

Summary to Fair Work Commission: Review of the Supported Employment Services Award 2010 - AM2014/286

NDS is advocating a change to the SES Award so that people with disability in supported employment settings do not have their ongoing employment jeopardised by changes to Social Security legislation that affect for example, eligibility for the Disability Support Pension or service access for other activity tested welfare beneficiaries.

In the SES Award Exposure Draft (Part 1, Section 2, Definitions) the current definition of an eligible employee is as follows:

employee with a disability means a national system employee who qualifies for a disability support pension as set out in sections 94 or 95 of the Social Security Act 1991 (Cth), or who would be so qualified but for paragraph 94(1) (e) or paragraph 95(1) (c) of that Act (these paragraphs identify DSP ineligibility on grounds of residency/citizenship requirements).

In the SES Award Exposure Draft the current definition of a supported employment service is:

supported employment services means a service as defined in section 7 of the Disability Services Act (DSA) 1986 (Cth)

The definition of supported employment service in section 7 of the DSA is:

"supported employment services" means services to support the paid employment of persons with disabilities, being persons:

(a) for whom competitive employment at or above the relevant award wage is unlikely; and

(b) who, because of their disabilities, need substantial ongoing support to obtain or retain paid employment.

NDS advocates that the definition of an employee in the SES Award 2016 reflect terminology as defined in Section 7 of the DSA 1986 (Cth). This will ensure consistency in both the definitions of an employee with disability as identified in the Award. A proposed new definition is below.

employee with a disability means a national system employee:

(a) for whom competitive employment at or above the relevant award wage is unlikely; and

(b) who, because of their disabilities, need substantial ongoing support to obtain or retain paid employment.

This definition would also be consistent with the current supported employee eligibility and access provisions in the DSS Disability Employment Assistance (DEA) Funding Agreement Operational Guidelines.

The NDIS will also effectively redefine the eligibility of employees and jobseekers in supported employment settings. People with disability eligible for the NDIS will be able to seek funded employment supports in their participant plan, ensuring they will be able to access supported employment, among a range of possible options.

NDS recommends that various wage assessment tools no longer used be removed from the SES Award (these tools are identified in clause 16.2 of the exposure draft). Following consultation with our members, we have identified at least seven other tools apart from the Business Services Wage Assessment Tool (BSWAT) that are no longer used. They include:

- The Hunter Contracts Wage Assessment Tool
- The Phoenix Wage Assessment Tool from 1 June 2017
- The PHT Wage Assessment Tool
- The RVIB Wage Assessment Tool
- The Cumberland Industries Wage Assessment Tool
- The Wangarang Industries Wage Assessment Tool
- The Ability Options Wage Assessment Tool

NDS advocates that the removal of these tools reflect the same wording used to show that the BSWAT had been removed:

e.g. (g) [*the Hunter Contracts Wage Assessment Tool* – deleted]

NDS recommends that clause 16.9 on the BSWAT transitional arrangements be removed from the exposure draft, as this process concluded on 29 February 2016.

The FWC is also seeking comments from interested parties on the adequacy of the current superannuation rate identified in clause 18.5 of the exposure draft. NDS would support a change to the superannuation clause only if such a change would not impose an additional cost or administration burden on Australian Disability Enterprises (ADEs) and would not disadvantage employees with disability (supported employees) working in ADEs.

Further clarification on eligibility to use the SES Award 2016

As previously noted, the source of funding for providers of supported employment services (Australian Disability Enterprises – ADEs) will progressively shift from the

Department of Social Services (DSS) to the National Disability Insurance Agency (NDIA). NDS recommends that organisations funded under the Disability Services Act 1986 (Cth) to provide supported employment services (ADEs) retain their recognition within the SES Award. The clauses that identify employers covered by the Award include clauses 4.1 and 4.2 in the exposure draft.

NDS recommends that the SES Award 2016 identify that organisations previously funded by DSS to provide supported employment services (ADEs) will in future employ individuals eligible for funded supports under the National Disability Insurance Scheme (NDIS). The SES Award 2016 should identify the relevant phase in timetable of the NDIS up to and including its scheduled full introduction in 2018-19, as DSS funding for organisations providing supported employment will phase out in accordance with this timetable.

NDS confirms its recommendation that there be ongoing recognition of the right of organisations covered by the SES Award 2016 to use pro rata wage assessment tools other than the Supported Wage System (SWS). This includes any new wage assessment mechanism introduced through the FWC BSWAT conciliation process ([AM2013/30](#)).

Under the NDIS, employment programs are replaced with individualised funding. Consequently, supported employment models will be provided in a far wider variety of settings.

There may be situations that arise where people with disability who have been employed in supported settings (e.g. an ADE) may be able to obtain employment with another employer. These workers, or new jobseekers with disability, may be eligible for employment support funding under the NDIS. In these situations, there may be a strong case for ongoing SES Award coverage of those workers or jobseekers with disability. NDS is interested in gauging if parties to the SES Award review are willing to examine the merits of this proposal.

National Disability Services is the peak industry body for non-government disability services. Its purpose is to promote and advance services for people with disability. Its Australia-wide membership includes 1100 non-government organisations, which support people with all forms of disability. Its members collectively provide the full range of disability services - from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.