

IN THE FAIR WORK COMMISSION

4 Yearly Review of Modern Awards

National Disability Services

Submission – AM2018/26

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

Substantive Issues Tranche 2 – Responses to Background Papers 2 and 3

National Disability Services (NDS) provides the following responses to questions raised in Attachment A of the Statement published on 4 March 2020.

Background Paper 2

Supplementary Question 4: (All parties) Do the parties challenge the proposition that a significant proportion of employers covered by the SCHADS Award are part time employers? (See BP2 at [13]).

NDS does not challenge this proposition. We note the difficulty in obtaining precise data in relation to workforce characteristics in this sector, but all the evidence from sources such as ABS and NDS is consistent with the proposition that a significant proportion of the workforce covered by the SCHADS Award are part-time employees.

Supplementary Question 5: The Join Union’s contend that the nature of the work required to be performed by employers in the sector has not undergone fundamental change and that those employers provide the same or similar services as is the point (ie pre NDIS), albeit that the extent and scope of their work has expanded. Do the other parties challenge this contention? If so, on what basis (See BP2 at [17]).

The unions’ contention that there has been no fundamental change to the nature of the work in this sector misses the point about the scale of changes to the organisation of work arising from the marketized funding arrangements in home care and disability services (CDC and NDIS). The massive increase in individualised funding arrangements between clients and providers in those sectors has resulted in a fragmentation of that work. It is for this reason that all of the parties in this matter have been preoccupied with matters such as broken shift, rostering, minimum engagement, travel time, overtime for part-time workers whose hours vary, and client cancellation. Those matters have all assumed greater significance in the decade since award modernisation.

Background Paper 3

Q.1: Question for all parties: Are there any additions or corrections to Attachment 1? (See BP3 at [15]). Parties are also asked to advise of the evidence which they rely upon for the community language allowance claim and the 24 hour clause matter respectively.

NDS has not found any need for corrections to Attachment 1.

In relation to the community language allowance claim, NDS relies on our submissions of 5 April 2019 and 17 May 2019 (summarised in the Background Paper of 4 December 2019 at [72]-[75] and [82]-[83]).

In relation to the 24 hour clause matter, NDS relies on our submissions of 5 April 2019, and 7 February 2020 (summarised in Background Paper 3).

Q.2: Question for all other parties: Are the findings proposed by ASU challenged (and if so, which findings are challenged and why)? (See BP3 at [25]).

NDS challenges the proposed findings of the ASU at points 3 and 7 reproduced in [25] of the Background Paper.

Proposed finding 3 asserts that unpaid time is controlled by the employer, but the evidence does not go to employer control and only demonstrates there are various mixes of paid and unpaid time during a broken shift.

Proposed finding 7 neglects to take account that the funding is only available where the client agrees to use some of their funding package for this purpose, rather than for time spent delivering a service to themselves. The result is that the employer does not have an unfettered ability to receive payment for such time.

Q.3: Question for all other parties: Are the findings proposed by UWU challenged (and if so, which findings are challenged and why)? (See BP3 at [27]).

NDS challenges UWU proposed finding 12. It neglects to take account that the funding is only available where the client agrees to use some of their funding package for this purpose, rather than for time spent delivering a service to themselves. The result is that the employer does not have an unfettered ability to receive payment for such time.

Q.4: Question for all other parties: Are the findings proposed by HSU challenged (and if so, which findings are challenged and why)? (See BP3 at [33]).

NDS challenges the HSU proposed finding 18. It neglects to take account that the funding is only available where the client agrees to use some of their funding package for this purpose, rather than for time spent delivering a service to themselves. The result is that the employer does not have an unfettered ability to receive payment for such time.

Q.5: Question for all other parties: Are the findings proposed by ABI challenged (and if so, which findings are challenged and why)? (See BP3 at [40]).

NDS does not challenge the findings proposed by ABI.

Q.7: Question for all other parties: is the alternative variation proposed by ABI opposed (and if so, why)? (See BP3 at [46]).

NDS does not oppose the alternative variation proposed by ABI.

Q.8: Question for all other parties: Are the findings proposed by Ai Group challenged (and if so, which findings are challenged and why)? (See BP3 at [48]).

NDS does not challenge the findings proposed by Ai Group.

Q.9: Question for all other parties: Are the findings proposed by HSU challenged (and if so, which findings are challenged and why)? (See BP3 at [53]).

NDS challenges the proposed finding 7. The comments about compensation for unsociable, unpredictable and irregular hours are a contention rather than a finding.

Q.10: Question for all other parties: Are the findings proposed by AFEI challenged (and if so, which findings are challenged and why)? (See BP3 at [57]).

NDS does not challenge the findings proposed by AFEI.

Q.12: Question for all other parties: Are the findings proposed by ABI challenged (and if so, which findings are challenged and why)? (See BP3 at [60]).

NDS does not challenge the findings proposed by ABI.

Q.13: Question for all other parties: Are the findings proposed by Ai Group challenged (and if so, which findings are challenged and why)? (See BP3 at [61]).

NDS does not challenge the findings proposed by Ai Group.

Q.14: Question for all other parties: Are the findings proposed by the HSU challenged (and if so, which findings are challenged and why)? (See BP3 at [65]).

NDS challenges the HSU proposed findings 2 and 3.

At proposed finding 2 it is incorrect to say that the award does not regulate the duration of a broken shift, as there is a 12 hour span set by clause 25.6 (c) of the award.

In relation to proposed finding 3, NDS reiterates our earlier submission that care needs to be taken about the conflation of the term “shift” with “client appointment”.

Q.16: Question for all other parties: Are the findings proposed by the AFEI challenged (and if so, which findings are challenged and why)? (See BP3 at [67]).

NDS does not challenge the findings proposed by AFEI.

Q.17: Question for all other parties: Are the findings proposed by ABI challenged (and if so, which findings are challenged and why)? (See BP3 at [69]).

NDS does not challenge the findings proposed by ABI.

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On behalf of NDS
10 March 2020