

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Further Submission

Social, Community, Home Care and
Disability Services Industry Award 2010
(AM2016/28)

2 May 2019

Ai
GROUP

AM2018/26 SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES AWARD 2010

1. This submission is filed by the Australian Industry Group (**Ai Group**) in response to a statement¹ issued by the Fair Work Commission (**Commission**) on 23 April 2019. Ai Group was subsequently granted an extension of time to file its submission.
2. The statement relates specifically to the National Disability Insurance Scheme's (**NDIS**) funding arrangements and recent Federal Budget announcements, which were the subject of evidence led by the Health Services Union (**HSU**) during proceedings before the Commission on 17 April 2019. The following exchange is particularly relevant: (our emphasis)

MS DOUST: No. Mr Farthing, can I just ask you to go to the calculations that are contained in the table after paragraph 21 of your statement?---Yes.

Are any of those calculations going to be affected by the recent Federal Budget?---Yes, they will be.

Can you explain how they will be affected by the budget?---Certainly. So in terms of each of the components, so the hourly rate, the amount of leave, those things, those salary on costs, those will stay the same for that particular price point, which is standard needs week day. However, the price cap by the NDIA has been substantially increased, and the increase applies - the increase varies depending on the time of the day that the care is delivered, and also the level of the support worker and the complexity of the participant being served. So on a level 1 week day, which is where I've made the comparison and done the analysis, that will actually increase by \$6.22 per hour.

JUSTICE ROSS: Is that from the \$48.14?---Yes, that is correct. So the \$48.14 is the current price cap from 1 July 2019. It will increase by \$6.22. It will actually increase slightly further than that once the minimum wage case decision is known, because the NDIA will also apply indexation for that.

Have those changes been - are they the subject of legislation to your knowledge, or have they been implemented administratively?---They have been implemented administratively.

...

JUSTICE ROSS: Let's not speculate about the further - when you say it was the subject of ministerial announcement is there a document that sets it out?---Yes. So there is a document on the NDIA website.

¹ 4 yearly review of modern awards—Group 4—Social, Community, Home Care and Disability Services Industry Award 2010—Substantive claims [2019] FWC 2756.

Can you provide that through Ms Doust's instructors to her and she can tender that and provide it to the other parties?---Sure. Yes.²

3. On 18 April 2019, the HSU filed correspondence that:
 - (a) Drew the Commission's attention to a NDIS price guide; (**NDIS Price Guide**)
 - (b) Included a media release from Minister Fletcher and Assistant Minister Henderson of 30 March 2019; (**Media Release**) and
 - (c) Identified further information available on a specific part of the National Disability Insurance Agency's (**NDIA**) website (**Online NDIA Material**).
4. Ai Group makes the following brief submissions in respect of the above material. They should be read in conjunction with the reply submissions we filed on 8 April 2019 (**Reply Submission**) and in particular, chapter 5 of that submission, which deals with the NDIS funding and pricing arrangements in detail.
5. Further, we continue to hold the concerns previously expressed about the funding currently afforded to providers in the industry, the implications that the insufficiency of that funding has had and continues to have on providers (and in turn, on their clients) and the extent to which those implications would be exacerbated if the various unions' claims were granted. The material here presented by the HSU does not cause us to demur from that position.

Online NDIA Material

6. It is convenient to deal with the Online NDIA Material first.
7. The HSU's correspondence directs the Commission to a webpage on the NDIA's website. A copy of that webpage is **attached** to this submission for convenience.

² Transcript of proceedings on 17 April 2019 at PN1589 – PN1597.

8. We refer to the 'Indicative change to east Price Guide', which was also extracted in our Reply Submission at paragraph 96. As we observed at paragraph 97 of that submission, the table indicates that the hourly price cap for the most basic level of one-on-one care on a weekday will increase by only \$3.55 per hour.
9. Mr Farthing gave evidence that the price cap "on a level 1 week day ... will actually increase by \$6.22 per hour".³ When asked by His Honour, Justice Ross, as to whether there was any documentation available that sets out the price increases, Mr Farthing indicated that there was such material available on the NDIA website and that it would be provided by him to the HSU. We take it that, by extension, the Online NDIA Material is that which was relied upon by Mr Farthing for the purposes of his evidence.
10. We have been unable to reconcile the evidence given by Mr Farthing and the Online NDIA Material. Mr Farthing's evidence appears to significantly overstate the extent of the increase that will be afforded for the level 1 care on a weekday as documented in the aforementioned table.
11. We also note that Mr Farthing's evidence proceeded on the basis that the current price cap for such care is \$48.14. The aforementioned table suggests that the current price cap is \$47.02, however we acknowledge that the NDIS Price Guide prescribes a price cap of \$48.14. This further confuses the evidence given.
12. It is unclear whether Mr Farthing's evidence relies on the information contained in the Online NDIA Material regarding 'Temporary Transformation Payments' (**TTP**). If this is so, it must be noted that the payment is a *temporary* one, which is to be phased out by a 1.5% reduction each year. It substitutes the current Temporary Support for Overheads (**TSO**) of 2.5%, which was introduced from 1 July 2018 in light an Independent Pricing Review that was

³ Transcript of proceedings on 17 April 2019 at PN1591.

undertaken in 2017 – 2018 and a recommendation made by McKinsey and Company, who subsequently published a report regarding their review.

13. The NDIA published the following explanation of the TSO and the reason for implementing it:⁴

Recommendation	Recommendation detail	NDIA Approach
<p>Recommendation #14</p> <p>Temporary support overhead (TSO)</p>	<p>Implement temporary support for overheads in the form of a temporary increase in the price cap for standard intensity attendant care. Government should offer business planning support for large providers that would otherwise exit and create risk of supply shortages.</p>	<p>The IPR recognised the time and effort it takes for providers to establish efficient systems and process to support the roll out of the NDIS.</p> <p>The NDIA will now provide temporary financial relief for providers as they transition their business operations to accommodate the participant-led NDIS funding approach.</p> <p>In 2018/19 a new 2.5 per cent loading will support standard intensity attendant care supports. ‘Attendant care’ refers both to assistance with daily personal activities and assistance with community participation.</p> <p>The Temporary Support Overhead will remain partially in place, at 1.25 per cent, in 2019/20 rather than be removed after 12 months as originally recommended.</p> <p>While this TSO loading is in place, the NDIA will continue to work to deliver initiatives that will reduce provider administrative costs and deliver a better NDIS provider experience.</p> <p>Significant progress has been made, with the NDIA delivering provider portal enhancements, payments process improvements, and continuous development of helpful tools such as the provider finder.</p>

14. The HSU seeks to rely on a report published by the University of NSW June 2017 titled ‘*Reasonable, necessary and valued: Pricing disability services for quality support and decent jobs*’ (**UNSW Report**). The report considers the assumptions underpinning the ‘Reasonable Cost Model’ for disability support work. Our Reply Submission summarised the many deficiencies of the NDIS funding model that are highlighted by the UNSW Report. That included concerns about the allowance made in the funding arrangements for corporate overheads.⁵

⁴ NDIA, [Independent Price Review Implementation 2018/19](#) (accessed 2 May 2019).

⁵ Reply Submission at paragraph 121 and footnote 56.

15. In this context, the implementation of the TTP cannot be relied upon to alleviate the potential impact of the unions' claims on employers. The temporary payment does not mitigate the concerns we have raised in this regard.
16. Further, at paragraph 125 of our Reply Submission, we observed that it is unclear whether the current funding arrangements account for the penalty rates payable under the Award in full. For example, it is unclear whether the labour component of the hourly rate is doubled for the purposes of the prices applying to Sundays or whether providers are required to partially absorb the additional labour costs incurred on those days. The same concern arises from the interim prices published in the NDIA Online Material.
17. Finally, the price increases are expressed to apply to attendant care, community participation and therapists. They do not appear to extend to the raft of other NDIS-funded supports such as support provided in group homes or supported independent living.

The Media Release

18. The Media Release was referenced at paragraph 95 of our Reply Submission. It regrettably contains little detail about the specific price increases that will be implemented in relation to different forms of care and the extent to which they will be implemented.
19. Whilst the Media Release provides certain headline figures regarding the relevant announcements made by the Morrison Government in March 2019, it does not serve any further probative value.

The NDIS Price Guide

20. The HSU has sought to highlight through its correspondence that the NDIS Price Guide that it specifies different price caps for work performed on a weekday, afternoon, night, Saturday, Sunday and public holiday.

21. The concerns we expressed at paragraphs 124 – 127 of our Reply Submission are apposite. Those submissions were made after having careful regard to the NDIS Price Guide. We remain concerned that the funding arrangements do not take into account various employee entitlements under the Award including overtime rates.