

The Development of a Wage Assessment Tool for Business Services

By the time this special issue of Access has circulated, the Department of Family and Community Services will most likely have contracted a consultancy to develop a wage assessment tool for Business Services.

This is not a new policy objective. One of the recommendations of the 1985 “*New Directions*” *Report of the Handicapped Programs Review* (that resulted in the Disability Services Act 1986) was the establishment of a “productivity based minimum wage for people working in long term supported employment on a pro-rata basis keyed to prevailing able bodied rates for that industry”.

It has been a long and circuitous route for this objective to re-surface as a possible reality. It’s re-appearance raises a number of interesting questions. Why now? What caused the big delay? What terms of reference have DFACS set? What are the major hurdles, the contentious issues, that have to be cleared or sorted before an acceptable wage assessment tool is rolled out and operational?

The Background

The 1985 recommendation about an all-inclusive wage assessment process was buried not to be resurrected until ten years later by the Baume Report. The influential 1990 Ronalds Report, though highlighting many shortcomings of traditional sheltered workshops, had focused on the development of a wage assessment process applicable to the mainstream labour market.

Reasons as to why the focus narrowed down to open employment can be found in subsequent policy developments: it became apparent that the official 5 year transition period for sheltered workshops to meet the principles and objectives of the DSA would not be achieved by the majority of change-resistant services; and the Department in 1990 funded the National Technical Advisory Unit to assist them to reform their business and employment practices. By 1992 the Government, bowing to ACROD’s constant lobbying, had amended the legislation to extend this transition period indefinitely.

The 1992 Dunoon Report (that directly spawned the Supported Wages System by 1994/1995) made no secret of why the possible extension of the SWS to supported employment services was wrought with difficulties: the absence of award coverage to establish performance benchmarks, a lack of clarity about the legal employment status of sheltered employees, an alleged inability to pay award-based wages and risks of closure.

The Baume Report had the courage to remind the ALP Government of its original social justice disability reform objectives by forcefully arguing that “no valid reason has been presented...as to why *all* services should not pay at least pro-rata award rates to *all* employees” and recommending a series of actions: by August 1995 an “assessment tool for productivity” validated, and by June 1996 all assessments completed with “all DSP

funded services paying employees under an award or certified agreement...at least pro-rata wages consistent with the principles of the SWS.”

In a May 1995 speech the Minister, Carmen Lawrence, endorsed these recommendations as part of the Government’s acceptance of the need for a “new consumer oriented outcomes focused Disability Services Program” with the main “goal of helping people with a disability to get valued jobs at fair wages”, and announced the provision of \$1.5 million per year to finance the introduction of award based productivity wages in Business Services. Timelines however were altered: the desired date for implementation became July 1997 with a maximum deadline of 1999 in recognition of the “magnitude of this task”. Then a comprehensive discussion paper was released by the Department in June 1995 outlining the policy environment, some underlying principles, a framework for the development of an “objective, practical and cost-effective” assessment process, a range of issues for consideration, and a consultative process.

So what happened? There was an election, ACROD got into lobbying mode again and the new Coalition government dropped the whole issue of a single national assessment tool and announced that each Sheltered Workshop could develop its own terms and conditions.

The 2002 Tender

Six years on the same Coalition Government has turned full circle and development of wage assessment tool for Business Services is back on the agenda. Why?

The Statement of Requirement for the DFACS tender indicates that this project comes under its Award Based Wages Strategy which “aims to assist Business Services...to reduce barriers to introducing award based wages as part of the wider reform agenda for disability employment services” and is therefore “critically linked to funding, quality reforms and the viability of Business Services”. This strategy itself is the direct result of a major Business Services Review which very clearly emphasized the core role of business service providers as employers with obligations to provide fair working conditions.

DFACS, under this same Strategy, had earlier commissioned Health Outcomes International to research the types of wage assessment tools currently in use and prepare a handbook rating the various tools. The resulting discussion paper and handbook concluded that it was impossible to recommend one specific current tool as meeting “best practice” standards and argued the need for a new wage assessment mechanism. Interestingly this was contrary to the recommendations of another funded consultancy that undertook the first major evaluation of the Supported Wages System during 1999/2000: “the SWS assessment process is seen to have relevance and application within business services while other elements are seen to require modification”. The SWS Evaluation Report argued that “radical reform” was unwarranted; that only some policy, administrative and procedural fine-tuning and increased promotion was needed; that the SWS had succeeded in its primary aim of enabling the increased workforce participation of people with more significant disabilities in an IR framework consistent

with disability discrimination legislation; and that it was viewed favourably by most stakeholders as “the preferable industrial mechanism for the determination of productivity-based wages”.

The DFACS Tender has requested the consultant to not only consultatively develop an assessment tool but also an underlying set of principles, new assessor guidelines, and an accredited wage assessor training package.

The Tender document also lists a number of factors that the consultants must consider. Factors like an ability to cater for diverse disabilities and account for underlying relevant employment competencies; an applicability to a wide range of jobs and industries; compliance with relevant legislation and the new QA standards; relevance to skill pathways in an award classification structure and consistency with any award; recognition of consumer privacy and assessment review rights; cost-effectiveness (including a streamlined review process); an assessment process simply explicable to all potential users; a development strategy involving consultation with all stakeholders; and the capacity to determine an equitable pro-rata wage uninfluenced by employer “capacity to pay” or “viability” concerns. Naturally the consultant is also advised to look at adaptable elements of the existing Supported Wage Assessment Tool.

It remains to be seen who gets the consultancy and what they come up with for a maximum of \$350,000 in the very tight timeframe of 7 months (April-November 2002). In the meantime it is worth canvassing the potentially more controversial aspects of this Tender brief:

Should there be one prescribed wage assessment tool or a broad framework of principles? Should a new Business Services wage assessment process eventually replace the Supported Wages System and apply to jobs in the mainstream labour market?

The ACTU and the National Caucus of Disability Consumer Organisations are in favour of one national system and “one set of wage-fixing principles” across all service types. In the context of a unitary funding and quality assurance system being introduced by December 2004, this would seem logical. Both peak bodies have argued that it should be a revised SWS, with Caucus claiming that “the development of another wage assessment system...will only serve to delay the already overdue receipt of rights to this exploited group of people”. ACROD not surprisingly have disagreed, arguing against the mandatory use of a single assessment tool in favour of a framework of principles that would allow each Business Service to develop and use their own assessment processes as long as they met the requirements of Disability Standard 9.

Should it be a productivity-based assessment process or a hybrid one that also includes competency-based performance evaluation? Should there be a minimum wage payable?

ACROD have championed the hybrid model (particularly the Greenacres Competency Wage Assessment tool) arguing the need for a more full-proof assessment system that gives a real and accurate picture of employee performance. They are strongly opposed to

any minimum wage as a possible deterrent to employment for high support needs consumers with low productivity. The ACTU and Caucus, on the other hand, doubt the need for a hybrid model and seek to dispel some persistent misconceptions about competency-based worker assessments. Both also support mandatory minimum rates (currently ranging from \$45-53 per week). The ACTU have expressed concerns about the adoption of the “two criteria of competency and productiveness”; concerns related to the routine entry-level nature of most business service employment, the resources needed to implement such a system, and common employer doubts that capabilities rather than actual performance should determine wage levels. They would however consider including some generic competencies (such as the ability to learn, to take and follow instructions, to use tools and equipment, or to understand overall product/service processes) but only to the extent that they have a role in determining at what work level an individual could be placed; the matter of actual remuneration should be related to the person’s productivity within that job classification. Caucus argues along the same lines, but takes further in claiming that the SWS “already takes into account the assessment of competency” through the process of job analysis and of negotiating an assessment methodology with the employer, agency and employee that assessors currently use to identify tasks/competencies/duties prior to setting comparative performance standards and undertaking an assessment. Caucus also support the argument that competencies regarding behaviour (like punctuality or attitudes to work or supervisors) should be dealt with through staff training or counseling interventions, not wage-fixing mechanisms.

Will the consultants recommend the mandatory use of independent external wage assessors?

I would hope so as “objectivity” and the removal of bias or conflicts of interest are essential to the credibility of any wage assessment process. The ACTU and Caucus argue this line, while ACROD attempt to justify the use of internal qualified assessors on the basis of cost-effectiveness and the probable unavailability of sufficient numbers of external accredited assessors.

How will the tool be activated –through legislation or the award system?

There are ongoing problems with industrial access to the SWS associated with the non-inclusion of the SWS model clause in some Awards, Minimum Wage Orders or Certified Agreements (alleviated only by the often unacceptable or time-consuming negotiation of an AWA or the laborious application for s.509 certificates of exemption in Victoria). So an inclusive access mechanism is badly needed. This could involve enabling legislation that did not necessitate further clause insertion in awards or agreements. Or a Business Services National Award that improved the current LHMWU Supported Employment (Business Enterprise) Award. Though if a unitary system covering open and supported employment environments eventuates then a national Supported Wages Award (akin to the National Training Wages Award) may be a better option, perhaps with Business Services expected to become respondents to relevant generic awards.

Should Standard 9 (Employment Conditions) be re-written to include the new tool as well as the existing Supported Wage System and the “Guide to Good Practice Wage Determination” in the KPIs?

The reason the Disability Employment Services QA Amendment Bill was held up before Christmas and shunted off to a Senate Committee to seek community submissions and further debate was primarily a disagreement between ACROD and consumer representatives about the content and wording of two standards, including Standard 9. One bone of contention was the inclusion of the SWS as the wage assessment tool for all funded consumers. The Bill has been re-introduced into Parliament with an unchanged Standard 9 and a KPI outlining that any “pro rata wage must be determined through a transparent tool or process, such as the SWS, or tools that comply with the criteria referred to in the *Guide for Good Practice Wage Determination* including: compliance with relevant legislation; validity; reliability; wage outcomes; and practical application of the tool”. Consumer advocates continue to argue this to be totally inadequate: the previous “good practice” of Business Services has by and large not led to fair wage outcomes. Furthermore it is not clear, if a new-fangled wage assessment tool is developed to the satisfaction of all parties, whether the Government will prescribe its use by inclusion in a revised Standard 9.

Is the whole project just part of an ongoing ACROD/DFACS procrastination strategy given that the official DFACS Evaluation report strongly recommended that the Supported Wages System, with a few refinements, should be introduced into Business Services?

Well, some would claim this.

Conclusions

Indeed sceptics might argue that the whole tender process is unnecessary - the SWS system could be easily adapted for Business Services at considerable less expense); the result of ACROD’s self-interested lobbying, an NCID discrimination complaint alleging the Department’s support for ongoing wage exploitation by funded service providers, and possibly the need to buy time to get Cabinet to approve the \$10-20 million that will be necessary to make it all happen. Some might also wish to point out the failure of another Awards Based Wages strategy (training for service providers and their staff on enterprise bargaining) as a relevant factor driving this new Tender in the wake of an increasing number of advocate challenges to Business Service Certified Agreements that are attempting (and in some cases succeeding) to legitimise low wages calculated either on straight capacity-to-pay flat rates or through elaborate confusing internal wage assessment tools and are pushed through the Commission on the basis of spurious public interest arguments. Caucus has made its position against ongoing “non-compliance” very clear: a revised SWS could and should be easily introduced into Business Services.

Others might be more generous (and overlook potential Standard 9 loopholes) in suggesting that this time the Government are for real and agencies that do not get the

ticks of standard compliance regarding fair wages and a transparent assessment mechanism will be defunded under the new DFACS QA system come December 2004.

But perhaps “the payment of wages based on an individual’s assessed productive capacity” is not, as the Department has often suggested otherwise, such a major compliance challenge. Maybe it is as simple as one CEO, Ian Thompson from Aware Industries, has recently declared:

“The issue of fair wages is not a complicated problem. It needs resolve and commitment rather than great intellectual effort. The Supported Wages System or a similar pro-rata wage determination can easily be applied to Business Services. Indeed there are Business Services where this has been in place for a considerable time. The argument that Business Services cannot afford to pay pro-rata wages is fallacious. So long as worker output is properly assessed, unit labour costs in Business Services are the same as in any other business.....Support costs for Business Services are met by government grants, so they are able to pay pro-rata wages and still compete with other businesses. Services that argue otherwise are either in bad businesses or are badly managed” (Letter to Editor, Access, Feb/March 2002)

A detailed list of References is available from the author (macfarlanerob@hotmail.com) on request