

Australian Unity submission to AM2014/285 – Social, Community, Home Care and Disability Services Industry Award 2010

Australian Unity Limited (**Australian Unity**) was established 180 years ago, in 1840. It provides a range of healthcare, financial and independent and assisted living services to more than 700,000 Australians. This includes the provision of aged and disability care.

Australian Unity files this submission in relation to a decision (**Decision**) issued by the Fair Work Commission (**Commission**) on 4 May 2021 regarding the *Social, Community, Home Care and Disability Services Industry Award 2010* (**Award**). Australian Unity understands that the Commission has decided to vary the Award in numerous ways and in some instances, has made provisional determinations about how the Award should be varied. In addition, the Commission has provisionally determined that the variations to the Award should commence operation on 1 October 2021 (**Proposed Operative Date**).

Australian Unity makes submissions about how the Award should be varied and the Proposed Operative Date.

Australian Unity's services and workforce

Australian Unity employs over 7000 employees. Approximately 3,900 employees are covered by the Award under the Home Care Employee classification stream classifications set out in Schedule E (**Award Covered Employees**). Those employees include:

- (a) care workers providing home aged care services such as domestic assistance, personal care, social support, meals and grocery shopping, transport and respite care;
- (b) care workers providing disability support, including the provision of personal care and assistance with daily living, domestic assistance, social support, meals and grocery shopping, transport and respite care;
- (c) customer and community coordinators who meet with customers and facilitate the provision of services under their care plans; and
- (d) administrative services supporting the direct care workforce including employees who schedule the services and roster employees to work the services.

It is the management of the work performed by the care worker employees described in (a) and (b) above (the **Relevant Employees**) that is most directly impacted by the Decision, however the flow on implications impact on those roles supporting and facilitating services performed by care workers (employees described in (c) and (d) above). There are approximately 3500 Relevant Employees.

The Award applies to some of the Award Covered Employees, whilst the majority of employee are covered by enterprise agreements. All the Relevant Employees are covered by enterprise agreements.¹

The Award Covered Employees provide services, directly or indirectly, to approximately 30,000 aged care customers and 400 disability customers.

¹ The *Australian Unity Home & Disability Services NSW Care Worker Enterprise Agreement 2019* and the *Australian Unity Home Care Enterprise Agreement 2017*.

Summary of impact

Australian Unity is concerned that the minimum engagement and broken shift aspects of the Decision will have unintended negative impacts on customers, some employees and aged care providers. The reorganisation of rostering to implement the Decision will have a significant impact on customer care choices and continuity of care. It will also be likely to adversely affect some employees whose preferences are to perform their work flexibly around other commitments in their life. Providers will need to dedicate significant resources to reorganizing how customer care plans can be accommodated in a manner consistent with the Decision.

Australian Unity appreciates and respects that the Commission has already made decisions in relation to the matters outline above. Australian Unity submits that these changes will be significant in Australian Unity and the industry and that a reasonable period of time will need to be afforded to allow care providers, customers and employees to be ready to implement the decision in a way that mitigates, to the extent possible, the adverse implications.

Regulated care environment

As a registered provider of aged care services, Australian Unity is required to comply with the 'Aged Care Quality Standards' (**Aged Care Standards**), which have been issued by the Aged Care Quality and Safety Commission. The Standards emphasise the need to recognise customers' choices about their own care and how it is delivered, as well as the proposition that any personal and / or clinical care should be tailored to their needs.

The disability services provided by Australian Unity are largely funded by the National Disability Insurance Scheme (**NDIS**), which is regulated by the National Disability Insurance Agency (**NDIA**). Australian Unity is required to comply with the *National Standards for Disability Services* (**Disability Standards**). Similarly, the Disability Standards promote person-centred approaches whereby people with disability are at the centre of planning and delivery.

Australian Unity is of the view that the Decision will produce outcomes that are inconsistent with the principles on which the Aged Care Standards and Disability Standards are based, as practices designed to implement the Standards are not easily adjusted to accommodate the Decision.

Minimum payment periods & broken shifts

Australian Unity refers to the aspects of the Decision that relate to:

- the introduction of a two-hour minimum payment for part-time employees (in the home care employee stream);
- the definition of a broken shift being a shift consisting of two separate periods of work with a single unpaid break;
- the ability to have second break in occasional circumstances with the agreement of the employee; and
- the requirement that each part of a broken shift meet the minimum engagement.

Current practices

Currently, in various circumstances in Australian Unity, Relevant Employees are rostered to perform shifts or portions of broken shifts that are less than two hours in duration. Such shifts are typically rostered in respect of the provision of personal care, respite care and, less frequently, domestic assistance services.

Australian Unity's customers very commonly seek services that necessarily require less than two hours of care (e.g. showering, making a meal or getting ready for bed).

Many Relevant Employees are also rostered to work broken shifts that are broken twice or more. The prevalence of such shifts is similarly attributable to the nature of the work performed by such employees. They work with customers in different locations, for relatively short periods at a time. Often, an employee will provide support to the same customer on more than one occasion through the course of the day however, due to the nature of the services provided, they must be provided separately at different times of the day. For example, a customer may require a personal care service such as showing and toileting in the morning, meal preparation in the middle of the day, medication prompting mid-afternoon and personal care again in the evening.

Broken shifts containing more than two breaks are particularly prevalent during the weekend. Services such as domestic services, are commonly scheduled on weekdays due to the increased cost of services to the customer on weekends arising from weekend penalty rates. This additional cost to the customer limits the number of domestic services requested on weekends and therefore reduces Australian Unity's ability to manage hours of work (including the scheduling of broken shift breaks) in care worker rosters on weekends by scheduling these less essential services.

These patterns of work described above are common in the aged and disability home care sectors.

Observations about the Decision – rostering practices

The conclusion reached in the Decision that “employers often bundle a series of short-duration customer services together to create a shift for employees. Employers also attempt to ‘build’ a shift for workers by combining numerous customer services so that the shift is attractive to employees²”, in Australian Unity's experience, does not appropriately recognise the competing factors that must be taking into account when scheduling services and rostering employees. There are other, competing factors that are considered when scheduling services and rostering employees. Arranging work through ‘bundling’ has the potential to compromise care, customer choice and employee preferences.

For customers, bundling of services into a shift may not result in the best clinical outcome, particularly if it means there is not continuity of care in terms of the care worker who is providing their care services. In its final report the Royal Commission into Aged Care Quality and Safety refers several times to the objective of providing continuity of care.³ Australian Unity strives to provide continuity of care by limiting the number of different care workers involved in the provision of care to a particular customer. As far as practicable, Australian Unity endeavours to prepare rosters in a way that facilitates the cultivation and maintenance of relationships of customers with their care worker.

The principle of customer choice and control is central to how work is allocated and rostered by Australian Unity. It is at the very core of Australian Unity's service delivery model. We give primacy to the preferences of our customers, including choices about by whom they received their services and at what time they received their services. The nature of the care provided by our employees is often very personal and intimate. It is very common for Australian Unity's customers to request that they be supported by specific support workers. For example, customers may prefer care workers of a particular gender or care workers from the same cultural and linguistic background. Over time, our customers typically develop a rapport with certain employees.

Further, there are some instances where the bundling of services to a single care worker is unachievable due to employee choice. Employees may have limited, and broken, availability during the period due to other

² Decision at [372]

³ Royal Commission into Aged Care Quality and Safety Final Report Volume 1. See, for example p 72, which identifies lack of continuity of staffing to contribute to substandard care

obligations. Many care workers have family care responsibilities for caring for children, grandchildren and elders. These obligations can impact on care worker availability and they may prefer a particular arrangement of hours, other than a single bundling of shifts. Other care workers, particularly our older care workers sometimes have preferences to have more frequent breaks to better cope with the physical demands of the role and enable them to perform more hours of work.

So, while the rostering to match bundled services may be operationally efficient, it is not always preferred by Australian Unity given the above considerations. Australian Unity chooses to roster employees in a way that recognises and respects our customers' choices and provides for optimal care. Australian Unity also strives to be able to offer our care workers their desired number of hours of work, in their preferred arrangement.

Within the Decision it has been identified that the process of rostering employees in the sector is “a negotiated process between the customer and the care facilitator⁴” and that “the contention that short shifts are the inevitable result of short appointments ignores the choices made by employers about the length of the shifts that they offer⁵.”

In Australian Unity's experience there is considerable complexity in rostering decisions which goes beyond a process of negotiation with the customer. Australian Unity agrees that short appointments do not always result in short shifts, but there are often times when short appointments can have a very real impact on the length of shift able to be offered.

Australian Unity's service scheduling and employee rostering is performed by a group of 266 full time equivalent employees who coordinate the services arrangements with customers and 153 full-time equivalent employees who match the service preferences of the customers with the availability of our care worker employees.

Rostering is a complex decision-making challenge which takes into account customer choice principles (regarding choice of service, time and care worker), continuity of care considerations, care worker availability, care worker skills, experience and capability, the location of customers relative to care workers (which can be a significant factor in regional and remote areas) and hours of work obligations in industrial instruments.

Anticipated impact of the Decision

As previously indicated, all of the Relevant Employees in Australian Unity are covered by enterprise agreements. A comparison of the current enterprise agreement terms compared to the Award terms is set out later in this submission.

The relevant Australian Unity enterprise agreements have expired. The parties agreed to not bargain immediately around expiry so that we could wait to understand the implications of the Royal Commission into Aged Care Quality and Safety. We are operating on Memorandums of Understanding with the relevant unions which provide further wages increases.

However, Australian Unity is about to embark on significant bargaining and will be required to ensure the next generation of agreements passes the Better Off Overall Test against the Award, which will undoubtedly require alignment of our terms to the Decision to ensure the agreement is approved.

Australian Unity anticipates the changes to minimum payments and broken shifts that will come about through the upcoming bargaining will produce:

- significant and unintended negative impacts on many of our customers;
- unintended negative impacts for some of our employees, which in relation to those employees may

⁴ Decision at [353]

⁵ Decision at [354]

be significant;

- increased challenges for Australian Unity in managing an already complex rostering environment.

Customers

Australian Unity anticipates the adverse impact to customers to manifest in two main ways:

- impact on care standards due to reduction in customer choice and impact on continuity of care; and
- possible inability to access services.

Australian Unity may need to reduce a customer's ability to direct their care as the ability to allocate their preferred care workers may not be possible. Australian Unity may need to allocate a non-preferred care worker to meet minimum shift obligations for that (non-preferred) care worker. Alternatively, Australian Unity may not be able to allocate the preferred care worker because it would result in the care worker being rostered with more than two breaks in their shift or for a period of less than 2 hours, which would not be compliant.

To remove this choice will have significant impacts on our customers. As previously stated, the care services Australian Unity provides to its customers is often of a very personal and intimate nature. It is common for our customers to have a preferred care worker perform their services. These are care workers that they feel comfortable with and have built relationships with, some over many years. It is a reality now that customers quite often prefer to cancel their services when their preferred care worker is unavailable due to being on leave rather than have the service provided by another care worker. This is a good indicator of how strong and real these preferences are.

For some particular groups of customers, the importance of choice and continuity is amplified. For example, for our approximately 2,000 customers with dementia, the impact of not having a familiar care worker could be very distressing. For our approximately 3,300 customers from a non-English speaking background, the impact of not being able to communicate effectively because your care worker does not speak your language can also be very distressing. In relation to our approximately 300 indigenous customers, the added complexity of cultural expectations, clan and family obligations also add to the challenge of service delivery. Customer choice is central to successful rapport build and service delivery.

We submit that the observations and experiences of Australian Unity about customer preference of care workers is not unique to the Australian Unity context. It is a feature of many of the relationships that care workers in this industry form with their clients.

The impact of the Decision is likely to lead to under-utilisation of care workers. This is explained in the section below regarding the impacts on employees. But this also has very real impacts on our customers. In an industry which is already experiencing a significant shortage of workers for the ever growing demand, this further pressure is likely to result, at minimum, in an inability for Australian Unity to provide flexibility to its customers in relation to their service times or, at worst, Australian Unity may not be able to provide services at all.

Australian Unity anticipates the Decision will significantly impact upon customers in regional, rural and remote areas which are already facing not just a shortage in care worker numbers, but also in ancillary and direct medical service providers. Access to care services for customers located in remote regions is often very limited with very few care workers available. These care workers are often required to provide multiple services throughout the day to customers within the remote community. The Decision would limit Australian Unity's ability to roster these care workers to their maximum ordinary hours where more than two breaks would be required during their shift and as there is often no option of reassigning work to other care workers, or even other providers, our customers might not receive the essential services they require. Reducing access

to our home care services will further isolate the most vulnerable people within these remote communities including many of our indigenous customers.

Employees

Australian Unity understands that most of the aspects of the Decision are intended to benefit employees. However it is our view that the minimum payment and broken shift changes will have an impact on some care workers in the following ways:

- impact their ability to obtain secure and significant hours of work;
- impact on their wellbeing as a result of the under-utilisation;
- the potential for deskilling;
- likely to decrease the flexibility of working hours, which is an attraction factor to the home care industry; and
- increased physical demands as a result of less breaks.

The aged care and disability workforce is traditionally highly casualised, Australian Unity strives to avoid high levels of casualisation and is proud to regularly exceed our target of not more than 15% of our workforce being casual employees. Casualisation is a contradiction to our continuity of care objectives. The limitation on broken shifts in particular, will potentially mean some care workers are not able to work their desired number of hours of work. While this will not necessarily lead to an increase in casual engagement in Australian Unity (although that is not out of the question as we struggle to put together regular part time work) it is likely that the number of working hours offered to care workers would reduce as a result of the changes. In a context where the aged care and disability sectors are struggling to meet the ever-increasing workforce requirements, this would be particularly disappointing.

Further, the limitations on broken shifts may cause some distress to our highly skilled and quality care workers. Australian Unity employs care workers that have worked in the home care industry for many years. They are skilled in what they do and are a preferred carer to their customers. It is likely that these skilled, quality care workers could be distressed by being unable to continue to provide care to their customers in the way they currently do, especially when they are willing to do so. This will be particularly the case for customers with more acute needs who require several services throughout the day.

The bundling of services, which is described in the previous section and may be necessary to implement the Decision, can have the effect of deskilling care workers. Care workers with greater skill and experience, particularly in providing complex care, will be required to perform lower skilled services such as domestic assistance to avoid breaks in their roster. As there is a growing need for care workers in both the aged and disability care sectors, Australian Unity considers it crucial to create careers for care workers. To uplift the skills and experience of our care workforce not only assists with the retention of employees but has the added benefit of increasing the quality of the services being delivered by this skilled workforce.

Many care workers choose a career in care as it provides flexibility in hours and enables them to manage other responsibilities in their life such as parental responsibilities. Often care workers nominate their availability for work to accommodate the needs of their family, particularly care workers with young families. For example, a care worker may nominate not to work at times when they are required to drop off or pick up their children from school. As the flexibility of working hours is a key attraction for many care workers, this change may potentially detract care workers from the industry.

As previously mentioned, some our care workers, particularly our older care workers, prefer to have more frequent breaks to better cope with the physical demands of the role. If they are not able to spread out the work, they may need to reduce the hours they are working or accept fewer breaks, contrary to their

preferences. Australian Unity has an ageing care workforce with 42% of all Relevant Employees aged 55 or over, as such this is considered a very real issue for Australian Unity and its employees' preferences.

Australian Unity

As previously mentioned, the rostering of care workers in the community care sector is increasingly challenging with many factors to be considered before scheduling a customer's service to a care workers roster.

The changes contemplated in the Decision in relation to minimum payments and broken shifts would require a review of all care workers rosters. Although it is theoretically conceivable that work could be rearranged in accordance with the impending variations to be made to the Award, we know the primary reason customers decide to cease having their care work performed by Australian Unity is because there has been insufficient stability in their care plan. Instability in the care experience of Australian Unity's clients is very likely to occur if there is not a significant lead time to the implementation of these aspects of the Decision – this instability is not merely commercially impactful for Australian Unity but the greater impact is in the disruption and hardship which it could create for those who are customers of Australian Unity. Australian Unity considers that a substantial amount of analysis and extensive consultation with customers and employees would be necessary, before it would be to implement the effect of the Decision.

Australian Unity would, if it was required to apply the effect of the Decision, need to:

- (a) review and analyse its existing rosters and customer schedules in order to identify circumstances in which work could be rearranged to reflect the Decision;
- (b) consult customers, one by one, about whether they would be amenable to being serviced at different times, on different days and / or having their service provided by another care worker;
- (c) consult employees about whether they are willing and available to perform different hours of work;
- (d) recruit additional care workers to perform work that can no longer be performed by existing employees who are rostered to work broken shifts with more than two breaks;
- (e) reconfigure Australian Unity's payroll and rostering systems in relation to around 3900 employees in order to ensure that employees are rostered and paid in accordance with the Award, as varied;
- (f) conduct an internal education process in relation to the Award variations; involving the development and delivery of training to staff with responsibility for payroll, rostering, human resources and various tiers of operational management.

The recruitment of new employees in the aged care sector at the rate required to keep pace with demand is very challenging (as identified in *A Matter of Care*⁶, the report of the Aged Care Workforce Council and the Final Report of the Royal Commission into Aged Care Quality and Safety⁷). In Australian Unity's experience, this is equally the case in the disability sector. As a result, the recruitment of additional care workers would take a significant period of time. In addition, those employees would need to be inducted and trained. Therefore, it is possible that not all customer services could be reassigned before the changes took effect, resulting in Australian Unity being unable to provide services to all its customers.

In relation to reconfiguring our payroll and rostering systems, our analysis to date is that this will require the development of a number of manual process and controls to ensure compliance. For example, our rostering system will be unable to automate or provide alerts for non-compliance of conditions such as where more

⁶ 'A Matter of Care' Australia's Aged Care Workforce Strategy, Report of the Aged Care Workforce Strategy Taskforce, pg 6

⁷ *Royal Commission into Aged Care Quality and Safety Final Report Volume 1*. See, for example p 72, which identifies lack of continuity of staffing to contribute to substandard care

than two breaks is included in a shift. This results in a manual solution which increases the risk of non-compliance. In relation to the need for agreement on a second break in shift, our system does enable the tracking of agreement to the shifts, and therefore if acceptance of the roster as posted is not sufficient to discharge this obligation, significant work is involved to meet this obligation. In relation to the payment for broken shifts being potentially different depending on the number of breaks, our system will be unable to recognise the number of breaks and assign an appropriate allowance and so a manual rostering process would be required to be configured by the vendor and tested. A significant consequence of manual pay processes is an increased risk of non-compliance with the Award and compromised pay accuracy. This is something Australian Unity is very keen to avoid.

Australian Unity considers that a significant period of time will need to be allowed for providers to be ready to administer these aspects of the Decision.

Similarities between the Award terms and Australian Unity enterprise agreement terms

Australian Unity acknowledges that the Relevant Employees are covered by enterprise agreements and as a result will not immediately be impacted by the Decision. Our submissions are available to be advanced by Australian Unity, because our terms are in all practical application very similar to the Award as it applied immediately prior to the Decision.

The terms of the *Australian Unity Home & Disability Services NSW Care Worker Enterprise Agreement 2019 (HDS NSW EA 2019)* relevantly are as follows

- Clause 2.5xxii – *Shift means a period of not less than two (2) hours, provided that in the case of personal care services, respite services or a service where there is a genuine inability to roster for more than two (2) hours the period will not be less than one (1) hour. A shift is made up of one or more engagements and travel between customers. A shift may consist of one or more consecutive Engagements, or may be broken with breaks between Engagements.*
- Clause 2.5xi – *Engagements are discrete periods of work where an Employee is rostered to perform work described in the appropriate classification.*
- Clause 8.8(d) – *Where you are rostered with a break in consecutive engagements of greater than one (1) hour at the convenience of Australian Unity you will be reimbursed the kilometres, in accordance with clause 8.8a, for the distance to return home and from home to your next customer.*

The terms of the *Australian Unity Home Care Enterprise Agreement 2017 (Home Care EA 2017)* relevantly are as follows:

- Clause 2.6(a)(xx) – *A shift means a period of not more than 12 hours made up of one or more engagements. A shift may be a broken shift where engagements are separated by breaks.*
- Clause 2.6(a)(ix) – *Engagements are discrete periods of paid work of not less than 30 minutes in duration in which you are rostered to perform work described in the classification for that engagement.*
- Clause 3.2(h) – *As a part time employee you will receive a minimum payment of two hours for each Shift.*

The effects of the combination of the clauses are similar across the two enterprise agreements.

In the HDS NSW EA 2019, the effect of clauses 2.5xxii and 2.5 xi in practical terms is that part-time employees are often engaged over the course of the shift for periods of 1 hour only. In the Home Care EA 2017, the effect of clauses 2.6(a)(xx) and 2.6(a)(ix) in practical terms is that part-time employees are often engaged for period of 30 minutes only. In both these circumstances, this is because there are many situations in which the shift will only require personal care services or respite services, and there are often cases of genuine inability to roster more time as dependent on customer preference for care workers and the timing of their services.

Importantly with respect to the Home Care EA 2017, while there is a minimum payment provision of 2 hours for each shift, there are no limitations on the number of 30 minute period engagements that may be used to ensure work of at least 2 hours can be scheduled across the shift. In the HDS NSW EA 2019, because there is no minimum engagement per part of a broken shift in the, this is analogous to the how the minimum engagement is regulated under the Award prior to the Decision.

The Australian Unity enterprise agreement clauses are theoretically somewhat more beneficial to employees than the manner in which minimum engagement is regulated under the Award prior to the Decision because there is at least a minimum number of hours for part time employees. However it is Australian Unity's view that the enterprise agreement clauses are not, in practice, that different to having no minimum engagement for part-time employees. This is because in reality there has to be some amount of work performed and it would be fairly unusual, although not impossible, for there to be a desire to have an employee work for less than 30 minutes. It is also Australian Unity's view that the difference between a 1 hour minimum engagement and a 2 hour minimum engagement is substantial in our sector, and a 2 hour minimum engagement or payment (which is consistent with the Decision) will be a significant change for Australian Unity.

Submissions in relation to the Decision

Australian Unity provides the information in this Submission for the benefit of the Commission in making a final decision.

Australian Unity submits that the impact on customers, employees and care providers is complex and will require considerable time to mitigate impacts and be ready to implement. Australian Unity proposes that the operative date for the commencement of the provisions be at least 12 months from the date of the final decision.

Minimum Payment Periods – Training and Meetings

Australian Unity refers to the Decision and the Commission's invitation to provide further arguments in support of a 1-hour minimum engagement for staff meetings and training and professional development.

Training and learning

At Australian Unity, employees are required to undertake numerous e-learning training modules. These e-learning modules cover both mandatory compliance modules and modules that are not essential from a compliance perspective but may be mandatory with Australian Unity and aim to enhance the skill level of our employees and their ability to provide high quality care (and are therefore 'mandatory' within Australian Unity). In the 12 month period between April 2020 and March 2021, 38,370 modules were completed by our care workers. Of those modules, 37,916 were required by Australian Unity to meet compliance obligations, induction requirements or role specific skill requirements. The remainder were self-selected learning modules.

In the majority of instances, these training programs require less than 2 hours to complete. In some cases, they require as little as 30 minutes. Australian Unity is also involved with research with Melbourne Ageing Research Collaboration (MARC) and National Ageing Research Institute (NARI) on the effectiveness of 'micro-learning' which are short 5 -15 minute learning interventions integrating learning with working.

As they are available online, Australian Unity generally permits care workers to complete these from their own homes, at a time convenient to the employee, within a designated time frame. This is a benefit to employees as they are not required to expend any additional time travelling to or from their home or to return to a home care office to complete the training. Employees are paid for their time completing the training.

A requirement to pay employees for at least two hours in circumstances where the training is of lesser

duration would impose an unreasonable additional cost burden on employers such as Australian Unity. It may result in a decision to reduce the level of non-essential training (which is undesirable), or to require employees to perform the training immediately adjacent to their shift which is unnecessary, or require employees to complete multiple modules in the one sitting, which is also unnecessary.

Team meetings

Australian Unity holds structured, monthly 1-hour meetings for care workers within their home care office. These meetings cover mandatory content across the branch network to ensure care workers have all the information they need to perform their role. These meetings are highly valued by a workforce that performs the vast majority of their work independently in the community. In addition to being critical for important information sharing and discussion, this time allows for connection with other care workers. We are often told by our care workers how important and valued this time is.

It is impossible to schedule team meetings that allow all care workers to attend in a way that the meeting is part of, or contiguous with, all care workers schedules. For example, if the meeting is set for 2pm to accommodate care workers performing work in the afternoon, it is quite likely that some of the care workers who commenced early in the day will have already completed their shift. Therefore, to apply a 2-hour minimum payment, in circumstances where the employee has already worked at least 2-hours earlier in the day is in our submission unreasonable.

Submissions

Australian Unity submits that:

- a 1-hour minimum payment period should apply where an employee attends a meeting or undertakes training required by the employer;
- where training occurs online in an employee's home and can be done at time of the employee's choosing, that there be no minimum payment;
- where an employee has previously performed work in the day of a duration at least equal to the minimum shift, that there be no need to treat the additional hours as a separate shift (and therefore no need to apply the minimum start again); and
- that the break between the last period of work and the commencement of the training is not considered a break for the purpose of the broken shift definition.

The National Disability Insurance Scheme

The disability services provided by Australian Unity are largely funded by the National Disability Insurance Scheme (NDIS), which is regulated by the National Disability Insurance Agency (NDIA).

The NDIA prescribes limits on prices (**Price Limits**) charged by providers to customers for their disability services. Providers of disability services are not permitted to charge more than those Price Limits. The Price Limits are underpinned by a cost model that has been developed by the NDIA.

The NDIA published revised Price Limits and the cost model underpinning them on 1 July 2021. The revised Price Limits commenced operation on that same date. The cost model has not been adjusted to take into account the variations to be made to the Award as a consequence of the Commission's recent decision.

To date, the NDIA has not informed Australian Unity or made any general announcement about whether it intends to review the Price Limits or cost model in light of the Commission's decision to vary the Award.

Our experience in previous years with the NDIA process, particularly around pricing and its lack of alignment

to common industrial benefits, led us to significantly reduce our operation from 3,000 NDIS customers to our now 400 NDIS customers. This significant exit came at an incredible emotional cost to our employees and customers. Further impacts without pricing alignment will mean we have no choice but to exit providing under the NDIS completely.

The variations to be made to the Award will impose additional employment costs for which there is currently no funding available. For example, the cumulative cost of the proposed broken shift allowance may be significant for providers that regularly implement broken shifts. At this stage, the Price Limits have not been amended to incorporate this additional proposed entitlement, nor has the NDIA foreshadowed that it intends to do so.

Australian Unity is a member of Alliance20, which is an organisation of disability sector providers. Alliance20's principal aim is to advocate for a sustainable and workable NDIS. Through its involvement in Alliance20 meetings and activities, Australian Unity is aware that many providers continue to have concerns about various deficiencies in the cost model that underpins the Price Limits. This is because the cost model does not take into account various operational costs (including employment costs) and, in addition, the assumptions made for the purposes of the cost model have the consequence of underestimating the actual cost of delivering disability services.

Australian Unity submits that the operation of the Award variations should be delayed, so that providers have an opportunity to engage with the NDIA about increasing the amount of funding available to providers in light of the Commission's decision. The existing deficiencies in the cost model and the strain that they are placing on providers will only be compounded by the variations to be made to the Award if additional funding is not made available in the meantime. Ultimately, this could have serious consequences for the extent to which providers are able to sustainably continue to provide their services to persons with a disability.

Summary of submissions

Australian Unity submits that:

- Implementation of the minimum engagement and broken shift aspects of the Decision will adversely impact on customer care choices, continuity of care, the ability to provide services and the flexible work preference of some employees.
- Implementation of the minimum engagement and broken shift aspects of the Decision by providers will be a significant workforce planning challenge and will require considerable time to reorganise with customers and mitigate adverse outcomes, to the extent possible
- It is appropriate to delay the operation of the Award, for a period of least 12 months from the final decision.
- A 1-hour minimum payment period should apply where an employee attends a meeting or undertakes training required by the employer.
- Where training occurs online in an employee's home and can be done at time of the employee's choosing, that there be no minimum payment.
- Where an employee has previously performed work in the day of a duration at least equal to the minimum shift, that there be no need to treat the additional hours as a separate shift (and therefore no need to apply the minimum start again).
- That the break between the last period of work and the commencement of the training is not considered a break for the purpose of the broken shift definition.

Australian Unity appreciates the opportunity to make these submissions and hopes they are of assistance to the Commission in making its decision.

180
YEARS



A handwritten signature in black ink that reads 'Kevin McCoy'.

Kevin McCoy
CEO, Independent and Assisted Living
Australian Unity
2 August 2021