

FAIR WORK COMMISSION

4 Yearly Review of Modern Awards

Supported Employment Services Award 2010

Matter No: AM2014/286

SUBMISSION IN OPPOSITION BY MAI-WEL LIMITED

1. Mai-Wel opposes the variation for the removal of the Mai-Wel Wage Assessment Tool from the Supported Employee Services Award (SESA).

Disability Enterprises start with a workforce

2. Mai-Wel, along with many disability enterprises developed wage assessment tools that consider the complex characteristics of supported employment. A primary characteristic of disability enterprises is they exist to provide supported employment to people with disability. On this basis, disability enterprises start with a workforce and build the business around the capabilities of the workforce. The existence of disability enterprises is a direct opposite of the commercial nature of the for-profit business.

SWS lacks the flexibility to adapt to complex workplaces

3. Mai-Wel contends that the Supported Wages System (SWS), including the modifications to SWS for disability enterprises, is not a suitable tool for all disability enterprises. Mai-Wel will give evidence that SWS does not work in team-based and production line work. SWS does not have the flexibility within its assessment methodology to adequately adjust to the complexity of these types of work. Further, the rigidity of SWS assessment methodology relies on the same work to be completed to establish a standard so that the assessment methodology may have integrity of benchmark and timings. Mai-Wel will show evidence that in a work environment where custom products are manufactured that SWS does not adapt to that type of workplace.

Registered NDIS Provider

- Working Life
- Lifestyle & Leisure
- Living Options
- Support Coordination

Mai-Wel Enterprises

- Enterprise
- PACE Setters
- TimeSavers

Mai-Wel LabourForce Solutions

THE MAI-WEL GROUP
Enhancing lives through opportunity and choice

The Mai-Wel Group delivers flexible and innovative solutions to enable people to live the life they choose.

With a strong 55+ year history, The Mai-Wel Group is focused on offering vibrant and innovative services which provide opportunities for people with a disability, young jobseekers or those experiencing disadvantage, to be the drivers of the support they require.

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 The Mai-Wel Group

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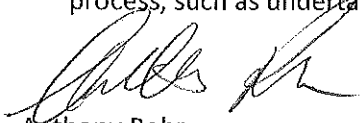


4. The implication if SWS is the sole wage assessment tool will be adverse for supported employees, their families and the disability enterprises providing supported employment.

Tools made to match the employees and workplace

5. The Mai-Wel Wage Assessment Tool has been in operation since 2000. This followed the Federal Government implementing a range of reforms across the Disability Employment Sector. Accreditation under independent Quality Assurance was required. One KPI of Quality Assurance required Disability Enterprise's to assess and to pay Supported Employees under a pro-rata award based wages. Each year Mai-Wel is audited by certified independent auditors as part of the governments funding agreement, where the use of the Mai-Wel Wage Assessment Tool is reviewed.
6. The Mai-Wel wage assessment tool considers skills and task in completing wage assessments. The benchmark used in the tool to determine skills and productivity considers the job a person without a disability would be required to do in the particular business. The pro-rata wage is calculated based on classifying the job a person without a disability would undertake in accordance with the SESA classifications.
7. The supported employment Mai-Wel provides gives supported employees' workplace training and skill development through their annual Employment Plans. The goals that supported employees identify in their Employment Plan typically focus on learning new tasks that are part of their workplace. As part of the supported employee training, they undertake training assessments that identify their competence in the task, of parts of the task. The Mai-Wel Wage Assessment Tool recognises the development of new skills and rewards supported employee with improved wage assessment outcomes.
8. The Supported Wages Systems (SWS) narrow focus on tasks fails to give merit to the broad range of skills and tasks that supported employees undertake. SWS does not recognise the full extent of skills an employee may have, which in turn can disadvantage those employees with a high level of skills and may become a deterrent for employees to learn new skills.
9. The tasks undertaken at Mai-Wel's disability enterprises are broad-ranging and can change from day to day. The Mai-Wel tools' on the job wage assessment allow all the tasks a supported employee undertakes to be included in the assessment, thus providing an accurate assessment of all the tasks a supported employee undertakes. In contrasts, the SWS is a short time limited assessment that does not encompass the broad-ranging and day to day changes in tasks that occur in the disability enterprises and which supported employees work across.

10. Mai-Wel has participated in the conciliation process in the Fair Work Commission. If permitted Mai-Wel would like to provide further details of their experience throughout the conciliation process, such as undertaking a demonstration of the SWS in our disability enterprise.



Anthony Rohr



Fair Work Commission
Four Yearly Review of Modern Awards
Supported Employment Services Award
Matter : AM2014/286

STATEMENT OF ANNE HODGSON

I, Anne Hodgson, of 128 Eelah Road Mindaribba NSW, state as follows:-

Introduction

1. I am the former Deputy CEO The Mai-Wel Group. Although no longer employed by Mai-Wel, I enjoyed a 20 year career with the organisation. I continue to remain involved working on a volunteer basis on a Board of Directors subcommittee as well as working as a consultant as required. During my employment, I was responsible for developing The Mai-Wel Group Wage Assessment Tool.
2. This submission is written to support the ongoing inclusion of The Mai-Wel Group Wage Assessment Tool in the Supported Employment Services Award. Furthermore, this submission supports and outlines the history and rationale underpinning the inclusion of competency and productivity assessment of wages for people with a disability working in Australian Disability Enterprises.

History

3. During the years 1998 to 1999 The Mai-Wel Group was working towards achieving accreditation under the new Quality Reforms that had been developed by the then Department of Family and Community Services (FACS). These reforms required Disability Service providers to achieve compliance with the new Disability Service Standards which included Standard 9 Employment Conditions.
4. My role during this period was Business Services Manager. I was responsible to develop a Quality Management System for The Mai-Wel Group to ensure compliance to the Disability Service Standards. FACS had advised Service Providers that continuity of funding was contingent with them achieving Quality Assurance Accreditation.
5. The Disability Service Standard 9 (refer to ATTACHMENT A) was highly prescriptive regarding the assessment tool and process for determining supported employee wages. It stated: *"This pro-rata wage must be determined through a transparent assessment tool or process, such as Supported Wage System (SWS), or tools that comply with the criteria referred to in the Guide to Good Practice Wage Determination including:*

compliance with relevant legislation;

AH

- *validity;*
- *reliability;*
- *wage outcome; and*
- *practical application of the tool."*

The Mai-Wel Wage Assessment Tool was developed using the above criteria and was assessed against these as compliant by Jenny Pearson and Associates.

6. In 1999 to 2001, Disability Employment Services across Australia were endeavouring to achieve their Quality Assurance Accreditation (QA). The Government had begun a process to develop a 'tool' for wage assessment but had encountered several delays. Therefore, to achieve QA Accreditation Service Providers were forced to develop Wage Assessment Tools independent of Government and at their own expense. As a result, multiple wage assessment tools were developed because organisations worked in isolation across the country to develop systems driven by the urgent requirement to achieve Quality Assurance Accreditation.
7. Each of the new Wage Assessment Tools were inserted into the Australian Liquor, Hospitality and Miscellaneous Workers Union Supported Employment (Business Enterprises) Award 2001 (the 2001 Award). Initially 11, were inserted and sometime afterward an additional 22 tools were included.
8. The Commonwealth contracted Jenny Pearson and Associates to thoroughly assess the legitimacy of each of the wage assessment tools before referral to the Industrial Relations Commission for final assessment prior to inclusion in the Award.
9. In 1999 Mai-Wel completed development of the Mai-Wel Group Wage Assessment Tool. Jenny Pearson and Associates completed an in-depth assessment of the tool and after their report was submitted to the Industrial Relations Commission, the tool was included in the Award.

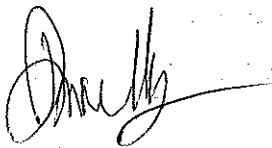
Competency and Productivity Assessment

10. The Mai-Wel Group Wage Assessment Tool includes both assessment of an employee's competency (skills) and assessment of their productivity. The tool was developed to be fair, transparent and non-discriminatory.
11. Essentially, consideration was given to how people without a disability are assessed for their wages in mainstream workplaces similar to ADE's. People without disability are employed after assessment of their skills and competencies. This is normally established at interview stage through discussion, tendering evidence such as formal qualifications, referee statements or direct observation of performance in role-play scenarios and tests. People with a disability often do not, or did not have these elements to provide to an employer. Contrary to the AED Legal submission, direct

observation and testing to assess competencies is both fair and non-discriminatory and widely practiced in non-disability employment.

12. As I was the developer of the Mai-Wel Group Wage Assessment tool, I can provide the rationale for its development. Additionally, I also employed both people with a disability and people without a disability in Mai-Wel Disability Enterprises. The tool was developed by answering the question – “what skills or competencies are required of people without a disability to be employed at a Mai-Wel ADE in a non-management role”? This list of skills included everything from the most basic skills such as sweeping the workshop to more difficult skills such as using a bench saw. It was the expectation that staff without disability would be able to complete all the skills on the list at full capacity.
13. Having developed the skills list specific for each workplace, people with a disability were assessed on each skill. Productivity was also considered for each skill as a component on the assessment. The assessment included a sliding scale indicating provisional to advanced competency in each skill – allowing for progression with training and experience. The assessment measured the percentage of the skills for their workplace the employee achieves. The resulting score was translated to a percentage of the Award wage.
14. The assessment process was done over a period of approximately 4 months by Support Workers who work with and were familiar with the Supported Employees who were being assessed. This provided many opportunities for the Supported Employees to demonstrate their competencies and provided a much clearer and more accurate assessment. It regularly demonstrated that it removed the extremes of performance ie extreme underperformance due to nerves or extreme overperformance sometimes demonstrated with a snapshot assessment – with work level unsustainable over an extended period.
15. The assessment involved a team of staff. In addition to the Support Workers mentioned above, some staff with formal training qualifications in Cert IV Training and Assessment were also involved in the assessment team as were the ADE Managers and Training Manager. This ensured a consistent and fair application of the assessment process.
16. The implementation of the new wage assessment process at Mai-Wel was received extremely well. During my time at Mai-Wel, no wage assessment was ever challenged. The Supported Employees and their parents / carers were informed of the process and were satisfied with the results they achieved with their wage assessments. They were informed of the Complaints Process. No complaints were received.

17. The AED Legal submission is incorrect in their argument that there is a ceiling on what can be paid to Supported Employees. Supported Employees whose wages are assessed using the Mai-Wel Group Wage Assessment Tool have capacity to earn up to 100% of the award wage.
18. Additionally, the submission by AED Legal suggesting that competency can be captured in the productivity assessment is also incorrect as the productivity assessment focusses only on measuring outputs. A productivity assessment does not consider many issues for example:-
 - the limitations placed on a individual working in a team
 - the impact on the productivity when a job has been modified to suit the needs of individuals with a disability



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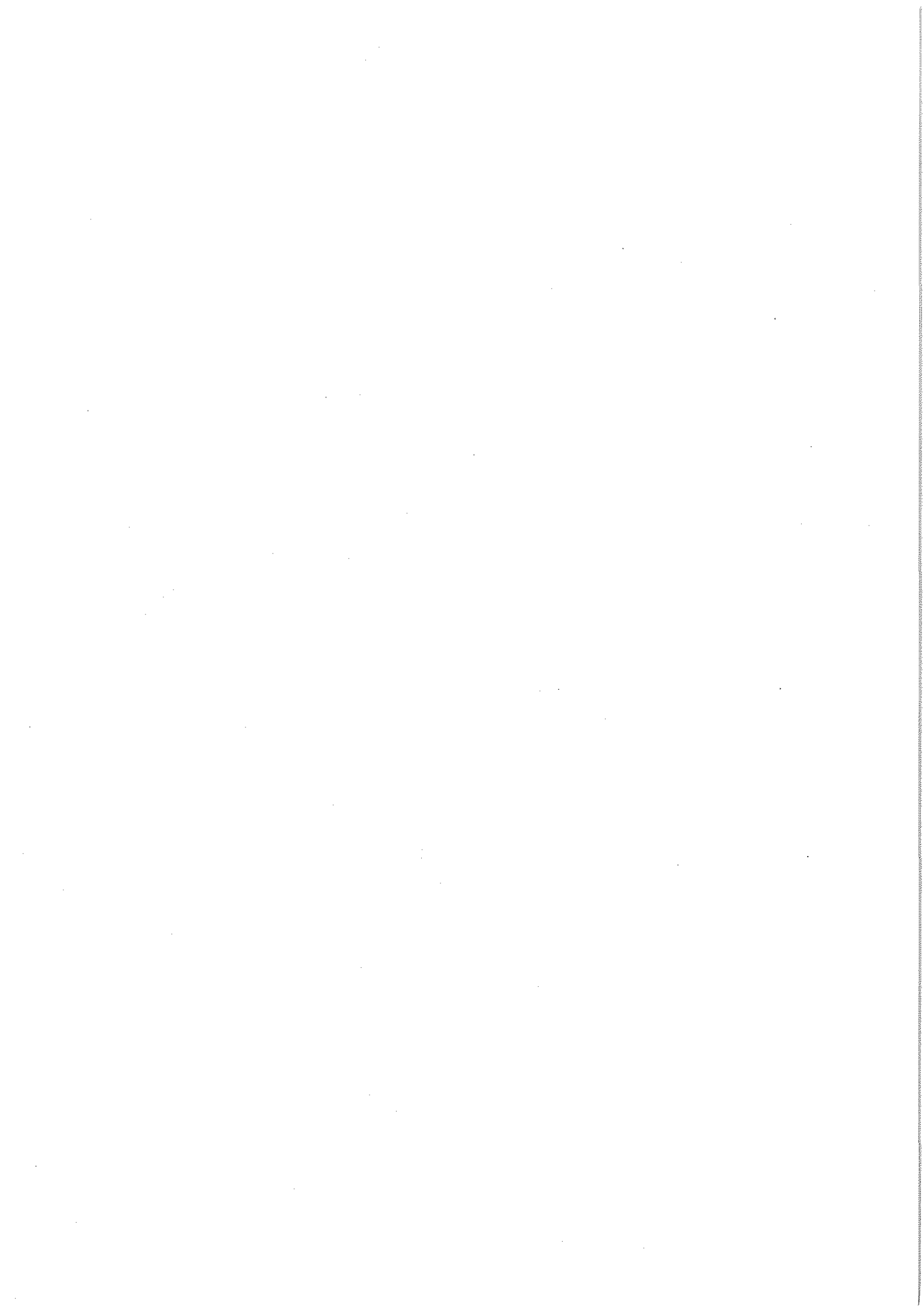
Anne Hodgson

ATTACHMENT A

Standard 9: Employment conditions

Each person with a disability enjoys working conditions comparable to those of the general workforce.

- KPI 9.1 The service provider ensures that people with a disability, placed in open or supported employment, receive wages according to the relevant Australian Pay and Classification Scale (APCS), special Federal Minimum Wage (SFMW), award, order or industrial agreement (if any). A wage must not have been reduced, or be reduced, because of award exemptions or incapacity to pay or similar reasons and, if a person is unable to work at full productive capacity due to a disability, the service provider is to ensure that a pro-rata wage based on the applicable special SFMW, APCS, award, order or industrial agreement is paid. This pro-rata wage must be determined through a transparent assessment tool or process, such as Supported Wage System (SWS), or tools that comply with the criteria referred to in the Guide to Good Practice Wage Determination including:
- compliance with relevant legislation;
 - validity;
 - reliability;
 - wage outcome; and
 - practical application of the tool.
- KPI 9.2 The service provider ensures that, when people with a disability are placed in employment, their conditions of employment are consistent with general workplace norms and relevant Commonwealth and State legislation.
- KPI 9.3 The service provider ensures that, when people with a disability are placed and supported in employment, they, and if appropriate, their guardians and advocates, are informed of how wages and conditions are determined and the consequences of this.



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STATEMENT OF ANTHONY ROHR

I, Anthony Rohr, c/ of 555 High Street, Maitland New South Wales, state as follows:

BACKGROUND

1. I am the General Manager, People, Culture, Quality, Safety, of The Mai-Wel Group (**Mai-Wel**). Mai-Wel is situated in the Hunter Region of New South Wales.
2. Mai-Wel provides supported employment services to support the paid employment of persons with disabilities under the definition in section 7 of the *Disability Services Act 1986* (Cth) (**the Act**).
3. Mai-Wel delivers flexible and innovative solutions to enable people with a disability to live the life they choose, across three service areas:
 - (a) Working Life;
 - (b) Living Options; and
 - (c) Lifestyle and Leisure.
4. Mai-Wel provides opportunities and increases independence for people with a disability. We provide training and support in a variety of areas relating to personal and professional development. We are committed to supporting people reach their full potential, whatever their work and life goals.

No one wage assessment tool is simple in all workplaces

5. While the Supported Wages System (SWS) has a simplistic assessment methodology, it's rigidity means it cannot be applied to all types of supported employment. In fact, by applying the SWS methodology in some of Mai-Wel's workplaces, SWS becomes considerably more complex than the Mai-Wel Wage Assessment tool. This, in turn, raises questions about the capacity of SWS to deliver consistently valid wage assessment outcomes.



6. Mai-Wel engaged a SWS assessor in the timber crate and pallet manufacturing workshop to apply the SWS in scenarios where supported employee undertook production line work, team-based work and the manufacturing of custom products made to customer size and weight specifications.
7. Building a custom sized crate requires multiple steps, where the design of the crate is interpreted by the supported employee and applied to the build. The broad steps involve starting with a pack of timber, which the lengths of timber are cut to size, and then used to make the base, sides and top, with the final stage of these sections being assembled to make the crate.
8. The supported employees work in teams to build a crate. The teams are typically constructed with three people of different abilities, match by different of skills as follows.
 - a. Employee 1 can complete all tasks
 - b. Employee 2 can complete most tasks
 - c. Employee 3 can completed a few tasks
9. The details in this statement demonstrate why SWS does not delivery a valid and practical method of wage assessment in this type of business, where they manufacture custom size crates and pallets.

SWS does not adequately adapt for Production Line Work

10. To make a crate the timber needs to be cut to the lengths required according to the size of the crate. This step uses a team of three supported employees, comprised as per the team defined in point 4 above. The first person slides the timber on the saw bench; the second cuts' the timber and third stacks the cut timber on a trolley. The time it takes each employee to do their job is dependent on the speed of the other supported employee. The speed at which employees undertake their part of the task are interdependent. The speed which the timber is feed into the saw, cut or stacked effects the speed at which the other supported employee can carry on with their step. The flow and rhythm by which the team works together have a bearing the productivity achieved, as such the time portioned to each supported employee for their part of the step. Therefore the SWS timing is not recording individual productivity but influenced by the level of teamwork achieved.
11. The value the supported employee contributes to the task based on their skill level is not considered by the SWS timing methodology. For example, the supported employee who cuts the timber, he does this by pushing the button on the saw which takes a few seconds, is the one who can do all tasks. The notion that that timing a supported employee to push a button contributes to a productivity-based wage assessment is misguided.
12. While all steps in this task are reasonably basic, the job of the supported employee who cuts the timber encompasses broader responsibilities than those recognized in the time it takes to push the button on the saw. This supported employee sets up the saw for use; this includes doing the pre-start checks, turning on the dust extractor, reading the cutting list to ensure the right amount of pieces of timber is cut to the right lengths and the shutdown process. The other two supported employees are guided by the supported employee operating the saw.



13. In this production line work, the SWS methodology gives no recognition to the value and broad skills the supported employee operating the saw is contributing to this task.
14. After the timber is cut, the next step is to build the crate. The crate is built by building the base, sides and top, then assembling these components. To do this the team of three supported employees will work together, each taking on different activities that reflect their capabilities. The supported employee who is the saw operator has the skills to do most steps required in building the crate. This supported employee needs to interpret the job sheet (the design for the crate) and the type of crate being built, that being a standard crate or a heavy duty crate. The steps they undertake include reading the job sheet to build the crate to size, laying the timber out to size and squaring the base/sides up by measuring the diagonals. At this stage, one of the other supported employees may be able to help with measuring or laying out the timber correctly for nailing. The third supported employee, who can do a few tasks, may pass and hold pieces of timber in place for nailing. The three supported employees understand each person's capabilities and working as a team, knowing each other's skills and how they work together to complete the steps effectively.
15. As in the above example of the production line work, the SWS methodology gives no recognition to the value and broad skills the supported employee leading the crate assembly is contributing to this task.
16. The number of tasks in each step and interdependency of each supported employee completing their part of the task and working as a team means SWS assessment is not measuring an individual's productivity but rather is a measurement influenced by the effectiveness of the work of the team.

SWS relies on setting a standard (benchmarking) to determine rates of pay

17. The manufacturing of crates and pallets are to customer specification, determined by the size and weight of the product being shipped. The results being the sizes of crates and pallets which customers order range from a carton of beer, 450x300x300 millimetres and up to a crate that would hold an elephant, 2500x2000x1500 millimetres. Customers may place orders for any sizes crates and pallets at any time.
18. SWS requires that a standard (benchmark) is set to show what is needed to earn the minimum rate of pay.¹ Due to the custom nature of the products manufactured at Mai-Wel, there are not a practical means to establish a standard for type and size of crate or pallet that can be used in an SWS assessment. As the size of the crate or pallet increases, the complexity of the design increases. For example, the spacing of the bearers used in the construction of the base needs to be calculated and measured correctly. As the size of the crate or pallet increases the accuracy of squaring the base, sides and top are more critical, as being out of square can have a larger impact and may require rebuilding that particular component. As the size of the crate or pallet increases the build time increases, the pieces of timber are longer taking more time to handle, and there are more pieces of timber to cut and assemble. When the weight of the product being shipped in the crate or pallet increases, the design becomes more complex, and the skills and knowledge required for the build are higher.

¹ Supported Wage System Handbook July 2017, p. 17



19. Therefore the measurement of the standard for an SWS assessment varies according to the customer specification of the crate or pallet, that is the size and weight of the product they are shipping. As there is such variation in customer specification, there are no practical means to establish a standard.
20. Attempting to apply SWS assessment in the above example of building a crate or pallet has high levels of inconsistency, given the high level of steps in the job, the complex nature of timings to assess productivity and non-uniformity of products manufactured.

SWS weights the time spent on a task to reflect value of that task in the pay rate

21. As the SWS is a productivity only based wage assessment tool, the methodology takes a very narrow and simplistic view on weighting the value of duty or task to the rate of pay. The SWS handbook states, "The proportion of time spent on a duty is the simplest and most reliable proxy measure for the importance of a duty and is important for a fair wage outcome."²
22. In the examples I have outlined above, the supported employee who cuts the timber would have the time-weighted they spent on the saw as part of their overall job. The saw operators' task here, being seconds each time to push the button and one or two minutes in total of the overall job that takes about 90 minutes, does not reflect a fair value of the saw operators contribution to the job. They are using other skills while this part of the job is done, such as counting the lengths of timber cut, that are not valued in a purely time based assessment.

SWS does not assess all the tasks an employee undertakes in the workplace

23. In practice, the SWS assessments do not measure all the tasks a supported employee performs, as the assessment is not applied in an exhaustive manner against all duties a supported employee undertakes. Rather the SWS selects the most common task completed by a supported employee and assessor only against these tasks.
24. For those supported employees who have the capability to undertake most tasks in the workplace will not have their broad range of skills recognised in an SWS assessment. The employee who is skilled at many tasks, including complex task, may have an outcome under SWS that is a lower rate of pay.

Industrial instruments and SWS consider supervision in determining an employee's classification and rate of pay

25. The Mai-Wel tool considers supervision as part of the wage assessment methodology, common across all workplaces, but excludes supports that relate to government funding that is not common in an ordinary workplace. The considerations of supervision are in common with SWS, which cater for additional supervision and support that is provided to ensure that employee maintains performance levels, by allowing for rounding in the final

² Supported Wage System Handbook July 2017, p. 22



rate of pay.³ The level of supervision provided to an employee is a common consideration amongst modern award classification structures.



Anthony Rohr

21/11/2017

³ Supported Wage System Handbook July 2017, p. 23