strongly the great caution needed to be exercised about how the time frames and entitlements are documented and implemented. No implementation time frame is possible until the financial impact is resolved. This then needs to be communicated to the sector, the workers, their families and carers – as well as the wider community.

Our estimate is that the “*few years*” should be about five (5). We suggest the transition needs to be staged, under the watchful eye of the Fair Work Commission, reported, and have key performance and time indicators. These require political will, the support of the Department (DSS) bureaucracy as well as the support of the wider disability organisations. We respectfully state that none of these three requirements are evident now, nor have they been evident in the past two decades.

It is obvious, from the active public campaigning, under the guise of advocacy :- <https://www.dpoa.org.au/endsegregation> & <https://www.inclusionaustralia.org.au/project/everyone-can-work> that the funded disability advocacy networks are pursuing a social reform agenda for the majority of disability stakeholders – to the detriment of the minority and most vulnerable. Whilst we respect their right to follow their ideological goals, it would be remiss of all decision-makers not to acknowledge that the industrial action of wages for supported employment is a key plank of their public agenda. The community and workers want reform with the retention of the ADE model as an option for those who needs cannot be accommodated in the open (mainstream) employment market. The protagonists for closure of ADE’s, portraying them as segregated employment, not supported employment, have both the resources and the determination to continue their activism.

The social atmosphere and outcomes are not the responsibility of the Fair Work Commission. The *argy-bargy* of the advocacy network’s public activism outside the FWC and in the wider community has, however, been accorded some weight, on behalf of the workers, their families and carers, by the Federal Court decision [2021] FCAFC 36 , para 110, page 35.

It would be remiss of us not to acknowledge that the constant public activism will probably continue, if not escalate. Consequently, we need to acknowledge that, just as it has already created delays in necessary reforms, we need to accept that’s likely to continue. Accordingly we have set a longer time frame than we would prefer, but we have done so to exercise caution, to protect the workers, their family carers and the sector by proposing a total sector restructure. In its’ entirety we seek to capitalise on the changing business and social world (post COVID), find the middle ground, and take “all parties” forward in a united sector reform process, during a period of technological change, with the wage restructure as the central nexus.

OTHER ISSUES :

The other issues of **Support, Communication, Change Management, and Communication Plans** are all complicated by the existing silos that separate active participants in the wage restructure from the decision makers and other essential stakeholders like The National Disability Insurance Agency (NDIS), Carers Australia, the United Nations, the Human Rights and Equal Opportunities Commission and a history of poor communication processes that have penalised the ADE workers, their families and carers. All these issues become moot concerns, if there is not the necessary level of support from the Federal Government.. Our National Sector Concept overview follows:-

The National Concept acknowledges the necessary wage restructure as the key component of our proposed sector restructure and overall position. Restricted space allows only this brief overview – but the evidence base underpins it, and a full explanatory document is available.

1. Re-introduction of the Disability Sector National Consultative Council (previously known as the ICC- Industry Consultative Council). It has historical success as a platform to resolve industrial differences. Would include existing parties. **Assigned to FWC & DSS with the power to co-opt.** Its’ dissolution in 2006 created detrimental impact on the sector, the workers and taxpayers. It would be the overarching body. Modern technology should reduce the cost of its re-establishment. It would oversee the industrial application of the new wage structure because there would be “teething problems” – no matter what the FWC final outcome. It would be reasonable to expect that the grievance mechanism within the new wage structure, and the FWC processes should ensure industrial issues are solved within industrial processes. It could monitor the transition and ensure that the key markers were met, acquitted and reported.
2. Introduce the social enterprise model of employment as a stepping stone from supported employment to open-mainstream employment – where applicable. The social enterprise model, like the ICC, is already supported by all parties (evidence-based), and we should be actively supporting its’ position in the Disability Employment Sector, with links to Education and vocational training.
3. Acknowledge and resource a Peak Body for our members – whose needs differ from those of the majority of disabled stakeholders. We have also been the legitimate and acknowledged stakeholders for ADE workers, their families and carers for the past 35 years. Resourcing this Peak Body would secure “live” networks to the existing ADE’s, to the wider community, to providers and the Federal Government.
4. Providers currently have no balanced advocacy networks to call on for their workers should they need access to advocacy or Unions. Our “Rights @ Work Clause was designed to fill that vacuum, and the need was never denied. However, we can’t facilitate that without resources to work with all parties, and communicate with our own members and all external parties.
5. Better utilise, within the services, the existing worker committees. They could be used to encourage self-advocacy, obtain input from the workers, provide output to the employers and capture suggestions. They provide a good platform for self-education and linkages to other educational and employment options, programs and processes.
6. The advocacy networks would need to consider their position with their current campaigning and see if their members agree to the social enterprise model as a stepping stone to the goal of open employment for ADE workers. History confirms they do accept the social enterprise model, so it makes sense for us all to advance that common link for a better national outcome.

A diagrammatic explanation would add the other “*silos*” which sit outside this network, but are integral to it. They are the NDIS, DES (Department of Employment Services), Carers Australia, United Nations, Human Rights Commission and there might be others that all parties might feel need to be included.