

Workshop Inclusive Employment 2012–2022: Fhacsia – Laura Angus and Anthony Bartolo

A Vision for Supported Employment

Future wage setting arrangements:

a discussion guide

Present: Samantha French PWDA, Tracey Moffat PWD Logan, Louise Lloyd DSAQ, rep from DS Australia, AFDO Marguerite, Robyn Renton (Rights in Action), Newell Advocacy NSW, Michelle O'Flynn QAI

Consultation are being conducted in three streams – providers

Stakeholders (this meeting)

Employees and families (small focus groups of 6-8 employees with separate sessions for families)

Laura reported that to date none of their consultations had reflected anything disparate or outstanding. If there were to be anything they would “unpack” it.

As a result of the Court Case, the Commonwealth thinks there are areas needing clarification as the decision will have widespread implications.

SWS (Supported Wages system is used in 11% of ADE's. GreenAcres is competency based

It was felt (particularly by Robyn and Samantha) that the Supported wage tool we already have is useful in all workplaces and that we do not need a separate assessment..

QAI proposed the following from notes made on the discussion guide:-

It would be far better to invest in the people with disability as a priority over maintaining or sustaining unviable ADE's.- those workers who have been providing good outcomes for ADE should be transitioned to open employment. Funding should be provided to work with the new open employers and co-workers to ensure a welcoming and accepting workplace environment.

Success stories are those ones where ADE are training grounds that progress their workers into open employment

Do you agree with the Govt's objectives for wage setting?

Are there other objectives the Govt. should consider?

QAI - While it may seem fair to assume that ADE's need to remain viable, there is the question that this is only another day service option if the ADE is not really viable. Many ADE's actively compete and win open tendered contracts against other businesses, so surely they must be viable, or they are undercutting in order to win the project. This is not good business practice, and all ADE's should operate as such in order to remain viable.

While it can be said that people with disability need their ADE, it is more likely that in many instances the ADE need their workers more. The primary objective and obligation the government has is the workers with disability over and above any that the government may have to the ADE sector.

Principles for any model

Fairness

Non discriminatory

Transparency

Reliability and validity

Objectivity

Do you think that these principles are the right ones to guide decisions about future wage setting tools?

What other principles do you consider to be important?

Fairness:- 1 This premise is unfair and unrealistic. For people without disabilities are not subjected to such processes and there are many people who work with varying levels of productivity and quality of work but are not unfairly discriminated against by having their wages garnished.

Reliability and validity: 1

2 There are some instances where people are paid piecemeal and not by how fast they can finish the job. ie: lawnmowing, fruitpicking etc. Elements of completion of a job are to be considered when awarding wages.

Objectivity 2

Transparency -Should be conducted by assessors with no or limited but clearly declared conflicts of interest. ie: external independent assessors

WAGE SETTING TOOLS Alternative Options

BSWAT as it stands should be abolished

SUPPORTED WAGE SYSTEM – This is the preferred option and the onus on ADE's to move productive workers into open employment, and further development remaining employees. Government could invest funds to assist ADE's towards this goal. Any extra wages being paid to workers is long overdue!

DO YOU HAVE ANY OTHER SUGGESTIONS? Take out the competency test in BSWAT (although this is still a separate system and supports the segregated sector. However, this might reduce the likelihood of disadvantaging those who rate highly on the competency tests and who may be disadvantaged under SWS)

How Do We move to a New Model?

Virtually all ADE's are not-for-profit organisations that do not have large cash reserves or other income to cope with increases in wages.

QAI - yet many ADE's have fleets of marked cars for non-disabled (support workers and management) employees

We need to do what we can to make sure that the transition process is as smooth as possible and that a changing industrial landscape doesn't lead to people losing their jobs. Many supported employees told us when the Government was developing the vision for inclusive employment that they like their current workplace — while they might like higher wages and more work choices, they want to be able to continue working where they are.

QAI – There are small choices in rotten apples. Especially in rural and remote areas where the service is and has been the only thing the population has been exposed to and is familiar. People are happy with familiarity and fearful of the unknown...especially when support workers tell them how harsh it is in open employment and how they wouldn't cope

Do you think a temporary exemption would be useful to help ADEs and workers transition to a new model?

No! An exemption will allow many ADE's to continue as they have been for years. It would be more helpful if they were made to comply immediately, but given assistance from the government to progress to compliance and transition out productive workers to the open employment sector. (as per previous suggestions)

What support will Australian Disability Enterprises need over the transition period so they are able to pay wages under a new model when the exemption expires?

If ADE's operate with good business practices then they should remain viable and can pay appropriate wages. Perhaps not undercutting tenders to win projects but providing realistic tenders would not see them paying slave wages. There are considerable savings to be made by reducing over- management costs.

What support will workers need over the transition period?

Workers will need transition support to open employment much as by DEN's and for unlimited times. Others who stay within ADE's should have the training provided to enhance and develop their skills.

Appendix A: Background information on current wage setting arrangements Australian Disability Enterprises operate within federal and state industrial relations regulatory frameworks. Under the 2002 amendments to the Disability Services Act 1986, they must meet disability services standards. These standards include the requirement to pay award-based wages to supported employees using a transparent wage assessment tool.

QAI - To afford equity and rights for worker with disabilities these frameworks need considerable amendments.

The assessment tools must also be fair and not subject to interpretation or manipulation by those conducting the assessment process.

Each business chooses its own tool to assess the wages of its supported employees.

There is a clear conflict of interest in having the employer conducting the assessment.

The Business Services Wage Assessment Tool: a short history

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At the same time, the Supported Wage System was being introduced into the open labour market. This tool simply compared the productivity of a person with disability with that of another employee without disability who was doing the same job to determine a wage. Many Australian Disability Enterprises thought, however, that the Supported Wage System would not be an elective wage assessment tool in their situation because they had simplified jobs to such a degree that comparable roles would not exist in a mainstream employment environment.

QAI - This is an unlikely and unfair assumption with the adoption of more mechanical processes in many mainstream workplaces. Also consider the many ADE's that advertise the complexity and capacity of their skilled workforces

As a result, the Business Services Wage Assessment Tool was developed in consultation with a wide range of stakeholders and was adopted by more than 50 per cent of Australian Disability Enterprises.

Did this include people with disabilities, their families, advocates?

Implications of the recent Federal Court findings

In December 2012, the full Federal Court found that the Business Services Wage Assessment Tool indirectly discriminated Mr Nojin & Mr Prior on account of their intellectual disability.

In particular, the Court found that the competency component of this tool was a requirement or condition that people with intellectual disability could not comply with. In this case the Court found that it was unreasonable that the scores in the BSWAT assessments did not reflect the actual capacity of the employees to undertake their work. The Court held that the requirement was not reasonable in the specific circumstances of the cases.

We agree...this surely indicates that people should be assessed only on their work outputs and that this should be done AFTER they have received the adequate training they need to perform the tasks. There could be some kind of pro-rata assessment in the interim as some people will need less training time than others.

Further Discussions:

Fhacsia raised concerns for people losing their jobs if ADE's (particularly those that were non viable) had to close and there were no other options for the employees. QAI expressed concern about the apparent conflict of interest for Fhacsia to fund the ADE's and have responsibility for their viability when their concerns should be focussed on the employees

and suggested that DEEWR should have responsibility for ADE's as they once did previously.

It was raised as a concern about Disability Employment Services (DES) placing clients in ADE's, but Fhacsia informed us that the DES cannot use ADE as an employment outcome, so there is no motivation for them to seek these out as employment options,

The subject of ADE's that operate as day centres, life skills training centres etc. was raised, and it was agreed by the participants that they should not be called ADE's as it was not employment. QAI suggested that with the incoming Disability Care Australia, such services should be supported to move towards becoming host providers if their operations are not employment or not solely employment.

The Vision Advisory Group 2012 was reconvened and met three weeks ago – their next meeting will be 23rd August 2013