



ELOUERA ASSOCIATION (INC)

Response to Request that the Elouera Association Wage Tool be removed from

BY

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AM2014/286 - Supported Employment Services Award

Introduction

- 1 The Elouera Association opposes the request to remove our wage tool, The Elouera Association (Inc) Wage Assessment Tool from the Supported Employment Services Award. Its inclusion was following a proper process of the then Australian Industrial Commission and we have seen no valid argument for its removal at this time.
- 2 My name is Allan Young, I am the CEO of Elouera Association Inc, a position I have held for 18.5 years. I have been in the disability industry involved in disability enterprises in both NSW and WA for 34 years since 1983. Over this time I have extensively been involved in the industrial process including the application for Australia's first employees with a disability to receive Australian Workplace Agreements.
- 3 The Elouera Association Wage Assessment Tool was originally developed by me for use in our AWA's and in 2004 Deputy President Duncan of the Australian Industrial Commission held a full day hearing in Cootamundra on the validity of our wage tool where he spoke at length with the Elouera Association (myself), Employees with a disability and their families. Following this our tool was approved for use.
- 4 Since that time the tool has evolved and improved and as per its design the assessments changed to suit the tasks and duties at the various workplaces. The ability to more accurately assess the weighting of tasks was added and we added new industries as our businesses grew and today there are four industries covered by our tool, Recycling, Pallet Making, Laundry and Café work.
- 5 Elouera Association was also involved in the original trials of the Business Services Wage Assessment Tool (BSWAT) and the recent modified SWS tool trials. Both tools were found to deliver results less fair and with a higher level of inconsistency to that of the Elouera Association Wage Assessment Tool.

Features of the Elouera Association Wage Assessment Tool

- 6 Some of the features of our tool are
 - a. It assesses the actual job that is on offer and is based on industry standards. It includes productivity and competence assessments so this is fair to all employees rewarding both speed of production and skills development.

- b. The tool is assessed over a period of time and in a variety of times and the assessment is on real production tasks but to agreed and pre set assessments for an accurate picture of the individual's performance in the workplace.
- c. We assess competence in a way that rewards the individual from the entry level right up to full competence, something the BSWAT did not do and one of the reasons we chose not to use it.
- d. The tool allows for the quantifiable measurement of training results and growth of skills that are reflected in wage outcomes also allowing us to set new goals with the individual that can be measured and rewarded against the award.

History of Approval of our Tool and why it should remain.

- 7 We already argued the case to use our tool and not the BSWAT in 2004 at the Australian Industrial Relations Commission and it was agreed then that our tool was a fair and valid option for setting wages for people with a disability in our employ. The fact the tool is currently only used by Elouera Association is a commercial decision however this in no way diminishes the quality or validity of the tool.
- 8 The Balance of this report responds to the issues as raised by AED Legal. While we respect the right of AED Legal to raise this issue, we do question their motives and claims to represent employees with a disability. They in no way represent a single employee employed at the Elouera Association Inc.

Is the SWS or Modified SWS an appropriate tool for setting wages in a Disability Enterprise

- 9 The reason many of us never objected to the inclusion of the modified SWS in the award was simple, in some cases it can be used to develop a fair wage outcome for people with a disability. The problem is however in most cases it is not.
- 10 The SWS claims to assess a fair wage via a productivity outcome however how do you do this in these examples:-
 - a. At a recycling plant where the speed of the conveyor belt is set to meet the needs of the lower able employees thus effecting the productivity of the more able employee.
 - b. In the case of a fork lift operator who may be highly skilled but works at a slower safe speed they are competent at. The SWS encourages wage increases by asking them to speed up not and recognising the skills they have. This is very unsafe.

- c. On jobs like operating a weigh bridge and entry gate at a tip site, again the skill is more important than the speed of processing however using the Elouera Wage Tool we assess both.

11 In fact the SWS is a barrier to skills growth as menial tasks and simple repetitive tasks that in general contribute little to the income of the business can produce the highest income and the most skilled and complex duties are generally done slower so the wage outcome is lower even though these are the money earning tasks.

12 It is said that the SWS has key principles that are safeguards such as minimum rates and independent assessment however I argue that this is actually not the case.

- a. The Elouera Association Wage Assessment Tool also has safeguards such as a minimum of 15% of the award for employees who are essentially non productive or whose productive output levels are too low to measure and 20% for anyone contributing to the business outcomes.
- b. The Elouera Association Wage Assessment Tool has Annual assessments unlike the SWS which can take as long as three years for an assessment plus the ability to assess an individual task between assessments where significant change occurs.
- c. All staff that conduct assessments using the tool have a Certificate IV Workplace Training and Assessment qualification a mandatory requirement of all Elouera Association staff in Employment so they can use the Elouera Association Wage Assessment Tool. SWS Assessors on the other hand only need to complete a few online modules.
- d. Independence does not necessarily produce a better result, in fact many employees will be stressed by the process or work at twice the normal speed for that day only. Internal assessments are done over longer periods of time in real production situations.

In fact the whole concept of independence is only based on the perceived belief that operators of Disability Enterprises can't be trusted to be fair in their assessment of people with a disability. If this is the case why did the BSWAT pay people with a disability at a lower average rate than the other wage tools in the award and well below the Elouera tool and that had independent assessors.

Our wage tool has staff working with the individuals assessing their wages and staff at head office checking the validity of the assessment and fairness of it. We are proud of individual achievement and increased skills, competence and productivity produce the same outcome for the employer.

The Elouera Association Wage Tool is an Equitable measure of Wages

- 13 It is said that the SWS is built on the assumption that a worker with a disability is entitled to a wage based on an award but this is the case with all tools out there. The main difference is to assess that wage against the awards when using the Elouera Association Wage Assessment Tool, skills and competencies are used as well as productivity increasing the opportunity for wage growth.
- 14 Often statements are made about safeguarding employees from their employers due to their vulnerability. The entire reason for existence of a Disability Enterprise is to maximise the ability, independence and achievement of individuals with a disability. By nature they are the protectors of those same individuals and staff achieve their satisfaction from seeing growth and achievement in these same individuals. Our core business is Disability employment training and supports, recycling, laundry or café work etc are how we achieve these goals, they are not our primary business, it is this fact that makes Disability enterprises unique.
- 15 The argument is made that the SWS is equitable and that it produces a fair wage based on similar productivity of other non disabled workers. Examples are given that a worker without a disability makes 100 items in an hour but the employee with a disability takes 2 hours so they earn 50%.
- 16 If only the world was that simple and workers with a disability all worked on a production line. The SWS can work in some cases however my experience in the trials and examining the reasons why leads me to believe this is by coincidence and not design.
- 17 For the vast majority of workers doing simple and repetitive tasks, it actually has a wage outcome that is too high and one that would make Disability enterprises no longer competitive nor viable. For highly skilled employees doing complex tasks, using this measure only, in most cases reduces their wages to below that of those doing simple tasks. It is only the middle ground group that you can say the SWS produces a fair outcome, but again this is coincidence not design. Even a stopped watch is correct twice a day.
- 18 Paul Cain in his report for AED Legal talks about weighting of tasks and how this makes the SWS the most fair tool however this assumption would only be correct if the weighting was based on the whole job and not just the part that the individual can achieve.
- 19 The Elouera Wage Assessment Tool has a very advanced job weighting system that can be adjusted to reflect the importance of tasks in the overall operation of the business, for example assembling pallets in a pallet factory may be weighted at 30% of the job where as sweeping the floor might be 7.5%. Using a forklift to load and unload trucks is also high but tailing out on a saw is a lower order task and so

on. We take time to assess the tasks a trade award worker would be required to do and accurately assess where the individual with a disability sits in comparison.

20 Where the SWS fails is it only assesses what a person does, not taking into account what they would be expected to do in another factory. Bottom line is, most would not hold down a job due to their inability to undertake all required tasks. That's the whole reason we exist, Disability Enterprises offer employment to a person who works slower, needs more supervision and support and may only do some of the tasks. Our wage tool reflects this where as the SWS aims to make an unrealistic outcome based on unsustainable assumptions.

21 In Paul Cain's statement, section 26 is incorrect. The SWS does not do these things well, the Elouera Association Wage tool does however achieve all of these points well.

- a. We set performance standards and have test sheets that describe the task being assessed so it is consistent and in line with industry standards and safe work method statements (that are also the basis of our training plans).
- b. We assess the performance of the employees against these same standards, for example in our Laundry tool there are task sheets that tell you what test bags of clothing items are to be used for the tests, the employee then not only completes the task but each and every time, the test is fair and consistent. The SWS cannot achieve this.
- c. We calculate the proportion of each task against the award and job and as a person learns new skills, tasks and competencies, they earn more. Paul Cain claims the SWS is the only tool that does this, it does not to the level and accuracy that the Elouera Wage tool does.
- d. Our tool also calculates based on the award grade that a person achieves, in fact the report provides a clear and accurate picture of what level the individual should be on by comparing the results against the awards classification description.
- e. AED Legal should not make claims such as this that have no basis in fact. I believe that these claims are based on assumptions, not facts. They have after all never worked as an assessor, at a Disability enterprise nor examined the other tools with an open mind as we have being involved in the trials of all tools offered to date.

Entry into Employment, The Trial Period

22 The Elouera Association Wage Tool provides a period of 12 weeks where initial training is provided prior to an assessment being

completed. All employees with a disability commence on a minimum wage of \$3.50 per hour which is above the 15% minimum threshold.

- 23 An employee with a disability that clearly shows their ability is going to be higher, can be moved to a higher wage to recognise this in the trial period without the need for a full assessment.
- 24 The proposed Australian Business option based on classifications could easily be adapted to make this initial period more accurate and quantifiable.
- 25 After the first assessment, following assessments are annual but we can assess parts earlier where significant change occurs, i.e. if someone learns a whole new task 3 months after an assessment, we can assess that task only and add the results to the original assessment and increase the wages accordingly.

Core Work Skills

- 26 While the SWS argues that by using the word tasks, they are incorporating the competences and skills such as Quality and safety into the results, this is a long bow to draw. My experiences in using the SWS in the 90's extensively and being part of the recent trial is that the SWS is essentially a measurement of piece work.
- 27 The Elouera Association Wage Tool assesses many tasks by timed productivity, then asks the same question in a competence question, i.e. they can produce 12 pallets in three hours with a 60% degree of competence.
- 28 We also look at core job skills, those items everyone has to have to retain a job such as being at work on time and when required, knowing safety rules and when to use PPE. The need for quality and recognising faults and non conforming items etc. All of these are measurable and the individual can and should be rewarded for this knowledge.
- 29 There is often an argument that the items I describe in 28 should now be used in an assessment however our tool does and on average the score on these items is usually higher than the productivity only outcome so excluding them will in fact lower wages.

What should be assessed all or just part of the job

- 30 The assumption that only the tasks completed by the individual should be assessed in the SWS is just wrong and unfair. It is in fact damaging because it removes the incentive to strive for more, to learn new things and grow as an individual. If by completing just three minor tasks, I can achieve a wage outcome of 50% why would I bother to learn the other 20+ tasks available and risk a lower wage.

- 31 Wage tools need to not only assess a wage outcome in a fair way, they need to encourage growth, development and achievement. By its nature the SWS is a disincentive to all of the above. The Elouera Wage Tool allows us to sit with the individual and show them how they can achieve, set goals and then reward them for partly or fully achieving those goals.
- 32 In the early days of the SWS in open employment this part task factor was used to promote opportunities, we in fact went to employers and looked for lower skilled tasks that occupied the time of skilled workers and offered to put a lesser skilled employee into that role only, freeing up other staff to be more productive. We engineered part jobs to achieve an outcome. This is why it cannot work in a Disability Enterprise, we have to do the whole job and just don't have the ability to create segmented opportunities as described.
- 33 We do however break down tasks to much smaller pieces than you would find in the average factory. These parts are not in general producing a saleable item but a number put together may. It is then unfair to pay the tasks in isolation to the other segments. It creates a false and unsustainable outcome. Our tool addresses this well, the SWS does not.

Availability of the SWS

- 34 Paul Cain states that the SWS has been available to Disability Enterprises since 1994, the facts are however that the introduction of a proper industrial device for assessing wages in disability enterprises was not mandated until around 2004 with the National Standards assessments.
- 35 The SWS in that 1994 decision was never designed for Disability Enterprises: in fact that decision contains a statement to that effect.
- 36 In the Mid 90's some Disability Enterprises were made to use the SWS as part of their start up funding but very few if any moved to it as a wage assessment option
- 37 I used the SWS for example in an enclave at the Commonwealth Bank where employees with a disability processed Electricity Accounts in WA, but I would never have considered it as viable in the Disability Enterprise itself.
- 38 Recently a number of Disability Enterprises adopted the SWS when the BSWAT was removed but very few are happy with the decision. A number were forced into this decision by FACSIA (DSS) to take over the operations of failed enterprises.
- 39 While Paul Cain says in his opinion this has shown that the tool proved to be appropriate, there is no evidence to back this, quite simply

circumstances drove the decision, not necessarily choice. The bottom line, if it worked, I would use it, it does not.

Training Support and Supervision

- 40 No wage tool should use Training Support and Supervision as part of the assessment, in the case of Support and to a degree supervision, that is what our funding is for. Paul Cain quotes a statement in paragraph 52 of his report that was written in 1990 but the vast majority of the tools used in the award were developed after the year 2000.
- 41 I would also agree that any tool that used these factors to reduce wages is invalid, that is why we don't. The Principles for Wage Assessment Standards developed in the early 2000s made it clear, assessments were on the basis of productivity, skills and competence only.
- 42 The Elouera Wage Tool fully meets these standards and all wage tools should, perhaps we don't need to mandate one tool or another in the award, we do however need to mandate a strict set of guidelines that these tools need to meet.

The Modified SWS and the Trial

- 43 Elouera Association Inc was part of the trial of the Modified SWS, both myself and my Operations Manager Shona Neale undertook the training in Melbourne over three days and we fully committed ourselves to undertake the trial in a fair and non judgemental way.
- 44 We were lucky in the fact tasks assessed generally had measures available as a result of the Elouera Wage Tool so we not only could meet the requirements but also could easily compare results with our tool.
- 45 It is said by Paul Cain the modifications address the needs of Disability Enterprises and is a fair way of assessing wages. He however was not part of the trial and had he been, he may actually have information that shows, this is not the case.
- 46 The trials results were declared inconclusive, the follow up study achieved the same result. The reason was not commitment by Disability Enterprises, it simply was a flawed process that did not deliver fair outcomes. If it worked, the trial would have shown this.
- 47 In our case the trial proved the belief I have that it rewards lesser able workers paying them more than they actually earn, it discriminates against higher skilled workers doing complex tasks and reasonably accurately measures that middle ground.

Should the Modified SWS be exclusively used?

- 48 Absolutely not, it is an unproven method that does not meet the needs of Disability enterprises and it discriminates against higher skilled employees doing complex tasks.
- 49 Should it be in the award, yes but with a commitment to fix the issues it still has and only be used where there is a real need to do so.

Should the existing Tools remain in the Award?

- 50 If they meet the standards I discussed, yes. While AED Legal and Paul Cain argue that our wage tools are designed to discount wages, this is not true, they are designed to fairly assess wages and ensure wages we pay are equitable against our competitors. In other words, the labour costs we have to make a pallet or recycle one tonne of cardboard are equivalent to that of our competitor that does not employ people with a disability.

The Nojin Case

- 51 Frequently the Nojin case is used to say Competence is bad and all tools using Competence are now invalid. A simple fact check shows that this is false. The Nojin case showed that for this individual the BSWAT was unfair in its treatment of competencies.
- 52 Do I agree, absolutely. In 2004 I was part of the original BSWAT Trials, I wrote an extensive report to the then FACSIA (DSS) telling them their treatment of competencies was unfair recommending a number of changes, When FACSIA then ignored this advice, I developed the Elouera Association Wage Assessment Tool addressing them developing what I believe to be a fairer and better tool. It was no surprise to me that BSWAT was deemed unfair however we had long ago addressed these same concerns.
- 53 In the case of the Elouera Association wage Assessment Tool, the Nojin decision is irrelevant. I would however caution that a similar case against how the SWS treats higher skilled employees doing complex tasks could very well result in a similar outcome as the BSWAT if challenged.

Conclusion

- 54 It is argued that by assessing internally this is a conflict of interest. Every employer in Australia conducts assessments of staff, they promote on merit and terminate when standards are not met. Internal assessments are the basis of all assessments in Australia because those making the assessment are in the best position to do so. Fair Work Australia and the FWA Ombudsman are there to ensure this is done fairly and in a proper manner. No other industry has independent people do this for the employer.

- 55 AED Legal claim that the SWS is the only tool that should be used. If it worked I would agree however for the many reasons stated, I feel the Elouera Association tool is a better and fairer method for wage assessments.
- 56 Our tool is legal, it provides good and fair outcomes and there is no reason it should not continue to be used.
- 57 Just because our tool is only used by Elouera Association does not diminish the quality of the tool. I have reviewed many and have yet to find a tool I would be happy to replace the Elouera Tool with.
- 58 AED Legal claim to represent employees with a disability at Disability Enterprises. They don't. Our employees would have no idea who they are and have never been asked their thoughts on what they propose.
- 59 Paul Cain claims to be an expert yet he has never worked in a Disability Enterprise nor conducted a wage assessment. I give very little credibility to his report as it has too many assumptions in it based on an ideological position.
- 60 On the other hand I have been working in the industry for longer, have been involved in trials of the BSWAT and Modified SWS and developed my own tool.
- 61 I ask the Fair Work Commission to allow the use of the Elouera Association Wage tool in the award so I can continue to provide the best outcomes for all employees with a disability employed by our organisation.

Thank You

A handwritten signature in black ink, appearing to read "Allan Y". The signature is fluid and cursive, with a large, stylized 'Y' at the end.

Chief Executive Officer
Elouera Association Inc