Supported Wage System Handbook

July 2017

Disclaimer

Supported Wage System operates within the Australian industrial relations framework, therefore people wishing to use the Supported Wage System provisions must ensure that they are able to do so in accordance with their applicable industrial award, enterprise agreement or other instrument.
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Section 1 Supported Wage System Overview

Introduction

The purpose of the Supported Wage System (SWS) is to provide a process for reliable and independent work productivity assessments to enable people whose work productivity is reduced as a result of their disability, to obtain employment. Many people with disability obtain employment in the open labour force at full award wages but for some people, the nature of disability can significantly affect their productive capacity. People in such circumstances may require a process of productivity assessment to obtain employment. SWS can also be used to determine productivity based wages to employees in Australian Disability Enterprises (ADEs).

The SWS productivity assessment process provides a method to assess the productivity of the employee against Basic Performance Standards of other employees without disability undertaking the same tasks or duties in the workplace.

The SWS was introduced in 1994. It was developed in consultation with the relevant industrial authorities, employer, trade union and disability peak bodies, government departments and specialised employment agencies for people with disability.

Key principles of the Supported Wage System

Industrial framework and conditions

The SWS must operate within federal and state workplace relations laws. People with disability who access the SWS retain the same employment conditions as their fellow employees under the relevant industrial instrument, for example a modern award or an enterprise agreement. The assessed percentage of productivity applies only to the wage rate.

The SWS was designed to use industrial instruments and principles of wage settings that apply to all other employees in the national and state workplace relations systems.

Equity of application

The SWS must be equitable in its application, in relation to both employees with disability and those without disability.

Limits of use

Only when it is clear that a person with disability is unable to work at full productive capacity compared to that of another employee without disability, who performs the job at the Basic Performance Standard, is a SWS productivity or pro-rata wage to be used. The presence of disability in itself does not justify a pro-rata award wage.

The SWS should not be used to reduce the wages of people with disability already in jobs, however, it may be used to assist people whose continued employment at full award wages is at risk, subject to conditions (see Assistance for People in a Job at Risk).

Only people eligible to participate in the SWS are to use it and it is not applicable to other employees, particularly to other disadvantaged job seekers without disability. The SWS is intended to be simple and practical to use.

It is essential that employees are not pre-determined as capable of performing at a certain wage level and then placed in jobs.

A SWS productivity rate can be determined by assessment of the performance of a particular individual in a particular job. The SWS is not intended for contractors, short-term or temporary jobs in which the core duties and tasks often change.
One person’s SWS productivity assessment cannot be applied to other employees with disability performing similar duties, or to the same employee in another job.

Applications for SWS require that:

- the job under consideration is covered by an industrial instrument or legislative provision that permits employment under the SWS provisions
- the person is an Australian citizen or is a person resident in Australia whose continued presence is not subject to a time limit imposed by Australian law (e.g. a temporary visa)
- the person is at least 15 years of age
- the person has no outstanding workers’ compensation claim against the current employer
- the person meets the impairment criteria for the Disability Support Pension (DSP) as determined by Centrelink, and
- the job being offered is for a minimum of eight hours per week.

The Department of Social Services’ Supported Wage Management Units (SWMU) approve applications for SWS. Applications are submitted online via JobAccess. The employer is responsible for ensuring it is lawful to employ a person under SWS provisions for the job in question.

**Eligibility of People not in Receipt of the DSP**

When a SWS applicant is not in receipt of the DSP and either:

- does not wish to apply for DSP;
- or is not eligible for DSP on non-impairment grounds (e.g. age, residency, income or assets)

the SWMU will request Centrelink to arrange for a SWS eligibility test against the impairment criteria for the DSP. This is not the same as a DSP eligibility assessment.

**Management of the System**

Day-to-day management of the SWS is performed by SWMU staff at the Department’s State and Territory offices. The SWMU’s key responsibilities are to:

- quality assure, confirm eligibility of participants and approve applications for SWS
- facilitate approval to enable payments for SWS assessments and the SWS Employer Payment
- provide for the conduct of audits of SWS applications and assessments performed by approved SWS assessors
- check for accuracy and timeliness of the wage assessment process and outcomes, and
- appear before industrial tribunals, such as the Fair Work Commission or a state tribunal, where required.

**Assistance with interpreters**

If you need help to communicate, you can use the Translating and Interpreter Service on telephone 13 14 50. If you have a hearing, sight or speech impairment, you can use the Speech-to-Speech Relay through the National Relay Service on 13 36 77. If you are an employee who uses Auslan to communicate, the Australian Government’s Employment Assistance Fund (EAF) can help with the costs of Auslan interpreting for SWS assessments.

**Assistance for Employers**

**SWS Employer Payment**

If an employee completes a minimum period of work in a new job under SWS provisions, without any support from a government funded employment service providers (including ADEs, Disability Employment Services (DES) or jobactive), their employer may be eligible to receive a payment.
This is a one-off payment to offset some of the costs of training and supervising a new employee with disability under the SWS.

A payment of $1,000 is available for eligible unsupported SWS employment of 13 weeks at a minimum of eight hours per week.

Eligibility

A SWS Employer Payment may be payable where:

- a SWS Application has been approved, confirming the placement meets SWS eligibility requirements
- the initial SWS productivity assessment has been completed, and a valid SWS wage assessment agreement for the employee has been signed by the parties to the agreement
- the employee is not supported by a government funded employment service (e.g. ADE, DES or jobactive)
- the employer is not a related entity of a government funded employment services provider
- the employer has not previously employed the employee
- a wage subsidy is not paid to the employer for this employee
- the SWS placement is not a ‘job at risk’.

Payment can be made after the employer has provided the SWMU with a tax invoice for the relevant amount (GST inclusive) and confirmed that the employment has been for the required period and minimum number of hours. Calculation of the minimum period of employment commences from the date the initial SWS wage assessment agreement is signed.

Assistance for Supported Wage System Employees

Employer Payment of the Productivity-based Wage

The employer will pay the assessed wage and superannuation as required. Payment of the assessed wage is made to the employee in the same way as other employees who do not participate in SWS.

JobAccess website

The JobAccess website is a one-stop shop for all matters relating to the employment of people with disability. More information about SWS and other disability services can be found at JobAccess or by phoning 1800 464 800.

Employment Assistance Fund

The Employment Assistance Fund (EAF) is designed to help employers accommodate employees with disability. The EAF reimburses employers for the cost of special equipment or adjustments needed to accommodate an employee with disability in the workplace. Financial assistance for the provision of Auslan interpreters and disability awareness training is also available from the EAF. More information can be found at the JobAccess or by phoning 1800 464 800.

Retention of Pensioner Concession Card

Recipients of DSP are entitled to the Pensioner Concession Card (PCC). More information about the Pensioner Concession Card can be found at the Department of Human Services website.

Mobility Allowance

SWS employees may be entitled to Mobility Allowance. Mobility Allowance, which provides assistance to people with disability who are in paid employment, voluntary work or vocational training, undertaking independent living/life skills training or a combination of paid work and training
and who are unable to use public transport without substantial assistance. More information about Mobility Allowance can be found at the Department of Human Services website.

**Workers’ compensation**

Employers are required to provide workers’ compensation insurance for all employees. This includes potential SWS recipients who are working in the Trial Period and those employed after the SWS productivity assessment.

**Nominee**

An employee may choose to involve a nominee in any stage of the job placement or SWS productivity assessment process. This general advocacy role may be carried out by any person nominated by the employee.

Where a signature is required, such as on the wage assessment agreement, and the applicant is presently unable to provide it, the person signing must be someone nominated in accordance with the relevant state laws to sign documents on the applicant’s behalf.

**Trial Period before the SWS Productivity Assessment**

It is expected that people with disability will acquire work skills and competencies at varying rates. Some people may have a ‘learning curve’ that climbs steadily for many weeks, others may learn the basic skills or competencies more quickly and their performance may plateau earlier.

A period of specialised on-the-job training will usually be required for most people using the SWS before an initial productivity assessment is conducted.

For this reason, and to enable consideration of the overall suitability of the job placement, provision has been made for a Trial Period of up to 12 weeks, to a maximum of 16 weeks. The extension of the Trial Period to 16 weeks is only acceptable when it is for the benefit of the employee undergoing the SWS assessment, such as due to absence from work because of illness or where it is expected that the person could further improve work performance in a short period.

There is no specified minimum time for the Trial Period. The parties may elect to proceed with a SWS assessment at an early stage, if the employee is considered to be settled in the job, familiar with their duties and has sufficient experience in the work required.

A negotiated wage is to be paid by the employer to the employee during the Trial Period. The trial wage must be at least the Federal minimum SWS weekly wage, and should ideally reflect the expected productivity levels for the Trial Period. The SWS minimum wage changes on 1 July each year and is available from the Fair Work Ombudsman website or by contacting the Fair Work Infoline on 13 13 94. On 1 July 2017, the SWS minimum wage was $84 per week.

Depending on the anticipated productivity in the Trial Period, it is desirable that the trial wage not be substantially lower than the actual assessed wage. This is particularly relevant where the person has prior experience relevant to the job in question.

The wage in the Trial Period will apply until the productivity assessment is conducted and wage assessment agreement is signed by the workplace parties. The date, or dates, on which the assessment will take place will be agreed upon by the employer, the trial employee and the SWS assessor.

It is important that the employee is not persuaded to undertake a SWS productivity assessment before they are ready, or to delay an assessment, with the employee remaining on a training wage for longer than necessary.

The specialised training in the Trial Period is in addition to any other standard training normally provided to employees at the relevant workplace.
Many people will continue to receive training, specialised and general, after the SWS assessment is complete, in accordance with the normal award or industrial agreement provisions.

**Who Conducts the SWS Productivity Assessment?**

Assessments are undertaken by providers contracted by the Department of Social Services to perform SWS assessments. Assessors are required to have minimum qualifications and experience (see ‘Approval SWS Assessors’ below).

The role of the SWS assessor is to work cooperatively in the workplace and not seek to impose a primary decision-making or arbitration role.

The SWS assessment process must be conducted in a manner which ensures the employer and the employee has a strong sense of ownership of the outcome.

As specified in the relevant industrial provisions, the wage rate to be paid will be based on the result of a SWS assessment of the productive capacity of the employee with a disability. Applicable industrial provisions allow for the productive capacity of the employee to be assessed by the employer, the employee and the SWS assessor.

An assessment of the employee productive capacity will be made following the Trial Period. This will be used to determine the appropriate rate of pay, consistent with the procedure outlined above.

At this point, the employer can decide to enter into an ongoing employment arrangement with the employee.

If agreement cannot be reached on the outcome of the productivity assessment, then no employment contract can be made under the SWS provisions.

**Approval of SWS Assessors**

To be an approved SWS assessor requires certain prerequisite skills, training and experience. Assessors require a minimum of two years practical experience in the disability employment or related sectors, and an Australian recognised education qualification (at a minimum of diploma or higher level) in one of the following fields:

- Occupational Therapy
- Psychology
- Physiotherapy
- Rehabilitation Counsellor
- Vocational training, or
- Other diploma or higher level qualification which the Department considers is relevant to providing the required SWS assessments.

The Department of Social Services contracts a panel of SWS Assessment Service Providers to conduct SWS Assessments.

**SWS Review Assessments**

Where an employee with disability is employed on a SWS productivity-based wage, the person’s productivity should be reviewed on the basis of a reasonable request for such a review or, at least, annually. This ensures that changes in the employee’s productivity are reflected in the wage rate.

Where agreement cannot be reached about the need for an early review (between the employer and the employee and/or the employee’s nominee), the dispute mechanisms available in the workplace or industrial jurisdiction may be used. Otherwise, the assessed productivity rate will stand until the next review.
The majority of SWS Review assessments are allocated to SWS Assessors approximately 9 weeks before the date the assessment is due.

Where a SWS review assessment is scheduled, the employer, employee and union representative or assessor will re-examine the work undertaken and the current level of productivity. On the basis of this review, the parties will reassess the percentage of the full award wage paid to the employee and either agree to amend or retain the current assessed productivity rate which is applied to the wage.

If a party to the SWS wage assessment disputes the result, they may submit a written request to the Department’s SWMU outlining why the assessment should be reconsidered.

If agreement between the parties to the assessment cannot be reached on the assessment outcome, the employment contract under SWS provisions will lapse 30 calendar days after the date of their last assessment. It will be a matter for the parties involved as to whether they wish to enter a new contract based on the general industrial provisions, or whether they wish to use avenues generally available under the industrial relations system to resolve any areas of disagreement as to the operations of the industrial provisions for the SWS.

Cost and Content of Reviews

The Australian Government will pay the cost of SWS wage assessments for each employee. This includes initial assessments and annual reviews.

Reviews will require examination of the main elements of the previous SWS productivity assessment, including the tasks and duties performed, the suitability of the performance standards and the productivity results of the employee against those standards.

Where an employment services provider is funded to support the person at work, this service provider would usually offer to assist in the assessment process.

Since the record of the previous productivity assessments and reviews will normally be available to SWS assessors, the later reviews may be simpler and shorter than those conducted earlier.

Date of Commencement of the Assessed Wage

The operative date of the wage agreement is the date the wage assessment agreement is signed by the employer, employee (or nominee) and either a union representative or SWS assessor.

Assistance for People in a Job at Risk

Occasionally the continued employment of an existing employee at full award wages may be at risk. This may occur when, for example:

- A person with disability finds a job, perhaps with the assistance of an employment services provider, and it is likely (but not certain) that an award-wage level of achievement can be reached. The employer, however, agrees to pay full award wages from the outset.

The person then enters work but is unable to achieve award-level productivity, despite reasonable adjustments being made, for the following reasons:

- a person acquires a disability outside the workplace (for example, a stroke or multiple sclerosis) and the person’s capacity to work is reduced
- a person’s existing disability is worsening and has reduced the person’s capacity to work, or
- due to a change in business operating conditions or the job is substantially restructured or removed.

There may be a need to reassess the residual job functions or to consider assessing a new position for the employee. Where a pro-rata wage is considered the most appropriate option, an employee at risk of unemployment may be covered by the provisions of the SWS subject to meeting each of the following five conditions:
- the person agrees to participate in the SWS
- the person does not have a pending or current employee compensation claim against the employer
- the person meets all eligibility criteria for the SWS (including meeting the DSP impairment criteria)
- the employer has made reasonable adjustments to maintain the person’s productivity, and
- the employee's SWS assessment confirms an inability to meet the agreed Basic Performance Standard for the job.

**Disputes**

If there is no agreement on the outcome of the initial SWS productivity assessment, the employer may choose not to offer the person employment under the provisions of the SWS. A disagreement between the employer and the assessor would not be subject to the industrial dispute mechanisms applying in the enterprise.

Once the employee has been engaged on SWS provisions, the dispute resolution mechanisms available to other employees in the workplace apply. The relevant industrial relations body has jurisdiction over disputes that a SWS employee may have with an employer. A nominee of the SWS employee may be involved to ensure the interests of the employee are adequately represented.

If one or more parties disagree with the SWS productivity rating, they need to try to discuss their different views, and seek to resolve them and reach agreement. If they fail to reach agreement, they may submit a request for a review of the SWS assessment process, with the SWMU in their State or Territory. A request for a review can be lodged by the employer, employee, employee’s nominee or a union representative. The request must be in writing (email is acceptable) and must outline the specific parts of the SWS assessment process which they would like reviewed, making reference to the requirements for conducting SWS assessments outlined in the SWS Handbook. It is not sufficient to base a request for review on disagreement with the result alone. Grounds for requesting a review of the assessment must include evidence that the assessment was not conducted in accordance with the SWS Handbook and that it would result in significant disadvantage to the employee and/or the employer.

The Department will respond to requests for review within 21 calendar days. The Department will not change the productivity rating, but may request that a SWS assessor conduct parts of the assessment again or in cases where there is clear evidence that the assessment was not properly conducted, may request a new assessment.

**A Scenario of how people will enter the Supported Wage System**

Use of the SWS can be initiated in a number of ways. Many people with disability are clients of employment services providers, who can help facilitate the application for SWS. However, people who are not registered with an employment services provider may also use the SWS.

Below are key procedures for participation in the SWS. These use a typical scenario (See Section 2 for more details).

**Background**

In this scenario, the applicant receives the DSP and is a client of an employment services provider. It is thought, provisionally, that the employee will not be able to work at the full award wage rate as many unsuccessful attempts have been made to secure employment at full award rates. A likely job has been found, and is covered by SWS provisions that permit employment at pro-rata wages.
Pre-employment steps

The applicant contacts the Fair Work Commission or 1300 799 675 to confirm the job is covered by the SWS provisions, or checks the employer’s current industrial instrument and its SWS provisions. The applicant visits JobAccess to check the requirements of participating in SWS and confirms the employee meets the key eligibility requirements for the SWS. The applicant or employment service provider completes the SWS application online at JobAccess.

On receipt of the application, the SWMU verifies that the employee meets the impairment criteria for receipt of DSP or is in receipt of DSP, and checks that other eligibility criteria have been met. The Department will notify the applicant when an application is approved or declined.

Commencement of the Trial Period

The employee begins work for the Trial Period and advises Centrelink of any change in circumstances (the rate of DSP paid may need to be altered for this period to take account of the wages paid).

The assessor must ensure that the employer and the employee understand the implications of SWS and agree on a time for the SWS assessment to be undertaken. If a pro-rata award wage is shown to be necessary, and is accepted by those involved, the SWS wage assessment agreement is signed and a copy provided to the employer and employee. The assessor also provides a copy to the employment service provider and union if requested. The employer should send a copy to the relevant industrial authority, if this is a requirement stated in their industrial instrument. Note that it is not always necessary to send the wage assessment agreement to the industrial authority.

The employee commences work at the agreed assessed wage. The SWS wage assessment agreement takes effect immediately when it is signed by the employer, employee and SWS assessor.

Work after the Wage Assessment Agreement Begins

Payment of the pro-rata wage commences from the date the SWS wage assessment agreement is signed. The employee or their nominee advises Centrelink of the agreed wage.

An anticipated date for the review of the wage assessment is agreed between all parties. This date can be varied by local agreement, but must generally be within a year following the assessment (see Section 2, ‘Review Date Negotiated’). A work order to conduct a review assessment will be generated and issued to a SWS provider approximately nine weeks before the review date, so that the assessor has time to complete the preliminary research about the duties, work classification, industrial instrument, workplace requirements, and so that the employer and employee can prepare for the assessment to take place in the workplace.
Section 2 How to Use the SWS Administrative Procedures

Eligibility and Funding Procedures

The SWS procedures apply whether a person is registered with an employment services provider or not (the key steps in the wage assessment process are summarised later in this section).

Contacting the Supported Wage Management Unit

The employee, employer or employment service provider can contact the SWMU by phone on 1800 065 123.

Making the Application – Role of the Employment Service Provider

The online SWS application form can be found on the JobAccess. The employment services provider (or employer, where no government funded employment service is involved) completes and submits the application form online.

The SWMU Processes the Application

The SWMU:

- confirms the employee meets the DSP impairment criteria (SWMU may contact Centrelink to confirm this), or that they are in receipt of DSP
- checks all other eligibility criteria have been met, and
- approves or declines the application.

Advice of Approval

The Department will notify the applicant of the outcome of a SWS application. Once approval has been given, the employee can commence the SWS Trial Period.

An Assessor is arranged

The Department’s IT system generates and issues a Work Order to a contracted SWS Provider.

The provider accepts the Work Order and arranges for an Approved SWS assessor to make arrangements for the assessment.

Work Begins on a Trial Basis

The workplace parties negotiate a trial wage. A negotiated wage is to be paid by the employer to the employee during the Trial Period. The trial wage must be at least the Federal minimum SWS weekly wage, and should ideally reflect the expected productivity levels for the Trial Period. The SWS minimum wage changes on 1 July each year and is available from the Fair Work Ombudsman website or by contacting the Fair Work Infoline on 13 13 94. On 1 July 2017 the SWS minimum wage was $84 per week.

Alternatively, the employee may be assessed and begin employment almost immediately if it is agreed by the workplace parties that a Trial Period is not required.

Advising Centrelink of change in financial Circumstances of a Person in Receipt of DSP

Centrelink requires advice about the SWS employee’s wage during the Trial Period, and any subsequent wage adjustments. The employment services provider should assist the employee in advising Centrelink, where required. Centrelink can be contacted by telephone on 13 27 17, in writing or by visiting a Customer Service Centre. It is important to advise Centrelink within 14 days of a change of wages because the employee’s earnings may affect the rate of DSP. More information can be found at the Department of Human Services website.
The Lead up to the Assessment

The SWS assessor negotiates a suitable date and time with the employee, employer and employment services provider for the assessment to take place. The employment services provider will usually make the arrangements with the employer and employee.

After the Assessment

After the assessment is agreed upon and a wage assessment agreement is signed, the employer sends the signed wage assessment agreement form to the relevant industrial authority (Industrial Registrar or the Fair Work Commission), if required. The employer and SWS assessor must be satisfied that the correct name of the industrial instrument under which the employee is being employed is entered on the SWS wage assessment agreement before sending it to the relevant industrial authority. The assessor may offer to send the SWS wage assessment agreement to the industrial authority on behalf of the employer.

If a union representative was not party to the wage agreement, the industrial authority sends a copy of the wage assessment agreement to the relevant union. If the union has not notified an objection to the industrial authority within 10 working days, it then advises the employer and the SWMU that the wage assessment agreement has been successfully filed.

The assessor always provides a copy of the wage assessment agreement form to the agreement parties (e.g. the employee, employer, the union representative if party to the agreement, and the employment services provider if agreed to by the employee).

The Date for Beginning to Pay the Assessed Wage

The date when the employer can legally pay the agreed pro-rata award wage is the date when the wage assessment agreement is signed. The employer should pay the agreed wage rate from this date and does not have to wait until notification has been received from the industrial authority that the wage assessment agreement has been filed.

Review Date Negotiated

The model SWS provisions specify that SWS reviews should occur annually and should be scheduled to occur within 12 months of the employee’s previous assessment. However, in circumstances where it is not possible to complete a review within this 12 month period, the original assessment continues to apply until the review is undertaken. It should only ever be in exceptional circumstances that a review assessment is not undertaken within this 12 month period, for example, the employee is ill. To ensure compliance with the timeframes specified in the award or other instrument, assessors should ensure that reviews are conducted in a timely manner, to the extent that it is within their control.

An earlier review date may also be negotiated if there has been a significant change in work tasks or the productivity of the employee. Should the parties subsequently determine that this earlier review is unnecessary, the original wage assessment agreement will remain valid for 12 months.

Change in Financial Circumstances

The employee has a responsibility to advise Centrelink of any change in financial circumstances within 14 days of the change occurring.
Review of Assessments

A review may be held before the scheduled date if at least one of the parties wishes this to occur.

Approximately nine weeks before the review is due, the Department’s IT system will generate and issue a work order to a SWS provider to make arrangements to undertake a review assessment.

It is the responsibility of the employer to ensure that a copy of the new wage assessment agreement is sent to the relevant industrial authority, if required by the industrial instrument. The employer and SWS assessor must confirm the correct name of the industrial instrument that the employee is employed under. This is entered on the new wage assessment agreement before it is signed and sent to the industrial authority. The employer may request the assessor send the wage assessment agreement to the industrial authority on their behalf. The assessor must advise the SWMU of any significant changes as a result of the outcome of the review when they submit their assessment report online.

Variation in Procedures for People who are not Receiving DSP

A person not receiving the DSP may choose to:

- apply for DSP, or
- not apply for DSP, but, at the SWS Application approval stage, the SWMU may request Centrelink to test whether they meet the medical impairment criteria for DSP to satisfy the SWS eligibility requirements.

If the applicant chooses to apply for DSP, the relevant form(s) can be downloaded from the Department of Human Services website or collected by visiting a Centrelink Service Centre, or obtained by phoning the Centrelink Contact Centre on 13 27 17. It is advisable that the applicant or their nominee obtains information from Centrelink on the claim process.

The applicant completes the claim for DSP and sends it to the local Centrelink office. Centrelink will contact the applicant about the claim.

If the person meets the DSP impairment criteria, the applicant, nominee or employment services provider informs the SWMU. The SWMU confirms the information with Centrelink.

The SWMU then processes the SWS application in the usual way.

If the person is not in receipt of DSP, the SWMU would notify the employment services provider (or SWS applicant) that they will send a request to Centrelink to determine the applicant’s eligibility for the SWS.

If the outcome of the test indicates eligibility for participation in the SWS, the SWMU then processes the application as previously outlined.

The procedures that apply to people with disability who are in receipt of DSP and those who are not, are outlined in the following flowcharts.
Summary of SWS Process – Key Steps

1. Access the JobAccess website (www.jobaccess.gov.au) or phone the Department of Social Services Supported Wage Management Unit (SWMU) (free call 1800 065 123) for information.

2. Complete and lodge the application form on the JobAccess website.

3. The SWMU checks the employee’s eligibility.

4. If the employee is not in receipt of the DSP and does not have a current medical impairment assessment then the SWMU contacts Centrelink for a SWS Eligibility Test.

5. If the employee meets the impairment criteria, then the SWMU approves the application on-line and confirmation is sent to the applicant.

6. The employee commences the Trial Period.

7. The SWS IT System assigns the assessment to a SWS assessment provider.

8. If the employee is on income support, the employee notifies Centrelink about the employment.

9. The SWS wage assessment is conducted and agreed, and lodged with the relevant industrial authority if required.

10. The SWS IT system automatically initiates annual productivity reviews thereafter. The SWMU can arrange an earlier review if requested.
Section 3 The SWS Productivity Assessment Process

Introduction

The productivity-based wage essentially requires a standard to be set of the productivity needed for the full rate of pay for the job, followed by an assessment of the employee’s achievement against that standard.

An employment services provider may be involved in providing on-the-job support for the employee whose productivity is to be assessed. In practice, the SWS assessment may draw upon work already done by the employment services provider for the job placement.

An employment services provider often identifies and records the key duties of a job. This guides the training provided for the employee. The usual job placement process often includes a discussion about the performance standards required for the key duties. This information guides the employee’s training strategy and also gives each party a clear understanding of what is required for the placement to succeed.

A productivity assessment requires extra attention to any training-oriented description of duties and the subsequent assessment of the employee against those duties.

An important goal of the productivity assessment process is that it be reasonably easy to use and causes minimal disruption to the workplace.

The assessment must also guard against prejudice or bias (discussed later in this section) and ensure a fair wage rate is identified. The method of arriving at the assessment must be capable of scrutiny by an independent third party.

Workplaces are dynamic and each is unique – not every variation in job design or all employee requirements can be foreseen. Judgement is required in applying the assessment method in each particular environment.

Described below is how a SWS wage assessment is expected to be conducted, and the role of key individuals in the process, including:

- a summary of the assessment process
- pre-assessment checks
- explanation of each step in the assessment, and
- next steps after the assessment.

It should be noted that the SWS is not intended for short-term contractors, short-term or temporary jobs and jobs where the core duties change often.

Summary of the Assessment Process

List the duties of the position

Where the duties and tasks are already identified within the workplace, they should be checked for accuracy, given the possibility of job-redesign in the Trial Period. Existing job descriptions or competency standards specific to a particular workplace can also save time when defining the job. In some cases, there may be consideration of the appropriate classification of the position.
Set a standard for each duty

The standards show what is needed to earn the minimum rate of pay under the relevant industrial instrument for each duty. In many cases, the most effective way to set a standard is by observing the standards of another employee performing the same duties in the workplace.

Establish the employee’s achievement against the standards

The rate and quality of work in each duty are assessed.

Check the employee’s time spent on each duty (hours per week)

In calculating the productivity rate, each duty the employee performs is weighted according to the amount of time spent on that duty (usually per week, but could be per day, per fortnight, etc.). Duties are time weighted so that poor performance on a minor duty (or vice versa) does not adversely affect the wage rate.

Calculate the Productivity Rate

The employee’s achievement on each duty is compared with the workplace’s standard for that duty:

• the comparative performance is then multiplied by the percentage of time spent on each duty. This gives a percentage of the award to be paid for each duty
• the final percentage of the rate of pay to be paid for each duty is added
• in some cases, the productivity rate may be adjusted for supervision and other work-related factors (see Optional Assessment Steps at the end of this section)
• the resultant figure, adjusted up or down to the nearest 10 per cent increment, is the percentage of the rate of pay in the relevant industrial instrument payable to the employee, and
• each party comments on the process (if it wishes to do so) and signs the wage assessment agreement.

Pre-Assessment Checks

The assessor will need to be satisfied before the wage assessment, that the required pre-assessment checks have been completed.

An employment service provider, where used, should check the items listed below (regardless of the anticipated use of full or pro-rata wages). The checks will occur before and during the job placement, as they are customary job-matching tasks for most people with significant disability.

Suitability of the employee and the Job Design

Is there an appropriate match between the individual and the job?

• Does the placement capitalise on the strengths and abilities of the employee, or does the placement place undue focus on areas of disability?
• The employee’s freedom of choice and preferences should, of course, always be an integral part of this process.
• Are there any desirable changes to task allocation in the work team? Such changes may improve overall productivity and help match the employer’s requirements and the abilities of the employee?
• The Employment Assistance Fund can provide reimbursement for the provision of necessary modifications to the workplace to assist with the employee’s mobility or performance at work. More information can be found at the JobAccess.
Reasonable Adjustment

Reasonable adjustments are alterations or modifications made to the workplace to assist an employee with disability to participate in employment on the same basis as others. Reasonable adjustments are given statutory force in the Disability Discrimination Act 1992 (Cth) and in other similar Acts at the state and territory levels.

Under the Disability Discrimination Act (Cth), a failure to make reasonable adjustments for an employee with disability can constitute unlawful discrimination. An adjustment is ‘reasonable’ under the Act if it does not impose unjustifiable hardship on the employer. In determining whether an unjustifiable hardship would be imposed, all relevant circumstances of the particular case must be taken into account (including the factors set out in Section 11 of the Act).

Sometimes reasonable adjustments require more than modifications to the physical working environment. The manner in which reasonable adjustments are made will vary according to the needs of the employee with disability, the nature of the job, the physical setting, and the knowledge of people in the workplace. The provision of an appropriate modification to the workplace could mean the difference between a 60 per cent level of assessed productivity and an 80 per cent level.

An employer may make distinctions in regard to the terms and conditions of employment where an employee is unable to perform the inherent requirements of the job even if reasonable adjustments are made (see Section 21A of the Disability Discrimination Act (Cth)).

Training

The employee may require additional training or time in the workplace to meet the basic requirements of the job. This has been addressed by the inclusion of a Trial Period in the relevant industrial instrument containing SWS provisions. The type of industrial instrument the employee is operating under will determine the provisions for the Trial Period.

The SWS schedule contained in most modern awards allows up to 12 weeks as a training or settling-in period, before the initial assessment is required to be conducted. The Trial Period may be extended by up to four additional weeks to a maximum period of 16 weeks, but only if there is agreement that the trial employee could further improve their work performance significantly in that time.

The Special pay scale and Special federal minimum wage provide for a Trial Period not exceeding 16 weeks.

The employee with disability should reach a reasonably stable level of job performance before a SWS productivity assessment is conducted.

Evidence that the employee would be unable to work at Full Award Wage Level

The parties should be satisfied that an award wage level of work performance appears not to have been achieved so far on the job, and is unlikely in the short term.

The presence of disability or eligibility for DSP should not, of themselves, be taken to indicate the need for a SWS productivity wage.

Many people with high levels of disability are able to work at full award wages. Where an employment services provider is involved, care should be taken in any discussion of current productivity to avoid prejudging the outcome of the later productivity assessment.

Explanation of Each Step in the Assessment

Guidelines and training in the methods of gathering information for productivity assessments are provided to contracted SWS providers. The following is a description of the key points in productivity assessments:
Assessment Step 1: List the Major Duties of the Position. Briefly Describe the Majors Tasks of Each Duty.

In some cases, information on the duties and tasks of the job will already be contained in:

- the specialised training plan for the employee
- existing job descriptions and personnel documents
- competency standards within competency based training systems, and
- the relevant award.

Duties and tasks may be identified or confirmed by observation and by talking to the supervisor, employee, government funded employment service provider and other employees. This is made easier by considering the outcomes or key results to be achieved by the job, and then thinking about the tasks needed to achieve these outcomes.

The appropriate classification for the position is determined by the provisions of the relevant industrial instrument. The classification is identified by comparing the duties to be undertaken by the employee with the classifications and associated definitions in the industrial instrument.

Where an employee performs duties that span more than one classification, any specific provisions dealing with this situation should be applied, or if there is none, the industrial practices generally applying under the relevant Pay Scale should be used.

Assessment Step 2: Agree on a basic standard for each duty at the full rate of pay for the job as prescribed in the relevant industrial instrument.

The assessment requires some measure, or standard of the Basic Performance Standard that would be expected from an employee, against which the employee with disability may be assessed.

An industrial instrument may have established the competency and productivity standards required for employees entitled to receive the minimum rate of pay. It should, therefore, not always be necessary to set these standards as part of the assessment process. Key points about the use of performance standards in the assessment system are:

- standards should always reflect the basic level of performance that would be expected from a competent employee performing the same duties as the employee with disability
- to adopt some higher or ‘ideal’ standard would unfairly disadvantage SWS employees. The reason is that the minimum pay of other employees is not determined by this higher standard
- standards need to be set only for those duties or tasks where the individual’s disability has some bearing on performance.

For any parts of the job unaffected by the disability, the employee may be assumed to meet the standard without any assessment being applied. It would simply be a matter of recording that the employee met 100 per cent of the requirements for the amount of work time spent on that duty.

Assessment of Quality

Employers and assessors should specify performance standards that incorporate both quality and quantity components.

The standard used for quality will be that required by the employer for the duty in question.

An example of such a standard may be ‘produce x units per hour, with a rejection rate not exceeding y per cent’. The standard would be taken from the performance of other employees performing the same or similar jobs in the workplace in question. The performance of the SWS employee can be
assessed against such a standard, with the number of ‘rejects’ in excess of those allowed under the standard, deducted to form the score.

**Methods of Gathering Information for Performance Standards**

Quantifying an employee’s achievement will often be the easiest and most reliable way of setting performance standards, and of assessing the employee’s achievement against the standards – especially in assembly, manufacturing or process duties.

While the need for judgement is a necessary part of the productivity assessment, the greater the reliance on subjective judgement, the greater the scope for bias and inconsistency (see ‘Avoidance of Bias’ at the end of this section). The use of reliable data is therefore the preferred method of setting standards and assessing the employee’s achievement.

However, where duties are appropriately quantified, a qualitative standard will be used.

Each party to the assessment must agree to the performance standards and to the assessed levels of work achievement against those standards.

Information on other employees’ performance should normally be used in setting performance standards. This information can often be achieved without direct observation of other employees. Many workplaces gather reliable production statistics which can be a non-intrusive means of establishing performance information.

In cases where other employees cannot contribute to the setting of performance standards (such as where the position is new, there is no one else performing those duties), it may be useful for the SWS assessor to perform the duty to develop reasonable expectations of performance.

If another employee is involved in a standard determination exercise, the person should be competent in the task but, preferably, have a similar length of experience on the job as the person who is the subject of assessment. The performance of employees who have been doing the same job for many years could be unusually high.

If fellow employees are being monitored to develop performance standards, they should be advised of this. It should be noted that the very fact of providing this information could improve the other employee’s achievement.

Information gained over too short a period may over-estimate the performance that can be sustained over time.

Gathering information to set standards should be made under conditions closely approximating those normally applying to the workplace.

Naturally, provision should be made for rest breaks and personal time, consistent with the needs of the employee or the general operating standards of the workplace.

There is a wide variation in the performance of employee with disability, just as there is in the performance of employee without disability. Variations in performance reflect a wide range of workplace factors, not only the capabilities of the individual (e.g. supervision and work design).

Where the job involves considerable variation in duties on a day-to-day basis, it may be desirable to create a simulated work routine for the purpose of establishing performance standards and assessing achievement against these standards.

In this approach, the performance standard and subsequent assessment of the individual’s achievement would be based on a representative sample of tasks drawn from the range of duties the employee would typically perform in the job.
Assessment Step 3: Compare the employee’s achievement on the job with agreed basic workplace standard for each duty.

The assessment of the employee’s achievement would almost always be made in the usual work setting. Certainly the employee, or their representative (union or nominee) or the employer, would be entitled to seek an opportunity for the employee to demonstrate their capabilities.

As noted above, there should be no assessment of any duties where the disability clearly has no bearing on the employee performance. Such duties should be listed and rated at 100 per cent achievement. The total percentage of time taken to perform such a duty is recorded.

For each duty or task, the parties agree on an appropriate rating for the employee against the performance standard. Achievement is expressed as a percentage, with 100 per cent level representing the agreed performance standard for the full relevant rate of pay for the job.

The following points apply to any demonstration of performance by the employee:

- the goal is to choose unobtrusive and reliable methods of gaining productivity information, and
- observation or monitoring the employee’s achievement in the course of their normal work is clearly preferable to a separate and more formal demonstration exercise (although this may be desirable in some cases).

Observation or monitoring should:

- be conducted in as natural and sensitive a manner as possible, so the employee is comfortable and relaxed
- be done independently of any ‘hands on’ assistance from supervisors, other employees or placement agency staff
- ensure the employee receives the same level of support and supervision that would be reasonably available to other people who do not have a disability, such as being able to ask questions or discuss problems, and
- ensure the employee is free to stop and repeat the process if they feel uncomfortable.

Assessment Step 4: Specify the time spent on each duty

The time spent on each duty is used to adjust the employee performance rating for each duty. This ensures low (or high) performance on a minor duty will not unfairly influence the overall productivity rate. Time is generally also a useful indicator of the importance of each duty.

Why use time to assess task performance?

Duties and tasks may vary in importance according to how frequently they are performed, how critical they are to job performance and how difficult they are to learn.

The fairness of the time dimension is indicated in the following example.

An employee in a plant nursery spends 60 per cent of her time on one duty at which she achieves 70 per cent of the expected performance for the relevant rate of pay. She spends 30 per cent of her time in a second duty in which she achieved 50 per cent of the expected performance for the relevant rate of pay. The remainder of her time is spent on a duty in which her performance is at 40 per cent of the standard.

Without a time weighting her performance rating would be 53 per cent:

<table>
<thead>
<tr>
<th>Duty</th>
<th>Performance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duty 1</td>
<td>70%</td>
</tr>
<tr>
<td>Duty 2</td>
<td>50%</td>
</tr>
<tr>
<td>Duty 3</td>
<td>40%</td>
</tr>
<tr>
<td>Average</td>
<td>53%</td>
</tr>
</tbody>
</table>
With a time weighting, however, her performance rating (without supervision or other adjustment) is 61 per cent:

- Duty 1: 70% x .60 = .42
- Duty 2: 50% x .30 = .15
- Duty 3: 40% x .10 = .04

.61 (by addition)

The proportion of time spent on a duty is the simplest and most reliable proxy measure for the importance of a duty and is important for a fair wage outcome.

**Assessment Step 5: Calculate the appropriate wage level**

The usual process for wage calculation:

- The extent to which the employee achieves the Basic Performance Standard for each duty – expressed as a percentage – is simply multiplied against the time spent in that duty. This step adjusts the rate of pay for each duty, so that low performance or a minor duty will not excessively reduce the overall wage rate.
- The result is the amount of the relevant rate of pay to be paid for that duty. This is shown on the sample assessment sheet at the end of this section.
- The result from each duty is then added to give the percentage of the full relevant rate of pay for the job.
- In a minority of cases the wage result may need to be varied if the employee achievement is increased (or reduced) because the person requires an unusually low (or high) degree of employer supervision or assistance. Note: it cannot be reduced for supervision provided by a Disability Employment Services provider, an Australian Disability Enterprise or other government funded employment service provider.

Any adjustments of this type are to be limited to the percentile band in which the assessed wage falls. For example, an assessment of 67 per cent may be adjusted up to no higher than 70 per cent or down to no lower than 60 per cent.

Detailed guidelines for assessing these factors are under the ‘Assessment Steps – Rounding’, at the end of this section.

It would be inappropriate to always apply a mathematical formula to round off the total. This would assume precision in the amount to be rounded that may not be warranted in all circumstances given the nature of the assessment task.

Instead, the judgement can be made by reviewing the assessment process as a whole, including the optional supervision step, to determine whether, on balance, the overall productive capacity of the employee would be better reflected by taking the assessment to the higher or lower decile.

It should be noted that where both rounding and adjustment for supervision are used, the two combined must not be outside the decile band in which the assessed rate falls.

**Minimum Wage Outcome**

The national minimum wage for people with disability on SWS provisions is to be paid by the employer as a safeguard. This minimum wage will be reviewed annually by the Fair Work Commission and will be published on the website. This review will be conducted so that any increased wages can be implemented from the beginning of the first pay period on or after 1 July each year. The minimum SWS wage applies even where productivity assessment indicates a lower rate of payment.
In rare instances, where the relevant industrial instrument does not fall under the jurisdiction of the Fair Work Commission, the minimum amount payable may be different from the SWS minimum weekly wage, where it is prescribed in the relevant industrial instrument. For additional information, contact the Fair Work Commission on 1300 799 675.

Payments above the Rate of Pay Specified in the Relevant Industrial Instrument

Where payments are made above the relevant award rate of pay as determined under the appropriate industrial instrument, the pro-rata wage should be based on the actual rate of pay.

Employers pay their employee above the relevant rate of pay for a variety of reasons. In some cases, over award payments are applied to all employees in a particular classification and in others they are applied only to particular employees in specific circumstances. Whether the assessed employee should receive a pro-rata wage based on a rate of pay above the relevant industrial instrument may depend on particular workplaces (having regard to the provisions of the Disability Discrimination Act 1992 (Cth)).

The Disability Discrimination Act (Cth) effectively provides that an assessed employee cannot be excluded from being paid above the rate of pay specified in the relevant industrial instrument on the grounds of disability. However, to qualify for a pro-rata amount which exceeds that prescribed in the relevant industrial instrument, the assessed employee would have to meet any specific criteria applicable for the payment in that particular workplace.

As a general rule, where the employer pays all employee in a particular classification, at a rate of pay above that specified in the relevant industrial instrument at the workplace in question, the pro-rata amount for the SWS employee would include the amount above the relevant rate of pay.

Productivity Assessment in Part-Time Jobs

Part-time jobs can be assessed under the SWS using the same procedure and calculations as for full-time jobs. This can be achieved by using the part-time hourly figures in the wage calculations.

Next Steps after the Assessment

This section covers the remaining steps in the assessment process.

Reaching agreement

The parties agree on the wage rate and date for review, and sign the wage assessment agreement. For the purposes of the wage assessment agreement, a nominee whom the employee nominates in accordance with relevant state laws will be accepted as the signatory. This could occur in cases where the employee agrees with the outcome of assessment but is unable to sign the document.

Commenting on the process

Any of the parties may record their comments on any aspect of the process. Each party is entitled to read the comments of the other parties before signing the wage assessment agreement.

Notifying the Industrial Registrar

Where required by the relevant industrial instrument, the employer must provide copies of the completed wage assessment agreement to the Industrial Registrar or to the Fair Work Commission, as relevant. The Registrar will notify the relevant union, if that union did not participate in the assessment process. The agreement will take effect, unless the union notifies the Registrar of its objection, within 10 working days.
Assessment Steps

Rounding

The basis of the process of rounding within the SWS is contained in the SWS Schedule which is included in most modern awards. This section refers to an ‘applicable percentage’ of the minimum rate of pay prescribed in the award or industrial agreement. An employee assessed capacity, for the purposes of determining a wage, is expressed in percentile bands.

From this, it was agreed between employers, union and the Australian Government prior to the commencement of the SWS that the actual (unrounded) assessed rate would be rounded to the nearest ten percentile band. The method of doing this would be a simple arithmetic rounding.

Adjusting for supervision

Within the SWS, there is also provision for rounding using a method other than arithmetic. This may occur in cases where the unrounded assessed rate is required to be either raised or lowered to account for factors that have not been accounted for elsewhere in the assessment, for example, where:

- significant adjustments have to be made to the duties of other employees in order to integrate the assessed employee into the mainstream workplace
- the employer incurs a significant additional cost in ensuring the employee meets the required quality standard, and/or
- there are major and recurring fluctuations in the employee output levels, such that the supervisor, other employees or employment service providers need to provide additional supervision or support to ensure that the employee maintains performance levels as per the employee assessed capacity.

Any adjustment other than arithmetic may only take place within the percentile band in which the assessed rate falls. For example, an assessed rate of 67 per cent cannot be rounded down below 60 per cent. An assessed rate of 60 per cent cannot be reduced any further, as this would place the employee productivity level in a different (lower) percentile band.

The objective in placing this restriction on the amount of adjustment is to limit the extent to which an employee assessed rate can be reduced. Thus, the maximum possible amount by which an assessed rate can be lowered is 9.99 per cent.

Adjusting for supervision may also be considered when the employee requires significantly less supervision than would reasonably be expected from a competent employee (as may be the case where a permanent support employee is present).

The adjustment may be used to take into account other work-related factors not covered elsewhere in the assessment; for example, to acknowledge non-quantifiable or ‘intangible’ benefits the employee brings to the job (such as a high level of commitment or reliability) or to acknowledge other skills or attributes.

In cases where this adjustment is used and produces a very low wage rate, the suitability of the job for the individual should be re-examined. Further training or vocational assessment may be required to establish a suitable job.

Where adjustment for supervision or other employee assistance is used, assessors are required to record the reasons in their assessment report in support of any such deduction.

The provision of scope for an adjustment within the percentile band is seen as being a simple and consistent means of dealing with the issue. Before making such an adjustment, however, it should be noted that employees without disability require supervision and assistance to meet required standards, as do employees with disability.
This deduction is not intended to apply when the assistance or support provided by managers and other employees is only occasional or incidental to the employee duties.

Supervision and support provided to the employee by an employment services provider (such as a Disability Employment Services provider or Australian Disability Enterprise) should, of course, not be counted for the purpose of calculating the appropriate wage rate. It is important that any adjustments for rounding and supervision, when used, are considered together so that the employee is not disadvantaged by having two adjustments to the assessed wage.

Avoidance of Bias

The SWS uses a specific assessment process to ensure wage rates are fair and to guard against bias or prejudice. A number of potential sources of bias may apply in the assessment of individual capabilities, particularly in the assessment of people with disability.

The following are some of the sources of bias:

- Expectancy bias – if you expect people to behave in a certain way, you will probably perceive them as behaving in that way. Someone who stereotypes people with disability as, for example, costly to employ, troublesome (i.e. having behaviour problems, being disruptive, etc.), and likely to be absent more often as a result of health problems, is more likely to see them as demonstrating those behaviours.
- The ‘halo effect’ in rating skills and performance – drawing an impression of an employee based on a single characteristic, such as intelligence or appearance. The halo may be either positive or negative; for example, a negative halo may be to assume that, simply because an employee has a speech impairment, he or she also has an intellectual disability.
- Failure to recognise the ‘implicit’ skills and attributes of the employee with disability, e.g. ability to cooperate with others or to focus attention on a task.
- Gender factors – research suggests that gender discrimination in the general labour force interacts with discrimination against people with disability to severely disadvantage women with disability, in terms of access to jobs, training, services and income.
- Discrimination on the basis of age needs also to be considered, particularly in view of the ageing of the population.

The need to avoid bias in the assessment system may be approached by:

- Ensuring that assessments are based on explicit criteria that are (as far as possible) capable of measurement or observation (i.e. performance standards) rather than on unstructured subjective assessments.
- Including in any training for those undertaking assessments, specific materials on recognising and preventing bias.
**Assessment Summary Sheet**

The Duty list on the IT system displays the duties that the employee performs in their job. The duties are populated from the SWS Application. Assessors should add, delete or amend what was submitted if required.

<table>
<thead>
<tr>
<th>Duty number</th>
<th>Title</th>
<th>Ave other employee observation</th>
<th>Ave employee observation</th>
<th>Employee Productivity (%)</th>
<th>Hours per week</th>
<th>Percentage of total time (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Picking Fruit</td>
<td>7:49</td>
<td>11:39</td>
<td>67.10</td>
<td>5:25</td>
<td>45</td>
</tr>
<tr>
<td>2</td>
<td>Packing Fruit</td>
<td>12:24</td>
<td>21:56</td>
<td>58.79</td>
<td>4:35</td>
<td>38</td>
</tr>
<tr>
<td>3</td>
<td>Loading Fruit</td>
<td>22:16</td>
<td>58:44</td>
<td>37.92</td>
<td>2:00</td>
<td>17</td>
</tr>
</tbody>
</table>
Section 4 Industrial Relations

Introduction

The SWS was established for employees who have a disability that reduces their productive work capacity. Appropriate workplace relations arrangements are necessary to enable the payment of SWS pro-rata wages. Under the SWS, an employee with disability may only access the SWS if the industrial instrument that applies to the employee contains SWS provisions.

SWS Provisions in Industrial Instruments

It is the employer’s responsibility to identify the applicable industrial instrument under which they will employ a person. The employer must ensure the information about the industrial instrument entered on the wage assessment agreement is current and accurate. While an employee may have access to SWS provisions through a state or federal industrial instrument, not all instruments will contain SWS provisions. It is therefore essential that the industrial instrument be identified and that a check is conducted by the employer to confirm it contains SWS provisions.

Most employers and employees in Australia are covered by the national workplace relations system and one set of workplace relations laws, including most employers and employees who were previously covered by state workplace laws. Accordingly, the majority of employers and employees will be covered by a modern award or enterprise agreement, most of which will contain the model SWS provisions. The model provisions are included at Attachment A.

For details on coverage of the national workplace relations system, visit the Fair Work Commission website or contact them on 1300 799 675.

Determining the appropriate industrial instrument

An employer must identify the industrial instrument under which they seek to employ a person with disability, to ensure that the instrument contains SWS provisions.

As noted above, the majority of employers will be covered by a modern award or enterprise agreement, most of which will contain the model SWS provisions. However, SWS provisions may also be included in a range of other industrial arrangements and these provisions may vary slightly from the model provisions. For instance, they may contain different lodgement procedures or a different Trial Period.

For assistance with determining an appropriate industrial instrument, visit the Fair Work Commission website contact them on 1300 799 675.

What if the applicable industrial instrument does not include SWS provisions?

The vast majority of modern awards in the national workplace relations system include the model SWS provisions. This means that most employees to whom a modern award applies will have access to the SWS. However, if an applicable industrial instrument applying to an employee does not contain SWS provisions, then the employer and employee are generally not able to access SWS.

In this situation, employers and employees in the national system may seek to make an enterprise agreement that will include SWS provisions. There is information available on the Fair work Commission website about making variations.

Employers who have an existing enterprise agreement which doesn’t contain the SWS provisions, may seek to vary their agreement to add SWS provisions.

In cases where a state award does not include SWS provisions, the parties to the award (the union or employer) can apply to the relevant state industrial tribunal to have SWS provisions inserted in to the award. This can be done where there is a potential SWS employee with a specific job in mind or in anticipation of a general future need.
Lodging a SWS Wage Assessment Agreement

As outlined above, many private sector employers are now covered by the national workplace relations system. Therefore, most employees will be covered by SWS model provisions in a modern award. The model provisions contained in most Modern Awards (included at Attachment A) state that all SWS wage assessment agreements, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission. Contact details for the Fair Work Commission are at Attachment B.

It is the responsibility of the employer to lodge the assessment agreement. However, it is customary for the SWS assessor to complete this task on behalf of the employer as part of their role as facilitator, if the employer so requests.

Where an assessment has been conducted subject to a SWS provision in a relevant state award, such as an assessment for an employee in Western Australia who is not employed by an employer in the national workplace relations system, then these assessments should continue to be lodged, using the lodgement provisions in the relevant award. This is likely to require lodgement of the wage assessment agreement with the Industrial Registrar of the state industrial tribunal such as for example, the Western Australian Industrial Relations Commission. Contact details for state industrial tribunals are provided at Attachment C.

Some existing industrial instruments may not include specific provisions for lodgement of SWS wage assessment agreements.

Where a union has an interest in the award, but is not involved in the wage assessment.

Where a union which has an interest in the relevant modern award is not party to the SWS assessment, the assessment agreement will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect, unless an objection is notified to the Fair Work Commission, within 10 working days.

Review of assessment

The model SWS provisions provide that the assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the SWS.

Special National Minimum Wages

The Expert Panel within the Fair Work Commission (FWC) is required to review minimum wages annually, with any wage adjustments taking effect from the first pay period to commence on or after 1 July each year. In each annual minimum wage review, the FWC is required to make a national minimum wage order for employees not covered by a modern award or agreement. The national minimum wage order is to include a special national minimum wage for employees with disability.

It should be noted that where a relevant industrial instrument in the national system, other than a modern award, specifies rates that are lower than the special National Minimum Wage, then the level specified in the special National Minimum Wage will apply.
Attachment A – SWS Schedule C in Modern Awards

C.1 This schedule 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 award.

C.2 In this schedule:

**Approved 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.

**Assessment instrument** means the tool 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.

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

**Relevant minimum wage** means the minimum wage prescribed in this award for the class of work for which an employee is engaged.

**Supported Wage System** (SWS) means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from JobAccess.

**SWS wage assessment agreement** means the document in the form required by the Department of Social Services that records the employee’s productive capacity and agreed wage rate.

C.3 Eligibility criteria

C.3.1 Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class for which the employee is engaged under this 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.

C.3.2 The schedule 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 award relating to the rehabilitation of employees who are injured in the course of their employment.

Supported wage rates

C.3.3 Employees to whom this clause applies shall be paid the applicable percentage of the relevant minimum wage according to the following schedule:

<table>
<thead>
<tr>
<th>Assessed capacity [sub-clause (d)]</th>
<th>% of prescribed award rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>20%</td>
<td>20%</td>
</tr>
</tbody>
</table>

1 The schedule denominator can vary between Awards and Agreements (for example Schedule B or E)
### C.3.4
Provided that the minimum amount payable must be not less than $84 per week.

### C.3.5
Where an employee’s assessed capacity is 10%; they must receive a high degree of assistance and support.

### C.4  Assessment of capacity

#### C.4.1
For the purposes of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and the employee, and if the employee so desires, a union which the employee is eligible to join.

#### C.4.2
Assessment made under this schedule must be documented in a SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Fair Work Act.

### C.5  Lodgement of SWS wage assessment agreement

#### C.5.1
All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

#### C.5.2
All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

### C.6  Review of assessment

The assessment of the applicable percentage should be subject to annual review or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the support wage system.

### C.7  Other terms and conditions of employment

Where an assessment has been made, the applicable percentage will apply to the relevant wage rate only. Employees covered by the provisions of the schedule will be entitled to the same terms and conditions of employment as all other employees covered by this award paid on a pro-rata basis.

### Table

<table>
<thead>
<tr>
<th>Assessed capacity [sub-clause (d)]</th>
<th>% of prescribed award rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>30%</td>
<td>30%</td>
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<tr>
<td>40%</td>
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<td>50%</td>
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<tr>
<td>80%</td>
<td>80%</td>
</tr>
<tr>
<td>90%</td>
<td>90%</td>
</tr>
</tbody>
</table>
C.8 Workplace adjustment

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee’s capacity to do the job. Changes may involve redesign of job duties, working time arrangements and work organisation in consultation with other employees in the area.

C.9 Trial Period

C.9.1 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 schedule for a Trial Period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

C.9.2 During the Trial Period, the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.

C.9.3 The minimum amount payable to the employee during the Trial Period, as at 1 July 2017, must be no less than $84 per week.

C.9.4 Work trials should include induction or training as appropriate to the job being trialled.

C.9.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the Trial Period, a further contract of employment will be entered into based on the outcome of assessment under clause C.5.
Attachment B – Fair Work Commission – contact details

You can contact the Fair Work Commission between 9.00 am and 5.00 pm on ordinary working days.

If you need help to communicate with the Fair Work Commission, you can use the Translating and Interpreter Service on telephone **13 14 50**. If you have a hearing, sight or speech impairment, you can use the Speech to Speech Relay through the National Relay Service on **13 36 77**.

You can contact the Fair Work Commission through the following:

- Email: Inquiries can be emailed to [inquiries@fwc.gov.au](mailto:inquiries@fwc.gov.au)
- Telephone: The national Fair Work Commission Help Line number **1300 799 675**.
- In person: Visit the Fair Work Commission office in your capital city.

Contact details for the Fair Work Commission offices in your capital city are available on the [Fair Work Commission](https://www.fwc.gov.au) website.
Attachment C – State industrial tribunals – contact details

**Industrial Relations Commission of New South Wales**
GPO Box 3670
Sydney NSW 2001
Ph: (02) 9258 0866

**South Australian Industrial Relations Tribunals**
PO Box 3636
Rundle Mall SA 5000
Ph: (08) 8207 0999

**Queensland Industrial Relations Commission**
GPO Box 373
Brisbane QLD 4001
Ph: (07) 3227 8060

**Western Australia Industrial Relations Commission**
Locked Bag 1
CLOISTERS SQUARE
PERTH WA 6850
Ph: (08) 9420 4444

**Tasmanian Industrial Commission**
GPO Box 1108
Hobart TAS 7001
Ph: (03) 6165 6770
### Attachment D – SWS Assessment service providers

<table>
<thead>
<tr>
<th>Achieve Australia Limited</th>
<th>Mai-Wel Limited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Occupational Health Services</td>
<td>Mark Andrew Thornton</td>
</tr>
<tr>
<td>Advanced Personnel Management (APM)</td>
<td>MAX Employment</td>
</tr>
<tr>
<td>Assessments Australia</td>
<td>Maxima Group Training</td>
</tr>
<tr>
<td>Australian Red Cross</td>
<td>Multiple Solutions</td>
</tr>
<tr>
<td>B J Eldred</td>
<td>ON-Q Human Resources Limited</td>
</tr>
<tr>
<td>Bendigo Access Employment Inc</td>
<td>Ostara Australia</td>
</tr>
<tr>
<td>Castle Personnel Services Ltd</td>
<td>Personnel Placement Consultancies Pty Ltd</td>
</tr>
<tr>
<td>Cerebral Palsy League of Queensland</td>
<td>Physikal Health Services Pty Ltd</td>
</tr>
<tr>
<td>CIM EMPLOYMENT</td>
<td>Recovery Station</td>
</tr>
<tr>
<td>Counselling Appraisal Consultants Pty. Ltd.</td>
<td>Rehab Management</td>
</tr>
<tr>
<td>Crosslinks Rehabilitation Services</td>
<td>Resolve Rehabilitation Services Pty Ltd</td>
</tr>
<tr>
<td>DP Workplace Solutions</td>
<td>Richard Van Wyk Consultancy Pty Ltd</td>
</tr>
<tr>
<td>Disability Expertise Australasia (DEA)</td>
<td>RUTH MARY VIGUS</td>
</tr>
<tr>
<td>Evolution Research Pty Ltd</td>
<td>South Metropolitan Personnel Inc</td>
</tr>
<tr>
<td>Helen Saville</td>
<td>STEPS Employment</td>
</tr>
<tr>
<td>Heta Incorporated</td>
<td>Strive Occupational Rehabilitation</td>
</tr>
<tr>
<td>Interact People Solutions</td>
<td>Tania Carter Supported Wage Assessor</td>
</tr>
<tr>
<td>JJ &amp; DS Anderson</td>
<td>The Employment House</td>
</tr>
<tr>
<td>Job Centre Australia Limited</td>
<td>The ORS Group</td>
</tr>
<tr>
<td>JobCo Employment Services</td>
<td>VOICE- Psychologists &amp; Allied Professionals</td>
</tr>
<tr>
<td>JobLinks Employment and Training Service</td>
<td>Wave Assist</td>
</tr>
<tr>
<td>Jobmatch Association Incorporated</td>
<td>WCIG</td>
</tr>
<tr>
<td>LEAD - Live, Experience, Access and Develop.</td>
<td>Wise Employment Ltd</td>
</tr>
<tr>
<td>Lesley Pointon</td>
<td>Yooralla</td>
</tr>
<tr>
<td>Maccess</td>
<td></td>
</tr>
</tbody>
</table>
Attachment E – SWS Wage Assessment Agreement

Supported Wage System

<TYPE> Wage Assessment Agreement

When completed this form must be sent by the employer to the Industrial Registrar at the following address:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Fax/email: Address

Enter Details of all parties involved at the workplace in arriving at this assessment.

The undersigned parties agree:

<table>
<thead>
<tr>
<th>To recommend a wage of:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>of the appropriate award or agreement rate for the relevant classification of work</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

The name of the award or agreement which relates to the position is:

<table>
<thead>
<tr>
<th>the classification of the position within the award</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

The review date of the above wage rate:

<table>
<thead>
<tr>
<th>/ /</th>
</tr>
</thead>
</table>

Employer:

Name

Australian Business Number (ABN)

If employer entity has changed since Application was approved then a new Application is required

Physical Address

Postal Address (if different to physical address)

Telephone:

Fax/e-mail

Contact

Comments (Optional):

I (the undersigned) verify the job is covered by an award or legal industrial agreement which contains SWS Provisions. If you are unsure go to www.fwc.gov.au or contact the Fair Work Infoline on 13 13 94.

Signature of employer representative:

Date: / /

Employee:

Family Name

Given Names

Date of Birth

Postal Address

Telephone:

Fax/e-mail

Contact

Comments (Optional):

Signature of employee:

Date: / /

Employers: Please file your copy of this agreement appropriately for future reference

Page 1 of 2
Supported Wage System

Wage Assessment Agreement

<table>
<thead>
<tr>
<th>Union</th>
<th>Assessor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Union Name</td>
<td>Name</td>
</tr>
<tr>
<td>Postal Address</td>
<td>Family, Given, Organization Name</td>
</tr>
<tr>
<td>Telephone</td>
<td>NPA Provider Name</td>
</tr>
<tr>
<td>Fax/mail</td>
<td>Postal Address</td>
</tr>
<tr>
<td>Name of Union Representative</td>
<td>Telephone</td>
</tr>
<tr>
<td>Comments (optional):</td>
<td>Fax/mail</td>
</tr>
<tr>
<td>Signature of union representative:</td>
<td>Signature of Assessor:</td>
</tr>
<tr>
<td>Date:</td>
<td>Date:</td>
</tr>
</tbody>
</table>

Information for the Industrial Registrar – To be completed by the employer

<table>
<thead>
<tr>
<th>Assessment productivity % (from page 1)</th>
<th>Minimum hourly award or enterprise agreement rate for this position</th>
<th>Hours Employee will work per week</th>
<th>Employee's gross earnings per week at expected hours</th>
<th>Actual agreed Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>B</td>
<td>C</td>
<td>D</td>
<td>E</td>
</tr>
</tbody>
</table>

To which industrial registrar will this form be sent? (e.g., Australian Industrial Registrar, Sydney):

It is the responsibility of the employer to ensure the calculated rate of pay is correct and that it is paid in line with any annual wage increases.

Date this form sent to Industrial Registrar: / / Signature of employer: Date:

Form completion: If required by the Award or Agreement, original to be sent by the employer to the relevant Industrial Authority. Copies are provided to all signatories to the Wage Assessment Agreement, and the employee's employment service provider if requested.

What to do if circumstances change?
- Significant changes to work tasks or productivity
- Employment has ended
- New Employer entity
- Employment Award/Agreement no longer contains SWS provisions

If any of the above changes occur then please inform the DSS Supported Wage Management Unit by phone on 1300 065 123

Employers. Please file your copy of this agreement appropriately for future reference
**Attachment F - Glossary**

**Approved SWS Assessor** is a person who has been approved by the Department of Social Services to conduct Supported Wage System assessments.

**Applicant** is a person who submits an application for the Supported Wage System – either an employment services provider or an employer.

**Award** is an instrument that prescribes the terms and conditions under which a particular category of employee is employed.

**Award Wage** is the minimum wage, fixed by an award, certified agreement or enterprise agreement, to be paid to employees for performing specified work under conditions of full productivity.

**Basic Performance Standard** is the minimum level of performance which would be expected from a competent fellow employee performing the same duties as the employee with disability.

**Bias** is a tendency to arrive at a decision which has been influenced by views or beliefs held by the assessor and not based on fact.

**Centrelink** is an Australian Government agency that delivers a range of government services to the Australian community. These services are designed to assist people to become self-sufficient and to support those in need. Centrelink is responsible for the delivery of all income support payments.

**The Department** is the Australian Government Department of Social Services and is responsible for the administration of the Supported Wage System assessments.

**Disability** has the same meaning as defined under Section 4 of the Disability Discrimination Act 1992 (Cth).

**Disability Support Pension** is an income support payment and may be payable in respect to a person if they have an illness, injury or disability and are:

- Aged 16 or over and under Age Pension age, or
- Assessed as having a physical, intellectual, or psychiatric impairment and
  - unable to work, or to be retained for work, for 15 hours or more per week at or above the relevant minimum wage within the next two years because of the impairment, and
  - have actively participated in, or completed a Program of Support if required
- Meet the residency requirements
- Meet the income and assets test for your situation, or
- Permanently blind

**Disability Discrimination Act 1992 (Cth)** is Commonwealth legislation that makes it unlawful to discriminate against a person on the basis of their disability in prescribed areas of public life, including employment and access to premises.

**Employment Services Providers** are a national network of community and private organisations dedicated to placing people into employment.

**Fair Work Commission** is the national workplace relations tribunal. It is an independent body with power to carry out a range of functions relating to the safety net of minimum wages and employment conditions, enterprise bargaining, industrial action, dispute resolution, termination of employment and other workplace matters.

**Impairment Rating** measures how much a particular impairment affects a person and their ability to work. The Social Security Act contains provisions that enable the Minister, by legislative instrument, to determine tables relating to the assessment of work-related impairment for DSP and to determine rules that are to be complied with in applying the impairment tables. The current instrument is the
Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011. The tables describe functional activities, abilities, symptoms and limitations and assign ratings to determine the level of functional impact of impairment on a person’s ability to work. To qualify for DSP, a person’s impairment must be of 20 points or more under the Impairment Tables.

**Industrial Agreement** is a legal document that sets out the employee’s rights and conditions at work.

**Industrial Instrument** is an award (including a modern award), an enterprise agreement, a public sector industrial agreement, a former industrial agreement, a contract determination or a contract agreement.

**JobAccess** is the national hub for workplace and employment information for people with disability, employers and service providers.

**Job Analysis** is a systematic procedure for describing a job in terms of tasks performed and the knowledge, skills and abilities required to perform the tasks successfully.

**Job at Risk** is where the continued employment or job placement of an employee at full award wages is threatened, usually as a result of the effects of a physical, intellectual or psychiatric disability.

**Job Design** is the way in which a job is structured in relation to tasks, duties and the skills required to perform them.

**Job Match** is the degree of fit between a job and the nature of the employee’s disability, their personal preferences and skills.

**Nominee** is a person nominated by the employee to assist in the employment process and to ensure the best possible outcomes are achieved for that person or, for the purposes of signing the forms, a person whom the employee nominates in accordance with relevant state/territory laws to sign documents on their behalf.

**Pre-Assessment Check** is an investigation and judgement about the appropriateness of the job placement, including ensuring the person has had adequate training and that all necessary reasonable adjustments to lessen the impact of the disability have been made. The checks are made by those involved in the placement process before a wage assessment proceeds.

**Pro-Rata Award Wage** is the assessed percentage of the Award Wage. It is the wage paid by the employer to the employee on completion of the SWS wage assessment.

**Reasonable Adjustment** is an alteration or modification made to the workplace to assist an employee with disability to participate in employment on the same basis as others. An adjustment is reasonable under the Disability Discrimination Act 1992 (Cth) if does not impose an unjustifiable hardship on the employer.

**Review Date** is the date when an employee who is employed under Supported Wage System is due to have a SWS assessment to review their productivity.

**Superannuation Guarantee** is a specially established employer-supported superannuation contribution.

**Supported Wage Assessment Tool** is an online tool used by SWS assessors to record details of their wage assessments.

**Supported Wage System Schedule** is a schedule included in most modern awards that is one method of providing the legal basis for payment of a pro-rata wage. The SWS Schedule sets out the terms and conditions for the payments of a supported wage to an employee who is unable to work at the award wage because of the effects of a disability.
Tasks are the steps required to achieve specific outcomes or results in a job. Often a number of tasks will combine to form a ‘duty’. Tasks should be considered as separate duties when, because of a significant time weighing and productivity difference between them, a distortion of the wage would result if the tasks were combined into one duty.

Trial Period is a provision that has been made in the SWS Schedule for the employee to undertake a trial period before the wage assessment. The Trial Period usually includes specialised on-the-job-training in addition to any other standard training provided by the employer. The Trial Period can be up to 12 weeks (although by agreement, it may be extended to 16 weeks).

Unjustifiable Hardship has the same meaning as defined under section 11 of the Disability Discrimination Act 1992 (Cth). In determining whether an unjustifiable hardship would be imposed on the employer, all relevant circumstances of the particular case must be taken into account (including the factors set out in section 11 of the Act).

SWS Wage Assessment Agreement is an agreement which is entered into where the wage assessment results in a supported wage. All parties involved in the SWS assessment are to agree on the wage amount and date for review prior to signing the Wage Assessment Agreement.

Wage Assessment is a process for determining an appropriate productivity-based wage for people with disability whose work productivity is reduced as a result of disability. Assessment is based on productivity in a specific job. Assessments are not transferrable between jobs.

Work Order is a contract for SWS providers to conduct a supported wage assessment.

Workers Compensation is provided by employers for all employees. This also covers the SWS Trial Period.

Workplace Assessment is where the SWS assessor visits the workplace and conducts pre-assessment checks and an assessment of work productivity.