

Fair Work Commission
Four Yearly Review of Modern Awards
Supported Services Award

AM2014/286

Submissions of Greenacres Disability Services

Response to Submissions filed by Department of Social Services on the 22 October 2019 in the above matter.

Support for Australian Business Lawyers Submissions

1. Greenacres supports the submissions of Australian Business Lawyers (ABL). As a consequence of the extensive evidence and submissions that were put in the above matter the Full Bench (Bench) should make its Decision unencumbered by requests for a delay which would not serve any useful purpose but to provide greater uncertainty for providers and those they employ. Greenacres also supports the submission of National Disability Services (NDS).
2. We believe there is nothing in the Department of Social Services (DSS) submission that would warrant the Bench doing anything other than making its Decision post-haste.

DSS given ample opportunity to express a view.

3. In April 2018 the Bench issued as a Statement with respect to its provisional conclusions about wage assessment for supported employees engaged by Australian Disability Enterprises (ADE).
4. At paragraph 15 of the April 2018 Statement the provisional conclusion was that none of the wage tools including the SWS of itself were found to be an appropriate method of assessing wages for supported employees in in ADE.
5. Subparagraphs 15 (8) and (9) the Bench's April 2018 Statement also outlined a preliminary approach to determining wages for supported employees in the future.
6. A further Statement was issued by Bench on 11 September 2018 inviting submissions on its provisional approach.

7. Every organisation including DSS had ample opportunity to put forward submissions. The DSS did not do so in any substantial way notwithstanding being pressed by the Bench on a number of occasions during the hearings to clarify its position on a range of matters. Indeed, DSS were at pains to minimise their involvement in the proceedings.

In the public interest for a Decision to be made post-haste

8. The question of what is the most appropriate way of determining the wages of supported employees employed by ADE has been ongoing for some 4 years through mediation, conciliation and arbitration. In our view it would not be in the public interest given the considerable resources that the Parties have expended in this matter including the Fair Work Commission (FWC) for there to be any further delay particularly given that it will serve no useful purpose.

Formal DSS Submission does not ask Bench to delay its decision

9. The DSS Submission dated the 22/10/2019 **does not** specifically ask the Full Bench to delay a Decision but rather at paragraph 7 (b) says:

The Submission has been prepared to

(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”

This infers that the Parties to the SES Award **and not DSS** might by consent reach an agreed position on the best way forward. This is highly unlikely.

Pricing announcement by the NDIA makes things financial worse for many ADE.

10. The catalyst for DSS suggesting that the Parties should confer is as a consequence of recent funding announcements.
11. The first of the funding announcements is found at paragraphs 45 and 46 of the DSS submission which explicitly deals with the transition funding to a new wage assessment model. It is unclear whether any of the \$67million is for wage supplementation, but even if the full amount was, it is unlikely to cover what are likely to be wage increases arising out of the Decision.
12. The second funding announcement is found at paragraphs 39 to 44 of the DSS submission which deals with the announced pricing by the NDIA for employment supports which will replace the current funding arrangements for ADE. The new NDIS Pricing will be implemented sometime early in the new year **but not on the 1 January 2020** as stated by Ms Metz during the proceedings before the Bench on the 23rd of October.

13. The new NDIA pricing model will not provide any relief to ADE to supplement any wage increases for supported employees because under the new NDIA pricing model the funds are specifically provided for supporting people with disabilities in employment and not to pay their wages.
14. There is no evidence to support the assertions made in paragraphs 47, 48, 49, and 50 of the DSS submission. There have been thousands of NDIA participants affected adversely by the NDIA planning processes and to suggest that participants might see increases in funding is unsubstantiated.
15. At paragraph 48 the DSS state what is indeed the case that the new NDIS funding is not provided to subsidise wages of supported employees.
16. However, there is no evidence to support the assertions made in sub-paragraphs 48(a) and (b). Indeed, the new NDIA pricing structure will be detrimental for many ADE. In the case of Greenacres we have written to the Minister and the CEO of the NDIA outlining our concerns. These letters are found in **Appendix A**

New NDIA pricing does not align to community participation pricing

17. Finally, on the question of pricing the Bench in our view has been misled by the DSS submission about the pricing structure. At paragraph 40 it says in the third dot point:
 - *“Aligns NDIS funded employment support prices with NDIS funded community participation support prices.”*

Appendix B is a table which shows the clear difference between the announced pricing that applies to employment support and that which applies for persons who require community participation support on the Monday to Friday rates. The pricing in community support is considerably higher than those announced for employment support.

Impact of NDIA Pricing on Greenacres.

18. Our own assessment of the pricing model would see our organisation potentially lose over 25% of its funding. This in itself is critical let alone any type incentive to talk to other parties about reaching a consent position on wage determination as suggested by the DSS.

Reopening the case is not in the public interest.

19. At paragraph 50 that the DSS invites the Bench to seek further submissions from the parties about considering the use of the MSWS in light of the new funding arrangements. Greenacres has considered the use of the MSWS throughout the proceedings and nothing in the NDIA announcement would change our position.

20. These are our submissions. Nothing put forward by DSS or indeed the NDIA pricing/funding proposal, changes any of the submissions and evidence put forward in the case. If anything, the recent announcements by DSS and the NDIA makes it more imperative that the Bench hand down its Decision.

Application of the Award

21. At paragraphs 51 to 56 DSS deal with the uncertainty around the application of the SES Award given the new funding arrangements.

22. We believe there is merit to ensure the SES Award has clarity around its application not only for ADEs but to ensure the Bench's Decision is corralled and doesn't have unintended application beyond ADEs employers.

Conclusion

23. At the October 23 hearing Ms Metz in her closing remark said that DSS does not have a view about which wage assessment model should be used. On this basis it is unclear why this intervention by DSS has occurred which in our view has unnecessarily delayed the Bench making its Decision.



Chris Christodoulou
Chief Executive Officer
Greenacres Disability Services

Appendix A

24 October 2019

The Hon Stuart Robert MP
Minister for the National Disability Insurance Scheme
Minister for Government Services
Parliament House
Canberra ACT 2601

Email: fadden@aph.gov.au

Dear Stuart,

NDIA Proposed Pricing / Funding Model for Participants in Australian Disability Enterprises (ADEs)

As a consequence of the recent announcement by the NDIA of the new funding / pricing model for ADEs, Greenacres finds itself in a critical situation if the funding model was to proceed without significant change.

Currently our ADE supports approximately 240 people with disabilities who, without us, would not be in employment. Whilst Greenacres supports the objectives of the NDIA, to encourage open employment, the funding model will simply destroy many supported employment jobs for the most vulnerable in our community.

I would urge you as the Minister to request the NDIA not proceed with its current employment support pricing until it can find a way to ensure that the impact supported employees is minimal.

We have been actively engaging with representatives from both DSS and the NDIA since the funding model was announced. The funding model constructed was announced without first having a proper consultation process and one where each and every ADE could have sent back the effect that the proposal would have on Supported Employee jobs.

Your intervention is critical as I know you are a supporter of people with disabilities having jobs and that you appreciate the critical role played by Australian Disability Enterprises.

I would be happy to bring a small delegation of Supported Employees / Carers to talk to you about the need to ensure that Supported Employees jobs are protected and not destroyed as a consequence of a funding model, which at the moment, seems to be completely unworkable and not fit for purpose.

Kind regards,



Chris Christodoulou
Chief Executive Officer

24 October 2019

Mr. Martin Hoffman
CEO – NDIA
GPO Box 700
Canberra ACT 2601

Email: CEO.OFFICE@ndis.gov.au

Dear Martin,

NDIA Proposed Pricing / Funding Model for Participants in Australian Disability Industries (ADEs)

I wish to express our grave concern both with the announced pricing model for Supported Employment and more importantly, the method of consultation (or the lack thereof) prior to the announcement being made.

Over a year ago, we were told by NDIA that there would be a discussion paper fully outlining the funding model prior to it being introduced. We understood this to mean that **all** ADEs would have an opportunity both to review it and provide verifiable information on the impact the model might have on Supported Employment jobs. This process would have informed the NDIA Board of the implications that the recently announced pricing model would have had on a significant number of ADEs who employ the majority of people with disabilities.

As the new CEO, I would urge you to rethink the pricing model and to hold discussions with peak bodies and their representatives to come up with a pricing model which is fit for purpose and will not destroy the jobs of thousands of people with disabilities.

In the case of our organisation, 240 jobs are potentially affected. We do not want to have a public campaign around this issue, although once we are forced legally to consult our employees and their carers about workforce change, the issue will become very public.

We would like to approach Christmas in the knowledge that the NDIA will not force the implementation of the announced funding model until there is an agreed way of minimising significant job losses in the sector.

Whilst I would be more than happy to come and talk to you about the issue, I invite you to visit Greenacres and talk to our Supported Employees and their carers about why working in our environment is so critical to their lives

Kind regards,



Chris Christodoulou
Chief Executive Officer

Appendix B

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.