

IN THE FAIR WORK COMMISSION

4 Yearly Review of Modern Awards

National Disability Services

Submission – AM2018/26

Substantive Issues

1. NDS makes the following submission pursuant to the Directions made on 1 May 2019.

A. Modern awards containing reference to translators and interpreters

2. FWC has published a Background Document which sets out existing award provisions regarding community language allowances and similar provisions for employees required to perform occasional interpreting duties.
3. A number of these awards list unqualified and qualified interpreters as indicative duties for particular classification levels. The minimum rates of pay for these levels can be compared with the minimum rates of pay for SACS employees as set out in the following table.

Award	Classification	Pay rate	SCHADS – nearest equivalent SACS classification and paypoint	Pay rate
Aged Care Award 2010	Level 5 (Secretary interpreter unqualified)	\$865.70	Level 2.2	\$863.60
	Level 7 Interpreter (qualified)	\$928.80	Level 3.1	\$913.70
Amusement, Events & Recreation Award 2010	Grade 3 International host required to speak a second language	\$794.70	Level 1.1	\$782.00
	Grade 4 Interpreter	\$837.40	Level 2.1	\$837.40
Health Professionals and Support Services Award 2010	Level 5 Interpreter (unqualified)	\$865.70	Level 2.2	\$863.60

	Level 7 Interpreter (qualified)	\$928.80	Level 3.1	\$913.70
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4. The SACS rates shown in the above table do not include the equal remuneration component. This means that the rates reflect the skill based relativities applied to award rates without the addition of a component that applies uniquely to the SCHADS award to remedy historic undervaluation due to gender. In other words, this enables a comparison of “apples with apples”.
5. Where awards have classified the duties of interpreters they are generally at skill levels equivalent to SACS level 2 for unqualified interpreters, and SACS level 3 for qualified interpreters.
6. The *Aged Care Award* and the *Health Professionals and Support Services Award* are awards that apply to similar types of workers and workplaces as the SCHADS Award.
7. The SACS classification definitions contemplate a far wider and non-exhaustive range of skills than the classification definitions for most of the awards identified as having community language allowances and similar provisions. In those awards, the definitions are typically restricted to a short and narrow list of duties and skills at each level.
8. The relevance of the SACS classification definitions is dealt with further in the section of this submission regarding community language skills and the classification structure.

D. Industry data and the Equal Remuneration Order

9. The operation of the Equal Remuneration Order (ERO) will be the subject of a separate submission to be filed jointly by NDS, AFEI and ASU.
10. The Industry Profile published by FWC on 12 April 2019 draws on 2016 census data for employees working in the “other residential care services” and “other social assistance services” industry classes. Total employment is shown as being 167,793 in 2016.
11. The use of these industry classes is consistent with the approach of the Commonwealth Government in its submission of 18 November 2010 in the equal remuneration case for social and community services workers (C2010/3131)¹. The Commonwealth’s submission also pointed to a number of limitations to this approach², but concluded that nevertheless it provided a reasonable basis for estimating the size and characteristics of the sector.
12. No party disputed the approach taken by the Commonwealth in their submission regarding the size and characteristics of the sector.
13. In that submission, the Commonwealth provided an overview of the industry that would be covered by the proposed ERO. They estimated that in 2007 there would have been 6,093

¹ Australian Government submission in the matter of C2010/3131, 18 November 2010
https://www.fwc.gov.au/documents/sites/remuneration/submissions/austgovt_submission.pdf

² *ibid*, footnote 41 at page 64

organisations that could be subject to the ERO. Of these, it was estimated that 2,607 were employing businesses.

14. The Commonwealth Government's submission also reported that by 2009, the ABS Community Services survey estimated there were 4,033 businesses in the SACS sector subject to the equal remuneration case. These employed around 153,322 employees (90,271 fulltime equivalent). Some 90% of these employees were employed by not for profit organisations.
15. Data presented by the NSW Government in the equal remuneration case also points to a similar order of magnitude for the size of the sector. That submission drew on a report³ of survey of state government funded organisations in NSW and indicated about 1500 such employers in NSW in 2010.
16. The estimate of employment in the current Industry Profile published by FWC is a similar order of magnitude to that of estimates provided by the Commonwealth government in the equal remuneration case.
17. By using data for the same industry classes as was used in submissions for the equal remuneration case, the same limitations of precisely defining the sector identified by the Commonwealth will also apply.
18. NDS concludes that the approach taken in the Industry Profile results in a reasonable estimate of the likely size of the sector.

E. Community language skills and the classification structure

19. The classification definitions for SACS employees are set out at Schedule B of the SCHADS award.
20. The classification definitions set out
 - a) generic characteristics of work at each classification level, together with
 - b) a non-exhaustive list of indicative duties and responsibilities that would sit at each classification level, and
 - c) Skills and experience required, and
 - d) Organisational relationships and extent of authority at each level.
21. NDS submits that while "community language skills" are not explicitly named in the classification definitions, they can be considered to be contemplated by the reference to generic related skills.
22. SACS Level 2 specifies (at B.2.3 (a) (i)) that skills needed to perform work at that level include "*...basic skills in oral and written communication with clients and other members of the public...*"
23. The reference to skills in communication does not specify any particular language. Ordinarily it would be presumed that the relevant language is English. However in services where

³ Social Policy Research Centre, UNSW (2010) *Profiling non-government community services organisations in New South Wales*. Report prepared for Department of Human Services NSW.
https://www.fwc.gov.au/documents/sites/remuneration/submissions/austgovt_submission.pdf

workers are required to use their native non-english language in working within the community, the level of skill required will be equivalent to “basic skills in oral and written communication”.

24. SACS Level 2 is the entry level for Certificate qualified workers and equivalent to the classification levels used for unqualified interpreters in the modern awards tabulated at paragraph 3 of this submission.
25. Work at SACS Level 2 may be quite highly skilled and can cover work performed by certificate 4 qualified workers with significant experience.
26. One of the general characteristics of SACS level 2 is that a worker “...*may contribute specific knowledge and/or specific skills to the work of the organisation...*” (B.2.1 (b)).
27. Knowledge of a second language can be considered to be a “specific knowledge or skill”.
28. SACS Level 3 specifies
 - a) At B.3.2 (j), that responsibilities may include “.....*scope for exercising initiative in the application of established work procedures...*” and
 - b) At B.3.2 (n), that “...*where prime responsibility lies in a specialised field, employees at this level would undertake at least some of the following:*
 - a.;
 - b. *perform duties of a specialised nature;*
 - c. *provide a range of information services;...*”
 - c) At B.3.3 (a) (iii) that in relation to skills and knowledge needed for work at this level, the employee “...*may utilise limited professional or specialised knowledge...*”
29. SACS level 3 is the entry level for degree qualified workers and equivalent to the classification levels used for qualified interpreters in the modern awards tabulated at para 3 of this submission.
30. Work at SACS Level 3 covers graduates as well as experienced workers without formal qualifications. One of the general characteristics of the level is that the work may “...*involve solving problems of limited difficulty using knowledge, judgment and work organisational skills acquired through qualifications and/or previous work experience...*” (at B.3.1 (b)).
31. The definitions at both SACS levels 2 and 3 are not a narrow list of tasks or occupations. Rather they describe a range of generic skills and indicative tasks. Where a job role has duties not specifically mentioned in the classification definitions, the generic descriptors enable an assessment of the classification to be made by referring to equivalent types of skills and responsibilities.

F. Part-time employment and casual employment Full Bench (AM 2014/196 and AM 2014/197)

32. The operation of the NDIS is described by the Full Bench in the Part-time and casual employment decision.⁴
33. NDS submits that the observations of the Full Bench were accurate at the time and remain broadly relevant in 2019.
34. However, since that decision in 2017 the NDIS has continued to grow and has undergone some changes in the detail of its operation.
35. NDIS participant numbers are behind the original NDIS Bilateral agreements participant estimates (i.e. by about 100,000). This means the current rate of rollout of NDIS is at about 75% of the level originally planned in 2011⁵. Consequently the rollout will be extended well into 2019-20 and is unlikely to be completed before then.
36. At paragraph [631] of the Full Bench decision, reference is made to cancellations of supports by clients. Since that time, the approach of NDIA to cancellations has been modified. The current NDIS Price Guide allows for 90% of the fee to be charged if a participant cancels later than 3pm the day before the appointment. The participant can be charged up to 12 times in a year, after which NDIA may review the situation.
37. If a participant provides notice prior to 3pm the previous day, the provider cannot charge the participant.
38. The workforce has also undergone changes since the 2017 decision. At paragraph [633] of the Full Bench decision there is discussion of the characteristics of the disability workforce. That discussion referred to workforce reports published by NDS using 2016 data.
39. NDS has developed a Data Metrics Tool called Workforce Wizard designed to assist disability organisations track workforce trends. This was the source of the data referred to by the Full Bench in its decision at [633].
40. NDS have published a comprehensive report with data to July 2018⁶. Since then Workforce Wizard for the December 2018-19 quarter have been obtained, and this included data from 187 organisations, comprising of 41,119 workers in the disability and allied health sectors.
41. The average proportion of casual employment increased from 40.9% in September 2015 to 45.2% in December 2018. However, it has remained at around 45% since September 2017, with the exception of the September 2018 quarter (47.3%). While disability service providers are hiring more casual workers, the trend towards increased casual employment since 2015 appears to have stabilised.
42. It is important to note that the rate of casual employment has increased to 45.2% from a low of 39.2% in the June 2016 quarter.

National Disability Services

17 May 2019

⁴ [2017] FWCFB 3541 at [554] and [630]-[633].

⁵ NDIS (2019), *Report to the COAG Disability Reform Council for Q3 of Y6 Summary Part A*, page 6, section 1.4, <https://www.ndis.gov.au/about-us/publications/quarterly-reports>

⁶ NDS (2018), *Australian Disability Workforce Report July 2018*.
https://www.nds.org.au/images/workforce/ADWR_Third_Edition_July_2018.pdf