

Fair Work Commission

Four Yearly Review of Modern Awards

Social, Community, Home Care and Disability Services Industry Award

Matter No: AM2014/285 and AM2018/26

STATEMENT OF DR. FIONA MACDONALD

1. I am a Senior Research Fellow and an Australian Research Council DECRA (Discovery Early Career Research Award) Fellow in the School of Management, RMIT University.
2. I have worked as a researcher in academic, government and non-government roles since 1994. My research work over this period has largely centred on the changing nature of employment and the role of work in people's lives. A copy of my Curriculum Vitae is **attached as FM-1** to this statement.
3. Since 2014, when I commenced at the School of Management at RMIT University, my research has focussed on the work and employment arrangements of frontline disability support workers under the National Disability Insurance Scheme.
4. Since 2016 this research has been supported by an Australia Research Council grant.
5. I employ a range of qualitative and quantitative methodologies in my research including in-depth interviews, labour market and organisational case studies, and socio-legal analysis.
6. I am a member of the Executive Committee of the Association of Industrial Relations Academics of Australia & New Zealand, the ILO Regulating for Decent Work network and the International Carework network. I am a member of the editorial advisory board of the International Journal of Care and Caring.
7. **Attached as FM-2** to this statement is an article I co-authored, titled 'Wage theft, underpayment and unpaid work in marketised social care,' which was published in 2018 in *The Economic and Labour Relations Review*. The article reports on the findings of a recent research project undertaken by me and two colleagues about the paid and unpaid work time of disability support workers.

Filed on behalf of	HEALTH SERVICES UNION
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Dr Fiona Macdonald

15 February 2019

Fiona Macdonald

My professional experience as a researcher commenced over 20 years ago and my research over this period has largely centred on the changing nature of employment and the role of work in people's lives. Since 2014 my research has focussed on work and employment arrangements of frontline disability support workers under the National Disability Insurance Scheme. Since 2016 this research has been supported by an Australia Research Council grant. I employ a range of qualitative and quantitative methodologies in my research including in-depth interviews, labour market and organisational case studies, and socio-legal analysis. I am a member of the Executive Committee of the Association of Industrial Relations Academics of Australia & New Zealand, the ILO Regulating for Decent Work network and the International Carework network. I am a member of the editorial advisory board of the International Journal of Care and Caring.

Qualifications

2012	PhD (Political Science), University of Queensland
2001	Master of Social Science (Social Policy), (awarded with distinction) RMIT University.
1991	Graduate Diploma in Counselling Psychology, RMIT University
1982	Bachelor of Behavioural Science (Psychology), Latrobe University.

Employment

2016-	<i>Senior Research Fellow & ARC DECRA Fellow</i> , School of Management, RMIT University
2015-2016	<i>Vice-Chancellor's Senior Research Fellow</i> , School of Management, RMIT University (four year appointment, deferred in July 2016 to take up ARC DECRA Fellowship).
2014-2015	<i>Research Fellow</i> , (project position) School of Management, RMIT University.
2012-2014	<i>Research Fellow, Gender Equality and Decent Work</i> (project position), Centre for Work + Life, University of South Australia.
2009-2012	<i>Panel Member</i> , Victorian State Services Authority Panel of Grievance Review and Workplace Investigations Officers and <i>Independent Chair</i> , Victorian Public Service Tripartite Work Review Panels (self-employed consultancy roles).
2007-2012	<i>Self-employed research consultant</i>
2007	<i>Research Associate (project contracts)</i> , School of Political Science, University of Queensland; Centre for Applied Social Research, RMIT University; and Centre for Citizenship and Human Rights, Deakin University.
2005-2006	<i>Senior Researcher and Organisational Consultant</i> , URCOT, Melbourne.
2001-2004	<i>Executive Director, Equity Research Centre Inc.</i> industry advisory body to Victorian Government on equity and diversity in vocational education and training.
1994-2001	<i>Research and Policy Projects Manager</i> (from 1998) and Officer, Future of Work Research Project, Social Action and Research Division, Brotherhood of St Laurence, Melbourne.
1987-1994	<i>Vocational counsellor</i> and sessional lecturer, Social Science, RMIT; secondments to Industry Liaison Officer, TAFE Industry Research Unit, and Research Officer, Equal Opportunity Unit.

Awards

2018	Research Excellence Award, School of Management, RMIT University
2017	Vice-Chancellor's Award for Research Impact – Early Career Researcher Award, RMIT University
2016	Early Career Researcher Research Excellence Award, College of Business, RMIT University

- 2015 2016-2019 Australian Research Council Discovery Early Career Researcher Award
- 2008 Vic Taylor Award for Best Paper awarded by the Association of Industrial Relations Academics of Australia and New Zealand (AIRAANZ) for Charlesworth, S and Macdonald, F. 'The Unpaid Parental Leave Standard: What Standard?' 21st Conference of AIRAANZ, Melbourne, 6-8 February.

Recent funded research

- 2018 'Where Secure Employment meets Client Needs' Workforce Innovation Project for Greenacres Disability Services. Role: Sole researcher.
- 2018 *Disability Skills Portfolio Project*, for National Disability Services. With Assoc. Prof. Darryn Snell and Assoc. Prof. Victor Gekara, RMIT. Role: Joint Chief Investigator.
- 2017 *Scoping review on informal care, social protection and gender: policy implications for countries in the WHO Western Pacific Region, particularly in relation to low to middle income countries*, World Health Organisation Western Pacific Region.
Role: Lead Chief Investigator.
- 2017 *NDIS Workforce research*, Health and Community Services Union, United Voice and Australian Services Union. With Natasha Cortis (UNSW), Bob Davidson (Macquarie University) Role: Joint Chief Investigator.
- 2016 *Discovery Early Career Researcher Award*, Australian Research Council. 'Workforce challenges under cash-for-care models: Regulating for quality jobs in flexible care systems, Australia's NDIS in comparative perspective. Sole chief Investigator. (3 years).
- 2012 *Economic Abuse Research Project*, Good Shepherd Youth & Family Services and Kildonan UnitingCare. Role: Sole Chief Investigator.

Publications

Refereed journal articles

- 2018 Delaney, A, and **Macdonald, F** 'Thinking about informality: gender (in) equality (in) decent work across geographic and economic boundaries' *Labour & Industry* 28(2): 99-114.
doi:10.1080/10301763.2018.1475024
- 2018 **Macdonald, F** and Charlesworth, S 'Failing to live up to the promise: the politics of equal pay in 'new' workplace and industrial relations institutions' *Australian journal of Political Science*, accepted 16 June 2018, doi: 10.1080/10361146.2018.1502256.
- 2018 Byrne, L, Roennfeldt, H O'Shea, P and **Macdonald, F** 'Taking a gamble for high rewards? Management perspectives on the value of mental health peer workers' *International Journal of Environmental Research and Public Health* 15(4), 746-758. doi:10.3390/ijerph15040746.
- 2018 **Macdonald, F**, Bentham, E and Malone, J 'Wage theft, underpayment and unpaid work in marketised social care' *The Economic and Labour Relations Review*, 29(1): 80-96.
- 2016 **Macdonald, F** and Charlesworth, S 'Cash for care under the NDIS: Shaping care workers' working conditions?' *Journal of Industrial Relations*, 58(5): 627-646.
- 2015 Charlesworth, S and **Macdonald, F** 'The Decent Work Agenda and the advancement of gender equality: For emerging economies only?' *International Journal of Comparative Labour Law and Industrial Relations*, 31(1): 5-26.
- 2015 Charlesworth, S and **Macdonald, F** 'Women, work and industrial relations in Australia in 2014: The year in review', *Journal of Industrial Relations*, 57(3): 366-382.
- 2014 Charlesworth, S and **Macdonald, F** 'Australia's gender pay equity legislation: How new, how different, what prospects?' *Cambridge Journal of Economics*, 39(2): 421-440.

- 2014 Charlesworth, S and **Macdonald, F** 'Women, work and industrial relations in Australia 2013' *Journal of Industrial Relations* 56 (3): 382-397.
- 2013 **Macdonald, F** and Charlesworth, S 'Equal pay under the Fair Work Act 2009: mainstreamed or marginalised?' *UNSW Law Journal*, 36(2): 1-24.
- 2012 Bailey, J, **Macdonald, F** and Whitehouse, G 'No leg to stand on: the moral economy of Australian industrial relations changes' *Economic and Industrial Democracy*, 33(3): 441-461.
- 2008 Pocock, B, Elton, J, Preston, A, Charlesworth, S, **Macdonald, F**, Baird, M. Cooper, M and Ellem, B (2008) 'The impact of Work Choices on women in low paid employment in Australia: a qualitative analysis' *Journal of Industrial Relations*, 50 (3): 475-488.

Scholarly book chapters and monographs (peer reviewed)

Forthcoming

- Campbell, I, **Macdonald, F** and Charlesworth, S 'On-demand work in Australia' in M O'Sullivan et al. (eds.) *Zero-Hours and On-Call Work in Anglo-Saxon Countries*, Berlin, Springer Press.
- 2018 **Macdonald, F**, Charlesworth, S and Brigden, C 'Low-paid workers and collective bargaining; the issues in B Creighton, A Forsyth and S McCrystal (eds) *Collective Bargaining under the Fair Work Act: Evaluating the Australian Experiment in Enterprise Bargaining*. Federation Press, Sydney.
- 2018 **Macdonald, F** and Pegg, M 'Contracting out public services, marketisation and wages' in Hardy, T, Stewart, A and Stanford, J (eds) *The Wages Crisis in Australia: What It Is and What to Do About It*, University of Adelaide Press, Adelaide.
- 2017 Charlesworth, S and **Macdonald, F** 'Employment regulation and worker-carers: Reproducing gender inequality in the domestic and market spheres?' Chapter 6 in D Peetz and G Murray (eds) *Women, Labor Segmentation and Regulation*, Routledge.
- 2001 **Macdonald, F** and Holm, S 'Employment for 25 to 34 year-olds in the flexible labour market: a generation excluded?' in L Hancock, B Howe, M Frere and A O'Donnell (eds.) *Future Directions in Australian Social Policy: New Ways of Preventing Risk*, Council for Economic Development of Australia (CEDA), Melbourne:16-24. ISBN 0 85801 254 5.
- 2000 **Macdonald, F** and Siemon, D 'Families, work and welfare', Chapter 10 in P Saunders (ed.) *Reforming the Australian Welfare State*, AIFS, Melbourne, pp. 206-223. ISBN 0 642 39474 1.
- 1999 McClelland, A and **Macdonald, F** 'Young adults and labour market disadvantage?' in Dusseldorp Skills Forum (DSF), *Australia's Young Adults: The Deepening Divide*, DSF, Sydney, 117-134. ISBN 0 958 529 329.
- 1999 Probert, B and **Macdonald, F** 'Young women: poles of experience in work and parenting', in Dusseldorp Skills Forum, *Australia's Young Adults: The Deepening Divide*, DSF, Sydney, 135-158.
- 1998 McClelland, A, **Macdonald, F** and MacDonald, H (1998) 'Young people and labour market disadvantage', in Dusseldorp Skills Forum, *Australia's Youth: Reality and Risk*, DSF, Sydney, 103-128, ISBN 0 958293 0-2.

Published commissioned research reports (from 2006)

- 2017 Cortis, N, **Macdonald, F**, Davidson, B and Bentham, E *Reasonable, Necessary and Valued: Pricing Disability Services for Quality Support and Decent Jobs*, SPRC UNSW, Sydney.
- 2008 Charlesworth, S and **Macdonald, F** *Hard Labour: Pregnancy, Discrimination and Workplace Rights*, Victorian Office of the Workplace Rights Advocate, Melbourne.
- 2007 Charlesworth, S and **Macdonald, F** *Going Too Far: WorkChoices and the Experiences of 30 Victorian Workers in Minimum Wage Sectors*, Industrial Relations Victoria, Melbourne.
- 2007 **Macdonald, F**, Whitehouse, G and Bailey, J *Tipping the Scales: A Qualitative Study of the Impact of Work Choices on women in low-paid employment in Queensland*, Department of Employment and Industrial Relations, Brisbane.
- 2007 Whitehouse, G, Haynes, M, **Macdonald, F** and Arts, D 'Re-assessing the "family-friendly workplace": Trends and influences 1998-2004', *Employment Relations Research Series* No. 76, Department of Business, Enterprise and Regulatory Reform, United Kingdom.
- 2006 **Macdonald, F** 'Best practice in employment services for disadvantaged jobseekers', URCOT, Melbourne (commissioned by the Australian Committee of Officials on Employment for the Ministerial Council on Employment, Education, Training and Youth Affairs).

Refereed conference papers

- 2008 Charlesworth, S and **Macdonald, F** 'The unpaid parental leave standard: What standard?' Refereed paper published in the *Proceedings of Workers, Corporations and Community: Facing Choices for a Sustainable Future*, 22nd Conference of The Association of Industrial Relations Academics of Australia and New Zealand, Melbourne, 6-8 February. *Awarded Vic Taylor prize for best paper.
- 2008 **Macdonald, F** 'Dependent self-employment and some consequences of changing employment relationships in household services', Refereed paper in *Proceedings of the 26th International Labour Process Conference*, University College, Dublin, 18-20 March.
- 2007 **Macdonald, F** 'Entrepreneurs or precarious workers: what do we know about women's self-employment?' Refereed paper published in the *Proceedings of the Our Work Our Lives: Women and Industrial Relations Conference*, Adelaide, 20-21 September.

Professional leadership and community engagement

Professional leadership and engagement

International research partner, UK ESRC-funded international 'Sustainable Care: connecting people and systems' project (2017-2021), led by Prof Susan Yeandle, Professor of Sociology, and Director of CIRCLE (Centre for International Research on Care, Labour & Equalities), Sheffield University, England.

Member, Executive Committee, Association of Industrial Relations Academics of Australia and New Zealand (2017-).

Fellow, Future Social Service Institute, VCOSS & RMIT University (2017-present)

Member, Editorial Advisory Board, International Journal of Care and Caring (2016-present)

Graduate Member, Australian Institute of Company Directors (GAICD) (2016).

Research Collaborator, 'Gender, Migration and the Work of Care' International Research project led by Professor Ito Peng, Director, Centre for Global Social Policy, University of Toronto Canada (2013-present).

Member, Work & Family Policy Roundtable (W+FPR) comprising 30 researchers from 18 universities and research institutions to promote research to inform good evidence-based public policy in Australia.

Co-convenor, Gender Inequality Research Network (2016-present), RMIT University.

Research Theme Leader 'Working Lives: Uncertainties and Futures', Centre for People, Organisation and Work, College of Business, RMIT University (2016-present)

Member, School of Management Research Committee & Convenor, Grants Working party (2016-2017)

Community and industry leadership

2012-current Member, Board of Directors, Brotherhood of St Laurence.

2006-2011 Member, Board of Directors and Chair, Services and Policy Sub-Committee (2008-2011), Wesley Mission Victoria.

2002-2004 Member, Board of Directors, AFL SportsReady Group Training Company.

2002-2004 Member, Community Advisory Panel on Equity and Diversity to the Secretary, Department of Education and Training, Victoria.

1999-2000 Member, Advisory Panel, Victorian Government Social Indicators Project.

1998-2004 Member, Board of Directors, Victorian Welfare Rights Unit.

Recent invited keynote and other addresses to industry

2018 Quality, marketised funding and the future of the community sector workforce: Panel Speaker, to Job Australia National Conference, Melbourne, 3-5 October.

2017 'The regulation, organisation and experience of disability support work in the NDIS, a qualitative study', invited presentation to the National Institute of Labour Studies, Flinders University, Adelaide, 12 September.

2016 'The impact of personalisation on the care sector workforce experience', Invited address to the Jobs Australia National Conference, Gold Coast, 18-20 October.

2015 'Women, work and family: policy and politics', Keynote address to the Australian Education Union National Women's Conference, South Melbourne, November.

Wage theft, underpayment and unpaid work in marketised social care

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Abstract

Marketised models of social care provision in Australia are placing pressures on service providers and driving changes in work organisation and employer practices, with potential to degrade social care jobs. While international experience of marketised social care has demonstrated the vulnerability of social care workers to wage theft and other violations of employment laws, Australia's relatively strong industrial relations safety net might be expected to be better able to protect these low-paid workers. Nevertheless, there is emerging evidence of negative impacts on the pay and entitlements of frontline workers in the expanding community support and homecare workforce. This study investigates the paid and unpaid work time of disability support workers under Australia's new National Disability Insurance Scheme. The research takes a novel approach combining analysis of working day diaries and qualitative interviews with employees to expose how jobs are being fragmented and work is being organised into periods of paid and unpaid time, leaving employees paid below their minimum entitlement. The article highlights the role of social care policy along with inadequate employment regulation.

JEL Codes: J390, J81, J88

Keywords

Employment conditions, NDIS, social care, wage theft, working time

Introduction

This article reports on research investigating underpayment of wages of low-paid social care workers under Australia's new National Disability Insurance Scheme (NDIS). As a

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'cash-for-care' scheme, the NDIS individualises and marketises disability support and shifts the location of much care and support work from public organisational settings to more diverse settings, including private households, as well as introducing new demands for flexibility, for very short working hours and for travel between multiple work locations (Macdonald and Charlesworth, 2016). Similar pressures and arrangements in adult social care in the United Kingdom have seen social care workers become highly vulnerable to wages underpayment (Low Pay Commission, 2016).

This study explores working time arrangements and pay of disability support workers (DSWs) in the context of employment regulation and the new disability support arrangements. It addresses the following questions: what regulatory gaps contribute to any wages' underpayments and what roles (if any) do the design and management of the social care system (the NDIS) play in this?

Rubery et al. (2015) suggest a homecare worker's comment 'it's all about time' encapsulates 'the central importance of time in the management and employment arrangements in home care work' (p. 756). This phrase also encapsulates our findings that the tight control of time as a contested resource in disability support in the home and community underlies wage theft, underpayment and low pay. Underpayment of workers is made possible by various gaps in employment regulation, in addition to inadequate enforcement. While the regulatory deficiencies are not new, the changing industry structure under the new marketised social care arrangements may be exacerbating the issues.

Beginning with a short overview of the regulatory context for wages underpayment and minimum wage compliance in Australia, we then review relevant international literature on working time and wages in social care. We then outline the changing industry and regulatory context of disability support work in Australia. After outlining our method and framework for analysing paid and unpaid work, we present key findings from (1) analysis of disability support work 'working day' time diaries and (2) interviews with DSWs about their jobs and working time. We end with a reflection on the funding and regulatory frameworks that contribute to wages underpayment, and point to some possible responses.

Background

Wage theft, underpayment and employment regulation in Australia

Wage theft refers to the non-payment or underpayment of the full wages to which employees are legally entitled (Galvin, 2016: 325; Milkman et al., 2010; Vosko et al., 2017). Thus, wage theft is seen as arising from non-compliance with employment laws, and multiple types of wage theft reflect different kinds of violations. While violation of minimum wages regulation is the most 'blatant' type of wage theft (Wilson, 2011: 6), others include overtime violations, rest break violations, time 'off-the-clock' violations and illegal employer deductions (Milkman et al., 2010).

There has been little research into the extent of minimum wage non-compliance in Australia (Maconachie and Goodwin, 2010; Nelms et al., 2011). Historically, with wide workforce coverage, union recognition and union membership preference provisions, the centralised industrial arbitration system has been characterised by relative ease of

enforcement of standards, with trade unions playing a significant role (Johnstone et al., 2012: 27). In addition, a feature of the system has been a comparatively wide array of minimum employment standards contained in industry or occupation-based industrial awards including working time arrangements such as standard working times, minimum and maximum shifts, shift and overtime penalty payments, minimum call-back times and other rostering arrangements.

However, changes in the labour market and organisation of work and significant de-regulation and de-collectivisation of industrial relations (Quinlan and Sheldon, 2011) have seen more employment likely to be affected by ‘gaps’ in regulation. Unchecked non-compliance with employment laws resulting in wage theft can be seen as arising from a regulatory gap whereby evasion is made possible by limits in enforcement. Other forms of regulatory gaps have contributed to the growth of employment forms with inferior rights and benefits, including lower payment for comparable work, although there may not be any violation of employment laws. **Taking the range of protections of terms and conditions for full-time permanent employees as a normative standard, regulatory gaps exist for most workers outside this form of employment.** Different forms of regulatory gaps contribute to inferior employment. Special rules and exemptions in employment regulation establish some forms of employment with diminished conditions and benefits (e.g. casual employment), while limits in regulatory scope leave some workers, such as self-employed contractors, entirely outside all or most employment law (Pocock et al., 2004). An additional regulatory gap involves the absence of legal mechanisms for ascribing responsibility for pay and conditions to network lead organisations that, while not being the direct employer, control the way work is organised (Johnstone et al., 2012). All these types of regulatory gaps are relevant to the underpayment of social care workers’ wages, including wage theft through non-compliance.

Employment regulation is one important element in the broader institutional context in which wage theft and underpayment occur. Other social institutions also have significant influence. In the next section, we review some of the international evidence relating to working time in social care. **This review highlights that employer practices leading to underpayments (including wage theft) are also strongly shaped by gendered norms of unpaid care work and the design of public social care systems.**

Social care work, working time and underpayment of wages

International comparative research has shown there are real differences in social care systems in developed economies in regard to outcomes for social care workers (Simonazzi, 2009). However, in general, workers are low-paid and have poor working conditions (Cristiano et al., 2016; Razavi and Staab, 2010). In the context of pressures to cut care costs, there is also convergence between care systems, to more home-based care, private provision and cash transfers for care recipients. From the developing international literature on working time and pay in social care we draw three insights especially relevant to our Australian study. First, analysis of the organisation of work shows work time has been excised from paid time, embedding unpaid time in home-based care work (Boivin, 2016; Hayes, 2017; McCann, 2016). Second, the gendered nature of care work and strong norms of unpaid time combine with employer strategies and worker resistance to contribute to

overwork and high levels of unpaid work (Baines et al., 2017; Hayes, 2017; Palmer and Eveline, 2012). Third, public authorities and funding bodies maintain significant control over the organisation of work and over care workers' pay and conditions, using time as the main control mechanism (Atkinson and Crozier, 2016; Boivin, 2016; Rubery et al., 2015).

Of particular relevance is the UK experience, as social care systems across Britain share many features with Australia's developing individualised and marketised disability support system (Macdonald and Charlesworth, 2016). Social care workers have been identified as at greater risk than other UK workers of not receiving the National Minimum Wage (NMW) (Low Pay Commission, 2016: xxvii), and it has been estimated that about half of social care companies have not met their minimum wage obligations (HM Revenue and Customs, 2013). Homecare workers – who provide care and support to frail aged and people with disability in private homes and the community – are particularly vulnerable to underpayment with one estimate that 60% of such workers are underpaid (Bessa et al., 2013: 27–28).

In particular, the social care workforce experience in England highlights how, by paying workers for only some of the time they work, 'nominal' wages may be above the statutory minimum wage but 'effective' wages can be much lower (Koehler, 2014: 5). In England, homecare workers have typically been paid only for contact time with care recipients and have not been paid for much of the work they perform, including the time they travel between private residences where they provide care (Hayes, 2017: 135–138; Rubery et al., 2015). This has been considered to be wage theft (Hayes, 2014) and recent legal challenges to the practice have strengthened regulation specifying that travel between work assignments must be paid (United Kingdom Government, 2017).

Similarly, until recently, homecare and DSWs in New Zealand were not paid for time spent travelling between 'clients', with Briar et al. (2014) arguing this brought the employees' hourly wages below the national minimum wage. Following a long-running campaign and a legal case pursued by the Public Service Association (PSA), a sector-wide arrangement for payment of travel time has now been introduced (New Zealand Parliament, 2015). In Europe, recent legal cases under the European Working Time Directive have also challenged the non-payment of homecare workers' time spent travelling between home visits (McCann, 2016).

Despite some ambiguity about travel as 'work' (McCann, 2016), much other unpaid overtime undertaken by social care workers is undoubtedly work (comprising face-to-face client care and support, administration and communication). Non-payment of work time is underpinned by unfair job design with extremely tight specification of time and tasks and no provision at all for some aspects or for any variability in the work (Hayes, 2017; Moore and Hayes, 2017: 103). In addition, work scheduling techniques that 'drain waged-time from the working day' and the devolution to workers of the risks of variable client demand result in fragmented, often varying and unpredictable work schedules: short periods of paid time (invariably face-to-face contact time with care recipients) are interspersed with other also fragmented, variable and unpredictable periods of unpaid 'non-work' time (McCann, 2016: 44–45; Rubery et al., 2015). So, workers have long work days for little recompense, contributing to low pay. **Gaps of unpaid time in the day may not be work but neither are they available to the worker as personal time (Boivin, 2016: 301).**

Non-payment of social care work is supported by the gendered legacy of care work as women's work (Hayes, 2017; Palmer and Eveline, 2012). With care work continuing to

be mainly performed unpaid by women in the family, it is often regarded as performed for altruistic reasons and as unskilled and not deserving of decent pay. These norms have a powerful role in social care, influencing employer strategies and also workers' preparedness to perform unpaid work. Furthermore, much social care work is performed in not-for-profit agencies that have long traditions and strong norms of volunteering that contribute to pressures on workers (Baines et al., 2017).

A final insight from the international literature concerns the role funding models and commissioning practices play in determining care workers' pay and conditions. The UK and Canadian studies have identified the use of time as a control mechanism by public funding and commissioning bodies (Atkinson and Crozier, 2016; Boivin, 2016; Rubery et al., 2015). These bodies have no direct responsibility for the employment of care workers but nevertheless determine many aspects of care provision, including the organisation of work. They tightly specify 'care quality' and work on the basis of time and tasks, leaving employers with little scope in relation to workforce strategy. They determine the duration and scheduling of work and, through tight hourly based funding, they also determine pay.

The multiple factors underpinning the underpayment of homecare workers, including marketised, poorly funded care systems which build on a gendered legacy of care work as non-work, are now more visible in the Australian context of disability support work.

Social care, the NDIS, working time and pay in Australia

The Australian care workforce is predominantly female and the work of frontline social care workers is low-paid (Martin and Healy, 2010). Some 70,000 people were employed in specialist disability support services before the NDIS (Martin and Healy, 2010: 109) and the effective full-time disability support workforce is predicted to more than double by 2019–2020 (Buckmaster and Dunkley, 2017). In 2017, this workforce comprised 43% permanent part-time, 41% casual and only 12% permanent full-time employees (National Disability Services (NDS), 2017: 4).

The gendered undervaluation of social care work is reflected in the historical development of working conditions standards for social care workers in Australia (Charlesworth, 2012). The growth of the paid workforce was accompanied by a long struggle for industrial recognition, and it was not until 1990s that most social care workers gained industrial award coverage, providing them with minimum wage rates and employment conditions that were already available to 'over 90% of the Australian workforce' (Briggs et al., 2007: 498). Recently, some recognition of the gendered undervaluation of care work has been achieved with the success of an equal pay case acknowledging this undervaluation (Macdonald and Charlesworth, 2013).

In comparison to the UK, employees in Australia might be expected to be protected by this country's much more comprehensive set of minimum standards for pay and conditions. However, as Charlesworth and Heron (2012) have argued – specifically drawing on the case of social care work – inferior conditions are established for 'non-standard' part-time and casual employees in both the statutory National Employment Standards and in industrial awards, and this regulatory gap has a gendered impact due to women's concentration in these forms of employment. These authors document a range of inferior working time standards for employees covered by the Social Community Home Care and Disability

Support (SCHADS) award compared to employees covered by the Manufacturing Award. Such regulatory gaps include the absence of minimum engagement periods for part-time employees and of provisions for notice of changes to rostered work time and silence on the question of pay for time spent travelling between work assignments (Charlesworth and Heron, 2012). Based on overseas experience, it could be expected that these regulatory gaps are now more significant to the working conditions of care workers under the NDIS than under previous block-funding contracts for disability services.

The publicly funded disability support system in Australia has undergone significant reform with a national system, the NDIS, replacing multiple piecemeal services provided by states and territories. Services are now allocated and funded on an individual basis and provided through the market. Traditional service providers are now competing with new providers, including private for profits. A national agency, the NDIS, manages the market, assessing eligibility, determining individual support packages, setting prices and funding supports. Funding for the personal support provided by DSWs is determined on the basis of an hourly price, varied in some circumstances. Recent study suggests this fee has been set too low to enable the minimum SCHADS Award conditions to be met for DSWs (Cortis et al., 2017). The study also found that the pricing model did not reflect existing employees' classification levels and provided inadequate allowance for training, workers' time not spent providing face-to-face support (3 minutes an hour), travel between clients (providers can include a 20-minute journey but without any adjustment for support to be provided), and supervision (both levels and workloads). These assessments are supported by findings of an employer survey in which two-thirds of respondents disagreed with the statement 'NDIS prices enable us to meet our industrial obligations' (Cortis and Blaxland, 2017: 3).

Here, we report on a qualitative case study of DSWs' paid and unpaid work time. Our findings shed light on the ways in which social care work may be organised under the various pressures and within the regulatory context outlined above and on some of the impacts this can have on employees and their pay.

Method

Qualitative research combined collection of data from 'working day' diaries and semi-structured interviews with DSWs employed under the new NDIS arrangements. The purpose of collecting diary data was to explore working time arrangements and any unpaid work associated with DSWs' jobs. Interviews explored employees' experiences and views of their jobs, working time arrangements and pay.

Participants were recruited through advertisements in newspapers and job websites and through snowballing. We interviewed 22 employees providing home and community-based support services to people with disability. This article reports on analyses of interviews and working day diaries for 10 DSWs: a total of 20 interviews and 30 self-completed diaries. The 10 women all provided support and care under the NDIS. They were employed by 10 different service providers: four for-profit, five not-for-profit and one government provider. All worked in the same region that was one of the first NDIS implementation sites. At the time of the fieldwork in late 2016, the NDIS had been in place in the region for 3 years. The other 12 participants who are not reported on in this article were not providing NDIS services.

The 10 DSWs cannot be seen as representative of all DSWs working under the NDIS. However, this study can provide valuable insights into some of the ways in which work

is being organised under the NDIS and impacts on employees. Despite the small sample size, our interviews were approaching saturation (Morse, 1995), with issues raised in interviews highly consistent across the 10 participants. While there was considerable dissimilarity in paid and unpaid work patterns recorded in diaries, common issues and themes emerged from all 10 workers' diaries. The issues are also similar to those identified in recent surveys of DSWs and providers examining NDIS workforce issues (Cortis et al., 2017; NDS, 2016). Nevertheless, the data we present is indicative only and our findings warrant further investigation through a larger study.

Each DSW participated in two individual face-to-face semi-structured interviews with one of the researchers. In the first interview, each participant was asked about what her job/s involved, the support she provided, working time arrangements, rates of pay and likes and dislikes. At the end of the interview, the participant was given a paper 'diary' on which she was asked to record time, duration and a brief description of each work-related activity and 'breaks' for the next three work days. At the second interview (1–4 weeks later), the researcher went through the diary with the participant seeking additional details and views of the 'diarised' time use. Informed consent in writing was obtained from all participants. Participants were given retail vouchers in recognition of their time and in lieu of payment for any expenses incurred.

Analytic framework

To identify and quantify any apparent underpayment of employees' work time, we categorised time recorded in the diaries as follows:

- a. Paid work time.
- b. Unpaid overtime comprising: *support work and administrative work* (paperwork, communications and meetings with supervisors, support recipients and families).
- c. Unpaid travel directly between support recipients (for a single employer).
- d. *Other unpaid time in the work day* comprising: unpaid travel between the employee's home and work during and at the beginning and end of the work day; and unpaid 'breaks' between work-related activities.

We also recorded the *length of the work day* (e), defined as the duration of time from when the worker first left home in the morning until she returned home from her last shift for the day.

On the basis of our literature review, we considered that, on the face of it, time spent on (b) unpaid overtime and (c) unpaid travel directly between support recipients should undoubtedly be paid work time. In this article, we focus on these categories to investigate underpayment of wages for the DSWs. It is much more difficult to ascertain the extent of any wrongful underpayment for time in category (d) and, as it would require considerably more space to do so, we have largely excluded this time from our analysis. This time is, nevertheless, critical to the structuring of employees' work days and pay as workers are often expected to travel long distances from home for very short shifts and can have their work scheduled so that they experience long periods of 'dead' time between shifts.

Here, we have space to provide detail of this time only where it sheds light on the overall organisation and time structure of the work.

Findings

Overview of employees' work and pay

In total, 9 of the 10 DSWs were multiple job holders: five worked in two or three different DSW jobs. Other jobs included aged care and residential support. The main reason women gave for holding multiple jobs was that their main job provided insufficient income. In their main job, seven women were permanent part-time and three were casual employees. Part-time employees had contracts specifying minimum hours, although these minimums were as low as 2 hours a fortnight. All employees had highly variable daily and weekly hours and all were regularly 'expected' to do additional work, often at very short notice. Part-time employees' hourly rates ranged from AUD19.80 to AUD25 and casuals' from AUD25 to AUD29, rates consistent with employment at or just above the relevant classifications in the SCHADS Award. Nine DSWs said they were paid penalty rates for weekend and evening work. The 10th said her employer told her she was paid penalties only when they were included in her clients' NDIS support plans.

Only two DSWs (both employees of the same long-established and large service provider) were paid for time spent travelling between clients. However, seven DSWs (including those two), received a per-kilometre reimbursement for using their own cars when travelling between clients. Notably, the industrial award specifies employees must receive this reimbursement 'where required and authorised by their employer to use their motor vehicle *in the course of their duties*' (our emphasis) (SCHADS Award 2010:: cl 20.5(a)). All DSWs were reimbursed for using their cars to transport clients, as long as the distance was within the kilometre range specified in the client's NDIS funding package.

Employees' paid work time was primarily spent in direct contact with clients, providing in-home assistance, personal care and/or support for community and social participation. All 10 workers said they enjoyed or even loved many aspects of the work; they valued making a difference in people's lives and enjoyed spending time with clients. However, most were unhappy with their pay and conditions and several were seeking other employment. The work aspect identified as a serious problem by all 10 workers was the way their working time was structured. Many frequently worked long days, 6 or even 7 days a week to try to earn an adequate income; yet many spoke of their difficulties earning enough to pay their bills. The women's jobs often left them exhausted and with little time for friends and families.

The working day: The time diaries

The working day diaries documented a total of 30 working days (comprising 3 diarised days for each of the 10 DSWs). They reveal four important aspects of DSWs' working days.

First, the diaries show that the DSWs' days were typically made up of several relatively short paid work 'shifts' spent with support recipients, interspersed with often long periods of unpaid time. Over the 30 days, the 10 DSWs worked between one and five

separate shifts per day. The shortest recorded shifts of paid work were around 30 minutes and the longest was over 10 hours. Most paid work periods were 2 hours or less. Second, the DSWs' working days (from first departure from home for work to last arrival home from work) were long. Two-thirds of the 30 diarised days were 10 hours or longer. Third, though days were often very long, the proportion of the total working day that was paid work was often small. On 17 of the 30 work days, employees were paid for 5 or fewer hours' work in the context of a long span of working hours. As an example, one day in DSW9's diary showed that she left home at 8:45 am and finished her day 13.5 hours later, at 10:15 pm, having completed four shifts and earned only 5 hours' pay. This pattern of paid work was not uncommon: the diaries showed that for each worker, on average over their 3 working days, paid work time was between 27% and 73% of the working day (Table 1). Fourth, the diaries showed very substantial periods of the working day consumed by unpaid activities, structured and often occupied by work.

In the presentation of findings below our focus is on the unpaid work time employees spend travelling between clients and undertaking support and administrative work, time that apparently should be paid work time. However, the organisation of disability support work often renders unusable as 'free' or 'personal' time much other time in a worker's day. For example, workers spent time travelling back and forth from home to work in breaks between periods of paid work, and they often found themselves too far from home to make it worthwhile returning so they simply waited somewhere near their next client's home.

Turning to the unpaid work that clearly directly contributes to underpayment, all 10 DSWs undertook unpaid work either travelling between clients or unpaid overtime (administration and face-to-face support), or both, over the 3 diarised days. For individual workers, the total amount of such unpaid work undertaken over the 3 days ranged from 22 minutes to over 6 and a quarter hours. For some DSWs, unpaid work time was equivalent to a third or more of paid work time in a single day and comprised up to 25% of the duration of the working day (Table 1). If all travel between clients and overtime had been paid, these employees would have received between 2% and 27% more pay than they actually received for the 3 days. In the discussion that follows, this unpaid work and the factors driving it are examined in detail.

Unpaid work: Travel between clients

Travel to clients' homes is an essential part of home and community-based disability support work. The amount of unpaid travel directly between clients varied considerably among the 10 employees on the 3 diarised days. The two women who were paid for the time they spent travelling directly between clients had paid travel time in their enterprise agreement with the same long-standing service provider. Our interviewees informed us, and it was later confirmed, that this provider had ceased providing disability support services because they could not afford to do so under the NDIS. For other DSWs unpaid travel between clients was equivalent to between 1% and 15% of the employee's paid time over the 3 days, and as much as 25% in a single day. One DSW spent an hour and a half travelling directly between clients in a single day. A total of 15 of the diarised days showed no unpaid travel directly between clients, but this was often because employees had large unpaid gaps between paid work periods and went home before travelling to the next client.

Table 1. Disability Support workers' paid and unpaid work time for 3 days^w.

DSW ID	Disability support workers									
	1 ^x	2	3 ^y	4	5	6 ^{x,y,z}	7 ^{x,y}	8 ^y	9 ^{x,z}	10 ^x
Day 1 (no. engagements)	5	2	2	3	1	10	1	1	5	2
Paid time (a)	10:00	2:00	1:06	4:36	10:00	7:58	8:00	1:07	6:30	7:00
Unpaid overtime (b)	1:14	0:15	0:19	0:22	0:30	0:35	0:00	-0:02	0:00	1:10
Unpaid travel directly between clients (c)	0:25	0:00	0:00	0:06	0:00	0:00	0:00	0:00	0:15	0:00
All unpaid work (b + c)	1:39	0:15	0:19	0:28	0:30	0:35	0:00	-0:02	0:15	1:10
Length of work day (e)	15:15	6:00	3:30	9:37	11:30	10:00	9:00	1:21	13:30	10:45
All unpaid work/all work time ((b + c)/(a + b + c)) (%)	14	11	22	9	5	7	0	-3	4	14
Paid time/work day (a/e) (%)	66	33	31	48	87	80	89	83	48	65
Day 2 (no. engagements)	4	3	4	1	3	5	2	3	4	4
Paid time (a)	5:00	3:00	3:36	8:05	8:05	6:20	5:00	2:58	5:00	7:00
Unpaid overtime (b)	1:19	0:35	-0:01	-0:06	0:58	0:19	0:00	0:08	0:07	0:30
Unpaid travel directly between clients (c)	0:30	0:00	0:55	0:00	0:20	0:00	0:00	0:00	0:00	1:30
All unpaid work (b + c)	1:49	0:35	0:54	-0:06	1:18	0:19	0:00	0:08	0:07	2:00
Length of work day (e)	15:45	11:15	15:15	8:41	13:40	12:30	7:20	13:24	13:30	9:50
All unpaid work/all work time ((b + c)/(a + b + c)) (%)	27	16	20	-1	14	5	0	4	2	22
Paid time/work day (a/e) (%)	32	27	24	93	59	51	68	22	37	71
Day 3 (no. engagements)	5	2	3	2	2	6	4	3	3	2
Paid time (a)	8:20	2:50	5:06	1:56	7:30	10:36	3:36	2:35	3:10	2:25
Unpaid overtime (b)	1:49	0:00	0:24	0:05	1:10	0:04	-0:06	0:18	0:00	0:01
Unpaid travel directly between clients (c)	1:00	0:25	0:35	0:00	0:40	0:15	0:30	0:00	0:00	0:00
All unpaid work (b + c)	2:49	0:25	0:59	0:05	1:50	0:19	0:24	0:18	0:00	0:01
Length of work day (e)	11:15	4:20	8:55	6:26	10:05	14:42	7:45	9:52	3:35	8:50
All unpaid work/all work time ((b + c)/(a + b + c)) (%)	25	13	16	4	20	3	10	10	0	1
Paid time/work day (a/e) (%)	74	65	57	30	74	72	46	26	88	27

Table 1. (Continued)

DSW ID	Disability support workers									
	1 ^x	2	3 ^y	4	5	6 ^{x,y,z}	7 ^{x,y}	8 ^y	9 ^{x,z}	10 ^x
Total: Days 1 to 3	14	7	9	6	6	21	7	7	12	8
Paid time (a)	23:20	7:50	9:48	14:37	25:35	24:54	16:36	6:40	14:40	16:25
Unpaid overtime (b)	4:22	0:50	0:42	0:21	2:38	0:58	-0:06	0:24	0:07	1:41
Unpaid travel directly between clients (c)	1:55	0:25	1:30	0:06	1:00	0:15	0:30	0:00	0:15	1:30
All unpaid work (b + c)	6:17	1:15	2:12	0:27	3:38	1:13	0:24	0:24	0:22	3:11
Total all work days [e]	42:15	21:35	27:40	24:44	35:15	37:12	24:05	24:37	30:35	29:25
All unpaid work/all work time ((b + c)/(a + b + c)) (%)	21	14	18	3	12	5	2	6	2	16
Paid time/work day (a/e) (%)	55	36	35	59	73	67	69	27	48	56

DSW: disability support worker.

^wTimes are reported in hours and minutes.

^xDSW employed by more than one disability support provider.

^yAdministration time adjusted as one employer paid for 30 minutes a week.

^zDSW paid for travel between clients by one employer.

Most interviewees raised the issue of unpaid travel time as a major shortcoming of the job, particularly when paid work periods were short and the ratio of unpaid to paid working time was high. Women's gave a variety of explanations for undertaking shifts that involved a lot of unpaid travel and little paid work. For some it was a sense of responsibility to clients, a manager or both. **Fear of jeopardising further work opportunities was often cited as a strong motivator for not refusing shifts.** One DSW who had been in her job under 6 months was very conscious of the impact of travel time on her effective pay rate and also found the driving stressful:

... but a big part, as you know, is driving for the job. So I think at the end of the day I'm so knackered, so tired because I'm thinking, I've just been stressed all day worrying about the traffic, whether I'm going to have a prang, just trying to get to these places on time. All for what? For say 3 hours' work. (DSW2)

Yet this employee was unwilling to complain about her pay and conditions as it had been difficult for her to find work. This sense of vulnerability may have been well-placed: another DSW, who had consistently refused to take certain poor shifts, believed she had been punished by having work taken away. By comparison, a very experienced worker reported resisting or refusing shifts where the ratio of paid to unpaid work was too low:

I don't do any less than an hour. ... [Employer B] don't do less than an hour. [Employer A] try to get you to do half hour ones like for medication runs or things like that but, no to me it's not worth it especially when you have to drive like half an hour there, get paid half an hour and a half an hour back and you don't get paid for travelling. (DSW1)

However, this DSW spent nearly 2 hours travelling directly between clients over the 3 days, unpaid and without a car allowance.

Unpaid work: Overtime providing support and undertaking administration

A second type of unpaid work was the additional time DSWs spent providing support to clients and undertaking administrative tasks. Five of the ten employees accrued 50 minutes or more of such unpaid work over the 3 days. For four workers, this was equivalent to 10% or more of the time they were paid for work.

This form of unpaid work appeared endemic. Six of the ten employees provided unpaid support on 29 occasions over the 30 recorded days. Though often only for short periods this unpaid work added up to between 15 and 50 minutes over the three days. **Employees' fragmented work schedules meant that this additional work was often absorbed into unpaid time between scheduled support for clients – rendering it invisible to the employer.** Contributors to unpaid support included unexpected events (e.g. client illness), unpredictable behaviours, client requests for extra supports; new/unfamiliar clients; family carers returning home late, and mismatches between client needs and funded supports, as described here:

Sometimes when the support team goes out to a client's home or interviews them, [or] interview them over the phone, they may think 'Oh this is only going to take half an hour' but they haven't actually done it [the work] so they might guesstimate that it's half an hour where it's a bit longer. [DSW4]

Administration work was a further significant component of unpaid overtime. Eight of the ten employees completed multiple, often small, amounts of unpaid overtime every day. The range of unpaid administrative tasks included: completing client notes and incident reports, communicating with supervisors about client needs, organising rosters and extra shifts and completing travel forms and timesheets. Most tasks were central to client care and/or the organisation of work. While one organisation paid employees 30 minutes a week for administration, DSWs were not otherwise allocated paid time for these tasks which often consumed considerable amounts of time and could be highly disruptive to personal time. **One employee, who had many serious concerns about her clients, spent nearly 4 and a half hours over the 3 days writing up client notes, usually very late at night. This unpaid administration was equivalent to almost 20% of her paid work time.** Another seven employees undertook between 10 minutes and just under 2 hours of unpaid administration over the 3 days. Two employees did no unpaid administration work at all.

DSWs gave two main reasons for undertaking unpaid work. Many workers did so out of a personal commitment to providing good quality, and usually essential, care. This included one employee who said she and colleagues arranged staff meetings in unpaid time to induct new staff and discuss clients' support needs. Most employees linked their unpaid overtime to job insecurity and some reported responding to pressure to complete additional unpaid tasks at clients' request because they feared losing shifts if a client requested a different support worker.

In theory employees could claim pay for some of their unpaid overtime while in practice it was often difficult or impractical to do so. One employee commented: 'I mean I guess if we specifically rang our boss and we're like "hey, this ran 15 minutes over, I'm going to put it on my timesheet," and they knew, then we would. But if it happens every single day, I don't think that many of us really ring her every single day. And she's very hard to contact as well' [DSW10]. Nevertheless, employees sometimes accepted responsibility for not claiming time:

I: Do you get paid for that extra ten minutes, when (the family carer's) late?

P: No. Well, that's my fault; I'm not going to ring something like that in.

I: No. When would you ring it in? How many minutes late would they have to be for you to call in?

P: Half an hour, twenty minutes, half an hour, it depends. This is a nice lady, she doesn't mean to be home [late]. [DSW6]

In some cases, explicit organisational arrangements required employees to absorb unpaid work without remuneration. Further, employees articulated it was in their best interests to undertake this work in order to have better outcomes for clients. For example, one employee (DSW5) explained that it was in her position description to arrive at work 10 minutes before the commencement of her paid work. While she considered this 'a nuisance' it also enabled her to talk with the client's family carer and get any issues 'sorted'.

Finally, workers' sense of insecurity and lack of support in challenging their working conditions was often evident in their explanations for undertaking unpaid work. One employee feared losing shifts if she 'rock[ed] the boat' (DSW2), another said she was afraid of 'making ripples' and risking confrontation (DSW5), and others reported they

had been 'punished' with removal of shifts for attempting to challenge an employer (DSW1) and for refusing to take poor shifts (DSW8). In contrast the two employees of the large long-established and highly unionised service provider reported numerous instances of challenging management to improve conditions for workers.

The financial cost to employees of the unpaid work of travel between clients and overtime was significant, even for those who undertook relatively little unpaid work. For five of the ten employees, 2%–6% of their work over the 3 days was unpaid. On the basis of the standard hourly rate each DSW was paid (i.e. disregarding any penalty rates), we estimate those five employees were underpaid by between AUD8.84 and AUD30.42 over the 3 days. The other five DSWs were not paid for 12% or more of their work time, including one who was not paid for 21%. That employee, who had both the highest number and proportion of unpaid work hours, was underpaid by around AUD180 over 3 days. The remaining four employees were underpaid by between AUD24.75 and AUD92.08 over 3 days.

Discussion and conclusion

Our case study findings demonstrate some of the ways in which disability support work is being organised under NDIS implementation, leaving employees underpaid for significant amounts of their working time. While it is not possible to generalise from the experiences of this small sample it is worth noting that underpayment for travel and overtime was experienced by employees of nine of the ten different employers in this study. Further, we argue that the significance of this study, beyond mapping the dimensions of wage theft and underpayment for a small group of workers, is its analysis of how the funding and regulatory environments facilitate systemic non-payment of working time for homecare workers – an analysis which is broadly applicable to the many workers employed in the same context.

In part, underpayment of the DSWs was rendered invisible by the gendered norms of care work. The findings of this study echo those of Hayes (2017) that in the UK 'homecare workers who wish to provide care in a way which is compatible with self-respect must do so on an unpaid basis' (p. 127). The underpayment of wages was hidden and ambiguous, owing to the regulatory gaps which supported it. Non-payment for travel time was apparently enabled by the absence of a specific entitlement in the industrial award, while the absence of a minimum engagement period for part-time employees saw work periods reduced to as little as 20 minutes. Employers appear to have actively exploited the lack of clear minimum standards: paying vehicle allowances for travel between assignments suggests acceptance of this activity as work – while not paying wages for this time.

Inferior benefits and conditions for social care workers were established in Australian employment regulation long before the introduction of the NDIS. However, our findings support the view that the NDIS is further institutionalising employment practices that produce wages underpayment. Notably, in the context of identified under-pricing of personal support services under the NDIS, the only employees in our study who were paid for travel time lost work as their employer's disability services provision was deemed not viable under the new funding model. Also notably, in this workplace, employees had gained their superior benefits through collective bargaining, while union organisation and representation were less apparent for other employees in our study.

Addressing deficiencies in employment minimum standards is one strategy for resolving some of the problems of underpayment for social care workers. Embedding gender equality objectives in award review processes is potentially a way of achieving this (Macdonald and Charlesworth, 2013). More fundamentally, addressing underpayment of wages of social care workers is likely to require acknowledgement of the limitations of regulation fashioned around the normative standard of full-time permanent employment and the binary employment relationship. In this regard there is a variety of innovative regulatory responses that target network lead or top of supply chain organisations, including in Australia's textile, clothing and footwear industry (Johnstone et al., 2012). Safeguarding and quality regulation under the NDIS could be framed to ensure disability workers are paid fairly and all participants in the supply chain take responsibility, as was previously done in the road transport sector (Johnstone et al., 2015). The fact that the government is effectively the top of the supply chain body in publicly funded social care systems such as the NDIS highlights the need for embedding accountability for labour standards in public policy more generally.

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References

- Atkinson C and Crozier S (2016) Fragmented time and domiciliary care quality: 'no-one sets out to provide bad care but you're dragged to it, dragged into the gutter'. In: *CIPD applied research conference: The shifting landscape of work and working lives*, University of Westminster, London, 19 December.
- Baines D, Cunningham I and Shields J (2017) Filling the gaps: unpaid (and precarious) work in the non-profit social services. *Critical Social Policy* 37(4): 625–645.
- Bessa L, Forde C, Moore S, et al. (2013) *National Minimum Wage: Impact on the Domiciliary Care Sector*. London: Low Pay Commission.
- Boivin L (2016) 'Just-in-time' labour: the case of networks providing home support services in Quebec'. *International Journal of Comparative Labour Law and Industrial Relations* 32(3): 301–321.
- Briar C, Liddell C and Tolich M (2014) Still working for love? Recognising skills and responsibilities of home-based care workers. *Quality in Ageing and Older Adults* 15(3): 123–135.
- Briggs C, Meagher G and Healy K (2007) Becoming an industry: the struggle of social and community workers for award coverage, 1976–2001. *Journal of Industrial Relations* 49(4): 497–521.
- Buckmaster L and Dunkley A (2017) Fully funding the NDIS. National Disability Insurance Scheme Budget Review 2017–2018. Parliamentary Library, Parliament of Australia. Available at: <https://>

- www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201718/NDIS (accessed 15 October 2017).
- Charlesworth S (2012) Decent working conditions for care workers? The intersections of employment regulation, the funding market and gender norms. *Australian Journal of Labour Law* 25(2): 109–129.
- Charlesworth S and Heron A (2012) New Australian working time minimum standards: reproducing the same old gendered architecture? *Journal of Industrial Relations* 54(2): 164–181.
- Cortis N and Blaxland M (2017) *Workforce Issues in the NSW Community Services Sector*. Sydney, NSW, Australia: Social Policy Research Centre (SPRC), UNSW.
- Cortis N, Macdonald F, Davidson B, et al. (2017) *Reasonable, Necessary and Valued: Pricing Disability Services for Quality Support and Decent Jobs*. Sydney, NSW, Australia: Social Policy Research Centre (SPRC), UNSW.
- Cristiano G, Fernández J-L and Wittenberg R (eds) (2016) *Long-term Care Reforms in OECD Countries*. Bristol: Policy Press.
- Galvin DJ (2016) Deterring wage theft: alt-Labor, state politics, and the policy determinants of minimum wage compliance. *Perspectives on Politics* 14(2): 324–350.
- Hayes LJB (2014) Homecare workers have the right to be paid National Minimum Wage. University of West England, Bristol. Available at www2.uwe.ac.uk/faculties/BBS/BUS/Research/CESR/Sept_2014_Hayes.pdf (accessed 2 October 2017).
- Hayes LJB (2017) *Stories of Care: A Labour of Law*. London: Palgrave Macmillan.
- HM Revenue and Customs (2013) National minimum wage compliance in the social care sector. Available at: <https://www.gov.uk/government/publications/national-minimum-wage-compliance-in-the-social-care-sector> (accessed 23 September 2017).
- Johnstone R, McCrystal S, Nossar I, et al. (2012) *Beyond Employment: The Legal Regulation of Work Relationships*. Sydney, NSW, Australia: Federation Press.
- Johnstone R, Nossar I and Rawling M (2015) Regulating supply chains to protect road transport workers: an early assessment of the road safety remuneration tribunal. *Federal Law Review* 43(3): 397–421.
- Koehler I (2014) *Key to Care: Report of the Burstow Commission on the Future of the Home Care Workforce*. London: LGIU.
- Low Pay Commission (2016) National minimum wage: low pay commission report spring 2016. Available at: <https://www.gov.uk/government/publications/national-minimum-wage-low-pay-commission-report-spring-2016> (accessed 18 September 2017).
- McCann D (2016) Travel time as working time: Tyco, the unitary model and the route to casualisation. *Industrial Law Journal* 45(2): 244–250.
- Macdonald F and Charlesworth S (2013) Equal pay under the Fair Work Act 2009: mainstreamed or marginalised? *University of New South Wales Law Journal* 36(2): 1–24.
- Macdonald F and Charlesworth S (2016) Cash for care under the NDIS: shaping care workers' working conditions? *Journal of Industrial Relations* 58(5): 627–646.
- Maconachie G and Goodwin M (2010) Employer evasion of workers' entitlements 1986–1995: why, what and whose? *Journal of Industrial Relations* 52(4): 419–437.
- Martin B and Healy J (2010) *Who Works in Community Services? A Profile of Australian Workforces in Child Protection, Juvenile Justice, Disability Services and General Community Services*. Adelaide, SA, Australia: Flinders University.
- Milkman R, González AL and Narro V (2010) *Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-wage Workers*. Los Angeles, CA: UCLA Institute for Research on Labor and Employment.
- Moore S and Hayes LJB (2017) Taking worker productivity to a new level? Electronic monitoring in homecare – the (re)production of unpaid labour. *New Technology, Work and Employment* 32(2): 101–114.

- Morse JM (1995) The significance of saturation. *Qualitative Health Research* 5(2): 147–149.
- National Disability Services (NDS) (2016) *State of the Disability Sector Report 2016*. Deakin West, ACT, Australia: NDS. Available at: https://www.nds.org.au/images/news/sods2016/State_of_the_Disability_Sector_report_2016.pdf (accessed 12 August 2017).
- National Disability Services (NDS) (2017) *Australian Disability Workforce Report*. Deakin West, ACT, Australia: NDS.
- Nelms L, Nicholson P and Wheatley T (2011) Employees earning below the federal minimum wage: review of data, characteristics and potential explanatory factors, Research Report 3/2011. Melbourne, VIC, Australia: Fair Work Australia.
- New Zealand Parliament (2015) Home and community support (payment for travel between clients) settlement bill – first reading, 13 October. Available at: <https://www.parliament.nz/en/pb/bills-and-laws/> (accessed 8 September 2017).
- Palmer E and Eveline J (2012) Sustaining low pay in aged care work. *Gender, Work and Organisation* 19(3): 254–275.
- Pocock B, Buchanan J and Campbell I (2004) *Securing Quality Employment: Policy Options for Casual and Part-time Workers*. Kingston, ACT, Australia: Chifley Research Centre.
- Quinlan M and Sheldon P (2011) The enforcement of minimum labour standards in an era of neo-liberal globalisation: an overview. *Economic and Labour Relations Review* 22(2): 5–32.
- Razavi S and Staab S (2010) Underpaid and overworked: a cross-national perspective on care workers. *International Labour Review* 149(4): 407–422.
- Rubery J, Grimshaw D, Hebson G, et al. (2015) ‘It’s all about time’: time as contested terrain in the management and experience of domiciliary care work in England. *Human Resource Management* 54(4): 753–772.
- Simonazzi A (2009) Care regimes and national employment models. *Cambridge Journal of Economics* 33(2): 211–232.
- United Kingdom Government (2017) Minimum wage for different types of work. Available at: <https://www.gov.uk/minimum-wage-different-types-work/overview> (accessed 13 October 2017).
- Vosko LF, Grundy J, Tucker EM, et al. (2017) The compliance model of employment standards enforcement: an evidence-based assessment of its efficacy in instances of wage theft. *Industrial Relations Journal* 48(3): 256–273.
- Wilson N (2011) *The Fair Work Ombudsman – Two Years Navigation and Land Within Sight?* Perth, WA, Australia: Australian Labour and Employment Relations Association National Convention. Available at: <https://www.fairwork.gov.au/ArticleDocuments/764/Fair-Work-Ombudsman-Australian-Labour-and-Employment-Relations-Association-speech.pdf.aspx?Embed=Y> (accessed 25 September 2017).

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