

**The National Caucus of Disability Consumer Organisations
Senate Committee For Community Affairs Legislation Committee.
Disability Services Amendment (Improved Quality Assurance) Bill
2001.**

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Appendix 1:

Why the Supported Wage System is a vital component of addressing change

A. RIGHTS OF AUSTRALIANS WITH DISABILITY.

1. Australians with disability have the same rights as other Australians.

The equal rights of people with disability are stated in the Principles and Objectives of the Disability Service Act 1986, and relevant statements/declarations of the United Nations.

2. Disability discrimination in employment is unlawful.

The Disability Discrimination Act 1992 (DDA) and the Federal Workplaces Relations Act 1996 (WRA) both aim to prevent and eliminate disability discrimination in employment.

3. An object of the Disability Service Act 1986 is to ensure funding to organisations is based on the achievement of outcomes for people with disability.

This requires an assurance that Commonwealth funding is providing value to people with disability, and upholding their equal rights without discrimination or abuse.

4. It is unlawful under the DDA for the administration of Commonwealth laws and programs to discriminate against people with disability.

The Commonwealth is required to ensure that funding of employment assistance to people with disability does not support the discrimination of people with disability.

5. The Quality Assurance system must ensure that the Supported Wage System determines the pro-rata wages of employees with 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.

- This will provide for a system of pro-rata wage assessments that is broadly accepted as meeting the requirements of the Disability Services Act 1986, the Disability Discrimination Act 1992, and the Workplace Relations Act 1996.
- This will provide many thousands of people with disability with a safeguard against exploitation and discrimination.
- This will ensure that the viability of business services are based on a fair assessment of the cost of wages.
- This will ensure that all workplace agreements pass the no-disadvantage test of the WRA
- This will prevent attempts by unscrupulous employers to certify pro-rata wage assessment systems that are questionable in outcome if not discriminatory in terms of disability.
- This will ensure a decision making to safeguard people with disability, especially people with disability who are unable to understand or negotiate with sufficient power.

- This will ensure that the design of employment assistance is primarily based on positive outcomes of people with disability and not the interests of organisations or others.

B. MANY THOUSANDS OF PEOPLE WITH DISABILITY DO NOT ENJOY THEIR BASIC RIGHTS IN EMPLOYMENT

1. Many reports, reviews and consultations over the last quarter of a century have highlighted the poor employment conditions of people with disability in Australia.

The issue of employment conditions has been the subject of reform over long time (at least 20 years). Every major report on disability and employment refers to the need to address the employment rights of people with disability. This is due to an historical and ongoing issue of non-compliance with disability service standards, and employment and discrimination law.

2. Many thousands of people with disability are employed without any legal industrial agreement.

It is only recently that we are witnessing an increasing number of employers seeking to develop workplace agreement with employees with disability. This is largely due to the advocacy and representation of Caucus.

Caucus sought that the employment outcome for the proposed new funding system (case based funding) included the requirement for employees to be employed under a certified legal industrial agreement. This was achieved through conciliation with the Commonwealth following a complaint to the Human Rights and Equal Opportunity Commission (HREOC).

Other previous attempts to bring sheltered employment into the industrial regulatory were achieved by Unions during the term of the previous labour government. Funding was provided to assist unions to address the issue of employment rights for employees with disability. This funding stopped soon after the election of the current Government in 1996. Unions have since struggled to address the concerns of employees with disability.

Despite the increasing numbers of agreements many employees with disability are still employed without any legal industrial agreement (ie award or certified workplace agreement).

3. Many thousands of people with disability receive terms and conditions below the Federal Safety Net of minimum conditions

The average wage per week for people with disability in Sheltered Employment (Business Services) is reportedly between \$40 and \$80 per week.

Wages below the Federal minimum safety net wage (currently \$413.40 per week) are not lawful unless they are approved by the AIRC according to criteria (ie 'no-disadvantage test').

Many employees with disability receive wages below the Federal minimum wage without any authority. This is against the law.

Workplace agreements developed by sheltered employers attempt to obtain certification with wage assessment systems that disadvantage employees with disability. The certification of these agreements has been achieved through the acquiescence of employees who are unable to understand or negotiate with any power. If there is no challenge we have found that the AIRC will not challenge or examine issues of discrimination or disadvantage

4. Some State industrial relations acts of law specifically exclude employees with disability from the scope and protections contained in the law.

For example, South Australia provides Sheltered Employers a process by which they are not required to meet the rights and responsibilities of the state industrial relations act. Sheltered Employees can be listed on a schedule so that they are exempt from typical employer responsibilities under the SA Industrial Relations Act.

This law simply provides a haven for organisations who do not recognise the equal rights of people with disability.

Furthermore, the Commonwealth Attorney General tabled delegated legislation in 1999 [Disability Discrimination Amendment Regulations 1999 (No. 1)], which sought to exempt the SA industrial law from disability discrimination complaints under the DDA 1992. This action simply furthered the cause of employers who wish to exploit and discriminate against people with disability. The Democrats and the Australian Labor Party opposed the legislation

C. THE EXPLOITATION OF PEOPLE WITH DISABILITY IN SHELTERED EMPLOYMENT REQUIRES THE MAXIMUM SAFEGUARD AND PROTECTION

1. The Supported Wage System provides ALL employees with disability with safeguards against exploitation and discrimination

The Supported Wage System (SWS) is a system designed for those who are unable to perform the range of duties to the competence level required within the class of work because of the effects of a disability on their productive capacity.

The development of the SWS involved a broad range of groups (ACTU, ACCI, Government, Disability and Industry Groups). It was the subject of a full bench decision in 1994 and was considered to give effect to the principles of the DDA.

Most importantly, it provides employees with a wage assessment that is determined by an independent accredited wage assessor. The system provides protection for employees against exploitation. This is vital given that the purpose is to determine a wage.

The KPMG report noted that:

"Many employers indicated that the assessment process relieved them of the burden of being seen to be potentially exploiting people with disabilities." The current perception, and even reality, is that business services have a distinct conflict of interest in designing wage assessment tools and/or determining pro-rata wages.

Given that employees with disability in sheltered workshop have suffered gross exploitation of their rights over a lengthy period time, continue to do so, it is imperative that the best protection is provided. The SWS is currently the best system of pro-rata assessment within our industrial regulatory framework.

The KPMG stated that the SWS had broad support by all stakeholders, had values of integrity, and transparency in decision making. "These values have ensured the system's continuing appropriateness within the broad workplace relations and employment environment Stakeholders also view the SWS as the preferred industrial mechanism for the determination of productivity based wages."

The theme of the KPMG report is that the SWS enjoys broad support while there are opportunities to further improve and refine the operation of the SWS. As part of this refinement, KPMG recommended the extension of the SWS to business services (sheltered workshops).

2. Alternative pro-rata wage assessments for wages below the safety net or federal minimum wages are inherently discriminatory and disadvantage employees with disability.

All alternative below award wage assessments designed by employers (business services) seek to, inadvertently or not, disadvantage employees with disability as compared to the SWS

These wage assessments:

- Are performed by employers or staff who have a conflict of interest in the determination of the wages of employees
- Include a range of other wage assessment factors which heighten the likelihood of poor wage outcomes (social graces, behaviour, etc)
- Include a classification of wage rates which ensure the wage calculation results in a low wage
- Includes absolute rights for employers to change the wage assessment criteria
- Prey on the employees inability to understand or negotiate
- Are complicated, convoluted and designed to provide a veil of sophistication
- Are not based on assessments of capacity compared to award standards of productivity
- Are based on poor business practices, including non-viable businesses
- Are found to flounder when challenged in the AIRC

The principles of work and wage assessment do not change because an employee with disability works in a place titled as a 'business service'. There is no justification based on wage setting principles as to why we need 'different' assessment tools.

Caucus believes the motivation to develop different tools is due to the non-viable nature of many business services and a 'clinging' to an ideology of 'incapacity' and 'charity'.

Business Services still believe that people with disabilities cannot participate in the labour market. Business services still believe that people with disabilities should be congregated and segregated from the community. Business services still believe in a model of service that is based on 'managing people' in institutional like settings.

The congregation of people with disability in sheltered workshops has rarely, if ever, provided people with disability with quality employment outcomes in terms of integration or wages. Yet these organisations cling to an ideology even though the evidence points to a need to change.

The enactment of the DSA was the basis for the need to change. It is this change that the quality assurance system needs to achieve. Unless the SWS is prescribed for Standard 9 we are unlikely to see change.

3. Employees with disability are being taken advantage in the preparation of workplace agreements

People with disability in sheltered workshops are being asked to understand, negotiate, and vote on workplace agreements. The nature and complexity of these agreements make it unlikely that these groups of employees can realistically participate with any real power.

The nature of sheltered workshops, where there is a concentration of people with disability, often with intellectual impairment, make the notion of enterprise bargaining an exercise of the powerful and articulate versus the inarticulate and the powerless.

NCID has intervened in two workplace agreement applications in the Australian Industrial Relations Commission in an attempt to bring to the attention of the AIRC the exploitation and discrimination such agreements are attempting to legitimise.

The Coffs Harbour Challenge application was refused by the AIRC when it was ruled that the employees did not understand the agreement. This was an agreement which proposed an arbitrary wage assessment by an employer who was operating enterprises that have regularly made a financial loss.

NCID is currently intervening in the AIRC application by the Yooralla Society of Victoria. The Commission is yet to rule on this application but there are some developments that are worth noting. The proposed agreement proposes to use the Green Acres Competency Based Wage System (CBWS).

The Green Acres wage assessments is one of the alternative wage assessments that the Department of Family Community Services has promoted and believes is good. Following two days of examination in the Commission, NCID have exposed this system of wage determination as a complex nonsense. It provides for a wage calculation that is designed to ensure low wages. Yooralla has admitted in evidence

that the SWS would likely provide the employees with higher wages – a clear case of disadvantage for a group of employees that were told that the SWS was 'bad' for them.

When you consider that many workplace agreements have been approved, agreements not dissimilar to the Coffs Harbour Challenge and the Yooralla Society of Victoria, we are witnessing the systemic legitimising of exploitation and discrimination of thousands of employees with disability.

NCID has concluded that unless it physically intervenes in every case, it is likely that the AIRC will assume that employees fully understand and are aware of the impact of an agreement. We also have concluded that unless NCID intervenes in every application, wage assessment systems for below award wage rates will not be examined by the Commission as there is typically no complaint from a silent, acquiescent and intellectual impaired group of employees.

4. The research by FaCS into pro-rata wage assessment is an insult to the rights of people with disability

The research by Health Outcomes International is fundamentally flawed and fails to address a significant issue of abuse.

The report lists a number of disadvantages of the SWS. Disadvantages that cannot be found in the review of the SWS. It is clear that the list of disadvantages of the SWS stem from comments from sheltered employers who simply want to throw 'mud' at a system that will provide real wages to employees with disability. There is no evidence that supports the assertions.

The research fails to adequately analyse the alternative wage assessment tools or provide a comparative analysis.

The report identifies:

- That the assessment of competencies is a basis for skills and career training and assist with job classification or job match.
- That the measure of productivity is the basis for wage fixing.

The assessment of competency and skills training is the subject of the current service standard (11) of the Disability Service Standards. The role of competency is wage assessment is limited to classification of jobs in award wage structures. This is not a new concept and already a component of the SWS assessment.

Caucus has no quarrel with the industry conducting competency assessment, as this is a service that we already see as part of the disability employment service trade. We do not however, support competency assessment to be a component of wage fixing.

The research does not provide us with any definitive direction. Its recommendations only serve to provide legitimacy to alternative wage assessment systems that we know to be exploitative. Its recommendations only serve to delay the implementation of the rights of people with disability.

Caucus is of the opinion that the report was tailored made by a Department looking for a report to say that there is no one assessment tool that can be applied. We consider this report to be hostile to the rights of people with disability and should be disregarded.

5. The Supported Wage System was designed for our industrial relations regulatory framework

The development of the SWS model clause was a significant development in assisting people with disability to participate in the labour market on an equitable basis.

The exclusion of those services who are also the employer (sheltered workshops/business services) was due to their level of compliance with the Disability Service Standards – not the nature of the employees or employer.

The Supported Wage System anticipated the change that the Disability Service Act was promoting – that all services under sections 13 were going to change to meet the enhanced and eligibility standards of the Disability Service Act. Business Services making that change would then qualify for the SWS.

The development of the SWS was not 'for open employment services' but for people with disability participating in the labour market as real employees, doing real work, under real employment terms and conditions.

The basic premise of the Business Service Review is that business services must change to become employers that offer real employment (viable businesses).

The SWS currently is utilised in a wide range of circumstances, employers, and employees. Its design is not dependent on level of support, model of service or type of employment.

The SWS review identified areas of improvement for the SWS but concluded that the system has integrity and is appropriate in the 'broad workplace relations and employment environment'.

D. THE QUALITY ASSURANCE SYSTEM MUST PROVIDE THE BENCHMARK FOR EMPLOYMENT CONDITIONS THAT ADDRESSES NON-COMPLIANCE

The QA system must be able to address change.

A QA system that does not address the issue of exploitation and discrimination of employees with disability will not address change.

The current KPIs for Standard nine are inadequate. It is not enough to require transparency or that wage assessments are conducted in consultation with employees. It requires a system of protection, independent safeguards, a valid tool or assessment, and links with the award standards.

We are seeking that the KPI provide the strongest protection for employees with disability.

We want at least two indicators:

- All employees should be paid under an award or certified agreement
- The Supported Wage System should assess all employees requiring pro-rata wages

Without such indicators employees with disability will be vulnerable to exploitation and discrimination.

The implementation of change should include the following steps:

1. The acceptance of the SWS as the single national wage assessment system
2. The acceptance of the SWS review recommendation to modify the SWS guidelines and mechanisms 'to make it even better'
3. That the SWS indicator be set down for compliance by Jan 1 2005. This allows for the timeline for the Business Services Review. This allows significant preparation time with industrial relations and business viability issues. And allows ample time to implement modifications to the SWS.
4. This is coherent with the Business Services Review recommendation that the core activity of Business Services is as an employer.
5. Provides employees with intellectual disability assurance that the reform will provide them with an assessment that will prevent continued exploitation.
6. Backs up the Minister's statement that only quality services should attract government funding.
7. We believe it is a win-win solution. We fail to understand opposition to such a reform direction.

Appendix 2:

From the Representatives of the National Caucus of Disability Consumer Organisations (Caucus) on the Quality Assurance Working Party

Briefing Notes for Meeting with DFACS and Minister for Family and Community Services

21 June 2001

Introduction

We have been very active members of the working party and represent over 77, 000 people with disability who access Commonwealth funded disability employment services. However, we have always had a minority on the working party of twelve.

We have not succeeded in our representations as many of our requests / suggestions / proposals and consultancies have been minimised, trivialised or forgotten.

Today we want to highlight our areas of major concern and ask that the Quality Assurance Framework and Budget better reflect the intent of the Disability Services Act and promote the rights of people with disabilities.

The Caucus entered into the process of the Quality and Standards Working Party under the belief that its purpose was to effect active change to organisations that did not comply with the Standards. We were led to believe that participation of Caucus was imperative to serve as a consumer benchmark of necessary change, and to reflect the reality of practice within services, rather than simply service provider rhetoric.

The current situation is unacceptable because there has been NO EFFECTIVE CHANGE in the core areas of non-compliance.

The purpose of the Standards is not to fit in with existing services but to change them, even if not convenient to the current practices in some services. It has also come to our attention that not all members of ACROD support the hard line stance of their representatives on the working party.

Our main problem is that through the conduct of the Working Party the situation has been polarised into winners and losers - what service providers are easily willing to compromise and the consumer requests that will upset the service providers' status quo. We feel that the process has been a mockery to the purpose of pro-active change that we believed lay at the core of this working party.

1. Standards and Key Performance Indicators

People employed in sheltered workshops (business services) are still being paid abysmal wages. We think the average pay is about \$1 an hour. The working conditions are very poor and the QA system is not going to guarantee better wages or conditions. The Supported Wage System Review recommended using the SWS assessment system across the country as the best pro-rata wage assessment system currently available, and yet FACS says that another 18 months is needed to yet develop a better 'tool'. It's delaying tactics. The sheltered workshops via ACOD are crying poor but are unable to say when they will become financially viable enough to

pay proper wages. **The SWS system is accountable to the people with disability, and your department.**

Standard 9. Employment Conditions

We are seeking performance indicators that address both the historical exclusion of employees with disability from the regulatory framework of Australian industrial relations and the current abuse of employees with intellectual disability that is occurring through enterprise bargaining.

Performance indicators that Caucus propose include:

The service ensures that employees with disability receive employment conditions and wages according to a legal industrial agreement consistent with the principles and objectives of the Commonwealth Workplace Relations Act 1996.

The service ensures that any assessment of pro-rata award based wages shall be in accordance with the Supported Wage System.

These indicators provide an assurance to employees with disability that their employment conditions are comparable to employees without disability. It will also address the systemic abuse of employees Caucus is currently witnessing in the Australian Industrial Relations Commission where employers are seeking agreements that employees cannot understand or negotiate with any power. Such agreements mask the unviable business situation of business services and seek only to legitimise current poor wage outcomes and poor service quality.

Caucus cannot support the exploitation of people with disability. Caucus cannot support bargaining processes that leave people with disability vulnerable to the interests of employers and employment service providers. Caucus cannot support the continued placement of jobseekers with disability in unviable businesses. Caucus cannot support the continued granting of Commonwealth funding to organisations that have shown repeatedly over many years an incapacity to change in order to provide employment services that meet the rights of people with disability.

Caucus does not support the directions being taken by FaCS with both the Award Based Wages Strategy and the A Guide to Good Practice Wage Determination. We have not seen any outcomes from these processes that indicate that employees with intellectual disability will receive employment conditions comparable to people without disability, or indeed address the poor wage outcomes currently endured by employees.

The indicators that we seek are non-negotiable and Caucus has instructed us that we cannot trade or compromise the fundamental rights of people with disability in the development of the new QA system.

Integration

Sheltered workshops are still sheltered from community life. They are ghettos and need a wake-up call. They need reforming and we want them to be better integrated.

Our experience makes us very sceptical about the likelihood that they can improve. ACROD have been unable to make any proposals to the committee on the Standard of integration. **Perhaps the funding would be better spent on moving people out of these institutions via more CEPT services.** Financially, it could mean a substantial saving to FACS inside five years. People will become employed in the community like everyone else. Some people, however, will need the support funding to remain with them.

Standard 5

Integration is a critical test of the quality of a service. Integration is a key concept of the DSA, principles and objectives of the DSA, and the Standards. Yet it is a Standard that is rarely been complied with by those services that continue to segregate and congregate people with disabilities in employment settings.

Integration is about people with disabilities not being congregated in an employment setting based on notions that it is good for people with disabilities to be congregated together. Such service practices are contrary to treating people with disabilities as people first, as individuals. It continues the myths and misunderstandings that the DSA was enacted to change.

In a new QA system that is serious about measuring the integration standard auditors need guidance and understanding about integration. Most of all, auditors need clear performance indicators so as to measure integration.

Based on the definition contained in the Standards auditors need to measure the extent to which the service supports jobseekers with disability into an employment setting that maximises their physical and social integration with people without disability

Caucus proposes that the performance indicators need to direct auditors to measure integration. We have proposed the following indicators:

People with disability are physical integrated in employment settings, including interaction with people and co-workers without disability.

People with disability are socially integrated into employment settings and enjoy positive work relationships with people without disability, including employers, co-workers, customers and others.

These indicators, together with some basic training in the principle and nature of integration in human service for people with disabilities would provide auditors with the ability to assess the integration standard.

Standard 8. Service Management

An effective service management is achieving outcomes for consumers. All services should be assessed on the basis of their contribution to positive consumer outcomes. Caucus is concerned that the direction of Standard 8 is all about paperwork and administration reducing consumer outcomes to a minor dot point outside the performance indicators.

This standard requires the Government and FaCS to have clear outcome indicators to measure outcome performance. This will enable the Government, consumers, services and auditors clear directions as to how the performance of service management will be evaluated in terms of consumer outcomes.

Without a clear set of outcomes, the standard of service management and how it relates to positive consumer outcomes will be subjective and not based on objective evidence against an indicator framework.

In order to assess the relationship between service management and consumer outcomes we propose that the indicators should include:

Service management systems achieve quality benchmarks for consumer outcomes (job placements, job durability, job tenure, job and support satisfaction, wage rates and inclusion in the workforce and community).

Service management systems have been modified and adapted based on the results of consumer outcome achievements.

Service management operates independently in operation, personnel, finance and accounting from other activities of the organisation, including the operation of any business enterprises.

These indicators require the Government to develop a consumer outcome framework that can be used to assess service management performance. It also requires the monitoring of performance for the setting of industry standards.

Decision Making and Choice

While the sheltered workshops remain in force, with their captive employees, they need immediate access to advocacy. Today the (few) advocates have no rights of entry, and the 'nasty' services ensure that advocates are banned from their premises. Many service users (and their parents) are frightened and intimidated and are unable to assert themselves. **They must get this assistance and we need your help to do this.**

Standard 3.

Caucus is particularly concerned that this Standard is being developed without consideration of the needs of people with disability who have difficulty or who are disadvantaged when it comes to their participation in decision making.

Caucus is concerned that there is no requirement in the performance indicators to ensure that people with disabilities who cannot speak powerfully on their own behalf are not provided the protection and safeguard of independent advocacy.

The recent AIRC decision on the Coffs Harbour Challenge Enterprise Agreement application has highlighted the vulnerability of people with intellectual disability with decision making.

The decision raised issues of the acquiescence of people with intellectual disability and the degree of difficulty in understanding in relation to the difficulty of what is being put forward for their consideration.

For auditors this raises a level of responsibility in their assessment in determining how services address issues of vulnerability, acquiescence and cognitive impairment. What arrangements were made, what processes were used to determine decisions and choices for people who either unable or require additional support to make decisions and choices.

Caucus considers that the audit needs to assess the protection and safeguards provided for people with disability. We proposed that an indicator needs to include:

The Service has ensured that people with disability are provided with appropriate support and independent advocacy for people who either unable to competently make choices and decisions or require assistance to do so.

Other amendments to assessment framework in agenda papers for WP meeting 7 June 2001 Caucus also has a range of minor editorial comments and changes to put to Government based on the draft standards assessment framework.

2. Complaints Handling Process

The complaints and appeals proposal to date, allows advocacy support if it is necessary. The dis-empowered consumer always will have an up-hill battle. To raise a complaint is very difficult for most people. The new system must be **funded at a realistic level for a minimum of five years** and there should be **a right to advocacy support and advice**. We also need an enforceability clause in the new legislation that allows anyone to enforce a recommendation made by the complaints service.

The proposed complaint system for Commonwealth funded employment services must be:

An independently run and controlled consumer complaints system

It must receive funding for an initial five years with a built-in evaluation system

Management of the service must include a majority of people with a disability.

3. The role of person with disability on the certification audit team

The consumer auditors are going to be **allowed to be auditors but not in name**. We have no assurances that they will receive more than 'initial training'. We need to develop 'world first' courses of accreditation, a professional association which accredits the consumer auditors, and an induction scheme which allows groups of people to keep 'coming on stream'. Each component needs funding.

Caucus is continually frustrated by the lack of action and decision making by the QA WP to support the role of the person with disability on the certification audit team.

We are seeking that a person with disability is included on certification audit teams as a Disability Services Auditor. This to be a mandatory requirement.

We are seeking that the Government invest in the development of a training course for the qualification of Disability Service Auditors.

We are seeking the establishment of a training organisation, which specialises in training people with disabilities to become auditors. It will deliver programs which are officially recognised by JASANZ. The organisation will recruit people onto the training courses and then provide the list of qualified consumer auditors to the accredited certification agencies.

We are seeking that the Government invest in the development of a professional association of Disability Service Auditors.

We are seeking that the Professional Association be responsible for the accreditation of training of the Disability Services Auditor Qualification.

We are seeking that ISO Auditors be required to have the DSA Qualification at an introductory level.

Caucus has been seeking to have agreement on this issue so that we can concentrate on the development of training and support for people with disabilities. The constant barriers presented at the WP have only served to delay and thwart the development of people with disabilities on audit teams.

The extent to which the inclusion of a person with disability on audit teams has had to be justified and justified and justified, is an insight into how difficult it is for people with disabilities to achieve empowerment and acceptance in decision making roles.

Caucus requires a clear indication from Government on the acceptance of people with disabilities on audit teams as Caucus has proposed. Caucus will not accept a token role or an unsupported role without substantive Government resources for training and support.

4. The need for independent support for consumers during and between audit assessments

Funding must continue to be provided to independent organisations to provide independent support and advocacy to people with disabilities who are attending services funded by FACS.

The consultation feedback from consumers provides a strong indication that consumers want training and support to understand the quality assurance system and in particular support to provide feedback to the certification audit team.

The current proposal allows each funded service to judge if consumer training and support is needed. The \$1 million Consumer Training and Support Program, which needs to be expanded and developed further, is to be cancelled.

5. Meeting procedure of the Working Party

Caucus has decided that it is not in the interests of people with disabilities to have its representatives placed in a process of disempowerment. The minutes of recent meetings demonstrate that the consumer representatives will always be in position of minority if any issue comes to a vote. The principle of reporting the majority view versus a minority view simply highlights the imbalance of power in the Working Party.

A principle of Assuring Quality was that people with disabilities "should occupy roles in which power can be exercised - 'they must have authority'". How can this be if the policy process is biased against the representatives of people with disabilities?

Caucus representatives are continually frustrated by a process that appears to use the presence of Consumer representation to legitimise a quality assurance direction which merely seeks to maintain the status quo and not promote positive change for people with disability.

The view of consumer representatives if not in the majority in terms of number should carry sufficient weight of consideration not to be referred to as a minority when there is not a consensus or agreement.

Appendix 3:

A short history of employment discrimination and institutionalisation of people with disability

Introduction

The enactment of the Disability Services Act 1986 signaled for the first time in Australian history that people with disabilities have the same rights as other Australians. The non-payment of award based wages by employers that receive Commonwealth employment assistance funding continues to be, however, a serious abuse of the rights of people with disability.

Despite the LAW, thousands of people with disability remain in employment settings where they are exploited on a daily basis.

The current reforms to the Commonwealth Disability Services Program offer an opportunity to address this situation. Caucus representatives have presented to the Department of Family and Community Services and the Minister the need to ensure that the opportunity to create change is not missed.

There is a high level of unconsciousness to the exploitation of people with disability in Sheltered Workshops (Business Services). The fact that the Australian Government spends around \$100 million annually on services that do not meet the principles and objectives of the Disability Services Act 1986 is evidence of a systemic problem requiring immediate redress.

Caucus has repeatedly raised the need to ensure that all people with disability, in all employment settings, receive award-based wages determined under the industrial relations regulatory framework. The Commonwealth finally agreed to this in 1999 following the conciliation of discrimination complaint by Caucus against the Commonwealth Program. This provided for award-based wages to be part of the employment outcome definition for the new funding reform of caseload based funding.

Unfortunately, the industry has seen this as an opportunity to take advantage of employees with disability, especially employees with intellectual disability, by initiating unscrupulous workplace processes and agreements.

Caucus considers the extent of discrimination, being experienced by people with disability in the current industrial relations environment, requires the application of the SWS to the sheltered workshop (business service) sector. In this respect the employees in Sheltered Workshops (Business Services) deserve our best pro-rata award wage assessment system that we have. In our opinion, the SWS is the best and until otherwise, this should be the Standard.

Caucus rejects the development of another wage assessment system. In our opinion it is not justified and will only serve to delay the already overdue receipt of rights to this exploited group of people.

Background

How did we get to this stage of enquiry about pro-rata award based wages for people with disability? It is important to reflect on what has occurred in recent history. It is important to understand this context to be able to understand the current issue of award based pro-rata wages for employees with disability in sheltered employment.

Centuries of exploitation

People with disability have had to endure an exclusion from participation in the economic and social fabric of western society for many centuries. This exclusion has had a dramatic impact on people with disability and society itself.

It has meant that people with disability have not been valued for their individual capacity to contribute to the economic prosperity of our nation. The result has been an impoverishment of people with disability, dependency on charity, and dependency on government social security.

It has created an image of people with disability as being unable to work, needing to be understood only by their disability, needing to be congregated, and needing to be managed.

These assumptions have resulted in a substantive "life wasting" of people with disability. When the very existence of people with disability is not valued, society is apt to exclude and treat people with disability in a negative manner. As a result people with disability experience a daily life of poverty in terms of both materials and experience. These are the negative consequences of the devalued status of people with disability.

The community as a whole is also impoverished by such exclusion. We do not get to grow up with, and live and work with, the diversity of Australians. We do not get the benefit of the diversity of difference and the richness that diversity brings to our society in all aspects of our culture.

Exclusion, still to this day, is a driving assumption of many of our human service models, including that of sheltered workshops (business services). The continuance of such models of human service is evidence of the entrenched negative values towards people with disability in our community and human service industry.

The employment conditions of employees in Sheltered Workshops (Business Services) are the worst in Australia; poor wages, poor business practices and poor human service outcomes. The employees are highly vulnerable due to both their disability and the institutionalisation of their daily life.

The Handicapped Program Review 1983 and the Disability Services Act 1986

The Handicapped Program Review that began in 1983 was the beginning of the development of a new direction for disability service provision in Australia.

The final report of the Review, entitled "New Directions" has a picture on the cover of people with disabilities holding directional signs with the words "skills", "risks", "integration", and "rights". The report indicated that Australia was going to take a new direction that viewed people with disability as equal citizens with a right to be included in the fabric of our society as valued members.

The stated that: "The principle of positive consumer outcomes should be the basis of program development for people with disabilities." (New Directions, p. 13); and that "All policy initiatives for assistance to people with disability should be assessed on the basis of their contribution to positive consumer outcomes." (New Directions, p.18).

In terms of employment, the New Directions report indicated a constant call for paid employment as a highly desirable consumer outcome and that major concerns were expressed about the inadequacies of sheltered workshops in terms of work and the low level of wages paid.

The New Directions report indicated that supported employment programs should include:

- the provisions of general award conditions;
- entitlement to wages based on productivity according to able bodied rates, and;
- the setting of specific targets for increased integration.

The New Direction was legislated in the Disability Services Act 1986, which is still in force in 2001. The objects of the DSA 1986 (see Appendix 1) encompass the new direction put forward. A key object is to "ensure that the outcomes achieved by persons with disabilities by the provision of services for them are taken into account in the granting of financial assistance for the provision of such services."

In 1987 the Commonwealth Parliament approved the Principles and Objectives of the Disability Services Act 1986 (see Appendix 2), which was published in the Commonwealth of Australia Gazette (No. S 118. Tuesday, 9 June 1987). This gave effect to the principle that people with disabilities have the same rights as any other Australian. It also gave effect to the objectives of service provision to achieve positive outcomes for people with disability.

Fifteen years of DSA Non-compliance

The new direction set down by the DSA 1986 has not been achieved by Commonwealth funded organisations that were expected to change despite numerous initiatives to assist funded organisations to meet the principles and objectives of the DSA. Millions of Commonwealth funds continue to be spent on services that fail to comply with the DSA.

These initiatives included a 5 year transition period for Sheltered Workshops to meet the principles and objectives of the DSA; the multi-million funding of the National Technical Assistance Unit in 1990 to assist sheltered workshops to adjust to the new service models; the amendment of the DSA in 1992 to extend the transition period indefinitely; the development of Disability Service Standards in 1993 and the expectation that all services would eventually move to meet section 10 (i.e. meet the principles and objectives of the DSA); and the provision of multi-million dollars of transitional funding to assist organisations meet the DSA.

The expectation was that organisations would ensure that employees with disability received employment conditions comparable to those enjoyed by the general workforce. This reflected the DSA's intent that people with disability have the same rights as other Australians.

To this date, the vast majority of funded organisations, that have been expected to change to meet the DSA, have not changed. This means that for the past 15 years hundreds of funded organisations continue to receive Commonwealth funding despite not meeting the principles and objectives of the DSA. It also means that people with disability that have been employed by these organisations have been working in conditions that are not comparable to other Australians.

Given that the employees with disability in sheltered employment are in the main vulnerable, powerless and inarticulate, the situation where there is a Law, a set of Principles and Objectives, a set of Standards, and a Department with a responsibility for the implementation of the Law, this continued situation is a matter of shame.

Working Solution

In 1995 the Commonwealth published "Working Solution", Report of the Strategic Review of the Commonwealth Disability Services Program. This report indicated that the Commonwealth had failed in its implementation of the DSA as intended by New Directions.

The report stated that the Program lacked a clear goal and set of objectives by which to evaluate the program and the performance of services in meeting outcomes.

The report stated that:

"To move from good intentions to good outcomes for people with a disability will require a paradigm shift by all groups. There is no coherent overall policy for disability services for all people with a significant disability, outcome commitments are lacking, performance measures relating to outcomes are meagre or non-existent, and an urgent need exists now to identify and to articulate desirable outcomes for all people with a disability." (p. 1)

Without the development of performance measures the program would not be able to meet the object of the Act. The Working Solution report recommended a "paradigm shift" .. where .. "The Focus will move from services to individuals, from process to outcomes and accountability to clients and the funder." (p. 1).

The Working Solution report correctly identified that the continual funding of services without any accountability to performance makes a mockery of the Disability Service Standards.

On the issue of employment conditions for employees with disability, Working Solution, recommended that:

"By June 1996, all DSP-funded services should be paying employees under an award or certified agreement and should be paying at least pro-rata award wages consistent with the principles of the Supported Wage System."

As one can easily conclude, it is more than five years and counting for the implementation of this recommendation.

Review of legislation administered by Department of Health and Family Services. Making Rights Count. Australian Law Reform Commission. Report No 79. 1996

This report states that only 19% of workers in sheltered workshops receive award-based wages and receive an average of \$49 a week. The ALRC's view was that:

"the pay and working conditions of people with a disability should be specifically protected in disability services legislation."

The Commission agreed with the Working Solution Report that all employment services should ensure that employees are paid under an award or certified agreement and should be paying at least pro-rata award wages consistent with the principles of the Supported Wage System.

Wages Working Group

The Commonwealth established a wages working group in late 1994 in response to the recommendation of the Working Solution Report. This group examined the issues regarding the implementation of pro-rata award based wages in Sheltered Workshops.

The commitment from this group was that there would be a national wage assessment tool established. This momentum was stopped by the change of government in 1996 and the then responsible Minister, the Hon. Judi Moylan, announced that there would not be a single national assessment tool and that each Sheltered Workshop could develop its own terms and conditions.

The result of that decision was to put back the rights of people with disability in Sheltered Workshops by at least another 5 years.

The Wages Group had examined the SWS with regard to its adoption in Business Services. Issues of concern relating to the adoption of the SWS in Business Services were then considered by DPI(A) (formerly representing people with disability). The position put by DPI(A) was that:

"DPI(A) acknowledge that there are some issues that need to be considered when transferring this assessment tool to the sheltered workshop environment. We stress, however, that all of these issues can be addressed."

The position was that the SWS was flexible enough to accommodate the transition of the SWS to the business service environment. It is the same conclusion that Caucus has come to again six year later.

The development of a pro-rata award wage assessment

National Employment Initiatives for People with Disability. Chris Ronalds. Commonwealth of Australia 1990

A major purpose of this report was to address the determination of appropriate wages for workers with more severe disabilities. This report was the beginning of the development of the Supported Wage System.

It should be noted that the Ronalds report was written with a strong coherency with the objects and intent of the DSA. In this respect Sheltered Workshops were expected to change to the range of nine service models being promoted by the DSA.

The report states that:

"People with disabilities must be given the opportunity to work in the general labour market with adequate support for a living wage. This in line with the objects, Principles and Objectives of the DSA to achieve integration of people with disabilities."

And that:

"It is recognised that some people with disabilities will not be able to work at the same level of skills or that level for the same periods as workers without disability."

The Ronalds Report canvasses the importance of the development of a productivity based wage system as "central to the issue of achieving increased integrated employment opportunities for some people with more severe disabilities."

An assessment of wage assessment systems in Sheltered Workshops concluded that: "All the formal systems are time consuming and cumbersome and deliver little to the worker in terms of the potential for substantially increasing their wage levels." (p. 41)

The Ronalds Report recommended the development of one comprehensive national wage assessment process within the industrial relations system that would replace any existing state or commonwealth system. (p. 51)

Development of a National Assessment Framework for a Supportive Wages System. Don Dunoon, Department of Industrial Relations

Following the Ronalds Report a Wages Committee was established by the Commonwealth to further the Ronalds recommendation for the development of wage fixing arrangements for people with disability.

The Dunoon Report 1992 report provided the genesis of principles of pro-rata wage assessment that would become the Supportive Wage System.

This report, like the Ronalds Report, has a strong coherence with the intent of the DSA. It considers the new direction of supported employment initiatives as opposed to Sheltered Workshops which are said to: "being encouraged to move through a transition process, ..." (p. 7).

Dunoon found that wage fixing in Sheltered Workshops had the following characteristics including:

- Determined by a variety of means
- Informal assessments to elaborate systems
- Some systems attempt to measure productivity against an able-bodied rate whereas others are determined against an ability to pay
- Wage determination is not covered by awards
- Wages are adjusted on basis of attitudes and general behaviour – this practice is subjective and reflects a conflict between the dual role
- Wages are very low

The focus of the development of a supportive wages system was to promote a wage assessment that would promote integration and be consistent within the industrial relations framework.

Dunoon states that the extension of the SWS to Sheltered Workshops raises a number of issues.

- That Sheltered workshops are not covered by Awards
- That the application of the SWS may create an incentive for people to stay in workshops
- That there is a need to define the employment relationship in workshops
- That there is a concern about the capacity of Workshops to pay wages

These concerns reflect the intent of the DSA to change the sheltered workshop model to the supported employment models which focused on greater integration and positive outcomes. The concerns also reflect the situation that many of these Workshops are unviable businesses that 'pretend' to be operating under regular business assumptions.

Current Government policy now legitimises Sheltered Workshops (Business Services) as a valid employment option despite the continuing reality that this model of service provides poor service and employment outcomes and non-compliance to the principles and objectives of the DSA

The Dunoon report also provides a good analysis of the interrelationship and use of the terms 'skills' and 'competencies'. It is worth revisiting this earlier work given the misinterpretation of competency within pro-rata wage assessment. Dunoon points out that

"many of the jobs performed by people with intellectual disabilities are entry level positions organized around a number of relatively routine and readily identifiable tasks with unambiguous outcomes

For higher order jobs, where the work is more fluid and concerned with processes than with "chunks" of activity, the term competencies is more appropriate. A competency is broader than a task and can be defined as a task, process or strategy that is part of what individual workers do in their jobs" (Field 1990:26)." (p. 35).

Dunoon goes on to say that the term "duties" may be used when referring to both tasks and competencies. The identification of tasks and competencies may be obtained in the relevant award or through observation or discussion with the worker and employer. Dunoon also states that the need to develop competencies regarding behaviour should be dealt with through training interventions rather than through wage fixing mechanisms.

The development of the SWS reflected this understanding of tasks, competency and duties. In this respect the SWS is an assessment that already takes into account the assessment of competency.

The Supported Wage System

The decision of the Full Bench of the Australian Industrial Relations Commission (1831/94 Print L5723 see Appendix 3) gave rise to a system of pro-rata award wage assessment to "**promote employment for people who cannot work at full award wages because of a disability**". This decision was the end result of over four years of work auspiced by the Commonwealth that resulted in a system of pro-rata award wage assessment that could safeguard against exploitation or discrimination.

The model clause like so many developments since the introduction of the DSA recognised the new direction of ensuring the rights of employees with disability. The model clause stated in relation to sheltered workshops that:

"The award does not apply to employers in respect of their facility, programme, undertaking service or the like which receives funding under the Disability Services Act 1986 and fulfills the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the Act, or if a part only has received recognition, that part."

The clause specifically provides coverage to sheltered workshops (Business Services). The clause anticipates that these organisations will be making the transition to meeting the Disability Services Act and thus the consumers/employees receiving employment assistance would be able to benefit from the SWS.

The problem of coverage with Business Services has nothing to do with the nature of the employment or the nature of the employees. It has everything to do with the fact that these organisations remain ineligible organisations due to their non-compliance with the principles and objectives of the DSA.

The recent review of the SWS found that the SWS:

"Promotes the participation of employers, employee and unions equally and has at its core, values of integrity and transparency in decision making."

The report also concludes that:

"Radical reform is not required, rather a considered approach that will ensure that the SWS can remain relevant, responsive and flexible in a changing and dynamic environment."

Caucus would concur with this statement, as it is a system which at its 'heart' provides employees with disability a sense of fairness in wage assessment and protection against exploitation.

Recommendation 3 of the Review states:

"That FaCS modify the guidelines and associated mechanisms of the SWS to enable its adoption in Section 13 Business Services".

Again Caucus concurs with this recommendation as we believe that it is absolutely vital that the thousands of employees currently exploited in sheltered workshops should have access to the SWS so that they can benefit from the fairness and protection that is extended to other employees with disability in the open labour market. We do emphasise, however, that the modification to the guidelines and associated mechanisms of the SWS needs to be carefully considered so that the principles and characteristics of the SWS are maintained.

Current Government Reforms

The initiatives of the current Government provide an opportunity to address ongoing non-compliance of funded employment services. Unfortunately, the current trend is not to tackle these serious issues of non-compliance to the DSA and the current exploitation of people with disabilities in Sheltered Workshops (Business Services).

Funding

The Case Based Funding Trial is a welcomed funding reform. It was a struggle to get acknowledgement from the Commonwealth to ensure that positive outcomes should be central to the funding reform process. Caucus had to take out a complaint to the Human Rights and Equal Opportunity Commission (HREOC) to ensure that the funded outcome reflected the right of people with disability to an award based wage.

Following conciliation, the then Minister for Family Services, The Hon Senator Jocelyn Newman, agreed that award-based wages should be a component of the funded outcome for the employment program.

While this renewed the hope of people with disability, the Sheltered Workshop industry has, with a mean spirit, pursued every industrial loophole available to legitimise poor wage outcomes. This is the extent to which the industry will go to maintain eligibility to Commonwealth funding without actually meeting the intent and spirit of the DSA and continue the exploitation of workers with disability in Workshops.

The current trend is the preparation of enterprise agreements with groups of employees with intellectual disability who do not have the ability to understand or negotiate workplace agreements on an equal footing with employers. In short, employees with disability are put in a position of powerlessness to negotiate change.

The result is that the industrial relations process is legitimising enterprise agreements that contain wage assessments that are designed to maintain low wages. The AIRC is largely unconscious to the fact that the employees have the same rights as other Australians and are largely swayed by misguided pity and good intentions.

What this means is that the funding reform will not address the standards non-compliance with the DSA.

Standards

Caucus has welcomed the initiative of the Commonwealth to develop a new quality assurance system to ensure that all services meet the principles and objectives of the DSA.

Caucus representatives have tried to provide through the development of Key Performance Indicators protection for employees with disability against exploitation.

Caucus has proposed that wages should be award based and that pro-rata award based wages should be determined by the SWS.

This position recognises that the SWS is the only valid, reliable and independent system of pro-rata wage assessment available. It is a **good** system that has been acknowledged by the Report of its Review that recommended its extension to Business Services.

The system is applicable to services that are either section 10 or 12a under the DSA. The intention of the QA reform is that we will have simply one section that reflects conformity with the DSA. In this respect all services will be eligible to use the SWS.

The proposed key performance indicators of the QA system, however, will not provide positive outcomes for people with disability. It will not address the 15 years of Standards and DSA non-compliance by Sheltered Workshops (Business Services).

Conclusion

People with disability have a Law with a set of objects, principles and objectives, and Standards that uphold their citizenship and equality as Australians.

We should be able to say that people with disability are supported into employment where the business is viable. We cannot!

We should be able to say that employees with disability are provided with protection against exploitation in employment. We cannot!

We should be able to say that Commonwealth employment assistance funding is only provided to services that achieve positive outcomes. We cannot!

We should be able to say that Commonwealth employment assistance funding result in people with disabilities enjoying the benefits of paid employment. We cannot!

We should be able to say that we do not fund services that simply place people with disability in segregate and congregate employment settings. We cannot!

It has been fifteen years since the enactment of the Disability Services Act yet we have not been able to ensure that government funding and policy is driven by positive consumer outcomes.

Caucus representatives have indicated to FaCS and Government that the current reform process will not address the issue of non-compliance to the Standards and the DSA. Many thousands of employees with disability continue to be subject to employment conditions that maintain the "old direction" before the enactment of the DSA 1986.

Following fifteen years of non-compliance many thousands of employees with disability receive services from organisations that do not meet the DSA, receive employment conditions NOT comparable to people without disability, and are rendered powerless under the industrial relations framework through unscrupulous enterprise agreements.

Like so many reports and recommendations have said before, it is imperative that these employees are provided with quality support, fair employment conditions, and positive employment outcomes.

Appendix 4:

Excerpt from the Disability Services Act 1986 - Objects

3 Objects

- (1) The objects of this Act are:
 - (a) to replace provisions of the *Handicapped Persons Assistance Act 1974*, and of Part VIII of the *Social Security Act 1947*, with provisions that are more flexible and more responsive to the needs and aspirations of persons with disabilities;
 - (b) to assist persons with disabilities to receive services necessary to enable them to work towards full participation as members of the community;
 - (c) to promote services provided to persons with disabilities that:
 - (i) assist persons with disabilities to integrate in the community, and complement services available generally to persons in the community;
 - (ii) assist persons with disabilities to achieve positive outcomes, such as increased independence, employment opportunities and integration in the community; and
 - (iii) are provided in ways that promote in the community a positive image of persons with disabilities and enhance their self-esteem;
 - (d) to ensure that the outcomes achieved by persons with disabilities by the provision of services for them are taken into account in the granting of financial assistance for the provision of such services;
 - (e) to encourage innovation in the provision of services for persons with disabilities; and
 - (f) to assist in achieving positive outcomes, such as increased independence, employment opportunities and integration in the community, for persons with disabilities who are of working age by the provision of comprehensive rehabilitation services.
- (2) In construing the objects and in administering this Act, due regard must be had to:
 - (a) the limited resources available to provide services and programs under this Act; and
 - (b) the need to consider equity and merit in accessing those resources.

Appendix 5:

Principles And Objectives Of The Disability Services Act 1986

SCHEDULE

COMMONWEALTH OF AUSTRALIA GAZETTE

No.S 118. Tuesday, 9 June 1987

Preliminary

1. In this Schedule, unless the contrary intention appears --

“**advocate**” means a person who assists --

- (a) people with disabilities; or
- (b) the families of people with disabilities, to represent their interests;

“**programs**” means programs for people with disabilities administered by the Commonwealth pursuant to the *Disability Services Act 1986* (the Act); and

“**services**” means services provided to people with disabilities and includes rehabilitation programs provided under Part III of the Act.

Principles

2. (1) People with disabilities are individuals who have the inherent right to respect for their human worth and dignity.

(2) People with disabilities, whatever the origin, nature, type, and degree of disability, have the same basic human rights as other members of Australian society.

(3) People with disabilities have the same rights as other members of Australian society to realise their individual capacities for physical, social, emotional and intellectual development.

(4) People with disabilities have the same right as other members of Australian society to services which will support their attaining a reasonable quality of life.

(5) People with disabilities have the same right as other members of Australian society to participate in the decisions which affect their lives.

(6) People with disabilities receiving services have the same right as other members of Australian society to receive those services in a manner which results in the least restriction of their rights and opportunities.

(7) People with disabilities have the same right of pursuit of any grievance in relation to services as have other members of Australian society.

Objectives

3. (1) Services should have as their focus the achievement of positive outcomes for people with disabilities, such as increased independence, employment opportunities and integration into the community.

(2) Services should contribute to ensuring that the conditions of the every-day life of people with disabilities are the same as, or as close as possible to, norms and patterns which are valued in the general community.

- (3) Services should be provided as part of local co-ordinated service systems and be integrated with services generally available to members of the community, wherever possible.
- (4) Services should be tailored to meet the individual needs, and goals of the people with disabilities receiving those services.
- (5) Programs and services should be designed and administered so as to meet the needs of people with disabilities who experience a double disadvantage as a result of their sex, ethnic origin, or Aboriginality.
- (6) Programs and services should be designed and administered so as to promote recognition of the competence of, and enhance the image of, people with disabilities.
- (7) Programs and services should be designed and administered so as to promote the participation of people with disabilities in the life of the local community through maximum physical and social integration in that community.
- (8) Programs and services should be designed and administered so as to ensure that no single organisation providing services shall exercise control over all or most aspects of the life of a person with disabilities.
- (9) Organisations providing services, whether those services are provided specifically to people with disabilities or generally to members of the community, should be accountable to those people with disabilities who use their services, the advocates of such people, the Commonwealth and the community generally for the provision of information from which the quality of their services can be judged.
- (10) Programs and services should be designed and administered so as to provide opportunities for people with disabilities to reach goals and enjoy lifestyles which are valued by the community generally and are appropriate to their chronological age.
- (11) Services should be designed and administered so as to ensure that people with disabilities have access to advocacy support where necessary to ensure adequate participation in decision-making about the services they receive.
- (12) Programs and services should be designed and administered so as to ensure that appropriate avenues exist for people with disabilities to raise and have resolved any grievances about services.
- (13) Services should be designed and administered so as to provide people with disabilities with, and encourage them to make use of, avenues for participating in the planning and operation of services which they receive and the Commonwealth and organisations should provide opportunities for consultation in relation to the development of major policy and program changes.
- (14) Programs and services should be designed and administered so as to respect the rights of people with disabilities to privacy and confidentiality.

Appendix 6: SWS Model Clause

1831/94 Print L5723

Dec 1831/94 S Print L5723

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1988
s.113 application for variation

Australian Council of Trade Unions

and

Australian Chamber of Commerce and Industry
(C Nos 31484, 31485, 31486, 31487, 31488, 31489, 31490, 31491 of 1994)

and

Public Sector, Professional, Scientific Research, Technical, Communications,
Aviation and Broadcasting Union

and

Minister for Industrial Relations
(C No. 31494 of 1994)

SADDLERY, LEATHER, CANVAS AND PLASTIC MATERIAL WORKERS AWARD 1985

(ODN C No. 03936 of 1985)
[Print G0692 [S0001]]

HOTELS, MOTELS, WINE SALOONS, CATERING, ACCOMMODATION, CLUBS AND CASINO EMPLOYEES (NORTHERN TERRITORY) CONSOLIDATED AWARD 1986

(ODN C No. 03276 of 1979)
[Print G6935 [H0021]]

COMMUNITY CARE SERVICES (A.C.T.) AWARD, 1987 (ODN C No. 03951 of 1984) [Print G6635 [C0196]]

CSR WOODPANELS AWARD 1990
(ODN C No. 01065 of 1982)
[Print J2368 [C0275]]

TIMBER INDUSTRY AWARD 1990
(ODN C No. 00031 of 1950)
[Print J2380 [T0028]]

RETAIL AND WHOLESALE SHOP EMPLOYEES (AUSTRALIAN CAPITAL
TERRITORY) AWARD 1983
(ODN C No. 03078 of 1982)
[Print J5408 [R0017]]

GENERAL CLERKS (NORTHERN TERRITORY) CONSOLIDATED
AWARD 1985
(ODN C No. 01286 of 1980)
[Print G0198 [G0019]]

BRISBANE CITY COUNCIL SALARIED STAFF AWARD 1992
(ODN C No. 36257 of 1989)
[Print K2160 [B0056]]

ADMINISTRATIVE AND CLERICAL OFFICERS' (AUSTRALIAN
PUBLIC
SERVICE) SALARIES AWARD 1986
(ODN C No. 07114 of 1986)
[Print G3598 [A0324]]

Various employees

Various industries

PRESIDENT O'CONNOR
VICE PRESIDENT McINTYRE
COMMISSIONER GAY

MELBOURNE, 10 OCTOBER 1994

Wage rates - supported wage system - disabled employee - joint application for a supported wage system - facilitates employment of workers with disability in open employment at a rate of pay commensurate with employee's assessed productive capacity - model clause defines conditions applying to such employees - awards varied.

DECISION

These matters came before the Commission as a result of joint applications under section 113 of the Industrial Relations Act 1988 (the Act) by the ACTU (acting on behalf of the relevant unions) and employers to vary the above awards by consent to include a model clause (annexured to this decision) which makes provision for the operation of the "Supported Wage System". The matters were heard by the Commission on 20 July 1994, when joint submissions were presented by the ACTU, employers and Commonwealth Government in support of the applications. The Governments of New South Wales, Queensland, Tasmania and the Australian Capital Territory also appeared to express their support.

The "Supported Wage System" facilitates the employment of workers with disabilities in open employment at a rate of pay commensurate with the employee's assessed productive capacity. The system is an important social and industrial advance.

The model clause, referred to above, defines the conditions to apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of the clause. The clause among other things:

specifies the applicable percentages of minimum award rate of pay payable to an employee having regard to the employee's capacity;

provides for the assessment of an employee's productive capacity and its documentation in an assessment instrument;

requires the lodgment with the Registrar of all assessment instruments, including the appropriate percentage of the award to be paid to the employee; and

provides that, where an assessment has been made, the applicable percentages are to apply to the wage rate only and that employees will be entitled to the same terms and conditions of employment as all other workers covered by the award paid on a pro rata basis.

The model clause constitutes part only of the "Supported Wage System". Other parts of the system include a disability wage supplement paid through the social security system and other forms of support, such as on-the-job support and financial support for employers with respect to some of the additional costs of employing a person with a disability.

Where, in the awards before us, the model clause replaces an existing "slow" or "infirm" workers clause, it is agreed that a savings provision be added to the model clause to enable persons employed under the "slow" or "infirm" workers clause to continue to be paid under that clause as if the model clause had not been inserted in the award.

At the conclusion of proceedings on 20 July the Commission indicated that it intended to grant the applications to insert the model clause into the awards before it.

The Commission is satisfied that there is a jurisdictional basis for the proposed variations to each award and that the model clause is consistent with ILO conventions, the Disability Discrimination Act 1992, the Disability Service Act 1986, the objects of the Act and the Commission's own wage fixing principles. The Commission is also satisfied that the proposed model clause contains appropriate safeguards to ensure that the wages paid are equitable and that workers with disabilities are not exploited.

The Commission is conscious of the fact that the consent applications before it are an historic initiative which has attracted unanimous support from all the parties involved, and has been the result of extensive consultative processes. The model

clause is, as the parties submitted, facilitative only; i.e. it will not be sufficient in itself to promote greater employment opportunities for people with disabilities. The clause, to be effective, requires a commitment by the industrial parties to make use of the award provisions. We confidently expect that this commitment will be forthcoming and that the model clause will be implemented in workplaces to assist those people with disabilities who may have previously found it difficult or impossible to compete for jobs in the open labour market. We hope that other awards of the Commission will be varied to include the model clause and that the parties to those awards will implement its provisions. The Commission congratulates the parties on their co-operation and considerable efforts in developing the "Supported Wage System" which, we hope, will encourage industry to employ workers with disabilities and assist the integration of disabled workers into the general workforce.

We publish separately orders varying each of the awards before us. These orders will come into force from the first pay period to commence on or after 20 July 1994 and will remain in force for a period of six months.

Appearances:

M. Ferguson with D. Whelan and J. Collins for the Australian Council of Trade Unions.

I. Spicer with R. Hamilton for the Australian Chamber of Commerce and Industry.

P. Core with P. Drever for the Minister for Industrial Relations for the Commonwealth.

J. Johnston for Her Majesty the Queen in right of the State of Queensland (intervening).

M. Trenerry for Her Majesty the Queen in right of the State of New South Wales (intervening).

J. Woodrow for the Government of the Australian Capital Territory (intervening).

L. Lawrence for Her Majesty the Queen in right of the State of Tasmania (intervening).

Hearing details:

1994.

Melbourne:

July 20.

ANNEXURE - MODEL CLAUSE

1 WORKERS ELIGIBLE FOR A SUPPORTED WAGE

(a) This clause defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this agreement/award. In the context of this clause, the following definitions will apply:

(i) "Supported Wage System" means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability, as documented in "[Supported Wage System: Guidelines and Assessment Process]".

(ii) "Accredited Assessor" means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.

(iii) "Disability Support Pension" means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.

(iv) "Assessment instrument" means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

Eligibility criteria

(b) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this agreement/award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.

(The clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this agreement/award relating to the rehabilitation of employees who are injured in the course of their current employment).

The award does not apply to employers in respect of their facility, programme, undertaking service or the like which receives funding under the Disability Services Act 1986 and fulfills the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the Act, or if a part only has received recognition, that part.

Supported wage rates

(c) Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this award/agreement for the class of work which the person is performing according the following schedule:

Assessed capacity	% of prescribed award rate	(sub-clause (d))
10%*	10%	
20%	20%	
30%	30%	
40%	40%	
50%	50%	
60%	60%	
70%	70%	
80%	80%	
90%	90%	

(Provided that the minimum amount payable shall be not less than \$45 per week).

* Where a person's assessed capacity is 10%, they shall receive a high degree of assistance and support.

Assessment of capacity

(d) For the purpose of establishing the percentage of the award rate to be paid to an employee under this award/agreement, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:

- (i) the employer and a union party to the award/agreement, in consultation with the employee or, if desired by any of these;
- (ii) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.

Lodgment of assessment instrument

(e) (i) All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Industrial Relations Commission.

(ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award/agreement, is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within 10 working days.

Review of assessment

(f) The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

Other terms and conditions of employment

(g) Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the provisions of the clause will be entitled to the same terms and conditions of employment as all other workers covered by this award/agreement paid on a pro rata basis.

Workplace adjustment

(h) An employer wishing to employ a person under the provisions of this clause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

Trial period

(i) (i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.

(ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.

(iii) The minimum amount payable to the employee during the trial period shall be no less than \$45 per week.

[or in paid rates awards]

(iii) The amount payable to the employee during the trial period shall be \$45 per week or such greater amount as is agreed from time to time between the parties (taking into account the Department of Social Security income test free area for earnings) and inserted into this Award.

(iv) Work trials should include induction or training as appropriate to the job being trialled.

(v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause (c) hereof.

Appendix 7: Excerpts from the Review of the SWS

"Key findings

The SWS promotes the participation of employers, employees and unions equally and has at its core, values of integrity and transparency in decision-making. These values have ensured the system's continuing appropriateness within the broad workplace relations and employment environment.

A core strength of the SWS is its capacity to assist people with disabilities gain and maintain employment within an industrial framework consistent with the requirements of the Disability Discrimination Act 1992(*Commonwealth*).

The opportunities that SWS provides by enabling access to employment for people with disabilities through the use of productivity-based wages is recognised by all stakeholder groups. All commented that it provides an opportunity for employment for people with disabilities that would not otherwise exist. Stakeholders also view the SWS as the preferred industrial mechanism for the determination of productivity based wages.

Yet even with such support there are a number of opportunities to further improve and refine the operation of SWS."

Recommendation 1: That FaCS develop clear and quantifiable performance indicators by which the 'success' of SWS can be assessed. Such measures should account for:

- differing forms of employment e.g., full and part time employment, use in Business Services;
- differing nature of work e.g., process work, service industry work, knowledge based work;
- the level of independence expected of employees (people with disabilities) on the job;
- the nature of an individual's disability; and
- the duration of the employment.
- In determining suitable performance indicators for SWS it will be important that there is regard for the Government's broader welfare reform agenda as well as the reform strategy currently underway within the specialised disability employment arena.

Recommendation 3: That FaCS modify the guidelines and associated mechanisms of the SWS to enable its adoption in Section 13 Business Services.

Recommendation 4: That FaCS in response to the program objectives and performance indicators developed in Recommendation 1, develop/refine the guidelines for SWS:

- for people with high support needs, people who are frail and people with episodic disabilities e.g., people with psychiatric disability. In particular, the main issues that need to be considered are:
 - the appropriateness of SWS as a mechanism in securing and maintaining employment; and
 - a method for assessing productive capacity in relation to changing needs and capacities.
- its suitability as a mechanism for securing work experience for people with disabilities;
- in employment settings other than in areas of unskilled labour. In particular, consideration needs to be given where:
 - work tasks are flexible and varied; and
 - where there is a heavy reliance on knowledge based work;
- with various workplace relations mechanisms e.g., AWAs, certified agreements;
- minimum wage rates for full and part time work; and
- in Business Services.

Recommendation 20: That FaCS develop a comprehensive marketing strategy supported by appropriately targeted information products that is aimed at increasing the awareness of SWS and the benefits it can provide for people with disabilities seeking employment. Such a strategy should at a minimum be targeted at:

- people with disabilities through the Centrelink networks; and
- the employment assistance agency networks including intensive assistance Job Network services, open employment services and Business Services.

"The SWS assessment process is seen to have relevance and application within Business Services while other elements of the system are seen to require modification¹ before they could be applied within such a setting."

"It is seen that consideration should now be given to the potential application of the existing or a modified version of SWS for Business Services."

¹ The minimum wage rate, the means by which productivity links to an appropriate wage rate especially for those with a low productive capacity.