



**Australian Government**  
**Department of Social Services**

Dear Associate

**Four yearly review of modern awards - Supported Employment Services Award (AM2014/286)**

In correspondence dated 9 September 2019, the Department of Social Services wrote to the Fair Work Commission to draw to the Commission's attention forthcoming changes to funding for Australian Disability Enterprises, including a new pricing structure for employment supports to be announced by the National Disability Insurance Agency in October 2019.

In a response dated 12 September 2019 from Vice President Hatcher SC, the Commission invited the Department to provide a submission concerning the funding changes and their potential consequences for the outcome of the Award proceedings.

The National Disability Insurance Agency announced the new pricing framework for supported employment on 10 October 2019.

I **attach** a submission on behalf of the Department for filing in the Commission, which provides information on the funding of supported employment for consideration by the Commission and the parties to the proceedings.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Michael Lye'.

**Michael Lye**  
Deputy Secretary – Disability and Carers  
Department of Social Services

**21/10/2019**

## FAIR WORK COMMISSION

### Four yearly review of modern awards *Supported Employment Services Award* AM2014/286

#### SUBMISSION OF THE DEPARTMENT OF SOCIAL SERVICES 22 October 2019

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#### BACKGROUND

1. The Department of Social Services (**Department**) has been an observer to the Four Yearly Review proceedings with respect to the *Supported Employment Services Award 2010 (SES Award)*.
2. The Department's interest in the proceedings arises from the Department:
  - having policy responsibility for, among other things, Supported Employment, the Disability Employment Assistance Program, the Disability Support Pension and the National Disability Insurance Scheme (**NDIS**);
  - providing funding for supported employment under the historical funding arrangements which preceded the roll-out of the NDIS;
  - being the "owner" of the Supported Wage System (**SWS**), and involved in the development of the Modified Supported Wage System now included in Schedule D to the SES Award (**MSWS**).
3. The Department wrote to the Commission on 9 September 2019 to draw to the Commission's attention changes in the funding model for Supported Employment, through:
  - (a) the roll-out of the NDIS;
  - (b) changes to the NDIS pricing structure for supported employment (which were publically announced by the National Disability Insurance Agency (**NDIA**) on 10 October 2019); and
  - (c) an additional support measure for Australian Disability Enterprises (**ADEs**) announced in the 2019-20 Budget.
4. In correspondence dated 12 September 2019, Vice President Hatcher invited the Department to lodge with the Commission a publically available submission concerning the funding changes and their potential consequences for the outcome of the SES Award proceedings.

#### OVERVIEW OF SUBMISSION

5. Supported employment provides economic and social participation benefits both for people with disability and the broader Australian community. It provides employment opportunities for people with disability who might otherwise be excluded from paid work in open employment.

6. The changes in the funding model for supported employment referred to in the Department's letter dated 9 September 2019 and set out in these submissions:
  - (a) change the basis upon which ADEs are funded to provide supported employment;
  - (b) are likely to result in an increase in the amount of funding available for supports to people with disability who participate in supported employment; and
  - (c) may have implications for the Commission's decision with respect to the terms of the SES Award, particularly in relation to wage rates, classifications and wage assessment.
7. This submission has been prepared to:
  - (a) provide information to the Commission about:
    - (i) the historical funding model for supported employment;
    - (ii) the transition to the NDIS;
    - (iii) the new pricing structure announced by the NDIS on 10 October 2019; and
  - (b) assist the Commission and the parties to the SES Award review proceedings to consider these changes and the implications of these changes for those terms of the SES Award currently under review.

#### **NATURE OF SUPPORTED EMPLOYMENT**

8. Supported Employment Services are defined in the *Disability Services Act 1986* (Cth) (see paragraphs 53 and 54 below).
9. Supported employment is directed at making employment opportunities available to people with disability who are otherwise unlikely to be able to participate in open employment. In some instances, a period of supported employment may assist a person with disability to build skills and capacity and ultimately facilitate their participation in open employment. However, it is recognised that many people with disability participating in supported employment are unlikely to transition to open employment.
10. Supported employees are persons who qualify for the Disability Support Pension (**DSP**) (see definition of "employee with a disability" in clause 4 and clause 14.4(a) of the SES Award). Single DSP recipients can receive an amount of income up to \$174 per fortnight before their pension starts to be reduced. For each dollar of income over \$174, the single pension is reduced by 50 cents (referred to as the "taper rate"). This means that a part rate of DSP is payable where a person with disability earns up to \$2,040.80 per fortnight for a single DSP recipient. The rates of pay generally earned by supported employees under the SES Award mean that the majority of supported employees are in receipt of an amount of DSP together with the income earned in supported employment.
11. ADEs are typically not-for-profit organisations that provide a wide range of employment opportunities to people with disability who would not otherwise be able to find work in open employment. ADEs predominantly employ people with disability.
12. Historically, ADEs have not generally operated on a fully commercial basis and have been provided with funding support to assist them to engage employees in supported employment. Supported employment fundamentally differs from open employment in that:
  - most roles provided in supported employment are modified or "paired back" from comparative roles in open employment. Roles or tasks are often broken down into components, with supported employees required to perform a limited number of

those components, or the roles or tasks are modified (for example, machinery is slowed), having regard to the disability of the individual; and

- these adjustments and supports go beyond that which would be considered a "reasonable adjustment" in open employment.
13. The SES Award recognises the fundamental differences in the nature of supported employment when compared to open employment, and that there is a need for the terms and conditions applying to supported employment (including with respect to wages and wage assessment) to be tailored to the nature of supported employment. Such arrangements are expressly contemplated by the *Fair Work Act 2009*, which permits modern awards to include different minimum wages for employees with a disability (see sections 139(1)(a) and 153(3)(b)).
  14. Supported employment involves the provision of support to enable people with disability to participate in employment. Under the NDIS, participants are eligible to be provided with reasonable and necessary supports to enable them to participate in employment.
  15. ADEs are an important part of the employment landscape, particularly for people with disability. For this reason, it is necessary to ensure that ADEs are strong and viable into the future so that they can continue to provide employment opportunities for people with disability.
  16. In general, the funding provided to an ADE by Government (including indirectly through the NDIS) is not provided to meet the cost of a supported employee's wage. Rather, the funding provided by Government is directed at the provision of support to facilitate supported employment. Apart from limited wage subsidies which have been provided on a transitional basis, the cost of wages (and other overheads) is met by ADEs through the revenue generated from business activities, including through work undertaken by supported employees.
  17. The terms of the SES Award, including in relation to the setting of wages (including wage assessment), should:
    - (a) recognise and reflect the inherent differences between supported employment and open employment;
    - (b) provide sufficient certainty to ADEs and supported employees in relation to the terms and conditions of employment that apply to supported employees; and
    - (c) not adversely impact the financial viability of ADEs to continue to provide supported employment opportunities.

## **HISTORICAL FUNDING MODEL**

### **Case-based funding**

18. Since 2004, the Commonwealth Government has assisted ADEs to provide on the job support to around 20,000 people with disability employed in their organisations via case-based funding grants through the Disability Employment Assistance program.
19. Under the case based funding model, funding is paid to an ADE for an agreed number of places, and calculated based on a supported employee's individually assessed support needs. The work-related support needed for each employee is assessed using a Disability Maintenance Instrument. The Disability Maintenance Instrument is a tool which measures the level of assistance a particular employee requires. It captures workplace assessments, preparation of employment assistance plans, training, supervision, physical assistance and personal care, amongst many other factors, to assess disability related employment support needs.

20. The Disability Maintenance Instrument level is then matched with an appropriate level of funding. A summary of the Case Based Funding Price 2019-20 is included at **Attachment 1** to these submissions.

### **Funding of SWS assessments**

21. The Department funds the cost of assessments via a National Panel of Assessors. These assessments are undertaken both in supported employment (for the purpose of the MSWS) and open employment (under the SWS included in other modern awards), for employees who meet the eligibility requirements of the program.

### **Wage subsidies for ADEs using the MSWS**

22. The Department currently provides funding by way of wage subsidy to 38 ADEs who use the MSWS for the majority of their supported employees. In 2018-19 and 2019-20, the Department is providing an annual subsidy of 20% of wage costs to these 38 ADEs. This funding has been provided as a transitional measure to facilitate the transition of supported employees to the MSWS, which has generally led to higher pay outcomes than under other wage assessment tools previously applied to supported employees.
23. The two-year wage subsidy was implemented to support the viability of ADEs who transitioned to use the SWS (and then the MSWS) following the Federal Court's decision in *Nojin v Commonwealth of Australia* [2012] FCAFC 192, which found that the BSWAT wage assessment tool was discriminatory.
24. As at the date of this submission, the Government has not committed any additional funding for wage subsidies (transitional or otherwise) for ADEs.

## **NATIONAL DISABILITY INSURANCE SCHEME**

### **The Scheme**

25. The NDIS was established by the *National Disability Insurance Scheme Act 2013* (Cth) (**NDIS Act**). The NDIS is administered by an independent statutory body, the NDIA. It is jointly funded by the Commonwealth, and State and Territory governments.
26. Prior to the NDIS being introduced, the Commonwealth and State and Territory governments funded ADEs directly through block funding (to 2004) and then case-based funding (to 30 June 2020). The main feature of the NDIS is the provision of individualised packages of support to eligible people with disability (referred to as participants). This means that participants have "money in their pockets" to choose and control how, where and when their supports are provided.
27. NDIS funding is available for "reasonable and necessary supports" contained in a participant's NDIS plan. Supports can be funded in areas such as education, employment, social participation, independence, living arrangements and health and well-being.
28. NDIS participants have the opportunity to identify employment goals in their plan, regardless of whether they are currently employed or as a future goal. The NDIA identifies what supports might be needed to achieve these goals, including "reasonable and necessary" plan funding.
29. Under the objects and principles of the NDIS Act, participants are entitled to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports. Funds provided under an NDIS plan may be self-managed by the participant or managed by the NDIA, or by a registered plan management provider.
30. Supports are provided by registered providers of supports in what is intended to be a competitive market. Part of the transition to the NDIS has involved ADEs registering as

NDIS providers to provide a range of supports, including community participation as well as employment. Plans must be either self-managed or plan managed to pay for supports from non-registered providers.

31. The framework and pricing of supports is determined by the NDIA, and not the Department or State/Territory agencies.

### **Transition to NDIS**

32. As part of the national roll-out of the NDIS, funding for ADEs is progressively transitioning to the NDIS. The roll-out of the NDIS is almost complete for all States and Territories, apart from Western Australia.
33. As the NDIS rolls out, most supported employees are becoming NDIS participants. At 30 June 2019, the majority of supported employees have transitioned to the NDIS and it is anticipated around a further 1,800 supported employees will do so by 30 June 2020.
34. Once a supported employee has a plan approved under the NDIS, the Department's funding to the ADE ceases in respect of that person, and the ADE receives payment for providing relevant supports to the employee through the NDIS. Thirty-one percent of NDIS participants currently have a goal of employment in their plan and the NDIA aims to increase this percentage, which will likely result in an increase in people seeking supported employment.
35. Transitional/interim case-based funding is currently available for ADEs to continue employing and providing support in the workplace for existing supported employees where employment supports have not been included in their participant plans while NDIS plan reviews are being undertaken; and to employ and support new supported employees eligible for the NDIS.
36. Continuity of Support arrangements are being put in place from 1 July 2020 for current supported employees who are not eligible for the NDIS, the majority being those aged over 65 years. These arrangements are currently under development.

### **Current pricing structure**

37. Currently, NDIS funding of supported employees is determined in two ways:
  - supported employees transitioning to the NDIS attract one of four levels of funding. The levels are determined by the Disability Maintenance Instrument; and
  - new supported employees (those entering an ADE post-NDIS transition) attract the average outlet price determined for the outlet at which they work.
38. Details of the pricing structure are included at **Attachment 2**. This pricing structure largely replicates the funding previously provided to ADEs by the Department.

### **Revised pricing structure**

39. The NDIA has recognised that the current pricing structure for employment supports did not align well with the principles which underpin the NDIS, including individualised planning and increasing choice and control for participants. This is in part because the current funding:
  - did not take into account the number of hours a participant works, the hours of support they in fact require, or the setting in which supports are delivered; and
  - is based on an ADE site average for new supported employees and may not reflect the individual's actual support needs.

40. The new pricing framework announced by the NDIA on 10 October 2019 introduces an hours based per participant model that:
- reflects the actual hours of support provided to the participant per week, which may include non-face-to-face work time if appropriate;
  - will vary depending on the expected level of workplace supports a participant needs;
  - aligns NDIS funded employment support prices with NDIS funded community participation support prices.
41. The revised pricing for employment supports is included at **Attachment 3**. The new pricing framework will be implemented in early 2020. The Department and the NDIA have committed to further consultation with the sector on implementation and administration of the new pricing framework.
42. While plan funding may be determined based on the expected level of support a person needs in the workplace, a provider (i.e. an ADE) can only claim payment for the actual supports delivered to the individual participant. This includes consideration of the frequency and intensity of supports and the setting in which they are provided. This is a significant change from the annualised funding allocation which ADEs currently receive.
43. The hourly rates for supported employment are generally higher under the revised pricing model compared to prior case based funding.
44. The revised funding arrangements will allow participants, within the parameters of their plan funding, to receive supports commensurate with their support needs. For some participants, improved support levels will allow them to be more productive in the workplace, with potential flow-on to improving the quality or quantity of goods and services the ADE delivers.

#### **FUNDING ANNOUNCED IN 2019-20 BUDGET**

45. In the 2019-20 Budget, the Government announced that it will provide \$67 million over five years from 2018-19 to support ADEs in transitioning to a new wage assessment model following a review of the SES Award by the Commission.
46. This funding will be used to support ADEs to transition to the wage assessment tool determined by the Commission and is separate to funding provided through the NDIS. The transitional funding provided by the Department is intended to assist ADEs in meeting costs associated with transitioning to a different model of wage assessment. Details of the new support package are currently under development and subject to Government consideration and approval. The Department intends to consult in detail over coming months with the sector and other key stakeholders to inform its development. It is not intended that ongoing funding be made available for wage subsidies.

#### **IMPLICATIONS OF CHANGES TO FUNDING**

##### **Wages and Wage Assessment Tool**

47. Under the new NDIS pricing structure, the amount of funding in participant plans available for supported employment supports is likely to increase.
48. While the increase in the funding of supports is not provided to subsidise the cost of employee wages, the increase in funding available for employment supports may be relevant to an ADE's capacity to fund the wages of supported employees because:
- (a) an increase in funding may lead to an enhanced service offering and greater level of support for a supported employee, thereby resulting in higher productivity/output;

- (b) the increase in funding for supports may mean that ADEs may have the ability to direct more of their revenue (which, anecdotally, is currently directed by some ADEs at meeting some of the costs of providing supports and maintaining the work environment which are not met through existing funding) to employee wages.
49. For ADEs which currently use wage assessment tools other than the MSWS, the increase in funding may make it viable to transition to using the MSWS for all their supported employees.
50. In those circumstances, it may be appropriate for the Commission to seek further submissions from ADEs (and others) in relation to potential changes to wage assessment arrangements and, in particular, the use of the MSWS as the single wage assessment tool.

### **Definition of Supported Employment Services**

51. The SES Award is currently expressed to cover employers throughout Australia who operate supported employment services and their employees working in the classifications specified in the Award.
52. The coverage of the Award is critical to ensuring that ADEs providing supported employment are covered by the Award and that other employers in open employment are not.
53. "Supported employment services" is defined in the Award as meaning a "service" as defined in section 7 of the *Disability Services Act 1986* (Cth).
54. The Disability Services Act provides a legislative and funding framework for a range of disability services including employment services. Section 7 of the DS Act defines supported employment services as:
- services to support the paid employment of persons with disabilities, being persons:
- (a) for whom competitive employment at or above the relevant award wage is unlikely; and
  - (b) who, because of their disabilities, need substantial ongoing support to obtain or retain paid employment.
55. Following the transition to the NDIS, there is a question as to whether an ADE will continue to be a "supported employment service" for the purpose of the DS Act where their funding is derived from the NDIS and not pursuant to the DS Act.
56. The Commission and the parties may wish to consider whether the definition of "supported employment services" under the SES Award is, and will remain into the future, appropriate given that:
- the funding model for supported employment has shifted away from funding under the DS Act; and
  - the revised pricing model for employment support under the NDIS is not limited to a participant's employer as not all employers of NDIS participants are NDIS providers.



**ATTACHMENT 1: CASE BASED FUNDING PRICE 2019-20**

**Table 1 – Case Based Funding Core Fees**

Case Based Funding Core Fees – 2019-2020	Amount (GST exclusive)	
Intake Fee	\$660	
Employment Assistance Fee (or Pre-DMI Fee)	\$660	
(per month, for up to 12 months)	(up to a maximum of \$7,920)	
<b>Employment Maintenance Fee:</b>	<b>Amount Per Month</b>	<b>Amount Per Annum</b>
• Level 1	\$391	\$4,692
• Level 2	\$660	\$7,920
• Level 3	\$991	\$11,892
• Level 4	\$1,315	\$15,780

**Table 2 – Case Based Funding Additional Fees**

Additional Fees 2019-2020	Amount (GST exclusive)		
<b>Work Based Personal Assistance (2015-2018)</b>	Either: <ul style="list-style-type: none"> <li>• \$31.82 per hour where the work based personal assistance is provided by an Approved Support Worker from within the Outlet; or</li> <li>• \$40.91 per hour where the work based personal assistance is purchased from a second agency, is provided up to a maximum of 10 hours per week.</li> </ul>		
<b>Rural and Remote Service Supplement</b>	<b>ARIA Classification:</b>	<b>Amount Per Month</b>	<b>Amount Per Annum</b>
	• Highly Accessible:	Nil.	Nil.
	• Accessible:	\$1,570	\$18,840
	• Moderately Accessible:	\$3,139	\$37,668
	• Remote:	\$4,709	\$56,508
• Very Remote:	\$6,273	\$75,276	
<b>Existing High Cost Worker's Payment</b>	An amount in excess of CBF Employment Maintenance Fee Level 4, in accordance with Supplementary Condition 1.22 to 1.29.		
<b>Temporary Viability Support Payment</b>	An amount determined by us in respect of assistance to address unforeseen viability issues based on application and approval by the delegate.		

## **ATTACHMENT 2: CURRENT NDIS PRICING MODEL**

Under current implementation arrangements, the NDIA largely replicates the pricing architecture used by the Department for Case Based Funding (CBF), by matching CBF levels for existing supported employees and paying the average CBF outlet price for new participants referred by the Agency (clients that were not originally on CBF).

DSS currently supplements CBF through a range of other payments that recognise:

- rural and remote locations
- the cost of obtaining quality assurance certification
- social and community sector wage supplementation
- high cost workers (grandfathered supported employees from when CBF was implemented replacing a block grant model), and
- one off grants where, for example, there is an unexpected event (Temporary Viability Support).

These payments are provided to all ADEs, including for NDIS participants. As a result, the current pricing arrangements being implemented by the NDIA do not reflect the true cost of a participants NDIS package or long-term objective of transitioning supported employment to the NDIS.

### ATTACHMENT 3: NEW NDIS PRICING MODEL

#### Prices for supported employment providers

Ratio of support worker to participants	Weekday	Saturday	Sunday	Public Holiday	Afternoon Shift	Night Shift
1:1	\$54.95	\$74.79	\$96.62	\$120.44	\$60.41	\$61.50
1:2	\$28.53	\$38.45	\$49.36	\$61.27	\$31.26	\$31.80
1:3	\$19.72	\$26.33	\$33.61	\$41.55	\$21.54	\$21.90
1:4	\$15.31	\$20.27	\$25.73	\$31.69	\$16.68	\$16.95
1:5	\$12.67	\$16.64	\$21.00	\$25.77	\$13.76	\$13.98
1:6	\$10.91	\$14.22	\$17.85	\$21.82	\$11.82	\$12.00
1:7	\$9.65	\$12.48	\$15.60	\$19.01	\$10.43	\$10.59