

Fair Work Commission
4 Yearly Review of Modern Awards
Supported Employment Services Award 2010
Matter No: AM2014/286

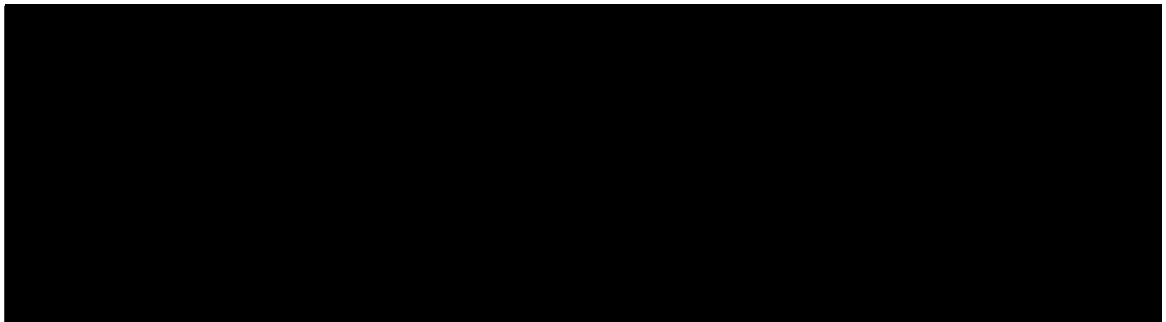
Further Statement of Paul Cain

I, Paul Cain, [REDACTED] make this statement in reply to submissions made by other interested parties filed on or about 21 November 2017.

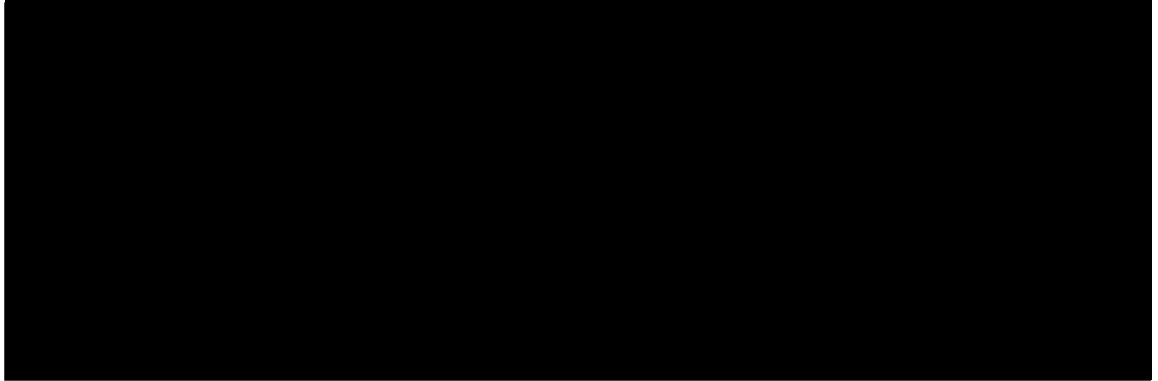
Employees completing tasks in a group or on a production line

1. Concerns have been raised by some submissions to this proceeding about the capacity of the Supported Wage System to provide fair and accurate wage assessments of employees completing job asks as a group, or on a production line.
2. Similar concerns were raised by the Modified Supported Wage System (MSWS) trial. The MSWS Trial report noted that;

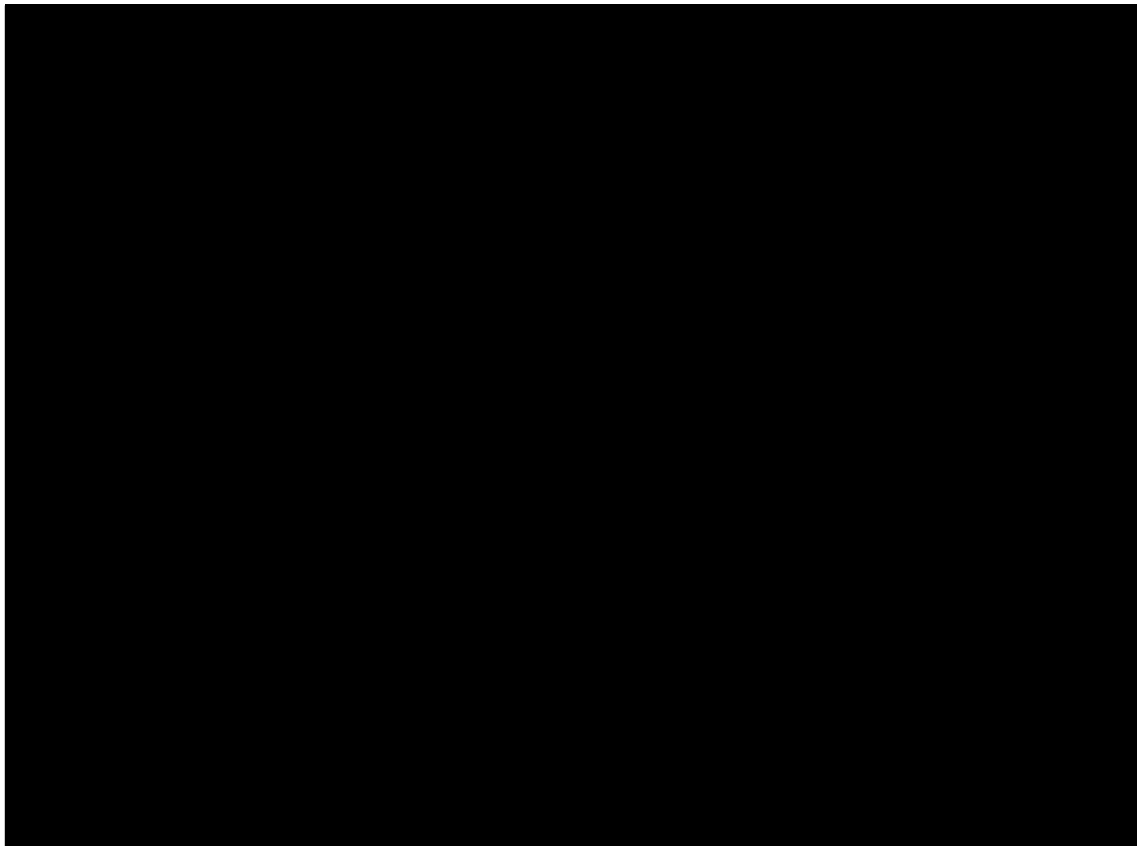
“ . . . However, clearer direction is needed on how employees should be assessed. . . to ensure consistency and fairness for employees completing tasks in a group or on a production line.”
3. In response to these concerns, the Conference AM2013/30 agreed to conduct a demonstration of the MSWS to address outstanding concerns raised by the MSWS Trail. The MSWS Demonstration Report stated that;



4. The purpose of the MSWS demonstration was to showcase how the MSWS can be applied to employees working in group settings, in production lines and where employees perform a range of job tasks.
5. The MSWS Demonstration report noted that the demonstration was;



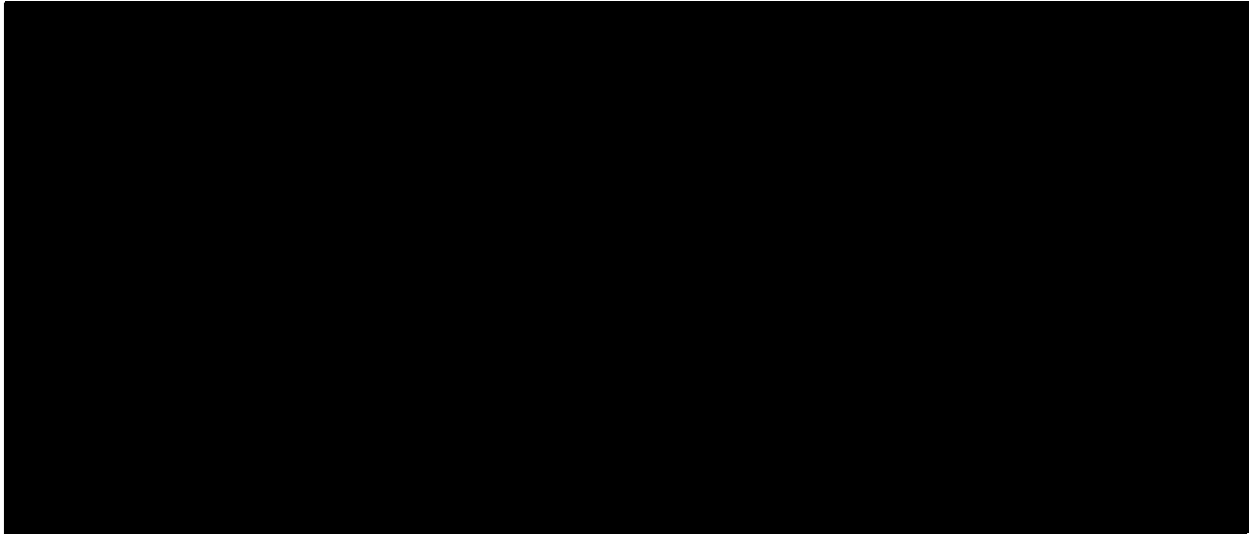
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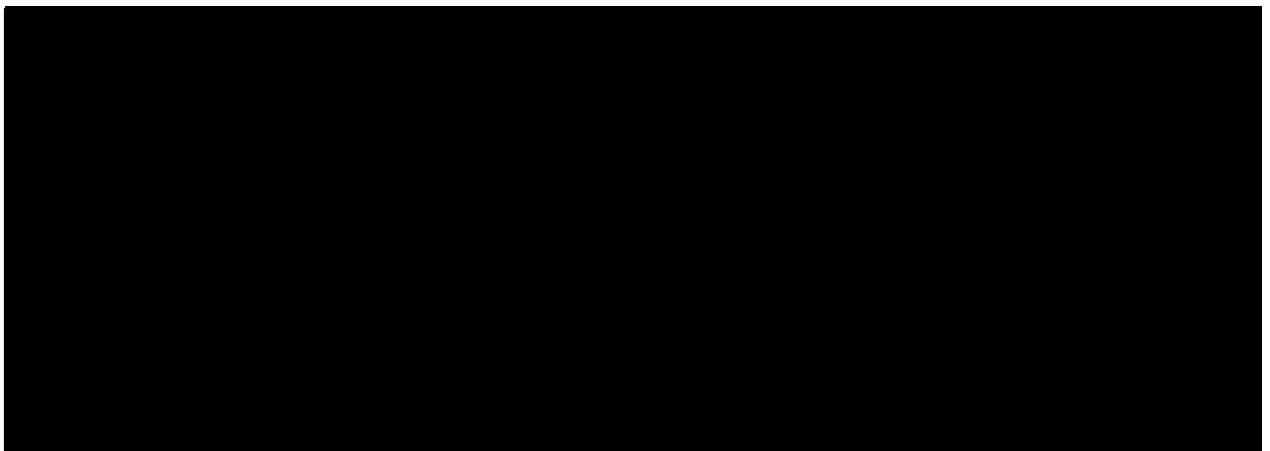
6. The demonstration showed that the MSWS was capable of conducting a wage assessment of employees working in a group or on a production line. It demonstrated that this was possible and able to produce a fair and accurate assessment.

Employees working on a production line

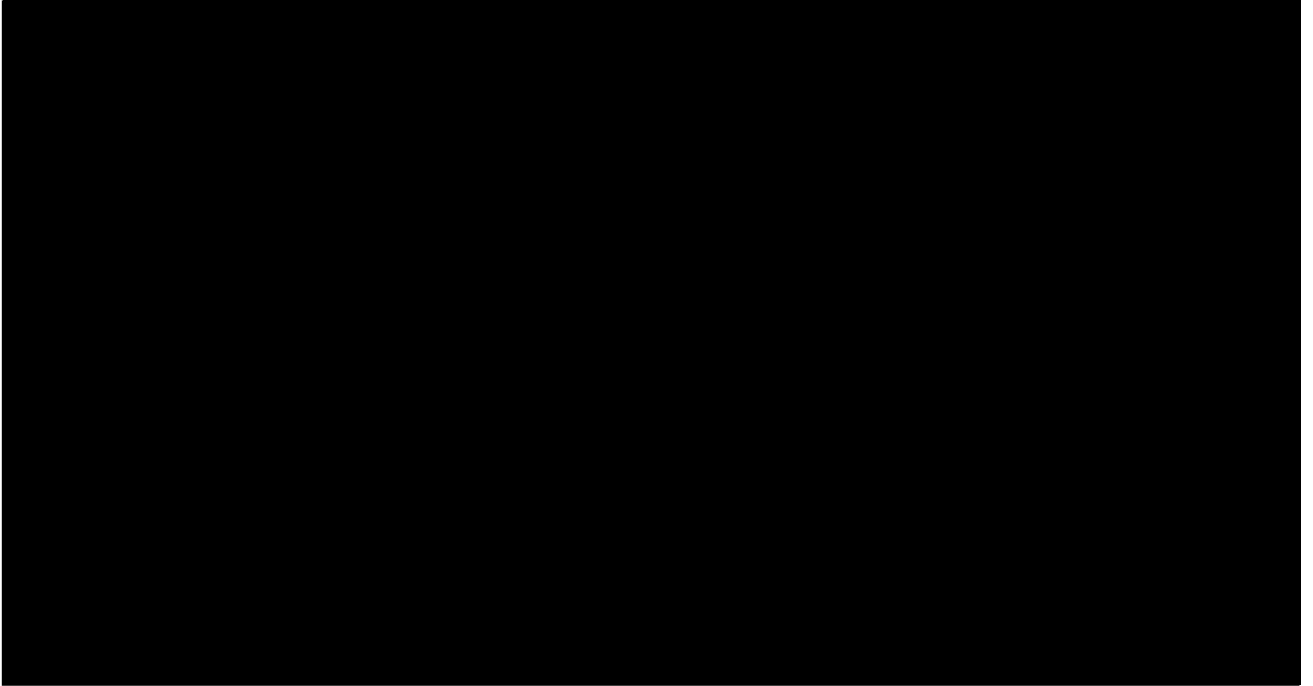
7. One MSWS Demonstration site (Mai-Wel) involved a wood cutting production line. This involved a three-step process of;
- Collect and feed wood
 - Operate the saw to cut the wood
 - Stack the cut wood
8. In relation to Mai-Wel the MSWS Demonstration report states that;



9. As an observer of this demonstration, the report from the MSWS assessors correctly indicated that applying the MSWS to a production line was not difficult, and could take into account the productivity impact of one employee or process in relation to another employee or process.
10. A second MSWS demonstration site (Disability Services Australia) involved the re-packaging of icing sugar on a production line.
11. According to the MSWS Demonstration report;

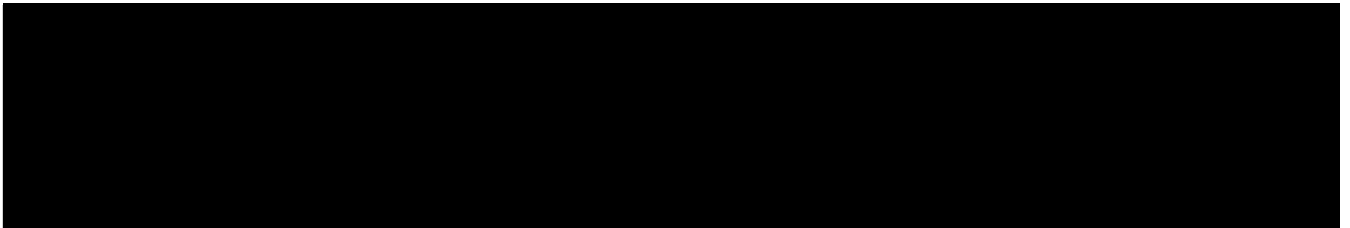


12. According to the MSWS Demonstration report, the assessors were able to collect adequate performance data for all employees working on the production line to be able to conduct a fair and accurate MSWS assessment. And there was no indication of any difficulty with applying the MSWS to this production line.

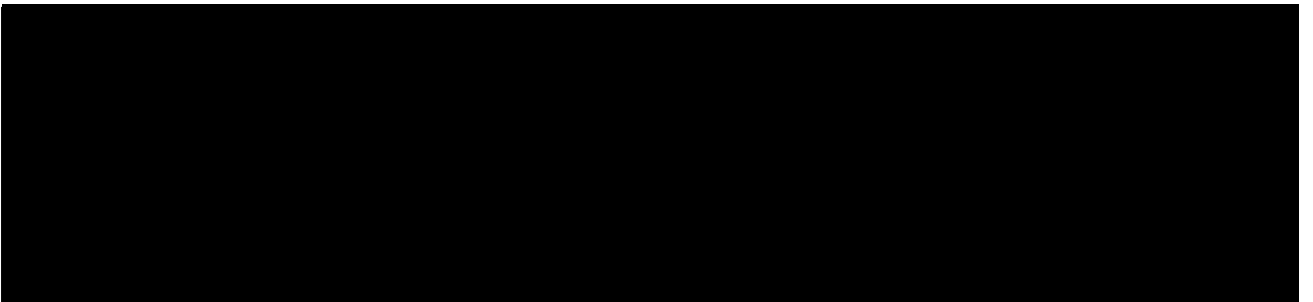


13. A third demonstration site (Greenacres) involved a production line for the packaging of NADS wax products.

14. According to the MSWS Demonstration Report;



15. Similar to the other demonstration sites the MSWS assessors were able to apply the MSWS for employees working on a production line without any difficulty.



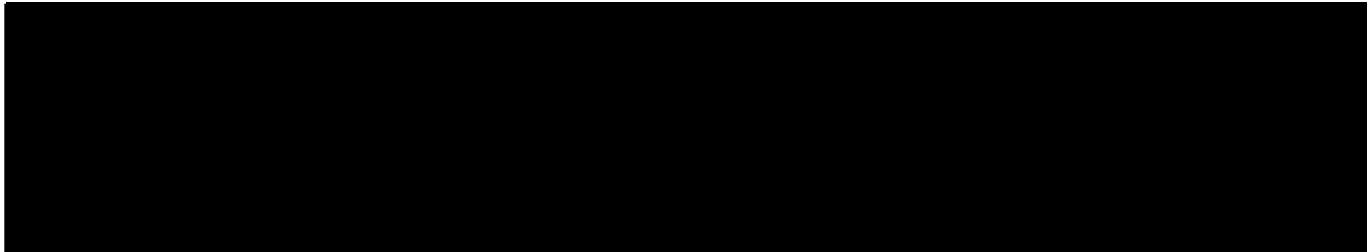
16. The MSWS demonstration report has indicated that the application of the MSWS to employees with disability working on a production line was relatively simple and straightforward.

Employees completing tasks in a group

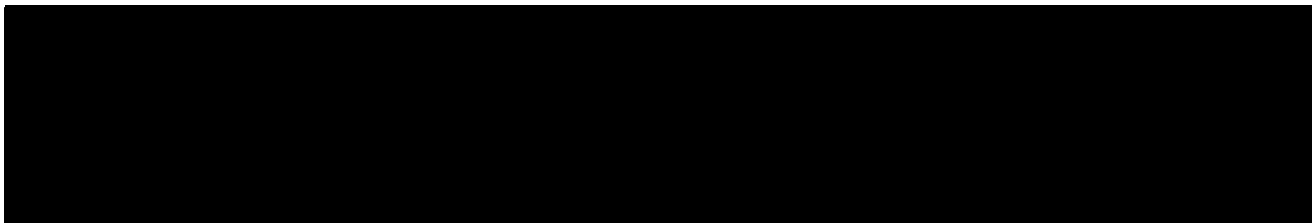
17. The MSWS Demonstration site at Mai-Wel chose the assembly of a wooden crate as a demonstration of employees performing work in a group.

18. The MSWS assessment was applied to a team of three employees building a wooden crate.

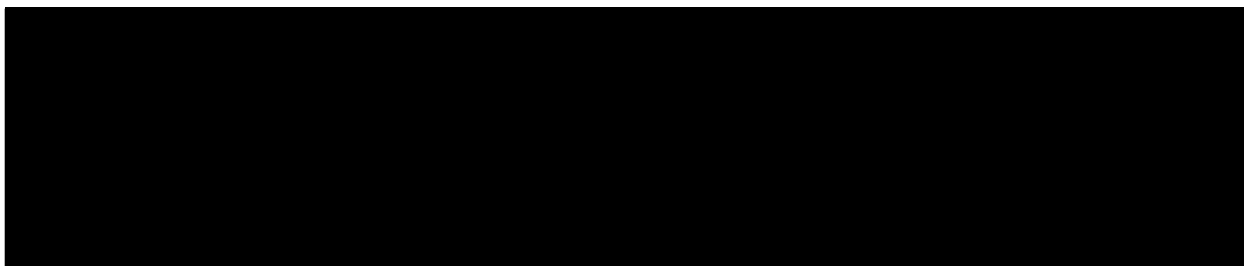
19. The MSWS assessors collected comparative performance benchmark data by having a team of supervisors build the same wooden crate.



20. The MSWS assessors were able to design data collection methods to suit the nature of the work being conducted in a team.

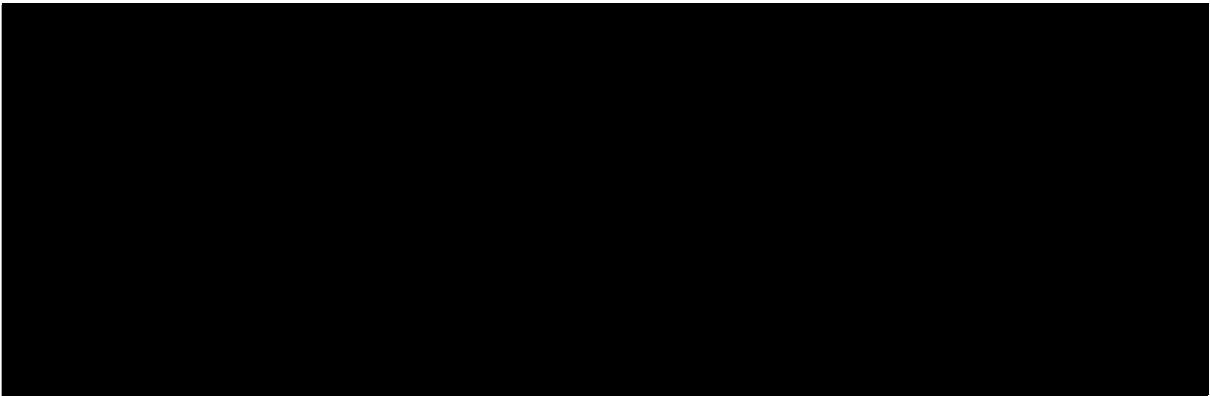


21. The MSWS report indicates the complexity of conducting the assessment of employees working in a group, though challenging, is capable of being done fairly and accurately.





22. The report drew attention to the need for additional assessment time due to the increased complexity in conducting an assessment of workers completing work in a group, and the need to ensure assessors have the necessary analytical skill. This provides some direction of time allocation for the future administration of the MSWS, and the need to include the complexity of MSWS assessment of employees completing work in a group within the scope of MSWS assessor training, support, and accreditation.



23. It is evident from the MSWS demonstration that concerns raised by the MSWS trial about the use of MSWS for employees completing work on a production line or in a group can be addressed by the MSWS to determine a fair and accurate wage assessment.

Speed

24. Many submissions by employers and other parties have raised concerns that the SWS only measures the speed or pace of work. This is not accurate and is a misrepresentation of the SWS.

25. The SWS handbook is clear. The performance benchmark used by SWS assessors includes both a quantity and a quality measure. According to the SWS Handbook;

“Assessment of Quality

Employers and assessors should specify performance standards that incorporate both quality and quantity components.

The standard used for quality will be that required by the employer for the duty in question.

An example of such a standard may be 'produce x units per hour, with a rejection rate not exceeding y per cent'. The standard would be taken from the performance of other employees performing the same or similar jobs in the workplace in question. The performance of the SWS employee can be assessed against such a standard, with the number of 'rejects' in excess of those allowed under the standard, deducted to form the score." (p. 19 & 20)

Complex vs Simple Job Tasks

26. Some submissions have argued that the SWS does not take into account the difference between simple and complex job tasks based on skill, and that there is a risk employees performing complex tasks will be paid less than employees who are performing simple tasks but at a high productivity rate.
27. The distinction between complex and simple task in such submissions is not accurate as almost all employees with disability in ADEs are performing work in the same award classification of Grade 2.
28. As the Award has already graded jobs into a hierarchy based on skill, training, supervision and responsibility, the classification system provides for different rates of pay for each grade level of work.
29. The SWS is not a comparison of performance between employees with disability, but a comparison with an agreed performance benchmark of each job task under the relevant classification of work. The SWS is a measure of performance against the performance benchmark to ensure equity is set against the classification system and award rates of pay.
30. For example, in the MSWS demonstration, in which I was an observer, the demonstration showed that an employee (at Greenacres) performing a packaging

job task had a relatively high level of assessed productivity of 68%, but was currently being paid at 27.5% of the award rate.

31. This employee's wage was limited to a lower rate due the employer's wage assessment tool which allows the packaging task to be devalued below what the Grade 2 award rate of pay is listed for this type of work.
32. It should be noted that a worker without disability performing the same job task would be entitled to the full rate of pay for Grade 2 — as an employer could not deviate from the classification rate of pay for that same job task.
33. In contrast, a second employee (at Greenacres) was performing a sewing task, also listed in Grade 2 of the Award, and was assessed by the MSWS with a relatively low productivity rate of 11%.
34. The employer's wage assessment tool deems that the sewing job task to be of higher complexity and pays the employee at 40% of the award rate of pay, even though the employee's comparative productivity is at 11%.
35. It should be noted that an employee without disability would get the full award grade 2 rate of pay, but produce products at nine times the rate, but only get 2.5 times the rate of pay.
36. Both job tasks (packaging and sewing) are classified in the Grade 2 classification of the Award;

"B.2.3

. . .

(d) Leather and canvas goods and sewing

"repetition sewing work on automatic, semiautomatic or single purpose machines (including basic operation of sewing machines) requiring some discretion with respect to kind, quantity, pressure, temperature or running speed"

. . .

(i) Specialist packaging

sorting (manual);

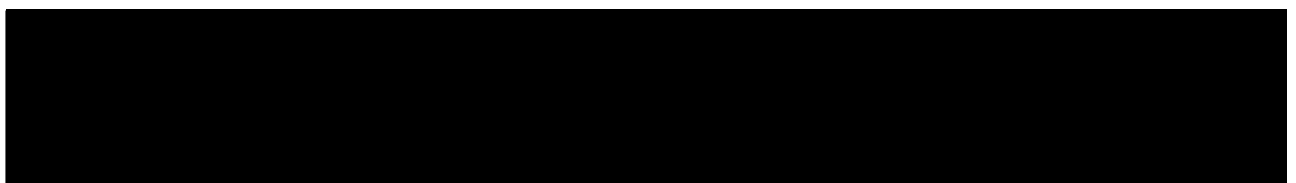
labelling;

folding;
stacking;
use of hand trolleys, pallet trucks;
taping;
heat sealing;
stapling
filling; and/or
check weighing.”

37. The MSWS is measuring the performance of an employee with disability against agreed award performance standards containing both quantity and quality measures for each job task performed.
38. The employee's performance is about applying the skills that they have been trained to do to perform their job tasks. Variation in performance can be impacted by individual strengths and weaknesses, skill and behaviour, and the quality of the training. This is why matching the strengths of an employee to a job task is important for an employee to have the greatest opportunity for success.
39. The relative difference of the skill of jobs is already taken into account in the award classification. It is subjective for employers to subsequently use their discretion to re-value job tasks for the purposes of wage discounting.

Number of Job Tasks

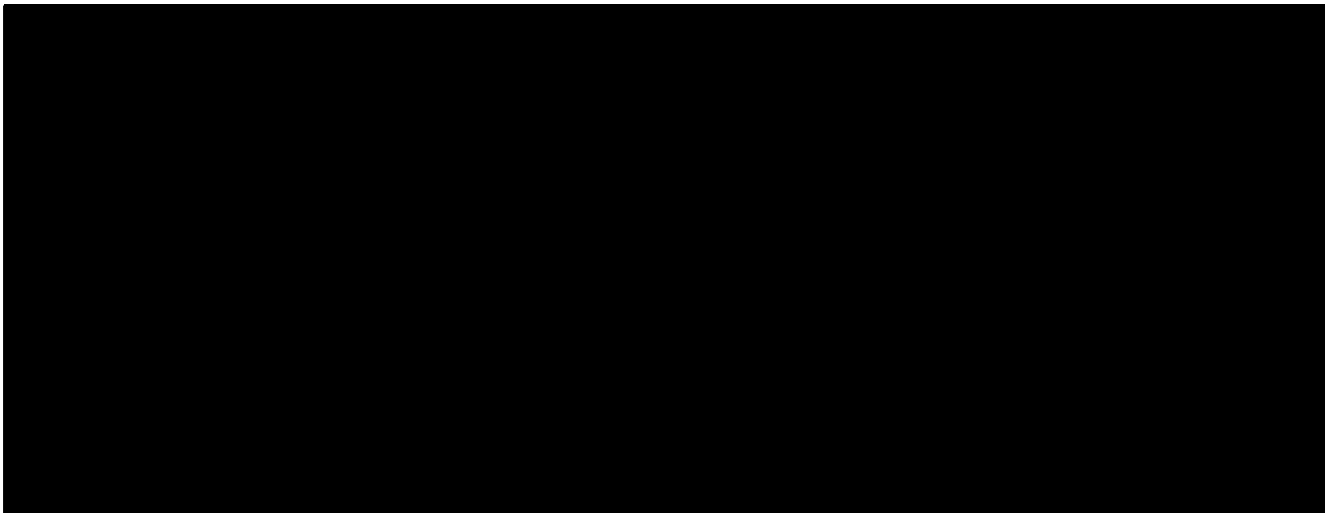
40. The MSWS Demonstration also address concerns about the application of the MSWS to employees with a different number of job tasks.
41. At the Mai Wel demonstration site the demonstration included 6 employees with a range of job tasks from 6 to 15 across 2 job duties.
42. The MSW Demonstration report noted that;





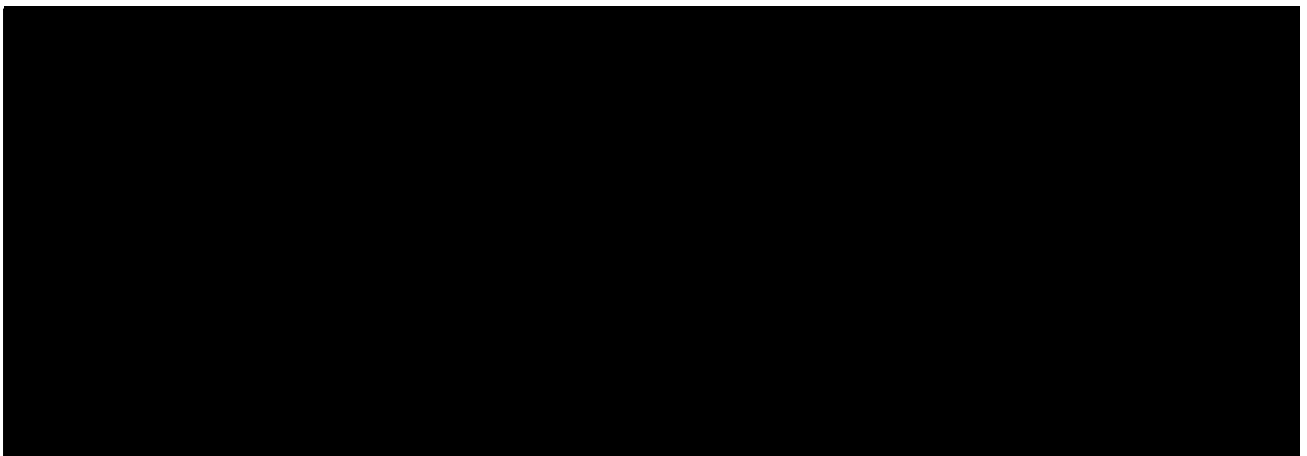
43. At the DSA site the demonstration included 6 employees with a range of job tasks from 1 to 10 across 5 job duties.

44. The MSW Demonstration report noted that;



45. At the Greenacres site the demonstration included 6 employees with a range of job tasks from 1 to 8 across 3 job duties.

46. The MSW Demonstration report noted that;



47. The MSWS Demonstration findings indicated that the perceived risk noted by the MSWS Trial report than employees working single task jobs would be over or

inequitably remunerated compared to employees working a greater range of task are not supported by the MSWS Demonstration findings.

On capacity to work in open employment

48. The submission by Mr. Michael Smith presents the view that employees with disability lack the capacity to work in open employment due to being independently assessed by the Commonwealth's job capacity assessment.
49. In my opinion, this view is misleading and requires clarification and correction.
50. First, there is no empirical evidence to support the job capacity assessment used by the Commonwealth to predict the future open employment capacity of people with intellectual disability.
51. This was confirmed by the Commonwealth's recent research report on Work Capacity Assessments where it was found that;

"Overall, our searches confirm the observations of Cronin et al.⁴ regarding a world-wide interest in work capacity assessments and the concerns of Serra et al.⁵, that is in spite of such an interest, there is a scarcity of evidence based work capacity (fitness for work) assessments validated by empirical data.

Within the scope of our search, we did not uncover any instruments designed specifically to predict the number of hours an individual has the capacity to work, nor any evaluations of using an instrument for this specific purpose." (Dyson Consulting Group, Critical Literature Review: Instruments Assessment Work Capacity. February 2017)."

"4..Cronin, S., J. Curran, J. Iantorno, K.S. Murphy, , L, et al., Work capacity assessment and return to work: A scoping review. Work, 2013. 44: p. 37-55. (footnote is original)

5. Serra, C., M. Rodriguez, G. Delclos, M. Plana, et al., Criteria and methods used for the assessment of fitness for work: a systematic review. Occupational and Environmental Medicine, 2007. 64: p. 304-312. (footnote is original)"

52. Second, research on the capacity of work in the open labour market has found that the only valid method of discovering the capacity of people with intellectual disability to work in the open workforce is to place the person in a job and provide systematic job instruction, and ongoing support.
53. This is coherent with the research finding that predictive work capacity tests of youth with intellectual disability typically bear little relationship to the capacity achieved following job placement and systematic on the job training.
54. Third, people with significant disability have been regularly placed and supported in open employment since 1986.
55. The DES Evaluation stated that
- “Research and practice in the field has shown that with the right level and type of support, people with significant intellectual disability can achieve more substantial employment.”*
56. The DES evaluation 2010-13, Chapter 7 on intellectual disability found that, with the right type and level of support, people with significant intellectual disability were able to achieve employment of 15 hours or more per week in the open labour market.
57. School leavers with intellectual disability are able to move directly to the DES open employment program without having to complete a job capacity assessment. This has enabled specialist providers to avoid losing clients through the Commonwealth’s job capacity assessment which may prove to be a barrier to choose future open employment opportunity.
58. It is important that a discussion about the rights of employees with disability working in ADEs to fair award wages is not inappropriately framed as being about individuals without the capacity to be included in the open workforce and entirely dependent on ADEs for employment participation. This would be misleading.

14 December 2017

Paul Cain