



INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

DRAFT POLICY – SPECIAL WAGE PERMITS

Purpose

1. This policy aims to inform applicants and those who are assisting them to make an application of the expectations and considerations of the Industrial Relations Commission (IRC) in relation to approval of a Special Wage Permit (SW Permit) pursuant to Chapter 2, Part 10 of the Industrial Relations Act 1996 (IR Act).

Who does this apply to

2. An employee with a disability (EWD) can apply for a permit that enables them to be employed for a lower rate of pay than a rate set by Awards and Enterprise Agreements made by the Industrial Relations Commission apply to those employed by the NSW public service and local government.

Background and objectives

3. It may be appropriate for an employee with a disability (EWD) to be permitted to work for less than the rate of pay set by an industrial instrument if their assessed work capacity is less than 100% to assist them to find suitable employment.
4. In many cases jobs that an EWD might do are covered by an award or registered agreement that contain supported wage system provisions. These permit lower pay where an EWD's work capacity is assessed by the Department of Social Services under the JobAccess program¹. For such jobs a special wage permit is not required.
5. If the work that an EWD is doing or wants to do is not covered by an award or registered agreement with supported wage system (SWS) provisions, the EWD/prospective EWD may apply to the Industrial Registrar (the Registrar) for a SW Permit.
6. A SW Permit permits the EWD/prospective EWD to work for less than the set rate of pay for their role, if the EWD considers that they are unable to earn the minimum rate

¹ <https://www.dss.gov.au/disability-employment-programs>

because of any impairment². With the approval of the Registrar, any such application may also be made by a person on behalf of the EWD/prospective EWD³.

7. The Registrar of the IRC is the authorising authority, pursuant to s125 IR Act, in relation to applications for SW Permits. The Registrar may:
 - a. grant a SW Permit with conditions; or
 - b. grant a SW Permit unconditionally; or
 - c. refuse to grant a SW Permit; or
 - d. cancel a current or existing SW Permit.
8. In cases where a formal competency and productivity assessment has not been conducted at the time of the initial application the Registrar may grant a permit of short duration on condition that an assessment be conducted before any further permit is granted.

What the Registrar will consider when an application is made for a SW Permit

9. When an application for a SW Permit is made, the Registrar is required to consider the objects of the IR Act. Those objects include to:
 - a. ensure a nationally consistent framework that is fair and just for workers;
 - b. prevent and eliminate discrimination in the workplace and to ensure equal pay for men and women doing work of equal or comparable value;
 - c. facilitate appropriate regulation of employment through industrial instruments;
 - d. promote participation in industrial relations by employees and employers at an enterprise or workplace level; and
 - e. encourage strategies to retain skilled staff where there are skill shortages.
10. The primary consideration is to ensure fair and reasonable conditions of employment and to that end to ensure that an employee is not permitted to be paid less than the value of the work they can do.
11. A permit will usually only be issued in respect of an applicant who can identify a particular position or type of work that they will be employed to do, or will seek. The application will be assisted if accompanied by information from an employer or

² s125 of the IR Act

³ s125(2) of the IR Act

prospective employer that identifies a particular position that the EWD is or will be employed to fill.

12. The Registrar will only issue a SW Permit if satisfied that an EWD/prospective EWD is unable to do the work in question at full productive capacity compared to that of another employee without a disability.
13. Many people with disabilities are able to work at a full productive capacity for the hours they are employed and so entitled to receive the full award wage for those hours. Evidence of a disability is not of itself sufficient to obtain a SW Permit.
14. When determining an application for a SW Permit, the Registrar will have regard to evidence addressing:
 - a. the nature and extent of training that an EWD/prospective EWD has received prior to their performance being assessed;
 - b. the relevant award or enterprise agreement classification for the work in question that sets the standard to be met for payment of the full award wage;
 - c. an assessment of the productivity of the EWD/prospective EWD in comparison to that standard;
 - d. whether there is likely to be any material change in the nature and scope of the proposed employment and/or in the EWD's disabilities prior to the expiry of the proposed duration of the SW Permit;
 - e. whether a suitably qualified independent assessor, such as someone through the National Panel of Assessors, has been involved in the conduct or scrutiny of the productivity assessment process;
 - f. if not, whether there is nevertheless a sound basis to accept that the EWD's productive capacity is less than 100% of the standard that has had regard to matters such as:
 - i. the employee's job description;
 - ii. the time they spend on each task;
 - iii. how much supervision they need;
 - iv. whether the process and the resulting agreement between the EWD/prospective EWD and the employer has been documented; and
 - v. if there is to be any periodic review of the EWD's performance

The process

15. A Special Wage Permit Application must be commenced by filing form - Application for a Special Wage Permit. It can be filed by email to Industrial.Registrar@courts.nsw.gov.au. It is intended that the Application for a Special Wage Permit form will be able to be filed using the Online permit portal at <https://ircpermit.powerappsportals.com/>. Once that is available, all applications should only be filed on the Online portal, with email filing being used where users experience system errors with the portal.
16. The application must be submitted by the EWD/prospective EWD. With leave of the Registrar, a third party may make the application on behalf of the EWD/prospective EWD.
17. If a third party is submitting the application on behalf of the EWD/prospective EWD, they must:
 - a. clearly explain why they are the most appropriate person to act on behalf of the EWD/prospective EWD;
 - b. confirm how they are authorised to act on behalf of the prospective EWD/prospective EWD. As best practice, any application should include evidence of authority.
18. The application form seeks the following information be provided:
 - a. EWD/prospective EWD;
 - b. information about the employer or prospective employer;
 - c. the nature and scope of the proposed employment;
 - d. the specific award or industrial agreement covering the proposed employment;
 - e. the proposed percentage of the minimum wage to which the EWD/prospective EWD is said to be entitled;
 - f. the proposed duration of the SW Permit;
 - g. the industrial organisation that covers employees in the relevant employment;
 - h. grounds supporting the application, including:
 - i. how the proposed wage percentage was determined;
 - j. reasons for the proposed duration of the SW Permit;
 - k. how the EWDs performance will be reviewed;
 - l. any relevant attachments, including assessment tools and reports.
19. Where an EWD or a third party is applying to renew a SW permit the application should also include details of any performance reviews, or any other document or thing, which

20. Once an application has been lodged it will be considered by the Registrar or his/her delegate.
21. Applications will be reviewed within 5 days of receipt, subject to the availability and other commitments of the Registrar.
22. If the Registrar requires more information the Registrar will contact the applicant via email setting out what is required to further consider the application.
23. A SW permit may be issued with conditions imposed, such as a requirement that the applicant provide an undertaking that any relevant outstanding requirement, such as the need to complete a productivity assessment, will be conducted within a specified period.
24. In making a decision to issue a SW permit with conditions, the Registrar may have regard to any of the following:
 - a. the date of the last assessment of the standard to be met for payment of the full award wage for the relevant role;
 - b. the date of the last assessment of the productivity of the EWD/prospective EWD in comparison to that of the standard;
 - c. whether a suitably qualified independent assessor has been involved in the conduct or scrutiny of the productivity assessment process and, if so, who it was and when;
 - d. whether, since the time of the last assessment of the productivity of the EWD/prospective EWD in comparison to that of the standard;
 - e. there has been no material change to the nature and scope of the proposed employment;
 - f. there has been no material change to the EWD's disabilities.
 - g. the EWD/prospective EWD has continuously been employed in the relevant role.
25. Where a non-urgent back transcript is ordered, delivery of the transcript ranges from 1-6 weeks.
26. Timeframes provided by RSB are not rigid and may vary depending on their staffing and workloads.

Outcome

27. If an application for a SW Permit is approved:
- a. the SW Permit will be issued for a period of up to 3 years at the Registrar's discretion and will expire:
 - i. at the end of the specified period; or
 - ii. at an earlier date if one is imposed; or
 - iii. when the EWD to whom the SW Permit was issued ceases to be employed in the role;
 - b. the Registrar will notify the relevant industrial organisation of employees of the grant of the SW Permit and of any conditions imposed.
28. If an application for a SW Permit is refused, the applicant may:
- a. re-apply upon obtaining further information and/or evidence; and/or
 - b. appeal the Registrar's decision to the Commission.