

## FAIR WORK COMMISSION

### Four yearly review of modern awards *Supported Employment Services Award 2010* AM2014/286

#### SUBMISSION IN REPLY OF THE DEPARTMENT OF SOCIAL SERVICES 13 NOVEMBER 2019

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##### BACKGROUND

1. The Department of Social Services' (**Department**) recent engagement in the four yearly review of the *Supported Employment Services Award 2010* (**SES Award**) has been directed at drawing to the attention of the Commission, and the parties, impending changes in funding for supported employment – most relevantly, through changes announced by the National Disability Insurance Agency (**NDIA**) in October 2019 to the pricing framework for supported employment supports.
2. The Department lodged a submission in the Commission on 22 October 2019 which provided information about the impending changes to the funding of supported employment.
3. In accordance with directions made by the Full Bench on 23 October 2019, a number of interested parties filed submissions in response to the Department's submission on 5 and 6 November 2019. A number of these submissions include assessments of the impact of the funding changes on Australian Disability Enterprises (**ADEs**).
4. The Department provides a submission in reply to clarify a small number of matters arising from the parties' submissions.
5. It is for the Commission to determine what, if any, regard is had to these submissions in making its final determination as to the terms of the SES Award (including with respect to wage assessment).

##### REVISED NDIS PRICING FRAMEWORK

6. A number of parties have raised concerns with the National Disability Insurance Scheme (**NDIS**) pricing framework in their submissions. Various parties have noted that the prices for supported employment supports are not the same as the prices for community participation supports.
7. While the NDIA has announced the pricing framework for supported employment supports, it is apparent (including from the submissions of various parties) that further information is required to confirm how the pricing framework will be implemented in practice. This information is also necessary to enable ADEs to fully and properly assess the impacts of the revised pricing framework.
8. The Department is working with the NDIA to publish further information on the new pricing framework for supported employment. The Department would expect that this information would:
  - (a) clarify the types of activities that may fall within the supported employment supports that can be funded through a participant's NDIS plan;
  - (b) provide further guidance on the introduction of hours-based and intensity-based claiming per participant; and

- (c) confirm arrangements for providers to claim separately for "non-face to face activities" and additional services associated with the provision of employment supports to participants.
9. Once this information is published by the NDIA, the Department is committed to undertaking further consultation with ADEs in relation to the implementation of the revised pricing framework for supported employment supports and the impact of the revised pricing framework on ADEs. The Minister for Families and Social Services is also committed to consultation with ADEs on these matters.
  10. Consultation undertaken by the Department and the Minister is separate from the four yearly review process and arises from the Department's policy responsibility for supported employment.
  11. The Department has not suggested, and does not suggest, that the Commission's decision with respect to the terms of the SES Award should be delayed pending this consultation process. While the further information about the pricing framework expected to be published by the NDIA and the outcomes of the Department's consultation with ADEs could be relevant to the Commission's considerations on the terms of the SES Award, the question of whether it is appropriate to defer any decision pending these processes is ultimately a matter for the Commission.

#### **DEFINITION AND COVERAGE OF SES AWARD**

12. At present, the SES Award covers employers throughout Australia who operate supported employment services and their employees working in the classifications listed in the Award.
13. Historically, the number of ADEs providing supported employment services has been limited by the fact of the Department providing funding for supported employment pursuant to the *Disability Services Act 1986* (Cth).
14. The National Disability Services submission seeks to express coverage by reference to, amongst other things, supports under the NDIS.<sup>1</sup> Respectfully, the NDS proposal may lead to an unintended broadening of the coverage of the Award.
15. The Commission should ensure that any amendments to the coverage of the SES Award:
  - (a) maintain the intended coverage of the Award (that is, to ADEs providing supported employment);
  - (b) do not unintentionally broaden coverage to any employer who provides employment supports.
16. Matters regarding the coverage of the SES Award are complex, and likely to require substantive submissions from the parties to the proceedings.<sup>2</sup> It may be the case that any proposed changes to the coverage terms of the SES Award could be dealt with by way of a separate variation application (outside the four yearly review process). This approach would also take into account that the revised NDIS pricing model, including the scope of providers that may provide employment supports to NDIS participants, remains subject to further consultation.

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<sup>1</sup> Pages 3 to 6 of the Submission of National Disability Services dated 6 November 2019.

<sup>2</sup> Paragraphs 21 and 22 of the Submission of Greenacres Disability Services dated 6 November 2019; Paragraphs 30 to 33 of the Submission of Australian Business Industrial and the NSW Business Chamber dated 6 November 2019;