

IN THE FAIR WORK COMMISSION

4 Yearly Review of Modern Awards

National Disability Services

Submission in Reply – AM2018/26

Social, Community, Home Care and Disability Services Industry Award 2010

Substantive Issues Tranche 2 – Claims advanced by Unions (Attachment C)

Introduction

1. National Disability Services (NDS) makes the following submission in reply, pursuant to the Directions made on 13 May 2019 and amended on 11 July 2019.
2. This submission is in response to variations proposed by the Australian Services Union (ASU), United Voice (UV), and Health Services Union (HSU) as summarised in Attachment C of the Directions.

Industry Context

3. National Disability Services (NDS) is the peak organisation for non-government disability providers with about 1,000 members across Australia.
4. NDS members operate several thousand services for Australians with all types of disability. Members range in size from small support groups to large multi-service organisations. They provide person-centred support for people with a disability – through personal one-to-one care in homes and in group settings, professional therapy, education, training and life-skills development, employment, accommodation support, respite and recreation.
5. The disability sector is undergoing profound change as a consequence of the implementation of the National Disability Insurance Scheme (NDIS). The NDIS is a major social program that, when fully implemented, will deliver supports to an estimated 460,000 people with disability.
6. Our submission of 5 April 2019 in these proceedings made brief reference to earlier submissions and evidence about the impact of the NDIS on this industry. We now also refer to the witness statement of David Moody¹, acting CEO of NDS, which provides an updated summary of the implementation of the NDIS, how it is affecting the operations of providers and the delivery of care by workers, and the relevance of NDIS to consideration of proposed changes to the Award.
7. In short, the NDIS is more than just another funding program. It represents a complete overhaul of the delivery of disability services, requiring an investment when fully

¹ Witness Statement of David Moody.

implemented of about 1% of GDP². The scheme has bipartisan political support and can be expected to underpin disability service delivery for a long time to come.

8. The NDIS has similarities to the introduction of consumer directed care in aged care, which applies in the home care sector covered by the *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHADS award). The arrangements deliberately place more power in the hands of the individual being supported (the participant) in determining how, when and by whom their supports will be provided. There is a corresponding reduction in the power of the provider to dictate these things to participants.
9. The relevance of the NDIS is apparent in relation to the raft of claims made by the unions in both tranches 1 and 2 of the present review of the SCHADS award. Most of the claims respond directly to issues that arise as a consequence of the NDIS.
10. The introduction of the NDIS post-dates the making of this modern award, and so we submit that it is appropriate that the review take account of these changes. Our submission of 2 July 2019 in support of proposals made by other employer parties, was made in recognition of the need for change in some aspects of the award.
11. Nevertheless, NDS submits that a balanced approach is needed to considering claims to vary the award. The tight pricing approach of the NDIS, together with the choice and control available to participants, places employers under very real pressure to be able to be flexible in the delivery of services. At the same time, NDS is aware of the risks of unfettered flexibility that might be expected to drive casualisation, high turnover and de-skilling of the workforce³.

Minimum Engagement

12. The HSU proposal seeks to impose a minimum engagement of 3 hours for all part-time and casual employees subject to this award.
13. The two key aspects of the draft variation are
 - a) an increase in the minimum engagement for disability and home care workers to 3 hours, and
 - b) the extension of the minimum engagement provision to fulltime and part-time employees.
14. The minimum engagement provided by the SCHADS award for casual employees in disability services of 2 hours reflect the realities of work in the context of the NDIS. Disability support work often involves catering to personal care needs of disabled clients who only require 45 minutes to 2 hours of assistance at a time. As an example, evidence from Steven Miller describes the high level of demand for short periods of support experienced by a major

² David Moody, [14]

³ David Moody, [23-40]

disability service provider that provides a range of supports⁴. This evidence is consistent with the observations of NDS across the sector⁵

15. The award already provides an incentive for the employer to attempt to create longer shifts by arranging for workers to visit a number of clients sequentially, in order to avoid the cost of paying, for example, 2 hours wage when only one hour of work is needed. Despite this, outside densely populated metropolitan areas, there may not be sufficient clients to allow this type of bundling of work to occur.
16. Under NDIS, there is no payment to the provider for topping up to the minimum engagement if only a shorter period of work is required.
17. We note that the issue of minimum engagement was dealt with in depth by a Full Bench in the *Casual and Part Time Employment Decision*⁶. That decision took account of a wide range of factors to be considered in general in relation to the establishment of minimum engagements, including the need to consider industry-specific circumstances and the potential downsides for employees of unduly long minimum engagements.
18. Factors that are relevant in the context of the SCHADS award include the provisions of clause 10.3 which require employers to provide part-time employees with guarantees regarding their hours of work on a weekly and daily basis. These requirements provide a degree of stability for part-time employees compared to the situation for casuals.
19. The effect of the HSU claim for a 3 hour minimum engagement will simply be to increase the cost of the minimum engagement for disability support workers, with there being no mechanism available for the employer to recover that cost. Where short shifts are currently used, it is because there is no other work available. A 3 hour minimum will not result in 3 hours work appearing where it currently does not exist.
20. The proposal to increase the minimum engagement clashes with the public policy objective of giving people with disability a long needed capacity to tailor the delivery of services to meet their individual needs, including the timetabling of supports that do not require anywhere near 3 hours of work.
21. The claim to apply a minimum engagement provision to fulltime and part-time employees interacts with a number of other parts of the award, including provisions relating to types of employment, and ordinary hours of work and rostering.
22. NDS submits a minimum engagement is unnecessary in the case of fulltime employees because the setting of fulltime ordinary working hours in accordance with clause 25.1 already imposes significant constraints on how engagements can be set.
23. The claim to extend minimum engagements to part-time employees is also relevant to the claims relating to broken shift. We deal with broken shift in more detail elsewhere in this submission.
24. The HSU in their submission are critical of how clause 10.3 (c) of the award operates in relation to part-time employees and also point to evidence of the use of short shifts in the

⁴ Witness statement of Steven Miller, [21-39]

⁵ David Moody, [51-54]

⁶ [2017] FWCFB 3541

industry⁷. This reflects the emerging reality about the organisation of work in the NDIS environment. NDS is concerned that the increasing pressure to arrange for short shifts that change from time to time, in response to the legitimate needs of clients, has the potential to drive unnecessary casualisation if the requirements of clause 10.3 (c) make part-time employment too difficult.

25. NDS is not opposed to consideration of a minimum engagement for part-time disability services employees limited to work performed for the purpose of delivering client services, provided such a minimum reflects the 2 hours that currently applies with regard to casual employees. This is part of the balance that we submit needs to be struck in reviewing this award. However any such consideration needs to be in the context of also considering how clause 10.3 operates together with the rostering provisions of clause 25.5, to enable some reasonable degree of flexibility in the rostering of part-time employees.
26. The HSU claim does not take sufficient account of the modern award objectives in relation to the needs of business, particularly at ss 134 (d) and (f).
27. In the case of the provision of disability services, it is not just employers who require the modern award safety net to promote flexibility and efficiency, but also the users of those services, people with disability who rely on NDIS to improve the quality of their lives.

Broken Shift

28. The three unions have each made different claims in relation to broken shift.
29. The evidence in this review, including the witness statements of Steven Miller and David Moody, shows that the use of broken shift is driven by the needs of clients. NDS supports the NDIS objective that people with disability should be able to exercise choice and control over how they live their lives and how supports are provided. The consequence of that objective is that broken shift will often be the only practicable way of meeting those needs.
30. NDS opposes the detail of most of the union claims relating to broken shift. However, as indicated above, we accept that an appropriate balance has to be struck between flexibility needed in order to deliver services in the context of tight pricing, and the need for employees to have some level of stability in their employment.
31. We also note that some of the union proposals interact with concerns regarding travel time, and we will make further submissions in relation to travel time, pursuant to the amended directions of 11 July 2019.

United Voice claims – Broken Shift

32. United Voice seek to
 - a) Restrict broken shift to just 2 sessions, and
 - b) provide that any shift penalty be determined by the starting or finishing time of the broken shift, whichever is highest.

⁷ HSU submission 15 February 2019, at [26] and [29]

33. The proposal to restrict broken shift to just 2 parts is an unnecessary restriction that would impact on the ability of participants to schedule supports for when they actually need them throughout the day.
34. The evidence of Steven Miller points to a pattern of peaks and troughs in the times that clients require supports⁸. But while there are clear peaks at the beginning and end of day, there are also varying amounts of service delivery required throughout the day. The operational need is to be able to cover a variety of different individual patterns of supports through the day, and this might reasonably require a worker to work a broken shift with more than one break.
35. The concentration of supports around a few hours at each end of the day means broken shift arrangements are often the only way to offer some workers enough hours for a living wage, especially if the worker is engaged on a casual basis. It is likely that the restriction sought by United Voice would also affect the ability of part-time and casual employees to obtain additional hours where they seek them. NDS opposes that part of the United Voice claim.
36. We accept that in relation to shift penalties that apply, the current award provision results in an employee working broken shift not receiving a shift penalty in some circumstances where such a shift penalty would apply to a continuous shift. This is the case for work that commences before 6am Monday to Friday (clause 29.2 (b) of the award). The example provided by United Voice of a broken shift commencing at 5am but receiving no shift penalty is a valid example of this scenario.
37. The relevant clause (clause 25.6 (b)) was varied in the two-yearly review⁹ to provide that the finishing time of the shift would determine any shift penalty. This aligned the broken shift clause with the provision of clause 29 which deals with shiftwork. NDS submits that the problem identified by United Voice is an unintended consequence of that variation.
38. NDS does not oppose the United Voice proposal to provide that any shift penalty be determined by the starting or finishing time of the broken shift, whichever is highest.

HSU Claims – Broken Shift

39. HSU propose that
 - a) Broken shift should only be worked by agreement between the employer and employee;
 - b) There be a limit of one break in a broken shift;
 - c) The minimum engagement apply to each period of work in a broken shift; and
 - d) That travel time be paid for travel between clients including during any break.
40. NDS will address the travel time proposal in a further submission pursuant to the amended directions of 11 July 2019.
41. NDS opposes the claim for a limit of one break per broken shift, for the reasons set out above at paras 33-35.

⁸ Steven Miller, [21-39]

⁹ PR531544

42. The draft variation from HSU includes a requirement that broken shift only be worked by mutual agreement between the employee and employer. NDS does not consider this part of the draft variation to be necessary given the requirements clause 10.3 in relation to part-time employment, and the provisions of clause 25.5 in relation to rosters. However, NDS does not oppose that aspect of the claim.
43. The HSU claim for a minimum engagement to be applied to each period of work is unworkable in the context of NDIS because it does not reflect the reality of participant requirements, as we discuss above in relation to the general claim regarding minimum engagements.
44. As outlined at para 25 above, NDS is not opposed to considering a minimum engagement of 2 hours for part-time disability services employees, limited to work performed when delivering client services, as a way of providing some amelioration of the concerns raised by HSU.

ASU claims – Broken Shift

45. The ASU have proposed a 15% loading to apply to a broken shift, including during breaks.
46. NDS opposes this claim, particularly in the context of the tight pricing arrangements that affect provision of disability services.
47. The quantum of the loading is out of kilter with the provisions of other awards that deal with broken shift.
48. The current award clause regulates the length of a broken shift and also provides for shift penalties as appropriate.
49. NDS submits that the restrictions imposed by clause 10.3 (c) in the setting of hours in part-time contracts provides significant protection for part-time employees in relation to the predictability of their hours of work, while casual employees receive a casual loading in compensation for irregular hours of work.

Rosters

50. United Voice have proposed that overtime penalty rates should apply where less than 7 days' notice of a change in roster is provided to an employee.
51. NDS opposes this claim as it is unnecessary. A failure to provide such notice is a breach of the award and the employer can be prosecuted and exposed to fines as a result.
52. We also refer to the protection afforded to part-time employees by the requirements of clause 10.3 (c), while fulltime employees have the protections of the ordinary hours provisions of clauses 25.1-25.4.

Recall to work

53. HSU have made a claim in relation to the performance of work by phone or email after leaving the employer's or client's premises. The draft variation provides for a one hour minimum payment.

54. NDS accepts that remote response work of this type should be paid. However, there is no reasonable basis for the payment of a minimum of one hour for a task that might require only a few minutes.
55. The HSU proposal requires that all such work be paid at “the overtime rate”. NDS accepts that in many circumstances, such work will be overtime – for example work that arises during a period of on-call and that has not been rostered. But it is not necessarily the case that all work performed from home will be overtime. Some employees perform their rostered ordinary hours by working from home as part of a flexible working arrangement, for example.
56. The drafting of the HSU variation in relation to payment at “the overtime rate” is also problematic because the relevant overtime rate will depend on whether the employee is fulltime, part-time or casual.
57. The HSU claim is an alternative to the draft variation proposed by Australian Business Industrial, the NSW Business Chamber, Aged & Community Services Australia and Leading Age Services Australia (ABI & others) and which was the subject of a submission in support from NDS on 2 July 2019.
58. The alternative variation from ABI & others avoids the problems associated with the HSU proposal, in particular by limiting the provision to situations of on-call or other work that has not been rostered as ordinary hours.
59. We reiterate our support for the alternative proposal from ABI & others.
60. NDS opposes the HSU claim.

Client Cancellation

61. The HSU claim in relation to client cancellation is limited to the home care sector and seeks to increase the notice period required.
62. NDS notes the alternative draft determination filed by ABI & others in April 2019, their submission of 2 July 2019, and we rely on our submission in support of that proposal also filed on 2 July 2019.
63. NDS reiterates its support for the proposal from ABI & others.
64. NDS opposes the HSU claim as it does not provide for any flexibility for dealing with client cancellation in the disability sector.



Michael Pegg

on behalf of National Disability Services

16 July 2019

BEFORE THE FAIR WORK COMMISSION

MATTER NO. AM2018/26

S.156 – FOUR YEARLY REVIEW OF MODERN AWARDS – SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY AWARD 2010

Statement of David Moody

I, David Moody, of Level 6, 369 Royal Parade, Parkville in the State of Victoria say:

1. I am the acting Chief Executive Officer of National Disability Services (NDS).
2. I commenced with NDS in July 2015 in the role of Victorian State Manager.
3. Before working at NDS I was employed in a number of different roles, including as a private lawyer, practising in workers' compensation and OHS; and as an executive at WorkSafe Victoria and in the Victorian Public Service, including as Assistant Director, NDIS Secretariat at the Department of Premier and Cabinet, from January 2011 until August 2013.
4. I hold a BA and LLB from Monash University.
5. In my role as acting CEO of NDS, I provide information, representation and policy advice to government on disability and related issues.
6. I make this statement on the basis of my own knowledge and inquiries, save where otherwise stated. Where I make statements based on information provided to me by others, I believe such information to be true.

About NDS

7. NDS has more than 1,000 members across Australia. Collectively, NDS members operate several thousand services for Australians with all types of disability.
8. NDS is the only organisation that represents the full spectrum of disability service providers. Members range in size from small support groups to large multi-service organisations and are located in every region of Australia.
9. NDS traces its roots back to 1945. It was founded by charitable organisations – many of them founded by the families of people with disability – that recognised the value of national representation. From an initial advisory council, the Australian Council for the Rehabilitation of the Disabled was established which evolved into National Disability Services.

10. In 2008 NDS, Carers Australia and the Australian Federation of Disability Organisations formed an alliance and in 2011 founded the Every Australian Counts Campaign to promote a national disability insurance scheme. The strong campaigning of Every Australian Counts highlighted to politicians and the general community the chronic under-funding and disrepair of the existing system and the need for a new, well-funded system responsive to the needs and choices of people with disability and their families.

The National Disability Insurance Scheme (NDIS)

11. Having campaigned hard for its introduction, NDS is a strong supporter of the NDIS. We are convinced that a service system that is responsive to the individual goals, needs and preferences of people with disability will boost their quality of life and their opportunities to participate in social and economic life.
12. The NDIS represents a major transformation of the role of disability service organisations, with implications for every aspect of their operations, including their model of service provision, financial management, marketing, the way they engage with their service users and their workforce.
13. From 2013 to end June 2016, the NDIS was the subject of 'trials' in various sites around Australia. Roll-out of the full scheme commenced progressively from July 2016.
14. When the NDIS is fully implemented across Australia, 460,000 Australians with severe disability will benefit. Government expenditure on disability services will double from 0.5 to 1 per cent of GDP (\$22 billion in 2019-20). The Scheme was scheduled to be rolled-out fully in all states and territories, other than WA, by July 2019, and in WA by July 2020.
15. At present, however, the pace of roll-out is such that this schedule will not be met and will require at least another year, with full roll-out not expected to be complete until mid-2020 (a year later in WA).
16. As of 31 March 2019, 277,155 people with disabilities had become NDIS participants. This contrasts with the original bilateral estimates for the states and territories during NDIS transition of approximately 377,000 people accessing the scheme by 30 June 2019.
17. The disability services market is growing. As of 31 March 2019, 20,208 organisations are now registered as providers with the NDIS. However, of those providers, only 57% (or 11,418) were active at 31 March 2019.
18. Most State and Territory Governments have already or are planning to withdraw partially or fully from direct service delivery and to transfer services to the non-government sector, adding another dimension to disability industry restructuring.

19. NDS has provided support to the sector during the roll-out and in every state has a direct role in assisting organisations to understand the impact of the Scheme and assist in their transition to the NDIS.
20. In 2013-4, NDS led a national consortium that provided the Australian Government with an analysis of workforce supply, demand and utilisation in the NDIS trial sites; it included several reports that outlined policy and program responses to increase workforce sustainability under the NDIS¹.
21. NDS has also managed multiple workforce readiness projects funded to support NDIS roll-out. As a result of its research program, practical support to providers and ongoing direct engagement with the sector, NDS is acutely aware that service providers have found and find it difficult to deploy workers flexibly within the current award settings, which is exacerbated by tight NDIS pricing.
22. More recently, NDS administered the Innovative Workforce Fund on behalf of the Commonwealth Department of Social Services. The Fund supported 30 projects, some of which focussed specifically on issues associated with managing workforce under award conditions in the NDIS environment. One of the key findings was that service providers find it increasingly difficult to support training, professional development and practice leadership under NDIS pricing. This finding is consistent with other research which found that time for training and professional development has diminished under NDIS operating environment².

Workforce management

23. NDS regularly surveys its members regarding workforce issues, particularly through its Workforce Wizard Tool. Workforce Wizard data forms the basis of NDS's Australian Disability Workforce Report (most recent editions in February and July 2018).
24. The July report was informed by data from 45,000 workers around Australia, collected over 11 quarters from service providers through Workforce Wizard.
25. Workforce Wizard is intended to monitor how the workforce is changing during the rollout of the NDIS. It was also intended to support NDS's advocacy work on behalf of the sector.

¹ Roadmap to a Sustainable Workforce, A National Disability Services Report prepared for the Australian Government Department of Social Services. K Windsor and C Alcorso, 2014

² Building an Industry of Choice: Service Quality, Workforce Capacity and Consumer-Centred Funding in Disability Care Final Report for United Voice, Australian Services Union, and Health and Community Services Union Natasha Cortis, Gabrielle Meagher, Sharni Chan, Bob Davidson & Toby Fattore March 2013 SPRC Report 02/13

26. Workforce Wizard tracks if more people are being employed as casual rather than permanent workers, changes in the mix of skills and demographics and what is happening to hours of work, working conditions and training. Previously, there was no reliable, high quality, up-to-date data on those matters. As more services have used Workforce Wizard, data on key trends is emerging and is providing useful evidence on issues such as workplace relations, NDIS pricing and market development.
27. Workforce Wizard allows providers to benchmark their data with other providers in the sector who have entered the same information and other national data sources such as the ABS.
28. The last set of Workforce Wizard figures were collected for the December 2018-19 quarter, but not publicly released. This included data from 187 organisations, comprising of 41,119 workers in the disability and allied health sectors. While disability service providers are hiring more casual workers, the trend towards increased casual employment since 2015 appears to have stabilised.
29. The average proportion of casual employment increased from 40.9 per cent in September 2015 to 45.2 per cent in December 2018. However, it has remained at around 45 per cent since September 2017, with the exception of the September 2018 quarter (47.3 per cent). 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.
30. This casualisation trend is not universal and is more prevalent in small and medium organisations, with the trend absent in large organisations. This pattern has held since September 2015.
31. I am aware that the recent 'Survey - Social, Community, Home Care and Disability Services Industry Award 2010' conducted by the Fair Work Commission contained a question on category of worker employment. Over 40% of the employees of the 854 respondent enterprises were engaged on a casual basis, while 63% of the respondent enterprises were engaged in the provision of disability services.
32. The disability workforce has been growing strongly. According to NDS's February 2018 report, the disability support workforce growth rate was 11.1% per year (averaged over a two-year period between September 2015 and 2017). This compares with growth of just 1.6% for the Australian workforce as a whole at the time.
33. This remarkable growth rate came overwhelmingly from the recruitment of casual workers. The average permanent workforce growth rate was just 1.3% per year, while the casual growth rate was 26% per year.

34. NDS has previously expressed concerns about the possible consequences of rapid growth in the casualisation of the disability workforce. Firstly, there is a very high turnover rate of casual workers – a two-year average of nearly 9% per quarter (equal to 35% per annum).
35. This is a significant cost and administrative burden for providers and also presents challenges to providers wishing to offer continuity of support and care to NDIS participants. Secondly, detailed investigation of NDS carecareers job board data shows job applicants have a clear preference for permanent over casual roles. In the competition for talented people, employers that predominantly offer casual jobs will be at a disadvantage.
36. In addition, as evidence from overseas suggests, heavy concentrations of casual and part-time work within the sector is very likely to result in high turnover, low morale and inconsistent standards of service provision³, including instances of participant abuse and neglect.
37. The projected growth of the workforce required to meet the needs of the remaining 183,000 people with disability still to access the NDIS (and within the next 12 months) presents a huge challenge for the sector.
38. For this growth to be achieved, the sector must, amongst other things, be seen as providing competitive and reasonable employment conditions as well as longer term career options.
39. Should the impending Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability reveal a pattern of unacceptable outcomes driven by a lack of stable and attractive employment options for disability support workers, then the need to address this situation will become critical.
40. Consequently, NDS regards it as imperative that the SCHADS Award review does not result in variations to the Award that would accelerate the casualisation of employment in the Disability Support Sector. Our research indicates that a balance needs to be struck between flexibility that is needed to meet the requirements of NDIS participants, while still enabling reasonable stability and security in employment for the support workforce.

Pricing

41. Following on the Independent Pricing Review conducted in 2017 as well as further advocacy from NDS and other sector stakeholders, there have been a significant raft of recent changes to NDIS pricing for supports, many of which are both substantial and

³ Do personal budgets increase the risk of abuse? Evidence from English national data. Ismail, M., Hussein, S., Stevens, M. Woolham, J, Manthorpe, J., Baxter, K., Samsi, K. and Aspinall, F. (2017) Journal of Social Policy 46 2 291-311

- welcome. Pricing for NDIS supports is now largely standardised across the country, with adjustments for some locations.
42. Maximum prices are still set by the Agency. The most common supports are specified in Plans and purchased on an hourly basis, though some allied health services, equipment purchases and other services are allocated a maximum amount or require the participant to tender quotations.
 43. There are a number of business consequences. A service only receives payment after the successful delivery of a funded support/service. There is minimal support for vacancy rates, inquiries and referrals and no-shows or cancellations.
 44. These tighter funding arrangements require far greater financial vigilance from services. Under previous state and territory programs, governments often recognised the need to at least partly underwrite the financial viability of funded service providers. Under the NDIS, any such risk sits squarely with the service provider.
 45. It should also be understood that client plans change, and can change considerably at short notice. At the end of 2015, 30 months into the Scheme, of the approximately 22,300 participants to that point in time, the NDIA reported there were 15,134 second plans, 8,613 third plans, 444 fourth plans, and 20 fifth plans among their participants.
 46. In March, the NDIA announced indicative increases in the base prices for attendant care and community participation and the introduction of a Temporary Transformation Payment (TTP) for services that comply with certain criteria. These base prices have been indexed in line with ABS Wage and Consumer Price Indexes and the national minimum wage order of the Fair Work Commission.
 47. Other price announcements, made in late June, reflect increased loadings for remote and very remote areas (40 and 50 per cent respectively, up from 20 and 25 per cent).
 48. There is now more clarity around non-face-to-face billing arrangements. Non-face-to-face activities are billable if:
 - provided as part of mutually agreed one to one support arrangements
 - the activities are part of delivering a disability support such as report writing
 - the provider has explained all activities to be billed to the participant
 - the charges for the activities comply with the NDIS Price Guide
 49. One of the key features of the NDIS is that the stated needs of the individual are the focus for funding and service delivery. Previously, many services adopted person-centred service planning within the programs they were funded to deliver. However, under the

NDIS only those activities listed on a person's individual plan are funded. This plan is not developed by the service provider, but by the person with disability, their family and carers and the National Disability Insurance Agency (NDIA) planner. The plan-holder then chooses the services they want to provide the various elements of the Plan. The power to purchase rests with the participant and their family.

50. Consequently, these arrangements differ significantly from the provision of home care services and require far more flexibility from disability service providers and support workers.

Broken Shift

51. I am aware that one of the variations sought to the Award (by the HSU in its draft determination of 19 February 2019) seeks to define a broken shift as: "For the purposes of this clause, broken shift means a shift worked by a casual or part-time employee that includes **no more than one break** (other than a meal break) and where the span of hours is not more than 12 hours."
52. The variation sought above does not align with the reality of operational need being driven by the NDIS and reported to NDS by its members, particularly the flexibility required of disability services and workers in order to meet the widely differing support needs of NDIS participants in an increasingly competitive market.
53. In the area of assistance with daily living (in home and community), individualisation and choice and control means many NDIS participants have no need for continuous shifts associated with their supports. Their time of most intense needs will be concentrated at the beginning and end of each day and will tend to be of a short duration (e.g. 2-3 hours).
54. This support usage pattern has been borne out repeatedly in evidence provided to the FWC by NDS members. These regular supports are likely to be supplemented by different types of supports provided during the day. These supports will be provided by disability support workers that possess the relevant skills and in a large number of instances will not be provided by one support worker for a period of, for example, eight hours.
55. Service mix is important. Service providers that offer a mix of services (or that use staff sharing arrangements) that enable them to deploy workers over home care and SIL/day care services will be better placed to avoid the use of broken shifts.
56. In addition, there is no way for employers to determine if workers are engaged by other employers or as casuals through various platforms. These workers could consequently be working long hours, potentially placing NDIS participants at risk.

57. Our research indicates that there is underemployment in the sector with many workers seeking additional hours.
58. The concentration of supports around a few hours at each end of the day means broken shift arrangements are often the only way to offer some workers enough hours for a living wage, especially if the worker is engaged on a casual basis.

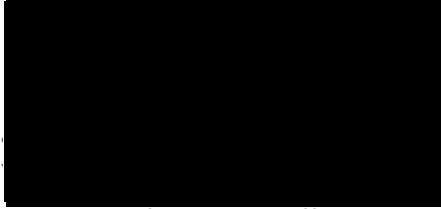
Travel

59. I am aware of recent changes in the NDIS Price Guide in relation to travel. The length of time providers can claim for travel has changed from 1 July 2019.
60. If agreed by participants, providers can now claim for travel up to 30 minutes per participant per day between appointments within city areas and up to 60 minutes per participant per day in regional areas. This is an increase from 20 and 45 minutes, respectively.
61. Providers delivering capacity-building supports are also able to claim time spent travelling from the last participant to their usual place of work. The maximum amount that can be claimed for return travel is 30 minutes within city areas and 60 minutes in regional areas.
62. Before providers can charge for travel, they must obtain agreement from the participant.
63. Clause 20.5 (a) in the Award mandates a vehicle travel allowance for employees of \$0.78 per kilometre. The Agency has not made provision for covering the cost of a vehicle used by a worker as they travel from appointment to appointment. These costs are substantial, cannot be avoided, and are not covered by the current price limits.

Client Cancellation

64. From NDS's work with providers throughout implementation of NDIS, I am aware that a direct result of the implementation of the NDIS is that providers have carried substantial costs associated with cancellations. New arrangements for client cancellations have recently been announced by the NDIA and incorporate amendments designed to alleviate some key service provider concerns.
65. A short notice cancellation is now defined as being when there is a failure to provide two clear business days' notice for a support or service which is eight hours or less in duration and less than \$1,000, or five clear business days' notice, in all other cases.
66. As of 1 July 2019 there is no limit on the number of short notice cancellations (or no shows) that a provider can claim, however these will only be paid at 90% of the full fee. If a participant has an unusual number of cancellations then the provider should seek to understand why these are occurring, as for higher rates of short notice cancellations, the

Agency “will require the provider to demonstrate they are taking steps to actively manage cancellations”.



Acting Chief Executive Officer

National Disability Services

12 July 2019