Australian Government
Department of Social Services

Supported Wage System in Open Employment Handbook

V1.2

Disclaimer

The 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 the applicable industrial agreement, enterprise agreement or other industrial instrument.

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Document Change History

Version	Effective Date	End Date	Change & Location
1.3	1 November 2025		Updated for new NPA Program 2025-2028
1.2	21 May 2021	1 November 2025	Update references to SESA Award 2020
1.1	1 July 2019	21 May 2021	Removal of Supported Wage System annual minimum wage
1.0	1 July 2018	30 June 2019	Original version of document

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 their disability can significantly affect their productive capacity. People in such circumstances may require a process of productivity assessment to obtain employment.

This Handbook is designed for those people employed under an industrial instrument with SWS provisions.

The SWS productivity assessment process provides a method to assess the productivity of the employee against performance standards of other employees with or 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, trade unions, disability peak bodies, government departments and specialised employment agencies for people with disability.

The SWS can also be used to determine productivity-based wages for employees employed under the *Supported Employment Service Award 2020* (SES Award). There is a separate Handbook that reflects the SWS under the SES Award.

Key principles of the SWS

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 other 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 and territory workplace relations systems.

Equity of application

The SWS must be equitable in its application as a productivity-based wage process linked to the same industrial relations agreement of both employees with disability and those without disability in the workplace.

Limits of use

A SWS productivity or pro-rata wage is used 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 performance standard. The presence of disability 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 can 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 is 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.

Eligibility Criteria

Applications for SWS require meeting the following conditions:

- the job under consideration is covered by an industrial instrument or legislative provision that permits employment under 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 16 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
- the job being offered is for a minimum of eight hours per week and is ongoing.

If an employee isn't covered by an industrial instrument or registered agreement, their minimum pay rate is set by the national minimum wage. An employee with disability can be paid a percentage of the national minimum wage based on their assessed work capacity.

For example, someone with a work capacity of 70 per cent will get 70 per cent of the national minimum wage. Only a qualified assessor can conduct this assessment. Employees cannot be paid less than the minimum weekly wage determined by the Fair Work Commission (FWC) per week, regardless of the number of hours worked.

For more information, see the Fair Work Commission National Minimum Wage Order. There is also information on the page about the Special National Minimum Wage 2, which prescribes the minimum weekly wage for people employed under a modern award with SWS provisions.

The Department of Social Services' (the Department) Assessment Team 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 particular job. The employer and the assessor must ensure the employee understands the SWS provisions.

Eligibility of people not in receipt of the DSP

A person not receiving the DSP may choose:

- to claim the DSP, or
- not to claim a payment, but only to test whether they meet the medical impairment criteria for the DSP: this is referred to as a SWS Eligibility Test.

If the person chooses to apply for the DSP, they should obtain information from Centrelink about the claim process. More information can be found on the Services Australia website.

For the person not on the DSP, the Department's Assessment Team will arrange a SWS Eligibility Test by contacting Centrelink. Centrelink may contact the employee for updated documentation or arrange an assessment for the SWS Eligibility Test.

Management of the system

The Assessment Team performs day-to-day management of the SWS and its processes.

The key responsibilities of the Department's Assessment Team is 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
- conduct audits of SWS applications and assessments performed by approved NPA assessors
- check for accuracy and timeliness of the wage assessment process and outcomes
- appear before industrial tribunals, such as the FWC or a state tribunal, where required.

Employers should contact the Department's Assessments Team at assessments@communitygrants.gov.au in the first instance to notify them of changes to SWS applications, i.e. if employment ceases, ABN changes, or employer changes.

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 provider (including Supported Employment Services, Inclusive Employment Australia or National Disability Insurance Scheme (NDIS), 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 employees who have completed further unsupported SWS employment of 13 weeks following their initial assessment 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. Supported Employment Services, Inclusive Employment Australia or NDIS)
- the employer is not a related entity of a government funded employment services provider and/or the employee has not received support through their NDIS funding
- 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 Assessment Team with a tax invoice for the relevant amount (GST inclusive) and provide documentation that the employment has been for the required period and minimum number of hours. Calculation of the minimum 13 weeks period of employment commences from the date the initial SWS wage assessment agreement was signed.

Employment Assistance Fund (EAF)

The Employment Assistance Fund (EAF) is designed to help employers support employees with disability in the workplace. The EAF reimburses employers for the cost of equipment or adjustments needed to support 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 JobAccess or by phoning **1800 464 800**.

Assistance and information for SWS employees

JobAccess website

The JobAccess website is a national hub for workplace and employment information for people with disability, employers and service providers. More information about SWS and other disability services can be found at JobAccess or by phoning **1800 464 800**. 1800 calls are free from fixed lines; please note calls made from mobile phones may incur additional costs.

Assistance for an interpreter

If you need an interpreter, help is available through the Translating and Interpreter Service on telephone **13 14 50**.

If you are deaf or hard of hearing or have speech impairment, we can help you through the Speech-to-Speech Relay through the National Relay Service on **13 36 77**. Both services are available 24 hours a day seven days a week and are the cost of a local call anywhere in Australia.

If you use Auslan to communicate, you can access the EAF to help with the costs of Auslan interpreting for SWS assessments.

Retention of Pensioner Concession Card

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

Mobility Allowance

SWS employees may be entitled to Mobility Allowance. Mobility Allowance assists 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 Services Australia website.

Workers' compensation and superannuation

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. Superannuation must be paid as legislated.

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.

Nominee

An employee may choose to involve a nominee in any stage of the job placement or SWS productivity assessment process. Any person nominated by the employee may carry out a general advocacy role. It is important that any known nominees, and their contact details are included in the SWS Application.

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

Who conducts the SWS productivity assessment?

National Panel of Assessors (NPA) Providers perform SWS assessments. Assessors are required to have minimum qualifications and experience (see 'Approval of NPA assessors' below).

The role of the NPA assessor is to work cooperatively with the employer and the employee and not seek to impose a primary decision-making or arbitration role.

The assessment process must be conducted in a manner that ensures the employer and the employee have a strong sense of ownership of the outcome. The assessment must ensure that the employer, employee, and assessor agree on the assessment process, performance standards and productivity outcome. In the event there is a dispute, the dispute mechanisms outlined in this handbook should be followed.

Approval of NPA assessors

NPA Providers are required to approve assessors to conduct SWS assessments. Assessors require a minimum of two years practical experience in the disability employment or related sectors, and an Australian education qualification (at a minimum of diploma level) in one of the following fields:

- rehabilitation counsellor
- occupational therapy
- physiotherapy
- nurse
- medical practitioner
- psychologist/psychiatrist
- orthoptics/optometry
- audiology
- exercise physiologist
- vocational training, or
- other diploma or higher-level qualifications which the Provider considers is relevant to providing the required Assessments which is approved by the Department.

The Department reserves the right to request documentary evidence of relevant qualification/s and experience for each Assessor working for an NPA Provider.

NPA assessor accreditation

In addition to the requirements above, assessors must complete the relevant training as directed by the Department before they are eligible to assess employees covered by SWS provisions.

A scenario of how people will enter the SWS

The SWS can be initiated in several 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.

Background

In this scenario, the applicant is an employment services Provider acting on behalf of an employee who receives the DSP. It is assumed that the employee will not be able to work at the full award wage rate as unsuccessful attempts have been made to secure employment at full award rates. A potential job in open employment has been identified that is covered by the SWS provisions in a modern Award.

Pre-employment steps

The applicant contacts the Fair Work Ombudsman on **13 13 94** to confirm the job is covered by 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 that they meet the key eligibility requirements.

The employer or employment service Provider completes the SWS application online at JobAccess.

On receipt of the application, the Department's Assessment Team verifies that the person with disability is in receipt of DSP and checks that other eligibility criteria have been met. If a DSP eligibility test is required, the Assessments Team will send a request to Services Australia.

The Assessment Team notifies the applicant when their application is approved, or if they do not meet the necessary criteria, they are notified that their application has been declined.

Commencement of the Trial Period

The employee begins work in the Trial Period once their SWS application has been approved and advises Centrelink of any change in circumstances: the rate of the 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 requirements of a SWS assessment and agree on a time for the assessment to be undertaken. If a pro-rata award wage is appropriate, and is accepted by those involved, the SWS wage assessment agreement is signed and a copy provided to the employer and employee. A copy of the SWS Agreement is sent to Fair Work Commission or Industrial Registrar for filing, if relevant.

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.

The assessor also provides a copy to the employment service Provider and union if requested. The employer sends a copy of the agreement to the relevant industrial authority, if this is a requirement stated in their industrial instrument. Note: 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 wage assessment agreement takes effect immediately when the employer, employee and assessor sign it.

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, 'SWS review assessment').

A Work Order to conduct a review assessment will be generated and issued to an NPA Provider approximately nine weeks before the review date. This is done so that the assessor has time to complete the preliminary research about the duties, work classification, 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

The key steps in the wage assessment process are summarised later in this section.

Eligibility and funding procedures

The SWS procedures apply whether a person is registered with an employment services Provider or not.

Contacting the Department's Assessment Team

The employee, employer or employment service Provider can contact the Assessment Team by phone on **1800 065 123**. 1800 calls are free from fixed lines; please note calls made from mobile phones may incur additional costs.

Making the application

The online SWS application form can be found on the JobAccess website. The employer or employment services Provider completes and submits the application form online.

The Department's Assessment Team:

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

Variation in procedures for people with disability who are not receiving the DSP

A person not in receipt of the DSP may choose to apply for the DSP.

They are not required to apply for DSP, however the Assessment Team may request Centrelink to test whether they meet the criteria for DSP to satisfy the SWS eligibility requirements at the SWS application approval stage.

If the person with disability chooses to apply for DSP, the relevant form(s) can be:

- downloaded from the Services Australia website
- collected by visiting a Centrelink Service Centre
- 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 person with disability completes the claim for DSP and sends it to the local Centrelink office. Centrelink will contact the applicant about the claim.

If the person with disability meets the DSP criteria, they, their nominee or their employment services Provider informs the Assessment Team, who then confirms the information with Centrelink, and processes the application

If the person with disability is not in receipt of the DSP, the Department's Assessment Team will 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 required, Centrelink may send a request to the person with disability requesting documentation to determine their eligibility. If this occurs, the Assessment Team will notify the SWS applicant that a letter has been sent to the person with disability.

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

Advise of approval

The Assessment Team notifies the applicant of approval of the SWS application, and the person with disability commences the SWS Trial Period.

An assessor is arranged

The Department's IT system generates and issues a Work Order to an NPA Provider.

The Provider accepts the Work Order and arranges an approved NPA assessor to conduct the initial assessment.

Work begins in a Trial Period

The SWS Trial Period allows the person with disability a settling-in period of up to 12 weeks. The Trial Period commences from the date the SWS application is approved. Further information on trial periods can be found further in the document.

The workplace parties negotiate a trial wage. The employer pays a negotiated wage 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 of the employee during 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**.

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. For example, where the person has prior experience relevant to the job in question. This only applies to employees under an industrial instrument with SWS provisions.

Advising Centrelink of change in financial circumstances of a person in receipt of DSP

Centrelink requires advice about the 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 as the employee's earnings may affect the rate of DSP. More information can be found at the Services Australia website.

The lead up to the assessment

Following receipt of a Work Order, the assessor negotiates a suitable date and time with the employee and nominee, if relevant, employer and employment services Provider for the assessment to take place. If the employee is an employment service Provider participant, the Provider may assist with scheduling a date and time for the assessment. Alternatively, the assessor can contact the employer directly to organise a date and time for the assessment. The employment service Provider should also be informed

It is the assessor's responsibility to ensure the employee has been advised of the assessment ahead of the scheduled date. If the employee was not informed ahead of the scheduled date, the assessment must not proceed, and the assessor must organise a new date for the assessment.

The NPA assessor will meet with the employee and nominee, if relevant, employer and employment services Provider at a pre-assessment meeting on or before the day of the assessment to enable all parties to discuss the relevant details of the assessment and answer any queries that may arise.

After the assessment

The employer, or the assessor on the employer's behalf, sends the signed wage assessment agreement form to the relevant industrial authority (Industrial Registrar or the FWC), as required. The employer and NPA assessor must be satisfied that the correct name of the industrial instrument under which the employee is employed is entered into the SWS wage assessment agreement before sending it to the relevant industrial authority.

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 that the wage assessment agreement has been successfully filed.

The assessor must provide a copy of the wage assessment agreement form to the agreement parties including the employee, employer, union representative if party to the agreement, and the employment services provider if agreed to by the employee.

Operative date to pay the assessed wage

The operative date of the wage agreement is the date when the wage assessment agreement is signed by the employer, employee (or nominee) and a union representative (if requested by the employee) and the NPA assessor. The employer will 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

SWS review assessments

Where an employee with disability is employed on a SWS productivity-based wage, the employee's productivity is periodically reviewed. This ensures that any changes in productivity are reflected in the wage rate.

The SWS provisions in modern awards specify that reviews 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 be under 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.

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 FWC may be used. Otherwise, the assessed productivity rate will stand until the next review.

The majority of review assessments are allocated to assessors approximately nine weeks before the assessment is due.

Where a review assessment is scheduled, the employer, employee, assessor and union representative (if required) will re-examine the work undertaken and the current level of productivity. The parties will reassess the percentage of the full award wage paid to the employee based on this review and agree to amend or retain the current assessed productivity rate, which is applied to the wage.

If a review assessment is overdue (past the 1-year mark) the Department's Assessment Team will contact the NPA provider or employer to ensure that an assessment is scheduled. Where an assessment cannot be negotiated between the employer and the employee following contact with the Department, the employment contract under SWS provisions will lapse after 30 calendar days.

If a party to the wage assessment disputes the result, they may submit a written request to the Department's Assessment Team 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 the 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 regarding the operations of the industrial provisions for the SWS. More information on disputes can be found further in the document.

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 assessor must confirm the correct name of the industrial instrument that the employee is employed under.

This is entered into 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 Assessment Team of any significant changes because of the review when they submit their assessment report online. For example, a change to employer name or ABN.

Cost and content of reviews

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

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

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

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

Assistance for people in a job at risk

Occasionally the continued employment of an existing employee with disability at full award wages may be at risk.

This may occur when, for example, a person with disability finds a job, 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 with disability enters work but is unable to achieve award-level productivity, despite reasonable adjustments being made, for any of 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 their capacity to work
- the job is substantially restructured or removed due to a change in business operating conditions.

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 with disability at risk of unemployment may be covered by the provisions of the SWS, subject to meeting each of the following five conditions:

- the employee agrees to participate in the SWS
- the employee does not have a pending or current employee compensation claim against the employer
- the employee 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
- the employee's SWS assessment confirms an inability to meet the agreed performance standard for the job.

Disputes

If there is no agreement on the outcome of the initial productivity assessment, the employer may choose not to offer the person with disability 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 with disability has been engaged on SWS provisions, the dispute resolution mechanisms available to other employees in the workplace apply. The FWC has jurisdiction over disputes that a SWS employee may have with an employer. A nominee for the employee with disability may be involved to ensure the interests of the employee are adequately represented.

For both initial and review assessments, if one or more parties disagree with the productivity rating, they need to try to discuss their different views in the post assessment meeting and seek to resolve them and reach agreement. If parties fail to reach agreement, they may submit a request for a review of the assessment process with the Department's Assessment Team. The employer, employee, employee's nominee or a union representative can lodge a request for a review. The request must be in writing (email is acceptable) and must outline the specific parts of the assessment process which they would like reviewed, referring to the requirements for conducting assessments outlined in this 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 process outlined in this 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 an 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.

It is important to note, that parties must not sign the SWS Wage Agreement until agreement is reached. Once an agreement is signed and submitted to the Industrial Authority, an early review of the employee's productivity may only be arranged where the employee's tasks or productivity significantly changes. All parties to the Assessment must agree to the early review.

If there is no agreement on the assessment outcome between the parties to the assessment, the employment contract under SWS provisions will lapse 30 calendar days after the date of the 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.

Summary of SWS Process – Key Steps

1. Access the JobAccess website or phone the Assessment Team (**1800 065 123**) for information.
2. Complete and lodge the application form on the JobAccess website.
3. The Assessment Team checks the employee's eligibility.
4. If the employee is not in receipt of the DSP then the Assessment Team contacts Centrelink for an SWS Eligibility Test.
5. If the employee meets the DSP criteria, then the Department's Assessment Team approves the application. A confirmation email is sent to the applicant. If the application does not meet the DSP criteria or other eligibility requirements, the application is declined, and a confirmation email will be sent to the applicant.
6. The employee commences the Trial Period.
7. The Department's IT System assigns the assessment to an 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 Department's IT System automatically initiates review assessments or the Assessment Team can arrange an earlier review if requested.

Section 3 The SWS Productivity Assessment Process

Introduction

The productivity-based wage requires a standard to be set for 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, where used, may be involved in providing on-the-job support for the employee whose productivity is to be assessed. In practice, the assessment may draw upon work already done by the employment services Provider for the job placement.

An employment services Provider, where used, often identifies and records the key tasks 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 tasks. This information guides the employees' training strategy and 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 is 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 review 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.

Things to consider

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, 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 unjustifiable hardship, all relevant circumstances of the particular case must be considered, including the factors set out in section 11 of the Act.

Sometimes reasonable adjustments require more than modifications to the physical working environment. The way 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 about 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 Act.

Trial Period

Employees with disability will learn their job tasks at varying rates. Some people may have a 'learning curve' that climbs steadily for many weeks, others may learn the basics 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, a Trial Period is part of the SWS provisions. This Trial Period can commence once the SWS application has been approved.

The type of industrial instrument the employee is operating under will determine the provisions for the Trial Period.

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

The SWS schedule contained in most modern awards allows a Trial Period of up to 12 weeks as a training or settling- in period, before the initial assessment is required. Under most awards, 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 employee could further improve their work performance significantly in that time. An extension may also apply when it is for the benefit of the employee, for example an absence from work because of illness.

There is no specified minimum time for the Trial Period for employees not covered by the SES Award. Both parties may elect to proceed with an 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.

Special National Minimum Wage 2 of the National Minimum Wage Order 2017 provides a wage scale and a Trial Period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

The employer pays a negotiated wage to the employee during the Trial Period. The trial wage must be the minimum SWS weekly wage and should ideally reflect the expected productivity levels for the Trial Period. The minimum weekly 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**.

Depending on the anticipated productivity in the Trial Period, it is desirable that the trial wage is not 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 the workplace parties sign a wage assessment agreement. The employer, employee and the assessor must all agree on the dates for the assessment.

It is important that the employee is not persuaded to undertake a 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.

The employee with disability should reach a reasonably stable level of job performance before an SWS productivity assessment. The employee should have already received specialist training where required to gain the skill and confidence to perform their tasks safely.

The Trial Period should include induction or training as appropriate in the job being trialed.

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 has not been achieved so far on the job and is unlikely in the short term.

The presence of disability or eligibility for DSP is not an indication of the need for a productivity wage.

Many people with high levels of disability can work at full productivity and award wages. Care should be taken in any discussion of current productivity to avoid prejudging the outcome of the later productivity assessment.

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 services 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 always be an integral part of this process.
- Are there any desirable changes to task allocation in the work team? Would changes improve overall productivity and help match the employer's requirements and the abilities of the employee?
- The EAF can provide reimbursement for the provision of necessary modifications to the workplace to assist with the employees' mobility or performance at work. More information can be found at the JobAccess website.

Avoidance of bias

The SWS uses a specific assessment process to ensure wage rates are fair and to guard against bias or prejudice. Several 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 because 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, they also have an intellectual disability.
- Failure to recognise the 'implicit' skills and attributes of the employee with disability, for example the 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 based on age needs also to be considered, particularly in view of the ageing of the population.

- Having a different expectation of performance compared to other people without disability in the workplace. Employees with disability have the same conditions under the Award or Industrial provisions as other employees.

To avoid bias in the assessment system:

- Ensure that assessments are based on explicit criteria that are (as far as possible) capable of measurement or observation (i.e. performance standards) rather than unstructured subjective assessments.
- Include training for those undertaking assessments, using specific materials on recognising and preventing bias.

Summary of steps in the assessment

1. List the duties of the position and describe the major tasks of each duty.
2. Agree on a performance standard for each task.
3. Compare the employee's achievement on the job with agreed performance standards for each task.
4. Specify the time spent on each task.
5. Validate the data.
6. Calculate the appropriate wage level.

Explanation of each step in the assessment

Guidelines and training in the methods of gathering information for productivity assessments are provided to NPA Providers. The following is a description of the key points in productivity assessments.

Assessment Step 1: List the major duties of the job. Briefly describe the tasks of each duty.

Duties and tasks are key concepts related to a job. In a job certain tasks are completed as part of a duty. Job requirements can include the knowledge, skills and abilities necessary for a job. Job tasks are specific actions in a duty required of someone in a given position. For example, someone may have a duty: package plumbing components. A task is a breakdown of the steps in each duty.

The tasks required under package plumbing components may be: collect product and bags, fill bags with product, label bag.

The product is comprised of washers and bolts which are placed into a plastic bag and then labelled with the contents.

The fundamentals that may be required for the job are the physical capability to collect the product and bags, and the dexterity to label the bags, as well as the capacity to learn how to do these tasks. The employee must be matched to the appropriate duties and tasks that match their capability.

A person with disability may not be able to complete all the duties (or even all the tasks in a duty) in a job. They may, however, be able to carry out one or more tasks that are identified as part of a duty.

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.

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.

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 duties and tasks needed to achieve these outcomes.

The provisions of the relevant industrial agreement determine the appropriate classification for the position.

Where an employee performs duties that span more than one classification, they must be paid at the higher grade if carrying out the duties of the higher grade for two or more hours in any shift. This does not apply while the employee is carrying out work in a higher grade for training purposes only.

It is important that the task is observable, measurable, replicable and has a clear beginning and end.

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

A performance standard needs to be established before an assessment can be undertaken, and before the employer can collect workplace data. Performance standards provide the employee with specific performance expectations for each duty and task. They are the observable behaviours and actions that explain how the job is to be done, plus the results that are expected for satisfactory job performance.

For example, they describe all task details required to successfully complete the task, including task breakdown, start and end points, how the task is completed, the quality and quantity required, details of any tools/machinery used, relevant environmental conditions (where the task is performed), and any conditions that need to be in place before or after the assessment.

In many cases, the most effective way to set a performance standard is by observing the performance of another employee performing the same duties in the workplace.

An industrial instrument may have established the productivity standards required for employees entitled to receive the minimum rate of pay. Therefore, it should 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:

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

Where there are duties or tasks unaffected by the disability, the assumption is that the employee meets the performance standard and no assessment is required. It would simply be a matter of recording that the employee met 100 per cent of the requirements for that duty or task.

Assessment of quality

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

The performance standard used for quality will be that required by the employer for the duty or task in question

An example of such a benchmark may be 'produce *x* units per hour, with a rejection rate not exceeding *y* per cent'.

The benchmark is established by 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 benchmark, with the number of ‘rejects’ more than those allowed under the standard, deducted to form the score.

Another example may be where an employee is required to mow a lawn. The standard may be to mow 50 square metres in 10 minutes within acceptable guidelines.

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’). The use of reliable data is therefore the preferred method of setting standards and assessing the employee’s achievement.

However, where duties and tasks 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.

Use information on other employees’ performance when setting performance standards. Sometimes, this information can 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 or there is no one else performing those duties, it may be useful for the NPA 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 and, 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 employees’ achievement.

Assessment information gained over too short a period may overestimate 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.

Make provisions for rest breaks and personal time, consistent with the needs of the employee or the general operating standards of the workplace.

There can be a wide variation in the performance of an employee with disability, just as there can be in the performance of an employee without disability. Variations in performance reflect a wide range of workplace factors, not only the capabilities of the individual, for example 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 employee’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 duty with agreed performance standard for each task.

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

In the pre-discussion meeting, all parties should first discuss and reach agreement on duties and tasks to be assessed on the day, and benchmarks and performance standards to be used for each of the duties and tasks.

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

If the employee achieves a greater than 100 per cent rating, for example 120 per cent, this is rated as 100 per cent achievement for that task.

The parties should agree on an appropriate rating for the employee for each task, 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 task.

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
- 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 disability, such as being able to ask questions or discuss problems
- 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 and calculate the productivity rate.

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

Each duty the employee performs is weighted according to the amount of time spent on that duty by adding up the times of each associated task, usually per week, but could be per day, per fortnight, etc.

Calculate the Productivity Rate

Compare the employee's achievement on each duty with the performance 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.

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 task within the 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 duty performance?

Duties 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 explained in the following example.

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

Without a time weighting the employee's performance rating would be 53 per cent:

Duty 1	70%
Duty 2	50%
Duty 3	40%
Average	53%

With a time weighting, however, the performance rating is 61 per cent:

Duty 1	70% x .60 = .42
Duty 2	50% x .30 = .15
Duty 3	40% x .10 = .04
Total	.61 (by addition)

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

It should be noted that the amount of time spent on a duty could be per day, week, fortnight, or even month.

In some cases, the performance rating may be adjusted for supervision and other work-related factors.

Rounding

The basis of the process of rounding within the SWS is contained in the SWS Schedule of the appropriate industrial instrument. 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.

Agreement was reached between employers, unions and the Australian Government for the majority of Industrial Instruments the actual (unrounded) assessed rate would be rounded to the nearest ten percentile band.

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:

- 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
- 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 of 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, i.e. rounding up 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 consider 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 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 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's duties.

Supervision and support provided to the employee by an employment services provider (such as an Inclusive Employment Australia Provider) should 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.

Assessment Step 5: Validate the data.

Validation is the analysis of the productivity data to establish whether the data is representative and reflective of the employee's usual performance.

Validation evidence should be documented when the timings are being collected. The evidence should include information on the circumstances in which the timings were collected. For example, if the employee is performing outdoor work, it would be relevant to include in the evidence any adverse weather and the effect this had on the employee's performance.

At the conclusion of the data collection process, the employee, the assessor and the employer will undertake a collaborative validation process, where all available data is shared. The employee, employer and assessor will discuss the available data and agree if any of the timings will be excluded in calculating the overall assessment result or agree to undertake more timings.

Assessment Step 6: Calculate the appropriate wage level.

The usual process for wage calculation:

- The extent to which the employee achieves the performance standard for each task, expressed as a percentage, is multiplied against the time spent in that task. This step adjusts the rate of pay for each duty, so that a fluctuation in performance of a task will not excessively affect the overall wage rate.
- The result is the amount of the relevant rate of pay for that task. This is shown on the sample assessment sheet at the end of this section.
- The result of each task is 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.

Any adjustments of this type are to be limited to the decile 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.

If the employee is receiving assistance to support their participation at work, and if the Inclusive Employment Australia program or the Disability Employment Assistance program funds this assistance, rounding for supervision is not applicable.

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 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 FWC, 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

Employers pay their employees 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 award may depend on particular workplaces, having regard to the provisions of the Disability Discrimination Act.

The Act effectively provides that an assessed employee cannot be excluded from being paid above the rate of pay specified in the award on the grounds of disability. However, to qualify for a pro-rata amount which exceeds that prescribed in the award, 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 employees 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, the employee's nominee (if nominated) is accepted as the signatory in accordance with relevant state or territory laws. This could occur in cases where the employee agrees with the outcome of assessment but is unable to sign the document. A copy of the signed wage assessment agreement is given to all parties.

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

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

The employer, or the assessor on their behalf, must provide a copy of the completed and signed wage assessment agreement to the Industrial Registrar or to the FWC, as relevant. The Registrar or FWC 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 Summary Sheet

The Duty list on the IT system displays the duties and subdivides those duties into tasks 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.

The following is an example to clarify the process. Employees may choose to use the first table to obtain benchmarks to be used for validation.

Duty	Tasks	Observations								Average for each task in seconds	Benchmark
		1	2	3	4	5	6	7	8		
Package Product	1 Collect product & bags	420	150	260	180	165				235	45
	2 Fill bags with product	580	480	348	390	210	227	209	200	331	60
	3 Label bag	540	280	220	260	235	204	203	210	269	60

Each task is based on 10 bags, so task 1 is to collect 10 bags and 10 products. Task 2 is to fill 10 bags and task 3 is to label 10 bags.

The average for each task is calculated by adding all the seconds in each task and dividing by the number of observations, as demonstrated in the following table.

Task number	**Title**	**Benchmark**	**Ave employee observation**	**Employee Productivity (%)**
1	Collect product & bags	45	235	19.15
2	Fill bags with product	60	331	18.13
3	Label bag	60	269	22.30
Average Productivity for this duty: 19.15 + 18.13 + 22.30 = 59.58% ÷ 3 = 19.86				

The employee usually spends five hours out of a 15-hour working week performing duty one, four hours on duty two and six hours on duty three.

In this example the productivity rates for duty two is 18.76% and for duty three is 35.35%

Once the observations and averages have been calculated, time weighting is then applied. Time weighting is applied to each duty – not at the task level.

Duty 1: 19.86 x 33% = 6.55

Duty 2: 18.76 x 27% = 5.07%

Duty 3: 35.35 x 40% = 25.76
Total: 37.38

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

The employer is responsible for identifying 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 is identified, and that the employer conducts a check 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 SWS provisions. An example of SWS provisions is included at Attachment A.

For details on coverage of the national workplace relations system, visit the FWC 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 SWS provisions. However, SWS provisions may also be included in a range of other industrial arrangements, and these provisions may vary slightly from the SWS provisions. For instance, they may contain different lodgment procedures or a different Trial Period.

For assistance with determining an appropriate industrial instrument, visit the FWC website or contact them on **1300 799 675**.

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

Most modern awards in the national workplace relations system include the SWS provisions. This means that most employees under a modern award will have access to SWS.

Where an employee is not covered by an award or agreement, they are considered to be award and agreement free. Award and agreement free employees may have an employment contract. The Special National Minimum Award wage 2 applies to an award or agreement free employee with disability who is eligible for receipt of the DSP.

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 FWC website about making variations.

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

In cases where a state or territory 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 into 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

The SWS provisions contained in most Modern Awards (included at Attachment B) 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 Industrial Registrar or FWC. Contact details for the Industrial Registrar and FWC are at Attachment C.

It is the responsibility of the employer to lodge the assessment agreement. However, the assessor may offer to complete this task on behalf of the employer as part of their role as facilitator, if the employer requests.

Where an assessment has been conducted subject to an SWS provision in a relevant state or territory 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 lodgment provisions in the relevant award. This is likely to require lodgment of the wage assessment agreement with the Industrial Registrar of the state industrial tribunal such as the Western Australian Industrial Relations Commission. Contact details for state industrial tribunals are provided at Attachment D.

Some existing industrial instruments may not include specific provisions for lodgment 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 has an interest in the relevant modern award and is not party to the SWS assessment, the assessment agreement is sent by the FWC to the union's nominated email address and the agreement will take effect, unless an objection is notified to the FWC, within 10 working days.

Review of assessment

The SWS provisions provide that the assessment of the applicable percentage should be subject to annual or more frequent review based on 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 Wage

The Expert Panel within the 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 includes a special national minimum wage for employees with disability.

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[1]

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. The employee must also meet the other eligibility criteria set out in this Handbook.

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:

Assessed capacity [sub-clause (d)]	% of prescribed award rate
10%	10%
20%	20%

[1] The schedule denominator can vary between Awards and Agreements (for example Schedule B or E) this is an example only.

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

C.3.4 Provided that the minimum amount payable must be not less than $xx per week, as stated in the Fair Work Commission website each year.

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 Lodgment 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 parties to the assessment including the employee or their nominee and employer. 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.

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 redesigning 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 employees' 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 20xx, must be no less than $xx per week.

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

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 enquiries@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 worksite

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 Wage Assessment Agreement

Supported Wage System

Initial Wage Assessment Agreement

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

Name	Address
Fax/email	

The undersigned parties agree:	to recommend a wage of:		of the appropriate award or agreement rate for the relevant classification of work.
	the name of the award or agreement which relates to the position is:		
	the classification of the position within the award:		
	the review date of the above wage rate	/ /	

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

Employer

Name:

Australian Business Number (ABN):

Physical address:

Postal address (if different to physical address):

Telephone:

Contact:

Fax/e-mail:

Comments (optional):

I 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.

Employer representative to print name and sign:

Date: / /

Employee

Family name:

Given names:

Date of birth:

Postal address:

Telephone:

Comments (optional):

Name of Nominee, if applicable:

Signature of employee (or nominee):

Date: / /

Employers: Please file your copy of this agreement appropriately for future reference. Page 1 of 2 on 16/02/2018 10:30:33 AM

Supported Wage System

Initial Wage Assessment Agreement

Union

Union name:

Postal address:

Telephone:

Fax/e-mail:

Name of union representative:

Comments (optional):

Signature of union representative:

Date: / /

Assessor

Name:

Organisation name:

Postal address:

Telephone:

Fax/e-mail:

Comments (optional):

Signature of Assessor:

Date: / /

Information for the Industrial Registrar *- To be completed by employer*

Assessment productivity % (from page 1)		Minimum hourly award or enterprise agreement rate for this position		Hours Employee will work per week		Employee's gross earnings per week at expected hours	Actual agreed Amount
A	x	B	x	C	=	D	E

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. Please ensure a copy of the agreement is forwarded to HR/Payroll for processing.

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
- New Employer entity
- Employment has ended
- Employment Award/Agreement no longer contains SWS provisions

If any of the above changes occur then please inform the Department's Assessment Team by Phone on 1800 065 123

Employers: Please file your copy of this agreement appropriately for future reference. Page 2 of 2 on 16/02/2018 10:30:33 AM

Attachment E - Glossary

Approved NPA Assessor is a person who has been approved by the Department of Social Services to conduct SWS 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.

Benchmark the minimum level of performance that would be expected from an employee who is paid the full award rate of pay. A standard or point of reference that will be used to compare an employee's work performance and productivity. A specific indicator used to calculate the time taken or task output in relation to agreed performance standards.

Bias is a tendency to arrive at a decision that 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 help people to become self-sufficient and to support those in need. Centrelink is responsible for the delivery of all income support payments.

Conflict of interest a situation where a Provider engages in an activity or obtains any interest, or benefit that may interfere with or restrict the Provider in performing their role fairly and independently.

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 (DSP) 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 2 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.

Duties are the work outcomes expected by an employer from an employee in a particular job. A duty can comprise one or a number of separate, identifiable measurable tasks. For example, a duty for a room attendant in a motel may be 'to clean the room' while the tasks that make up this duty include 'making the bed', 'cleaning the bathroom' and 'vacuuming the floor'.

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.

Inclusive Employment Australia is a mix of large, medium and small for profit and not for profit organisations that are experienced in supporting people with disability to find employment as well as assisting employers to put in place practices that support the employee in the workplace.

Industrial Agreement is a legal document that sets out the employees' 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 duties and 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 or territory laws to sign documents on their behalf.

Open employment refers to employment where the jobs are open to all people, with or without disability. People with disability who wish to receive assistance to find employment in open employment can register with an Inclusive Employment Australia Provider.

Performance Standards provide the employee with specific performance expectations for each duty and task. They are the observable behaviours and actions that explain how the job is to be done, plus the results that are expected for satisfactory job performance. For example, they describe all task details required for benchmarking, including task breakdown, start and end points, how the task is completed, the quality and quantity required, details of any tools/machinery used, relevant environmental conditions (where the task is performed), and any conditions that need to be in place before or after the assessment.

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.

Productivity or Productive Capacity is the work output of an individual employee over a predetermined time period. This is obtained by assessing a co-worker (where available) performing the same task to obtain the performance standard. Quality of output is taken into consideration, as the output is not just about the number of items produced (for example) but also the number produced that meet the agreed performance standards.

Pro-Rata Award Wage is the assessed percentage of the award wage. It is paid by the employer to employee on signing 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 an SWS assessment to review their productivity.

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

Supported Employment Services are generally not for profit organisations providing supported employment opportunities to people with disability. Supported Employment provides a wide range of employment opportunities and operate within a commercial context.

SWS 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.

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.

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 separately within a duty 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).

Validation is the analysis of the assessor data and the Workplace Data to establish if the data is representative and reflective of the employee's usual performance.

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 transferable 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 NPA assessor visits the workplace and conducts pre-assessment checks and an assessment of work productivity.