

Section 5 5. Employees with disability

5.1. Adjustment to minimum weekly payment

The ACTU and ACCI submit that the minimum wage rate under the Supported Wage System (SWS) should be adjusted to maintain its nexus with the income test free threshold for the Disability Support Pension (DSP):

'The ACTU seeks adjustment of the Supported Wage System minimum rate to an amount equal to the per week equivalent of the income test free area of earnings for the Disability Support Pension to apply from 1 July 2009.'¹⁶⁴

'ACCI and the ACTU have for some years agreed to apply the income free threshold level for the Disability Support Pension as the minimum pay level for the operation of the Supported Wage System (SWS).

ACCI maintains this position, and does so notwithstanding of the primary outcome in this matter and the issue of whether there should be a general increase during 2009.'¹⁶⁵

The Commission is aware that the weekly income test free threshold for a single person receiving DSP will increase from \$69 to \$71 from 1 July 2009. Accordingly, in Wage-Setting Decision 3/2009 the Commission adjusts to \$71 per week the minimum weekly amount payable to employees with disability covered by the following instruments:

- Special Supported Wage System (Employees with a disability) transitional Australian Pay and Classification Scale, [2007] APCS 1;
- transitional special Federal Minimum Wage No. 2 – Employees with a disability who are unable to perform the range of duties to the competence level required because of the effects of a disability on their productive capacity – and are not currently covered by a Pay Scale; and
- transitional Pay Scales which provide for the SWS and which also provide a minimum amount payable under the SWS.

5.2. Wage assessment tools in the Australian Disability Enterprises sector

The Special Business Services (Employees with a disability) Australian Pay and Classification Scale (Special Business Services Pay Scale) provides pro rata minimum wages to employees with disability employed in the Australian Disability Enterprises sector (Disability Enterprises).¹⁶⁶

¹⁶⁴ ACTU, March 2009, p. 150, para. 13.9.

¹⁶⁵ ACCI, March 2009, p. 9, paras. 40–41.

¹⁶⁶ Special Business Services (Employees with a disability) Australian Pay and Classification Scale, [2007] APCS 2, as determined by the Australian Fair Pay Commission Wage-Setting Decision 8/2007, and adjusted by Wage Setting Decision 1/2008 and 1/2009.

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The Special Business Services Pay Scale sets out a process for calculating pro rata minimum wages based on an employee's productive capacity, applying the following steps:

- 1) Upon appointment, the employer grades the employee at one of seven different grades, having regard to the employee's skills, experience and qualifications. The grading descriptions are set out in Schedule 4 of the Special Business Services Pay Scale.
- 2) The employee's capacity is assessed using a recognised wage assessment tool (WAT) to determine the employee's capacity percentage.
- 3) The capacity percentage figure is applied to the rate of pay for the relevant grading (from step 1) in clause 6.4 of the Special Business Services Pay Scale.

This mechanism mirrors the minimum wage framework set out in the preserved Pay Scale derived from the Liquor, Hospitality and Miscellaneous Union Supported Employment Services Award 2005 (LHMU Pay Scale). Coverage can also be provided by the preserved Pay Scales derived from the Cooma Challenge Limited Business Services (State) Award. Together, these instruments form the minimum wage framework for employees with disability in Disability Enterprises.

ACOSS and the Intellectual Disability Rights Service (IDRS) both raise concerns about the variety of wage assessment tools currently in use:

'Not all wage assessment tools are properly tailored to the specific job requirements of employees with intellectual disability...and, as a consequence some employees with intellectual disability are being assessed by tests with large parts that have no relevance to their actual job. The use of some wage assessment tools...may produce different wage outcomes for people performing the same work or different wage outcomes for the same person performing the same work. These outcomes are inequitable and unfair.'¹⁶⁷

'The keys to a fair and effective system of sub-minimum wages for workers with disabilities are a transparent and consistent system of productivity assessment that incorporates a requirement to change the workplace and work practices to improve productivity as far as possible prior to the assessment of individual worker productivity. This was part of the Commission's decision last year when it extended the Supported Wage System to more employees with disabilities in different industries. The extension of the Supported Wage System makes careful monitoring of the reliability and equity of the various instruments used to assess productivity essential. On equity grounds, it would be desirable to standardise the instruments to a greater degree than at present.'¹⁶⁸

¹⁶⁷ IDRS, 2009 *Minimum Wage Review*, letter dated 24 March 2009, p. 2.

¹⁶⁸ ACOSS, March 2009, p. 11.

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IDRS suggests that research be conducted into the Business Services Wage Assessment Tool (BSWAT), in particular, to determine whether use of this tool results in reduced wage outcomes for workers and whether it links training with assessment. It further suggests that the Commission review the process for the approval of new WATs for inclusion in the Special Business Services Pay Scale.¹⁶⁹

The Commission has recently undertaken detailed research and monitoring of wage processes in Disability Enterprises, including an audit of 28 WATs attached to the Special Business Services Pay Scale.

5.3. Disability wages monitoring and research

The WR Act requires the Commission to promote the economic prosperity of the people of Australia, having regard to a number of factors including the provision of minimum wages for employees with disability to ensure that these employees are competitive in the labour market. The Commission's wage-setting decisions generally affect employees with disability in two types of employment – Open Employment and Disability Enterprises.

Open Employment organisations employ people with disability who are engaged in the mainstream workforce alongside fully productive employees in a commercial setting. In Open Employment, if the employee's disability does not affect their productive capacity, they earn full adult wages. If, as a result of their disability, employees are unable to perform the range of duties to the productivity level normally required, they may be paid reduced wages under the SWS.¹⁷⁰

Disability Enterprises (formerly known as Sheltered Workshops, Business Services or Supported Employment), are businesses (all currently non-profit¹⁷¹) that provide employment for people with disability who generally require support to remain in paid employment. Employees are paid a wage based on their competency and/or productive output¹⁷², and receive support from the Disability Enterprise organisation which may include vocational training, personal development and social skill development.

¹⁶⁹ IDRS, letter dated 24 March 2009.

¹⁷⁰ The Supported Wage System (SWS) was introduced in 1994 to improve employment opportunities for people with disabilities in open employment. Under the SWS eligible people with a disability can access productivity based wage assessment and related workplace specific assistance in order to access appropriate jobs.

¹⁷¹ 'A non-profit organisation is one which is not operating for the profit or gain of its individual members, whether these gains would have been direct or indirect. This applies both while the organisation is operating and when it winds up. Any profit made by the organisation goes back into the operation of the organisation to carry out its purposes and is not distributed to any of its members...

Non-profit clause

The assets and income of the organisation shall be applied solely in furtherance of its above mentioned objects and no portion and no portion shall be distributed directly or indirectly to the members of the organisation except as bona fide compensation for services rendered or expenses incurred on behalf of the organisation.' Australian Taxation Office, *Is your organisation non-profit? Tax basics for non-profit organisations*, 2007, ATO <<http://www.ato.gov.au/nonprofit/content.asp?doc=/content/33732.htm>> at 8 May 2009.

¹⁷² See J tenBroek, *The Character and Function of a Sheltered Workshop*, 1995, The National Federation of the Blind <<http://www.blind.net/g3800001.htm>> at 8 May 2009; and Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, *About Australian Disability Enterprises 2009*, Australian Disability Enterprises, <<http://www.austliandisabilityenterprises.com.au/About.aspx>> at 8 May 2009.

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The Commission has convened the Disability Roundtable, an expert body representing key stakeholders, to provide advice on issues relating to the employment of people with disability. Further details of the Disability Roundtable are provided in Appendix B.

There are over 350 Disability Enterprise outlets in Australia run by over 200 organisations providing supported employment assistance to approximately 20 000 people with moderate to severe disability, who need substantial ongoing support to maintain their employment.¹⁷³ These Disability Enterprises operate in a wide range of industries including design, printing, packaging, manufacturing, laundry and landscaping.¹⁷⁴

Gaps in understanding the Disability Enterprises sector

In recent years there has been substantial change to the regulation of employment within Disability Enterprises. Major changes include:

- transforming sheltered workshops, unregulated by a formal industrial relations system, into the Disability Enterprises sector where formal employment relationships exist;
- requiring employers in Disability Enterprises to meet quality assurance standards in order to be eligible for Australian Government funding, in particular the payment of award-based wages determined by the application of WATs;
- requiring Disability Enterprises to phase in payment of pro rata award wages by 11 May 2008;
- removing wage rates from awards previously used by Disability Enterprises and inserting these rates into Pay Scales; and
- creation by the Commission of a Special Pay Scale for employees with disability.

From its previous research, and through consultation with the Disability Roundtable, the Commission found that there are significant gaps in information about employment in Disability Enterprises, particularly in relation to wage-setting. Specifically, there was no qualitative or quantitative data available on the wage-setting practices of Disability Enterprises.

Historically, the majority of data and information about the sector has been held by Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA.) These data have primarily been collected for accreditation and funding purposes, with little information directly available on the views and wage-setting experiences of employers and employees in the sector.

The WR Act provides that the Commission may inform itself by monitoring the impact of its wage-setting decisions. As part of this monitoring process, the Commission identified the need to create a sector profile of Disability Enterprises to assist in filling this knowledge gap in relation to wage-setting.

¹⁷³ Data provided by FaHCSIA's Online Funding Management System Data from April 2009. <<http://www.fahcsia.gov.au/sa/disability/progserv/providers/AustralianDisabilityEnterprises/Pages/AustralianDisabilityEnterprises.aspx>> at 8 May 2009.

¹⁷⁴ FaHCSIA, 2009.

Section 5 Disability Enterprises sector research

In consultation with the Disability Roundtable, the Commission scoped and developed an integrated research strategy to provide a profile of wage-setting practices within the Disability Enterprises sector. This strategy consisted of four projects – a statistical study, an audit of WATs, a survey of employers and focus groups with employees of Disability Enterprises.

Statistical study

The statistical study provides an up-to-date 'snapshot' of the Disability Enterprises sector as at 2009, using published and unpublished FaHCSIA data from 2007 and 2009. The two data sources are the FaHCSIA Disability Services Census 2007 and internal reporting data derived from the FaHCSIA Online Funding Management System.

Wage assessment tool audit

The audit provides an overview and analysis of WATs approved by the Commission for use in the Special Business Services Pay Scale and the LHMU Pay Scale. This project analyses 28 WATs of the 30 attached to the Special Business Services Pay Scale. The WATs are assessed against 29 questions developed in consultation with the Disability Roundtable to gather further information about the operation of tools, and to determine similarities and differences across the different WATs.

Employer survey

The employer survey provides insight into the practical application of WATs in the Disability Enterprises sector, as well as further information on the wage instruments, classifications and base rates of pay used by employers and their sources of information on changes to minimum wages. Of the 203 organisations invited to participate, 71 per cent (144 organisations) responded.

Employee focus groups

This research explores the employment experience and work-related circumstances of people with disability working in Disability Enterprises, including employees' levels of understanding as to how their wages are calculated. It was conducted by the University of New South Wales Disability Studies Research Centre in partnership with People with Disability Australia Incorporated and consisted of five focus groups, each containing six to eight participants, and three in-depth interviews with employees working in various Disability Enterprises.

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5.4 Key research findings

The following is an integrated analysis of key findings from the four projects, outlining where possible any similarities or trends that were evident across the projects to create an overview of the sector in 2009.

Wage instruments

Pay Scale coverage and use of Pay Scale rates

While there are three Pay Scales covering employees in Disability Enterprises, one of these Pay Scales is limited to a single organisation. Most minimum wage coverage in the sector is provided therefore by the LHMU Pay Scale and the Special Business Services Pay Scale. The employer survey reveals that over half (61 per cent) of survey respondents indicate that they are covered by the LHMU Pay Scale, with the remaining 38 per cent covered by the Special Business Services Pay Scale.

However, the research finds that just over half (55 per cent) of Disability Enterprises derive their rates of pay directly from the LHMU and the Special Business Services Pay Scales. The remainder of organisations source their classifications and wage rates from alternative wage instruments. These include Pay Scales derived from: the Clothing Trades (State) Award (NSW); the Furnishing Industry National Award; the Miscellaneous Gardeners &c. (State) Award (NSW) and the General Store Workers, Packers, Wholesale Sellers and Distributors (State) Award (SA).

Minimum rates of pay

The employer survey finds that 90 per cent of Disability Enterprises report using an amount equal to or greater than the Grade 1 classification rate in the LHMU and Special Business Services Pay Scales of \$14.31 per hour as the base rate of pay for their employees.

In relation to final rates of pay (that is, after application of an employee's wage assessment), the audit indicates that over two-thirds of WATs (20 of 28) include capped minimum rates of pay regardless of an employee's assessment.¹⁷⁵ However, the WATs reported in the employer survey as having the greatest coverage (the BSWAT and the SkillsMaster WAT) do not contain clearly specified minimum rates of pay, either as a percentage or as a set hourly/weekly rate.

The statistical study finds that in 2007 the majority of employees (77 per cent) in the Disability Enterprises sector earned a gross wage of \$100 or less each working week. However, it is important to note that, in both 2007 and 2009, the majority of employees in Disability Enterprises are employed on a part-time basis.

¹⁷⁵ These minimum rates of pay could also include training or probationary rates of pay.

Section 5 Wage assessment process

Use of wage assessment tools

Surveyed employers report that most organisations are using one of four WATs – the BSWAT, SkillsMaster WAT, SWS WAT and Greenacres WAT. Further, the majority of WATs (19 of 30) currently approved under the Special Business Services Pay Scale are each used by one organisation only.

Application of wage assessment tools to industries

The WAT audit finds that most tools cover the assessment of specific tasks and occupations in a particular industry, such as gardening, paper manufacturing, timber, assembly, packing, clothing and laundry.

Only four tools covered by the audit can be applied generally across industries, although these are the most commonly used. According to the statistical study, the BSWAT was used for assessment purposes for around 10 700 employees as at February 2009. Almost half of the respondents to the employer survey indicate their organisations are using the BSWAT, while 11 per cent are using the SkillsMaster WAT.

Method of assessment

The audit finds that the majority of WATs assess employees using hybrid tools (that is, tools that measure both productivity and competency). Few WATs in use assess employees on productivity or competency only. This finding is consistent with the statistical study which finds that 77 per cent of WATs applied against employees in the 2007 Census were hybrid tools.

Assessors

Wage assessments can be conducted internally within a Disability Enterprise (for example, by an employee of the organisation) or externally (for example, by independent third-party assessors such as CRS Australia).

The audit highlights that five WATs use external assessors only. Of these five, two are the BSWAT and the SWS WAT, which are the WATs with the highest levels of usage among surveyed organisations.

A significant majority of WATs included in the audit use internal assessors to conduct the wage assessment process (22 of 28). However, only about one-third (38 per cent) of respondents to the employer survey report wage assessments conducted by internal assessors. This survey finds that many of the organisations performing wage assessments in-house, use their own, or the SkillsMaster or Greenacres WATs.

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Of the 28 tools audited, 20 use assessors with Certificate IV qualification in Workplace Training and Assessment, and all but one of the respondents to the employer survey report that a staff member conducting the assessments had undertaken relevant training to perform assessments. Other survey respondents report that assessors had undertaken training specifically related to the WAT being used by the organisation.

Provision of information to employees

The research indicates that information about wage assessments and wages is predominantly provided to employees by the employing organisation. The majority of respondents to the employer survey (97 per cent) report that there is opportunity for a support person to be present when such information is provided.

Participants in the employee focus groups most commonly identified a member of staff as providing information regarding their rates of pay. This research suggests that many employees are aware that they could seek information from designated officers within the organisation, while some participants also have families that actively support them in obtaining work-related information.

The focus group research suggests that participants vary in their level of understanding of how their wages are assessed. Although the majority of participants displayed some understanding of their hourly rate or the amount of their weekly or fortnightly pay, a small number were unable to demonstrate this knowledge.

Training

The research finds only a small amount of specific information about training and supervision in the sector. The WAT audit finds that more than half of the WATs incorporate ongoing training and supervision into the assessment process.

Focus group participants reported that they had been trained in a variety of jobs and had developed skills sets across the organisation's machinery and job tasks. A few indicated that training took the form of formal or structured skills development tailored to increase employee competencies and diversify skills.

Dispute resolution procedures

The research suggests that there are dispute resolution procedures in place for most WATs but that it may not be clear to employees that these procedures are available.

Most WATs (24 of 28) have a clearly defined appeals and dispute resolution process, and a majority (19 WATs) provide for an advocate to represent an employee in the event of an appeals process.

However, participants in the employee focus groups demonstrated varying levels of knowledge in relation to opportunities to appeal or question the wage assessment process. This research finds that participants who have the skills and opportunity to speak up in their workplace are often those who understand the wage assessment process at the most detailed level.

Section 5 Conclusion

The research finds that:

- Disability Enterprise employees are engaged in a number of different industries and occupations;
- just over half (55 per cent) of Disability Enterprises source their rates of pay from the LHMU and the Special Business Services Pay Scales, with the remainder sourcing their classifications and wage rates from alternative wage instruments;
- the Pay Scale level used to calculate minimum rates of pay that is most frequently cited by employers is Grade 1 of the LHMU Pay Scale;
- there are a number of WATs approved for use in the sector but the majority of organisations use only four – the BSWAT; SkillsMaster WAT; SWS WAT; and the Greenacres WAT. With the exception of the Greenacres WAT, all of these are designed to be adaptable for general use; and
- Disability Enterprise employees vary in their understanding of how their wages are determined.

This research is published in full and available on the Commission's website www.fairpay.gov.au.