

6 November 2019

BY EMAIL chambers.hatcher.vp@fwc.gov.au

amod@fwc.gov.au

Ms Ingrid Stear
Associate to Vice President Hatcher SC
Fair Work Commission
80 William Street
EAST SYDNEY NSW 2010

Dear Associate,

Re: AM2014/286 Supported Employment Services Award

Please find enclosed our further submissions prepared to assist the Fair Work Commission in response to the Directions Hearing of Wednesday 23rd October 2019.

Yours sincerely,



Andrew Donne
Chief Executive Officer

Encl.

FAIR WORK COMMISSION

4 Yearly review of Modern Awards

Supported Employment Services Award 2010

Matter No: AM2014/286

SUBMISSIONS OF ENDEAVOUR FOUNDATION

Response to Submissions filed by the Department of Social Services on 22 October 2019

Background

1. This submission is filed pursuant to the directions of VP Hatcher dated 23 October 2019 in response to the submission of the Department of Social Services (**DSS**) dated 22 October 2019.
2. The DSS submission concerned the proposed National Disability Insurance Scheme (**NDIS**) pricing structure for supported employment, publicly announced by the National Disability Insurance Agency (**NDIA**) on 10 October 2019 and how the funding changes could potentially affect the outcome of the Award proceedings.

Summary of Response

3. In summary, Endeavour Foundation's response is as follows:
 - 3.1 A key issue before the Full Bench is whether the Wage Tools contained within the Supported Employment Services Award (**SES**) meet the Modern Award Objectives.¹
 - 3.2 Endeavour Foundation submits and agrees with the Full Bench that the Supported Wage System (**SWS**) and the Modified Support Wage System (**MSWS**) do not meet the Modern Awards Objectives.²
 - 3.3 The DSS states that the increase in funding may make it viable for all Australian Disability Enterprises to transition to MSWS.³

¹ Statement [2018] FWCFB 2196 at [15]

² Statement [2018] FWCFB 2196 at [15]

³ Paragraph 48(b) of the DSS submission dated 22 October 2019

3.4 Endeavour Foundation rejects the DSS Submission for the following reasons:

- There is no evidence advanced by the DSS to support that ADEs will be better off under the proposed new pricing model.
 - The alleged additional funding is not provided to cover wages. ADEs will not be able to use this alleged additional funding to offset any increase in wages that it would occur if it were to adopt the MSWS.
 - There is no evidence to support the DSS submission that the alleged additional funding will enhance ADE's service offering and greater levels of support for supported employees, thereby resulting in higher productivity/output, which may offset any wage increase.
 - The proposed new hours based per participant model:
 - Does not take into account the additional support needs of people who are currently assessed under the Disability Maintenance Instrument;
 - There is no recognition of the increase to administrative functions (and therefore costs associated); and
 - The NDIS funded employment support prices do not align with the NDIS funded community participation support prices (with the exception of 1:1 support).
 - Contrary to the alleged additional funding advanced by DSS, Endeavour Foundation estimates that the proposed new pricing model will result in an overall funding **reduction** of approximately **\$10.3 million** per annum to it. **Appendix 1 refers.**
 - Notwithstanding that the MSWS tool is unlawful, if adopted, it will increase Endeavour Foundation's cost of wages by approximately \$18 million per annum.
4. In the circumstances, the DSS Submission should be given little or no weight and the Full Bench should issue its decision based on the evidence at hand. That decision should be issued as soon as practicable.

Current Arrangements

5. Endeavour Foundation provides supported employment to 2,065 people living with significant disability, most of whom would otherwise be unable to obtain employment in the open market.
6. Endeavour Foundation is motivated to offer supported employment because of the desire of employees with disability to contribute to society through meaningful employment. We recognise that employment is a basic human right for people with a disability under the United Nations Convention on the Rights of People with a Disability. We uphold the right of people with a disability to freely choose for

themselves whether they wish to work in supported employment, in open employment, or be involved in another activity of their own determination.

7. Endeavour Foundation recognises that supported employment also offers benefits through increased economic independence and greater social and community engagement.
8. Endeavour Foundation has provided supported employment within Australian Disability Enterprise case-based funding arrangements since the inception of the ADE program. The model specifically funded the provision of a range of employment supports within ADEs. The model did not provide funding for supported wages or the operation of a commercial enterprise which generated employment.
9. Endeavour Foundation underwrites the continued operation of our ADEs through cross-subsidisation from fundraising initiatives.
10. Endeavour Foundation has engaged in Department of Social Services consultations on the development of new policy and funding models for supported employment, through written submissions, attendance at engagement workshops and participation in co-design meetings.
11. Within these consultations, Endeavour Foundation has clearly stated that the introduction of an hourly pricing model would not be viable for Endeavour Foundation nor for many other ADEs.

Increase to funding

12. The DSS letter to VP Hatcher dated 9 September 2019 states:

“A new pricing structure for employment support is scheduled to be announced by the National Disability Insurance Agency (NDIA) in October 2019. Indicative modelling by the Department of Social Services (the Department) has shown the majority of Australian Disability Enterprises (ADE) are likely to be better off financially once this new pricing has been implemented.”

13. The DSS states:

“that 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 are likely to result in an increase in the amount of funding available for support to people with disability who participate in supported employment.”⁴

14. No evidence has been filed by the DSS to support the above statements.

⁴ Paragraph 6(b) of the DSS submission dated 22 October 2019

15. Endeavour Foundation has extrapolated the proposed new pricing model across our ADEs, using the average hours worked by supported employees and the lower price points of support within the model. **Appendix 1 refers.**
16. Based on our detailed modelling, Endeavour Foundation estimates the proposed new pricing model will result in an overall funding **reduction of \$10.3 million per annum** for it.
17. This funding loss is too large for Endeavour Foundation to cover with revenue from fundraising activities.

Cost of implementation of the MSWS

18. The DSS states that due to this alleged increase of funding, this “*may make it viable to transition to the MSWS for all their supported employees.*”⁵
19. Notwithstanding that the Full Bench has already identified that the MSWS does not meet the Modern Awards Objective, implementation of this model is cost prohibitive.
20. Andrew Donne, Chief Executive Officer gave evidence that the cost of adopting the MWSW would be \$18,102,110 per annum.⁶ **Appendix 2 refers**
21. The DSS states:

“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 disabilities.”

22. Endeavour Foundation will be significantly worse off financially under the proposed new funding arrangements and will not be able to absorb this increase. If implemented, this will mean that many of Endeavour Foundation’s ADEs would close as they would not be sustainable and the ADEs that remain open will suffer significant job losses.
23. Endeavour Foundation modelling shows that a transition to the Modified Supported Wage System would create significant added cost to service providers while simultaneously reducing the cost of Disability Support Pension payments to the Department of Social Services. **Appendix 3 refers.**

⁵ Paragraph 49 of the DSS submission dated 29 October 2019

⁶ Paragraph 89, of the Statement of Andrew Donne.

Increase of funds can be allocated to wages

24. The DSS state that while the increase in funding is not provided to subsidise the cost of employees' wages, it may mean that ADEs may have the ability to direct more funding to employees' wages.
25. NDIS funding is provided purely for the delivery of support to people with a disability. It is not correct to say that a change in NDIS funding will provide additional funds which can be used to supplement wage increases.

Increase to productivity will off-set higher wage costs

26. Allegedly, an increase in funding may lead to an enhanced service, offering a greater level of support for employees, thereby resulting in higher productivity/output. Endeavour Foundation assumes that the submission implies that an increase in productivity will offset the higher wage cost associated with the MSWS.
27. However, no evidence has been provided to support this submission and it should therefore be given little or no weight.

Hours based pricing model

28. The DSS submits that the proposed new model 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 participants needs;*
 - *Aligns NDIS funded employment support prices with NDIS funded community participation support prices”⁷*
29. Endeavour Foundation has the following concerns:
 - The model does not take into account the additional support needs of people who are currently assessed under the Disability Maintenance Instrument;
 - There is no recognition of the increase to administrative functions; and
 - The NDIS funded employment support prices does not align with NDIS funded community participation support prices.
30. **Additional Support** - There are many supported employees who require additional support due to their needs and this element of support is not recognised under the new model. In the absence of clearer guidance from the DSS, it would appear that

⁷ Paragraph 40 of the DSS submission dated 29 October 2019

Endeavour Foundation must either absorb this additional cost or no longer supply this additional support.

31. **Administration** - Under the NDIS funding model, service providers make a service agreement with participants before beginning support services, based on the hours and type of service they wish to access from each provider. After delivering support, the service provider then lodges a separate claim for each item of support provided, against the NDIS plan for each participant.
32. Endeavour Foundation delivers other ratio-based supports under the NDIS. Endeavour Foundation is aware that it is a complex process to ensure each person receives the correct amount of support in keeping with their service agreement, in a ratio-based support model. This complexity is further multiplied for supports provided on an hourly basis.
33. Maintaining detailed records, claiming payment for supports and acquitting payments are complex and time-consuming activities which service providers must complete under the NDIS. Endeavour Foundation believes there will be a similar significant unfunded administrative burden created by the introduction of ratio-based supports and an hourly pricing model for supported employment. The cost of fulfilling these extra administrative requirements will not add any appreciable value to the employment and training experiences of supported employees. We believe this money would be better spent on direct employment support for people with a disability rather than consumed by red tape and administration.
34. **Community participation** - Apart from 1:1 support, the proposed new pricing levels for Supported Employment announced by the National Disability Insurance Agency are significantly lower than Community Participation support pricing. **Appendix 4 refers.**

Funding in Budget

35. The government announced it will provide \$67 million over five years to support ADEs in transition to a new wage assessment tool, following a review by the Full Bench.
36. As no new evidence has been provided by the DSS in support or otherwise of any new wage models, there is no further benefit to be gained by delaying this process any further.

SUPPORT FOR AUSTRALIAN BUSINESS LAWYERS AND GREENACRES SUBMISSIONS

37. Endeavour Foundation supports the submissions by Australian Business Lawyers, Greenacres Disability Services and National Disability Services (NDS).

CONCLUSION

38. The DSS submission should be given little if any weight.
39. The Full Bench should issue its decision in this matter as soon as practicable, based on the evidence at hand.
40. Endeavour Foundation welcomes the decision to provide a stable classification and associated wages framework for the industry.

Andrew Donne
Chief Executive Officer
Endeavour Foundation
6 November 2019

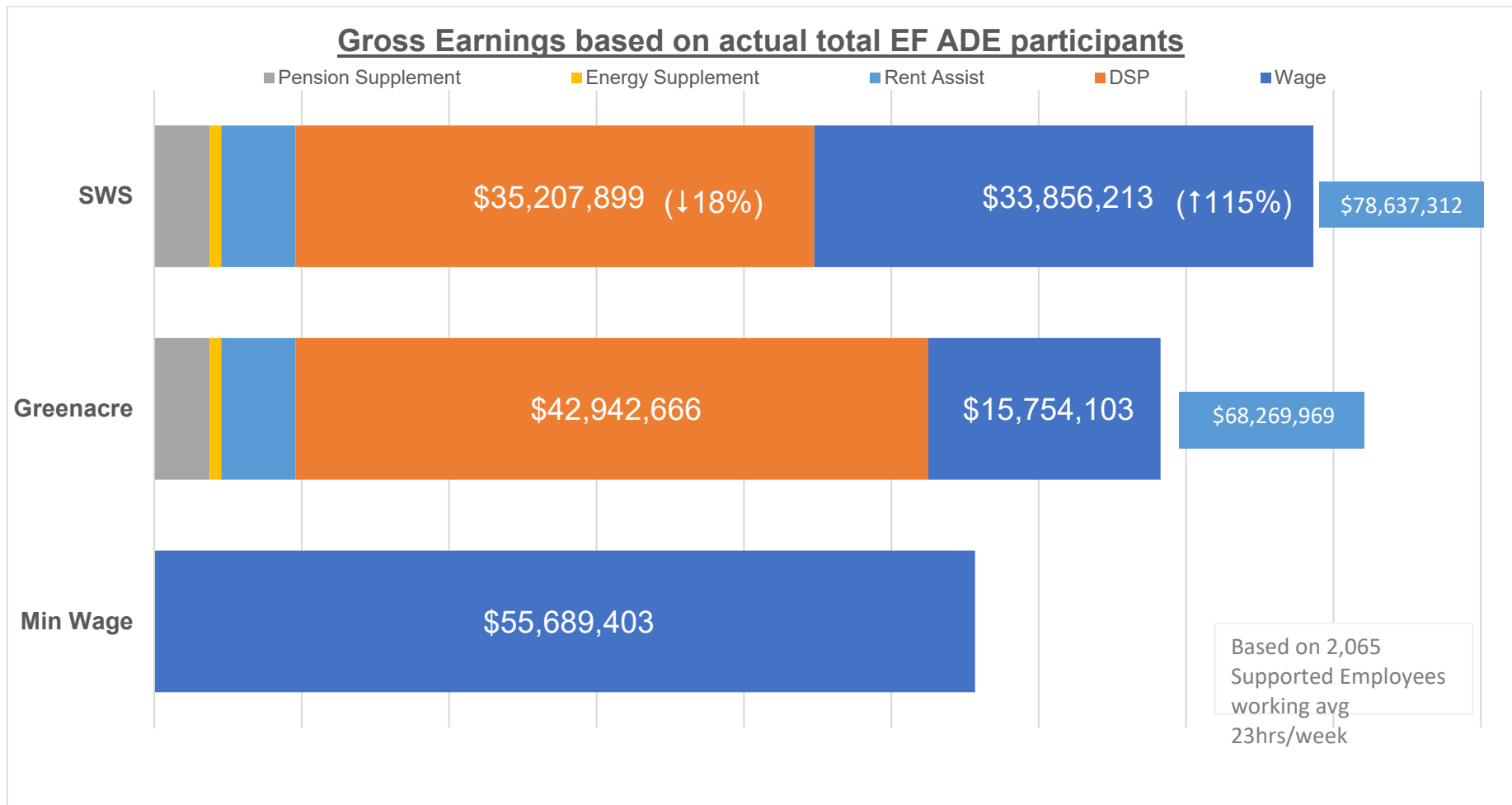
Appendix 1 : Current DMI funding model vs NDIA supported employment pricing framework

Endeavour Foundation comparison data: DMI funding model V NDIA Supported Employment pricing framework (October 2019)																			
DAX Location	Site	Participant DMI Level:						A	B	C	D	E	F	G	H	I	Current Funding \$	Var \$	
		Total	1	2	3	4	Avg RND	Average hours worked (week)	Hourly Rate \$	Annual weeks	Annual leave (weeks)	Personal leave (weeks)	Public Holidays (weeks)	Working weeks (C less D less E less F)	Annual Hours Worked (G x A)	Proposed Funding \$ (B x H x Participants)			
40022P	EFI - Wacol	195	0	1	14	180	3.9	4	23	9.65	52	4	2	2	44	991	1,864,645	3,128,350	(1,263,706)
40015L	EFI - Geebung	179	0	10	23	146	3.8	4	22	9.65	52	4	2	2	44	952	1,645,041	2,602,048	(957,008)
20010P	EFI - Mt Druitt	195	0	5	33	157	3.8	4	25	9.65	52	4	2	2	44	1,088	2,047,141	2,789,720	(742,579)
40076P	EFI - Toowoomba	134	0	0	3	131	4.0	4	24	9.65	52	4	2	2	44	1,062	1,372,651	2,108,453	(735,801)
30002P	EFI - Keon Park	154	3	13	19	119	3.7	4	23	9.65	52	4	2	2	44	1,010	1,500,599	2,068,796	(568,198)
20003P	EFI - Castle Hill	117	0	0	0	117	4.0	4	24	9.65	52	4	2	2	44	1,036	1,170,202	1,814,556	(644,354)
40288P	EFI - Mackay	75	0	0	4	71	4.0	4	21	9.65	52	4	2	2	44	929	672,558	1,128,678	(456,120)
40058P	EFI - Burleigh Heads	65	0	1	1	63	4.0	4	22	9.65	52	4	2	2	44	982	616,029	1,027,976	(411,947)
40051P	EFI - Southport	84	2	7	15	60	3.6	4	25	9.65	52	4	2	2	44	1,102	893,339	1,199,113	(305,774)
40236P	EFI - Bundaberg	68	6	2	8	52	3.6	4	21	9.65	52	4	2	2	44	928	608,997	989,527	(380,530)
40368P	EFI - Cairns	55	0	5	13	37	3.6	4	19	9.65	52	4	2	2	44	829	439,786	745,322	(305,535)
20001P	EFI - Seven Hills	82	1	3	14	64	3.7	4	23	9.65	52	4	2	2	44	1,019	806,423	1,201,659	(395,236)
30004P	EFI - Kew	77	0	2	5	70	3.9	4	22	9.65	52	4	2	2	44	982	729,908	1,053,323	(323,415)
30006L	EFI - Oakleigh	77	1	7	7	62	3.7	4	25	9.65	52	4	2	2	44	1,111	825,586	1,084,363	(258,778)
40260P	EFI - Rockhampton	50	1	2	9	38	3.7	4	22	9.65	52	4	2	2	44	947	456,767	773,673	(316,906)
40009P	EFI - Redcliffe	49	0	3	9	37	3.7	4	26	9.65	52	4	2	2	44	1,123	531,183	790,260	(259,077)
40187P	EFI - Kingaroy	33	0	0	0	33	4.0	4	20	9.65	52	4	2	2	44	880	280,311	582,268	(301,957)
40194P	EFI - Maryborough	54	0	5	6	43	3.7	4	24	9.65	52	4	2	2	44	1,046	544,922	743,913	(198,991)
30012L	EFI - Geelong	34	1	2	3	28	3.7	4	19	9.65	52	4	2	2	44	858	281,360	491,743	(210,383)
40337P	EFI - Innisfail	24	0	1	3	20	3.8	4	19	9.65	52	4	2	2	44	836	193,619	368,558	(174,939)
40142P	EFI - Maroochydore	69	0	3	14	52	3.7	4	22	9.65	52	4	2	2	44	956	636,644	859,678	(223,033)
40321P	EFI - Townsville	49	1	2	12	34	3.6	4	25	9.65	52	4	2	2	44	1,097	518,732	678,509	(159,777)
30003P	EFI - Qart	20	0	0	1	19	4.0	4	17	9.65	52	4	2	2	44	765	147,722	332,539	(184,817)
40252P	EFI - Gladstone	31	1	5	10	15	3.3	3	18	9.65	52	4	2	2	44	792	236,940	338,866	(101,927)
40301P	EFI - Bowen	7	0	0	0	7	4.0	4	14	9.65	52	4	2	2	44	615	41,568	141,142	(99,574)
40306L	EFI - Home Hill	9	0	0	0	9	4.0	4	22	9.65	52	4	2	2	44	964	83,728	199,366	(115,638)
40371P	EFI - Mareeba	17	0	0	2	15	3.9	4	23	9.65	52	4	2	2	44	1,003	164,532	298,916	(134,384)
40175L	EFI - Gympie	20	1	1	2	16	3.7	4	30	9.65	52	4	2	2	44	1,334	257,424	220,761	36,662
40099P	EFI - Warwick	42	0	2	2	38	3.9	4	26	9.65	52	4	2	2	44	1,137	460,692	635,250	(174,559)
		2,065	18	82	232	1733											20,029,049	30,397,328	(10,368,279)
Average Real world application:																			
							Participant DMI Level		DMI funding awarded (Annual)		Participant funding utilised (44 weeks x ~23hrs x \$9.65)		"Unutilised" funding per Participant		Endeavour # of Participants		"Unutilised" funding Total		
							Level 1		\$ 4,596.00		\$ 9,618.89		\$ 5,022.89		18		\$ 90,411.99		
							Level 2		\$ 7,764.00		\$ 9,618.89		\$ 1,854.89		82		\$ 152,100.85		
							Level 3		\$ 11,664.00		\$ 9,618.89		\$ (2,045.11)		232		\$ (474,465.89)		
							Level 4		\$ 15,468.00		\$ 9,618.89		\$ (5,849.11)		1,733		\$ (10,136,510.40)		
															2,065		\$ (10,368,463.45)		

Appendix 2 : Wage assessment tool comparison – wage cost to Endeavour Foundation

Calculations	Greenacre	SWS	Difference	No	
Clients	2,065	2,065		1	
Average Hours Worked (Week)	23	23		2	Based on average across 2,065 Supported Employees
Average Annualised Hours	1,193	1,193		3	Average Hours * 52
Average Hourly Rate	\$ 5.23	\$ 11.25	\$ 6.01	4	The SWS wage is 57.7% of the minimum wage
Annualised Average Wage	\$ 6,241	\$ 13,413	\$ 7,172	5	Annualised hours x average hourly rate
Annual Maximum DSP	\$ 22,110	\$ 22,110	\$ -	6	Based on a f/n max DSP of \$843.60 x 26
DSP Reduction Threshold	\$ 4,524	\$ 4,524		7	DSP Threshold for reduced earnings if \$174 f/n (Annualised)
DSP Reduction % of Wage	\$ 859	\$ 4,445	\$ 3,586	8	DSP reduction of 50c per dollar earned over threshold
Predicted Annual DSP	\$ 21,252	\$ 17,666	\$ (3,586)	9	
Pension Supplement	\$ 1,791	\$ 1,791		10	
Energy Supplement	\$ 367	\$ 367		11	
Rent Assistance	\$ 2,392	\$ 2,392		12	
Total Potential Earnings	\$ 32,043	\$ 35,629	\$ 3,586	13	
Wage Cost to Endeavour	\$ 13,576,442	\$ 29,176,330	\$ 15,599,888	14	
Oncosts @16.04%	\$ 2,177,661	\$ 4,679,883	\$ 2,502,222	15	
Total Wage Cost to Endeavour	\$ 15,754,103	\$ 33,856,213	\$ 18,102,110	16	
Total DSP cost	\$ 42,942,666	\$ 35,207,899	\$ (7,734,767)	17	
Wage increase Cost to Endeavour	\$ 18,102,110			18	
Total DSP Decrease	\$ (7,734,767)			19	
DSP Decrease per client	\$ (3,746)			20	
Average Wage Increase per client	\$ 8,768			21	
Additional Income per SE p.a.	\$ 3,586			22	
Total additional income Endeavour SE's	\$ 7,403,529			23	
Minimum Wage Rate	\$ 19.49			24	
Based on 23hrs and 52 weeks	\$ 23,310		\$ 12,319	25	Difference between SWS and minimum wage

Appendix 3 : Wage assessment tool comparison - Gross earnings based on actual total EF ADE participants



Appendix 4 : Employment Support Pricing vs Community Support Pricing

Ratio	Proposed NDIA for ADE Support Pricing	NDIA Community Support Pricing	NDIA Community Support Pricing with TTP	No. Participants	Total Income for Proposed NDIA Support for ADEs Per Hour	Total Income for Community Support Pricing without TTP	Decrease in Funding for ADEs when Compared to Community Support Funding without TTP	Total Income for Community Support Pricing with TTP Per Hour	Decrease in Funding for ADEs when Compared to Community Support Funding with TTP
1:1	\$54.95	\$54.95	\$58.91	1	\$54.95	\$54.95	0%	\$58.91	-7%
1:2	\$28.53	\$31.70	\$33.91	2	\$57.06	\$63.40	-11%	\$67.82	-19%
1:3	\$19.72	\$23.94	\$25.58	3	\$59.16	\$71.82	-21%	\$76.74	-30%
1:4	\$15.31	\$20.07	\$21.42	4	\$61.24	\$80.28	-31%	\$85.68	-40%
1:5	\$12.67	\$17.74	\$18.92	5	\$63.35	\$88.70	-40%	\$94.60	-49%
1:6	\$10.91	NONE	NONE	6	\$65.46	\$0.00	NONE	\$0.00	NONE
1:7	\$9.65	NONE	NONE	7	\$67.55	\$0.00	NONE	\$0.00	NONE

The only aligned pricing between the recently announced Employment Support Pricing and Community Support Price is the 1 to 1 ration of non TTP pricing. After this all employment support pricing is much lower than Community Support Pricing which is contrary to the Statement made by DSS.

TTP = Temporary Transitional Payment. These prices were introduced to assist organisations with the additional costs associated with providing NDIS supports. Organisations can negotiate these prices with client.