

**RESPONSE TO THE DEPARTMENT OF
SOCIAL SERVICES DISCUSSION PAPER:**

**“NEXT STEPS IN SUPPORTED
EMPLOYMENT: CONSULTATION ON THE
WAY FORWARD”**

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Australian Business Industrial

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1. INTRODUCTION

- 1.1 In March 2025, the Department of Social Services (**DSS**) published a Discussion Paper entitled: “*Next steps in Supported Employment: consultation on the way forward*” (**the Discussion Paper**).
- 1.2 The Discussion Paper seek views on the Government’s response to recommendations related to supported employment. Specifically, recommendations 7.30, 7.31 and 7.32 (collectively, **the recommendations**) in the Royal Commission into *Violence, Abuse, Neglect and Exploitation of People with Disability*.
- 1.3 The purpose of this submission is to rebut three propositions that arise from the recommendations:
- (a) **Proposition 1:** employers operating in the supported employment sector provide substandard employment conditions to persons with disabilities.
 - (b) **Proposition 2:** open employment is the only optimal form of employment for persons with disabilities.
 - (c) **Proposition 3:** maintaining supported employment under the *Supported Employment Services Award 2010 (SES Award)* is inconsistent with the Government’s commitment to the United Nations’ *Convention on the Rights of Persons with Disabilities (CRPD)*.¹
- 1.4 This submission consists of three parts:
- (a) **Part I:** Supported Employment is not a Lesser form of Employment.
 - (b) **Part II:** The Positive Impact of Supported Employment.
 - (c) **Part III:** A Way Forward: Maintaining Supported Employment.
- 1.5 This submission focuses on employers and employees covered by the SES Award.
- 1.6 Each of the positions advanced in this paper is supported by findings made by a Full Bench of the Fair Work Commission (**the Full Bench**) in the 4-yearly Review of the SES Award: 4 *yearly review of modern awards—Supported Employment Services Award 2010 (AM2014/286)* [2019] FWCFB 8179 (**the Decision**) and supplementary decisions [2022] FWCFB 203 and [2022] FWCFB 245.

¹ *Convention of the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008).

- 1.7 The Decision and supplementary decisions represent the culmination of seven years of intense and targeted enquiry by the Fair Work Commission (**FWC**) into the work performed in Australian Disability Enterprises (**ADEs**) and the conditions of that work.
- 1.8 The FWC heard extensive evidence over this period from industrial and non-industrial parties, the latter including family representative groups and advocacy groups.

2. PART I: SUPPORTED EMPLOYMENT IS NOT A LESSER FORM OF EMPLOYMENT

- 2.1 Supported employment is not the same as open employment. The Full Bench in the Decision described the nature of employment in the supported employment sector as “*markedly different*” than in the general labour market.² Neither statement supports a conclusion that employment covered by the SES Award is a *lesser* form of employment compared to open employment.
- 2.2 The Full Bench acknowledged that undisputed difference in the Decision with a view to highlight the unique benefits provided by supported employment to employees with disabilities.
- 2.3 Unlike businesses in the general labour market:
- (a) The purpose of ADEs is “*to provide employment opportunities for disabled persons who have restricted work capacity, typically on a not-for-profit basis. Accordingly, they **seek only those business opportunities which will generate jobs capable of being filled by disabled persons**, which necessarily limits the types of commercial activity they can engage in*”,³
 - (b) ADEs “*create or tailor jobs in such a way that they are capable of being performed by a particular person with a particular disability or by persons with a class of disability*”. This may mean, for example, “*that a set of work functions which is capable of being performed as a single job by a single person not relevantly affected by disability is broken up into a number of discrete tasks, each of which will be made into a separate job that aligns with the work capacities of a particular disabled person*”,⁴ and
 - (c) ADEs “***do not** arrange their workforces simply on the basis of a job structure that will allow the necessary work to be performed in the most productive and efficient fashion, and then recruit persons to fill those jobs*”.⁵
- 2.4 The Full Bench made further observations:
- (a) in the supported employment sector, the disabled employee’s restricted work capacity effectively dictates the nature of the job in which the employer may employ

² 4 yearly review of modern awards—Supported Employment Services Award 2010 (AM2014/286) [2019] FWCFB 8179 at [247]

³ Ibid at [247]-[248].

⁴ Ibid.

⁵ Ibid.

them. Such that the disabled person may not perform the “*whole job*” which the relevantly non-disabled person is capable of performing, notwithstanding that the duties performed by the disabled person may constitute part of those that might be performed by the relevantly non-disabled person;⁶ and

- (b) “[t]his is not the normal case of the employer requiring the employee to perform only a very confined task because the employer considers this to be the most efficient way to conduct its business”.⁷

2.5 The Full Bench also found that ADEs “provide a range of additional support services which an ordinary employer does not, including **training in life-skills as well as vocational training, counselling and behavioural support, and transport assistance**”.⁸

2.6 As set out in the Part II of this submission, ADEs provide persons with disability:

- (a) a genuine opportunity to participate in a workforce; and
- (b) access to the opportunity to work in a supported and inclusive environment.

Supported not “Segregated”

2.7 The Government should cease use of the word “*segregation*” and “*segregated*” to describe the employment provided to persons covered by the SES Award.

2.8 Whilst that language appears in the wording of recommendation 7.32, it originates from advocacy groups that sought the eradication of supported employment as exists under the SES Award. Notably, **such arguments were advanced and rejected** in the Decision by the Full Bench.

2.9 After considering the *uncontradicted* evidence of numerous supported employees (see extracts in Part II), the Full Bench held that they **did not** agree with the following views:

- (a) supported employment should be characterised (or deprecated) as “*segregated employment*”;
- (b) open employment should be the objective in all cases; or
- (c) supported employment acts as an impediment to open employment.⁹

⁶ Ibid.

⁷ Ibid.

⁸ Ibid at [245] (emphasis added).

⁹ Ibid at [246].

2.10 To that end the following finding of the Full Bench is highlighted:

“While we accept that open employment is a generally desirable objective, for more severely disabled persons it will not be practicable either at all or at least within the current framework of government support. Jobs in ADEs represent for such persons the only realistic opportunity for employment they will ever have. Accordingly, a factor foremost in our consideration of the wages structure of the SES Award is to ensure that, subject to the requirements of the FW Act, the capacity of ADEs to continue to employ disabled persons is not prejudiced.”¹⁰

2.11 Maintaining language such as “*segregation*” casts an unfounded negative light on the positive work of the hundreds of ADEs upon the lives of persons with disability and their families throughout Australia.

¹⁰ Ibid.

3. PART II: THE POSITIVE IMPACT OF SUPPORTED EMPLOYMENT

3.1 The Full Bench in the Decision found that *“the employment opportunities which the supported employment sector provides to disabled persons is of **immense value** to Australian society”*.¹¹

3.2 That finding was supported by *“the uncontradicted evidence”* given in witness statements and statutory declarations made by numerous supported employees or their family or carers.¹² Each statement addressed the benefits of supported employment and the likely consequences if such employment was no longer able to be provided (e.g. following an unsustainable increase to wages and/or the eradication of supported employment under the SES Award or otherwise).

3.3 The Full Bench said:

*“Those statements make it clear that **disabled persons place great weight upon the companionship, stimulation, independence, learning opportunities and the sense of dignity, achievement and self-worth which supported employment provides them.** For the carers and family members of disabled persons employed in ADEs, the support and respite which employment in ADEs provides them, and the positive personal effects such employment has on the disabled person, is regarded as being of huge worth.”*¹³

3.4 For the benefit of the DSS, the summaries of that *“supported employee”* evidence prepared by the Full Bench are extracted below. The summaries concern evidence filed by Disability Services Australia (**DSA**), the Mai-Wel Group (**Mai-Wel**) and Our Voice Australia (**Our Voice**).

DSA Evidence

3.5 From DSA, the Full Bench received evidence from nine witnesses:

“• DSA4 has worked for DSA for 31 years. He said that “the money is good” and he is saving to go away on a holiday with his partner who he met at DSA. He feels good about himself working at DSA, and over the years he has learnt new jobs and skills, and he also likes socialising at DSA. DSA4 said that if he could not work at DSA any

¹¹ Ibid at [245] (emphasis added).

¹² Ibid.

¹³ Ibid.

longer, **he would be upset and would get bored if he had to stay at home all the time.**

- DSA5 is a guardian for health and services for her nephew and assists in major decision-making that is beyond her nephew's capacity. DSA5 said that due to her nephew's disability, he needed to work at a workplace where staff had training and education to understand people with disabilities. Prior to working at DSA, her nephew had worked in a fast food chain, and had experienced harassment and was unhappy. Working at DSA had been a positive experience for DSA5's nephew, and **his role there gave him a sense of contribution and also routine and companionship.** She said that her nephew had become more confident and grown and developed through his role at DSA, and this gives DSA5 a feeling of contentment.

- 2DSA1 is a carer of a supported employee (EL) who is 33 with vision impairment, learning disability, Asperger's Syndrome, personality disorder and depression. Other barriers to EL working in an open market include factitious disorder, gender dysphoria, anxiety and suicidal ideations. Employment with DSA is important to EL because it gives her purpose in life. Her employment has had a positive impact on her mental health, confidence and self-esteem. **The main reasons for EL working in supported employment includes that it provides her with purpose, responsibility, the ability to live a normal life, inclusion in society and the ability to engage with peers. If EL was not able to work at a disability enterprise like DSA, it would change how support is provided to her and she would require more government funding to allow her access to other programs that would still not be able to fill the void.** EL does not have family support in her life and the impact of supported employment being taken away will create further strain on 2DSA1 and other carers as well as the hospital system.

- 2DSA3 has worked at DSA for 36 years. 2DSA3 believes employment at DSA has provided her with the ability to make lifelong friends, given her a reason to get up and work, provided a positive lifestyle and independence, made her feel good about herself and made her family happy. If she was not able to work at DSA she would have nowhere else to go. **Her work is suited to her abilities and she feels**

supported. If she was not able to work at a disability enterprise she would have to stay at home and do nothing.¹⁴

Mai-Wel Evidence

3.6 From Mai-Wel, the Full Bench received evidence from eleven witnesses:

*“• MW2 is the mother of an intellectually disabled daughter who cannot read or write. MW2 supports her financially and provides her housing. Her daughter is employed by Mai-Wel, and this is important to her as it fulfils her dream to work and provides her with a monetary incentive. Her self-esteem and independence have improved in supported employment as she is socially accepted. **She has previously been unable to cope in open employment as it does not have the same level of support as that received at Mai-Wel. If her daughter could no longer had access to supported employment, this might result in MW2 having to deal with mental health issues resulting from boredom, and MW2 would no longer be able to have any time away from caring for her daughter.***

• MW3 is an employee at Mai-Wel. She said loves working with her friends and giving her mother and father time to relax. Working gives her routine and independence and allows her to spend time with people. If she could not work at Mai-Wel, she would be at home doing nothing and her mother would have to be with her all of the time. She said “They need a break from each other”.

*• MW4’s daughter who has an intellectual disability, cerebral palsy, dormant brain tumour, left-side hemiplegia, scoliosis and talipes. Her daughter has been employed by Mai-Wel for the last 20 years. MW4 said her daughter “needs things positioned on her right side, she has to be trained in the differences between paper, cardboard and plastic ... if she is having a bad day she will just throw everything in... [she] needs very clear instructions, like the plain paper goes here, for shiny paper you say feel this type of paper it cannot go in”. MW4 provides her daughter with assistance showering, getting dressed, feeding her and packing her lunch and providing her transport. **Her employment at Mai-Wel is important to the whole family. MW4 said it provides her daughter a reason to be motivated, have a sense of***

¹⁴ Ibid at [170] (emphasis added).

achievement and gives her a sense of purpose in paid employment. It is not feasible for her to sit at home every day.¹⁵

3.7 From Our Voice Australia, the Full Bench received 55 statutory declarations:

*“• AT is a parent of a supported employee. He assists his daughter daily with routine tasks that she cannot complete herself so that her condition is not aggravated. His daughter works two days per week, totalling 13.5 hours. Working enables his daughter to interact with others and keeps her both physically and mentally active. It supports her self-esteem and allows her to feel like she is contributing to society. AT considers that work plays an important part in managing his daughter’s condition and **without this outlet his daughter’s mental state would be negatively impacted and would most likely result in severe depression. AT further stated that the time she spends at work enables her family to take a break from carer duties and if she was unable to continue working this would mean additional stress on the family.***

*• HB works as a supported employee, performing packaging since 2014. She states that **the best thing about her job is being with her friends, and that receiving training is fun as she enjoys doing courses.** Her supervisor encourages her to learn new jobs. HB likes that the organisation she works for listens to its employees. HB would like to keep working at her current workplace and would be really sad if she no longer worked there.*

*• BM is a member of Our Voice and a parent of a supported employee. He stated that there had been many benefits to his son and family since his son started working. Working provided his son the opportunity to learn valuable practical trade, workplace and social skills. **BM’s confidence has improved enormously, and his family are now working towards transitioning him towards independent living.***

• KS is a member of Our Voice and a parent of a supported employee. KS’s daughter has been working at her current workplace for three years and is currently paid a pro-rata wage calculated on elements of competency, productivity, skill and flexibility and also claims the DSP. KS stated that a wage system based solely on productivity would be unfair as higher skilled jobs would not be rewarded, and if the Commission were to accept this tool and her daughter’s workplace was as a consequence forced

¹⁵ Ibid at [238] (emphasis added).

to make job cuts, young people with intellectual disabilities who could work in open employment would be forced to stay at home. KS said that this would be demoralising, depressing and stressful to the entire family. Her view was that the current system should be left as it currently stands.

- MG is a member of Our Voice and sole parent of a supported employee. MG supports her daughter in every aspect of her life so that she is able to function each day. This includes assisting her daughter with physical care tasks, preparing her meals, laundering her clothes, managing her finances, providing transport and providing love and emotional support. **Participating in supported employment has enabled her daughter to feel a sense of achievement and purpose and gives her invaluable self-worth. MG's daughter feels a great sense of satisfaction from relating to others as an equal working adult.** Having time away from home allows MG and her daughter to talk about interesting things that have happened in her daughter's day, and independence has allowed her daughter to mature considerably. Without supported employment for her daughter, MG would not be able to continue working full-time herself and would need to become a full-time carer. This would negatively impact on her family's financial situation and lifestyle. Further, her daughter would have little interaction with her peers and could become lonely and isolated. Her daughter's days would be void of stimulating activity, her self-worth would decline, and this would have a detrimental effect on her mental health. **It would be unlikely for her daughter to gain open employment.**

- BM is a supported employee who has worked in his current role for 16 years. He is able to learn new skills and complete courses that improve his work opportunities as well as supporting his individual needs. If he was no longer able to work at his job, he does not think that he would be able to pay his bills or have a superannuation fund for when he retires. **BM stated that without this income he would be living in a group home which he does not think he would enjoy. Work gave him a reason to get up in the morning, and he found his workplace to be very friendly and understanding of employees' disabilities and needs, as well as providing an avenue for social interaction.**

- CM is a member of Our Voice and also a sole parent of a supported employee. CM's daughter has been in her current role for approximately five years. CM stated that her daughter is able to live "a bit of a 'normal' life" by going to work like her

brother and sister. It also enables CM to work part-time, providing them with a reasonable home life.

- *ES is the mother of a 40-year-old man who has worked at ADEs for 22 years. **He has a severe intellectual disability with no literacy, numeracy, money, or travel skills. He could never work in open employment as he has previously attempted this. His employment is a sense of his identity. He looks forward to work, feels productive, never complains about getting up early, works hard and has to be coaxed to stop for morning tea and lunch. Any extra dollar he earns will reduce his pension by 50 cents and increase his rent in social housing by 25 cents, and she considers that the current proceedings have placed his job in jeopardy for the sake of 25 cents in the dollar.** ES and her husband have cared for their severely disabled son and were only able to do so because of the support of the education system and the ADEs. If ADEs were made unviable, the flow on effect would be devastating not only for people with disabilities but also their families. **Without ADEs, it could be expected that there would be a large number of dissatisfied, bored and lonely people with nothing to do, families no longer willing or able to care for adult family members and an increase in demand on the NDIS.***

- *LD is the parent of a man who has worked in supported employment for the last 25 years. LD and his wife are aged in their nineties. Employment is a huge part of his son's life, providing him with structure and a reason to get out of bed. His siblings are also relied on to provide help in his overall support structure. LD and his wife would not be able to provide more support and care time if he was unable to work and stayed at home.*

- *RD is the brother of a supported employee who has been working at an organisation for 25 years. He has done a variety of jobs including packing, checking weights and peeling sweet potatoes. **It is a big part of his life in which he takes pride, and he would be devastated if he could not continue to work with his lifelong friends. The remuneration he receives is almost irrelevant in the "big scheme of things".** Going to work each day makes him feel like he is contributing to society in a meaningful way. His employment is an integral part of the life of his family, which includes RD, his wife and five children, as they assist their ageing parents provide the quality family care that underpins his supported accommodation and his job. The continued ageing of RD's parents means the role*

of siblings will increase over time as he will always need specialised assistance in his life.

- *AC works as a supported employee and has been working at the same organisation for 20 years. His duties include making metal tags and fence posts and sometimes working in the laundry. **AC said that he likes his job and feels good about himself.** He loves living at home with his parents and does not like staying alone at night. He would be upset if he could no longer work at his workplace.*

- *JMM is a parent of a supported employee and has been the carer for her son for over 56 years. JMM has attended an ADE since he was eighteen years old and continues attending today. **He is illiterate and has poor conversational skills, and would never be considered for any open employment.** His attendance at an ADE daily has enabled JMM and her other children to live a better lifestyle too. **Their town has a high unemployment rate and an ADE is desperately needed to supply an alternative for the disabled seeking employment.***¹⁶

3.8 The above accounts highlight:

- (a) access to work in an accessible and supportive environment was provided by ADEs and viewed as a critical benefit to the supported employees (and their families);
- (b) the social element of attending the workplace was beneficial for the mental wellbeing of both the supported employee and their family members;
- (c) access to the remuneration under the SES Award was empowering and affirmed the supported employee's contribution to the workforce; and
- (d) that “*open employment*” is not always suitable – a conclusion reached by the family members of supported employees due to the nature of their loved one's high needs and/or negative experiences with open employment.

¹⁶ Ibid at [244] (emphasis added).

4. PART III: THE WAY FORWARD: MAINTAINING SUPPORTED EMPLOYMENT

- 4.1 The plan to “*end segregated employment*” appears to target the abolishment of the SES Award. Eradication of the SES Award is not a solution.
- 4.2 The abolishment of the SES Award will result in numerous employees with disability across Australia losing the opportunity to participate in the workforce and all the benefits that come with that participation with the supported employment sector.
- 4.3 That outcome is entirely contrary to the DSS’ desired outcome that persons with disabilities should not be worse off as a result of any initiatives.¹⁷
- 4.4 The Full Bench in the Decision gave consideration to an employment landscape without the supported employment sector, on the basis of uncontradicted evidence they held:

“the loss of supported employment would result in social isolation, boredom, financial detriment, a loss of skills development opportunities and a diminished sense of self-worth amongst disabled persons, with a significantly greater burden being placed on their carers and other family members”.¹⁸

- 4.5 The Full Bench also observed there “*is no evidence that this would be ameliorated by any compensating increase in open employment for disabled persons*”.¹⁹
- 4.6 Further, in categorically rejecting the submission that supported employment should be regarded as “*segregated employment*”, the Full Bench observed:

*“We have paid very close attention to the evidence of Ms Powell, who described the experience in the UK after a policy decision was made to close down supported employment in favour of the disabled working in open employment. The result, as we have earlier recounted, was that **the vast majority of disabled persons formerly in supported employment were left without any employment at all.**”*²⁰

- 4.7 Maintaining supported employment will not hinder the ability of the Government to either promote open employment or pathways for people with disability to transition to open employment. Nor does the successful promotion of open employment or the development

¹⁷ Department of Social Services, “*Next steps in Supported Employment: consultation on the way forward*”, page 5.

¹⁸ *4 yearly review of modern awards—Supported Employment Services Award 2010* (AM2014/286) [2019] FWCFB 8179 at [395].

¹⁹ *Ibid.*

²⁰ *Ibid* at [361].

of further pathways to enable persons with disability to transition to open employment depend on the eradication of supported employment.

Supported Employment is not contrary to Article 27

- 4.8 Persons with disability can benefit from access to open employment *and* supported employment. Both provide an avenue for persons with disability to enter the workforce; the latter has been proven to extend that opportunity to persons that would not otherwise have access to open employment.

An Opportunity to Participate and Maintain Employment

- 4.9 The existing supported employment framework has successfully enabled “*supported employees*” to enter the workforce and maintain employment for decades. This is consistent with Article 27.1(e).²¹ The evidence set out in Part II reflects this and also highlight that several supported employees do not want the system disrupted: they want to maintain their employment.

The Decision demonstrates that the supported employment sector serves a purpose of value in its own right rather than it simply being a process to facilitate people with a disability to transition into open employment.

Protections

- 4.10 The conditions under the SES Award promote, protect and ensure that persons with disabilities have the opportunity to enter the workforce, supported by the same employment law protections established by the *Fair Work Act 2009* (Cth), together with additional supports provided by the employer.
- 4.11 The protections provided via the SES Award include:
- (a) the provision of a fair and relevant minimum safety net of terms and conditions and **minimum wages**²² under the SES Award;²³ and
 - (b) a requirement that employers in the supported employment sector take reasonable steps to provide information to employees about “*their right to be a member of the union and be represented in the workplace by a union representative*” and to have

²¹ *Convention of the Rights of Persons with Disabilities*, Art 27.1(e).

²² It must be remembered that the Decision ultimately concerned a proper determination of the “*value of work*” and in this regard the FWC applied the relevant objective statutory considerations to arrive at this outcome. None of the advocacy groups’ legal arguments to prevent this occurring prevailed.

²³ *Fair Work Act 2009* (Cth) ss 134, 284; *Convention of the Rights of Persons with Disabilities*, Art 27.1(f).

a “union assist them in making decisions about employment matters” (see clause 31, SES Award).²⁴

Support

- 4.12 As set out in Part I, a distinctive feature of supported employment is the “*support*” provided. Article 27.1(k) recognises the importance of enabling persons with disabilities “*to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training*”²⁵ This, along with additional support services, is provided by ADEs.²⁶

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²⁴ *Convention of the Rights of Persons with Disabilities*, Art 27.1(c).

²⁵ *Ibid* Art 27.1(k).

²⁶ See *4 yearly review of modern awards—Supported Employment Services Award 2010* (AM2014/286) [2019] FWCFB 8179 at [245].