



Jobs Australia

Community Sector Industrial Relations

IN THE FAIR WORK COMMISSION

4 YEARLY REVIEW OF MODERN AWARDS

Jobs Australia and National Disability Services

Joint Submission in Reply

Common Issues: Casual Employment (AM2014/197) and Part-time Employment (AM2014/196)

Part-time hours of work, changes to hours of work, rosters and entitlement to overtime –
NDIS and related issues

29 April 2016

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Introduction

1. In accordance with the Statement issued on 22 February 2016, Jobs Australia and National Disability Services (NDS) make this joint submission in reply regarding part-time hours of work, changes to hours of work, rosters and entitlement to overtime – NDIS and related issues.
2. In the Statement of 22 February 2016, parties were directed to make submissions in reply by 29 April 2016 to the submissions made by St Ives Group, and by Australian Business Industrial & NSW Business Chamber Ltd (ABI/NSWBC) and their respective draft determinations.
3. This submission in reply is in response to the issues raised as they relate to the *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHADS).
4. Our submission in reply of 26 February 2016 regarding the issue of minimum engagements for casual and part-time employees describes how the National Disability Insurance Scheme (NDIS) affects the organisation of work in the disability services sector, for employers covered by the SCHADS Award (see paras 10-41 of that submission).
5. The Jobs Australia and National Disability Services (NDS) submissions of 2 March 2015 regarding the SCHADS award also provide brief outlines of the impact of NDIS.
6. We rely on those earlier submissions regarding NDIS and now make further specific submissions in response to the draft determinations filed by St Ives group and ABI/NSWBC.
7. We support the variations sought by St Ives Group and ABI/NSWBC in relation to part-time contracts and rostering for part-time employees covered by the *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHADS).
8. The proposed changes would facilitate reasonably flexible working arrangements which will help employers to meet the widely supported public policy objectives of NDIS, while also providing a reasonable safety net of protection for part-time employees.
9. Furthermore, the proposed changes will lessen a current unintended effect of the award which is to encourage the employment of workers on a casual basis where they might otherwise be able to be employed on a part-time or full-time basis.
10. While our current submissions focus on the operation of the award in the disability sector and on the context of NDIS, the same issues are relevant across the broader social and community services sector which is under constant pressure to operate more flexibly. NDIS has simply made the issues particularly urgent in the disability services sector.

Context – National Disability Insurance Scheme (NDIS)

11. Our earlier submission of 26 February 2016 outlined how NDIS is leading to a rapid expansion in the provision of individualised support for people with disability. For convenience, we now summarise the NDIS and how it affects employment issues in the industry as follows.
12. Prior to NDIS, most disability support was provided by organisations which received block grant funding from government and then used that money to provide support to clients in ways that were fully managed by the provider.

13. Under NDIS, the client negotiates a plan for services and supports with the National Disability Insurance Agency (NDIA), which takes account of their individual circumstance and is directed towards achieving their individual goals. The funding rests with the client, not the provider. It is allocated for individual supports and services, not for programs. An important aim is to develop and implement plans which enable the client to live a life that is unconstrained by institutional barriers to pursuing individual preferences, and to allow for a measure of spontaneity and flexibility around organising activity, as is taken for granted by most people in the community.
14. As a consequence, the client now has the commercial power to take their business elsewhere if a provider cannot provide supports in a manner that is flexible enough to meet the client's requirements, as specified in a care plan developed by the National Disability Insurance Agency (NDIA).
15. An important outcome, therefore, of the move to NDIS is that employers have much less control over the rostering of work related to the provision of individualised support because the client now has a greater ability to require that supports be provided at times of their choosing.
16. NDIS has initially been trialled in regional trial sites such as Barwon in Victoria and Hunter in NSW.
17. The experience in the trial sites is that clients do exercise their power to request changes to the timing of supports from time to time.
18. The trial sites have seen
 - a) A growth in requests for supports outside normal business hours;
 - b) A high demand for supports of short duration (between 30 minutes and 2 hours);
 - c) A significant proportion of appointments with clients being subject to unplanned cancellation at short notice for reasons such as illness, social activity and personal preference;
 - d) Clients varying their requirements over time as objectives are met or in light of experience of how their care plan meets their individual needs; and
 - e) An increase in mobility of clients as they shop around for supports that best meet their needs and preferences.
19. The experience in the trial sites confirms that there remains a significant proportion of the work that continues to be predictable and constant. For example, clients living in group homes have fairly constant needs and rostering has not changed significantly in those types of services.
20. However these types of stable services represent a shrinking proportion of the work performed under NDIS.
21. NDIS is driving a rapid growth in the amount of support provided individually in the client's home and in community settings. These individual direct supports constitute a rapidly growing proportion of the work and are subject to significant variability, reflecting client needs and preferences.
22. While some of this growing direct individual support work has a predictable core, there is a significant component of the work that varies from week to week and some of that variation is at short notice.

Employment of part-time employees under the SCHADS Award

23. Clause 10.3 of the SCHADS Award sets out the requirements for the employment of an employee on a part-time basis. The requirements include at 10.3 (a) that the employee must have “*reasonably predictable*” hours of work and at clause 10.3 (c) the award sets out requirements to specify the precise hours of work for the employee.

Part-time employment

- (a) *A part-time employee is one who is engaged to work less than 38 hours per week or an average of less than 38 hours per week and who has reasonably predictable hours of work.*
- (b) *The terms of this award will apply to part-time employees on a pro rata basis on the basis that the ordinary weekly hours of work for full-time employees are 38.*

[10.3(c) inserted by [PR539625](#) 01Aug13]

- (c) *Before commencing employment, the employer and the employee will agree in writing on a regular pattern of work including the number of hours to be worked each week, the days of the week the employee will work and the starting and finishing times each day. Any agreed variation to the regular pattern of work will be recorded in writing.*

24. The effect of clause 10.3 (c) is to require that the employer provide contractual guarantees as to the exact hours that will be worked.
25. Clause 10.4 of the award goes on to define a casual employee as
- (a) *A casual employee is one who is engaged and paid as such but will not include a part-time or full-time employee.*
26. The SCHADS award does not impose any particular restrictions on the hours that may be offered to a casual employee.
27. Clause 10.3 (c) was inserted as an outcome of the 2012 modern award review in a decision of VP Watson (*Australian Municipal, Administrative, Clerical and Services Union*[2013] FWC 4141). In that decision the Vice President noted concerns of employers regarding the effect the provision might have on flexibility and at para [20] said “...if significant practical problems emerge an appropriate variation can be sought”.
28. We agree with St Ives Group and ABI/NSWBC that the introduction of NDIS has created new practical problems for the industry in relation to the operation of this clause of the award.
29. The basis of the draft determinations proposed by both St Ives group and ABI/NSWBC is that where the work has a significant component of hours that will vary from time to time, as is increasingly the case under NDIS, then it is not possible for an employer to offer part-time employment in the way required by the award.
30. On the other hand, the rigidity imposed on hours of work for part-time employment does not apply to casual employment. So the logical response for employers is to employ on a casual basis if there is likely to be some variability in the hours of work required.

31. Data collected from disability providers on a quarterly basis by NDS suggests that casual employment is indeed growing more quickly than part-time or full-time employment. NDS's quarterly data collector, Workforce Wizard indicated that in the first quarter (Q1) of 2015-16, casual employment grew by 25 per cent compared to 4 per cent for part-time and full-time workers. In Q2 2015-16, casual employment grew by 14 compared to 4 per cent for part-time and full-time workers. This is data from a sample containing over 25,000 workers; while not representative in the sense of being derived from a randomised statistically significant sample, it is nevertheless a large group amounting to at least one-quarter of the estimated total disability services front line workforce.
32. We acknowledge that if the hours of work for an employee are completely unpredictable and random, then casual employment is likely to be appropriate in any event. Our concern is that much of the work in this sector has sufficient regularity that it could be characterised as part-time rather than casual, if the award were to provide for some reasonable flexibility rather than imposing a requirement for fixed hours to be set in advance.
33. The claims by St Ives group and ABI/NSWBC differ in detail but in principle have similar objectives in seeking to resolve this.

Claim by St Ives Group to vary clauses 10.3 and 25.5 of the SCHADS Award

34. Jobs Australia and NDS support the proposal by St Ives in relation to clauses 10.3 and 25.5.
35. The proposed variation to 10.3 clarifies that an agreement on a minimum number of hours to be worked each fortnight does not preclude the option of working additional hours.
36. Importantly, the proposed variation does not require the specific hours for each day to be dealt with in the employment contract, as this is addressed through the rostering provisions of clause 25.5.
37. We also support the provision at 10.3 (c) of the St Ives Group draft determination for SCHADS for recording of the agreed availability of the employee. This is an important protection for part-time employees who may have limits to their availability due to external constraints such as family responsibility or outside work.
38. The variation to clause 10.3 would operate in conjunction with a variation to clause 25.5 – Rosters.
39. The roster is the appropriate mechanism for setting out the detail of the hours to be worked. In the NDIS context, this allows for reasonable notice to the employee of when the work will be performed, while allowing the employer some capacity to be flexible in response to client needs and demand.
40. The ability to set rosters with different precise hours on a fortnightly basis gives the employer a greater ability to adjust to short term changes due to client cancellations and other changes to care plans, while still being able to employ workers on a part-time basis rather than casual. This is the basis of standard approaches to shift work.
41. We agree with the observations made by St Ives Group in their submission of 12 October 2015 at paras 40-42 that encouraging part-time employment in preference to casual employment, where reasonably practicable, is important for meeting the modern awards objective of providing a fair and relevant safety net.

42. We support the proposal that communications regarding setting and changing rosters should be able to occur via any of a number of means including email, and that there should not any longer be a strict requirement for rosters to be placed on a physical noticeboard.
43. As the organisation of work evolves in this industry, especially in disability services under NDIS, more employees will work independently and remotely. Access to a central workplace is not always necessary or practicable for these employees. The award should expressly confirm that electronic communication is acceptable rather than continuing to impose last century communication arrangements on 21st century workplaces.

Claim by ABI/NSWBC to vary clause 10.3

44. Jobs Australia and NDS also support the proposal by ABI/NSWBC in relation to clauses 10.3.
45. The draft determination would have the effect of clarifying that variable, additional hours may be worked on top of the agreed minimum hours of work, without needing to resort to casual employment.
46. In our view the ABI/NSWBC draft determination would meet the needs of both employers and employees in facilitating flexible working arrangements in the context of NDIS.
47. To the extent that the ABI/NSWBC variation differs to the St Ives Group variation, Jobs Australia submits that they are not in conflict and a combined version could be drafted.

Are there alternative interpretations of the current clause 10.3 of SCHADS?

48. There is a potential objection that the interpretation of clause 10.3 taken by both St Ives Group and ABI/NSWBC is too narrow and that the clause does not, in fact, impose as much rigidity on hours of work as is claimed.

The “Narrow” Interpretation

49. On this view, St Ives Group and ABI/NSWBC have adopted a “narrow” interpretation of clause 10.3 which says that the requirements are absolute and do not permit, for example, setting agreed minimum hours with an expectation of reasonable additional hours. Indeed, arguably even rotating shifts and flexitime might not be permitted.
50. On the narrow interpretation, even where there is a predictable core quantum of weekly hours that can be guaranteed, if there are regular, but less predictable, hours available on top of that quantum, or if the start and finish times need to be rearranged periodically, the employer cannot provide the guarantees required by clause 10.3 (c). This means part-time employment is not available as an option, merely because some flexibility is required in the hours of work, even though there is a degree of reasonable predictability at the core of the job.

The “Broad” Interpretation

51. A potential objection to that narrow interpretation is that clause 10.3 is to be read in conjunction with other award provisions such as the provision in the same clause which permits hours to be changed by mutual agreement, as well as provisions such as clause 25.5 which provides a mechanism to change rosters, and clause 28 which allows the employer to require additional hours or overtime to be worked.

52. On this view, clause 10.3 (c) is intended merely to ensure the reasonable predictability required by clause 10.3(a), and does not necessarily require completely unchanging hours of work arrangements.
53. If the “broad” interpretation is correct, it is already possible to offer minimum hours contracts, subject to providing reasonable predictability.
54. This line of argument for a “broad” interpretation of 10.3 relies on the term “reasonably predictable” having a meaning that allows for some “operationally reasonable” level of variation, but balanced with a “reasonable degree” of predictability for the employee.
55. In other words, the predictability called for does not need to be absolute and unchanging. The setting of hours called for by clause 10.3 (c) operates in conjunction with other provisions in the award which allow for variation in the arrangement of hours of work (such as the overtime and rostering provisions).
56. Much of the core support work carried out in disability services under NDIS does in fact have a significant degree of predictability. The predictability is not absolute, but it could be argued that it is “reasonably predictable”.
57. At [50] above we considered a situation where there is a stable minimum quantum of weekly hours that can be guaranteed, but that available additional hours and the start and finish times were variable.
58. An example would be where an employer can guarantee a regular pattern of hours totalling at least 20 hours per week, but in addition there are potentially a total of up to 26 hours per week available, but which cannot be guaranteed because it is known that on average historically, some of the additional 6 hours are likely to be cancelled, or rearranged depending on individual client needs. In this example, the employee might work an average of 24 hours per week, but from time to time as few as 20 hours. The work is reasonably, but not completely, predictable.
59. The “broad” interpretation would say that in this example part-time employment is currently permitted provided the employee is provided with a contract that guarantees at least 20 hours per week with the actual start and finish times to be specified in a monthly roster, set in accordance with the rostering provisions of the award.
60. In effect, this interpretation of the current award provision requires an employer to “read between the lines”.

Reconciling differing interpretations of clause 10.3

61. Even if the “broad” interpretation were correct, it is not explicitly reflected in a straightforward reading of the award. It is open to an employer to rely on the plain wording of clause 10.3 and adopt the “narrow” interpretation.
62. It is undesirable that there are two possible interpretations of clause 10.3. This lack of clarity is in conflict with the modern award objectives around providing an effective safety net.
63. The reality of much of the support work carried out by employees under the SCHADS Award in the NDIS environment is that the hours of work need to be arranged flexibly. Fixing set hours in the contract of employment remains an option in some workplaces such as offices and some residential facilities, but is not an option for the growth area of individualised direct support work under NDIS.

64. We agree with St Ives Group and ABI/NSWBC that there is a need to vary clause 10.3 to ensure that the award explicitly enables employees to be engaged on a part-time basis in preference to casual, where there is a reasonable degree of predictability, balanced by the need to be flexible in the arrangement of hours of work in order to meet client demand.



IN THE FAIR WORK COMMISSION

4 YEARLY REVIEW OF MODERN AWARDS

Witness Statement: Ken Baker, Chief Executive NDS

Common Issues: Casual Employment (AM2014/197) and Part-time Employment (AM2014/196)

Part-time hours of work, changes to hours of work, rosters and entitlement to overtime –
NDIS and related issues

29 April 2016

Witness Statement of Dr Ken Baker AM

1. My name is Ken Baker and I am the Chief Executive of National Disability Services (NDS) which is the peak industry body for non-government disability services across Australia.
2. In that role, I provide information, representation and policy advice to government on disability and related issues.
3. I have worked in social policy and public affairs for over 30 years.
4. I am currently a member of the NDIS Independent Advisory Council and other committees advising on disability policy.
5. I make this statement in support of the application by NDS to vary the *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHADS Award). It is based on my own knowledge and inquiries, save where otherwise stated. Where I make statements based on information provided to me by others, I believe such information to be true.

About NDS

6. NDS has 1,100 members across Australia. Collectively, NDS members operate several thousand services for Australians with all types of disability.
7. NDS is the only organisation that represents the full spectrum of disability service providers. Members range in size from small support groups to large multi-service organisations and are located in every region of Australia.
8. NDS traces its roots back to 1945. It was founded by charitable organisations – many of them founded by the families of people with disability – that recognised the value of national representation. From an initial advisory council, the Australian Council for the Rehabilitation of the Disabled was established and it evolved into National Disability Services.
9. In 2008 NDS, Carers Australia and the Australian Federation of Disability Organisations formed an alliance and in 2011 founded the Every Australian Counts Campaign to promote a national disability insurance scheme. The strong campaigning of Every Australian Counts highlighted to politicians and the general community the chronic under-funding and disrepair of the existing system and the need for a new well-funded system responsive to the needs and choices of people with disability and their families.

The National Disability Insurance Scheme

10. Having campaigned hard for its introduction, NDS is a strong supporter of the NDIS. We are convinced that a service system that is responsive to the individual goals, needs and preferences of people with disability will boost their quality of life and their opportunities to participate in social and economic life.
11. The NDIS represents a major transformation of disability service organisations, with implications for every aspect of their operations, including their model of service

provision, financial management, marketing, the way they engage with their service users and their workforce.

12. The first stage of the NDIS was launched in July 2013 in four locations (the Hunter region in NSW, Barwon in Victoria, Tasmania for 15-24 year olds, and South Australia for young children), with trial sites in the ACT, Northern Territory and Western Australia commencing in July 2014. A year later, the NDIS commenced in Nepean Blue Mountains in NSW and this year it began in Townsville, Charters Towers and Palm Island in Queensland.
13. Roll-out of the full scheme will commence progressively from July 2016. Some 22,300 people with disability were provided with an NDIS plan by the end of December 2015, of whom fewer than 60 per cent were previously receiving government-funded services¹.
14. When the NDIS is fully implemented across Australia, 460,000 Australians with severe disability will benefit. Government expenditure on disability services will double from 0.5 to 1 per cent of GDP (\$22 billion in 2019-20).
15. The disability services market is growing. Some 2,200 organisation are now registered as providers with the NDIS. Most State Governments have plans to withdraw partially or fully from direct service delivery and to transfer services to the non-government sector, adding another dimension to disability industry restructuring.
16. NDS is providing support to the sector during the transition and in every state has a direct role in assisting organisations to understand the impact of the Scheme and make the changes they need to prepare for the NDIS.
17. In 2013-4, NDS led a national consortium that provided the Australian Government with an analysis of workforce supply, demand and utilisation in the trial sites; it included several reports that outlined policy and program responses to increase workforce sustainability under the NDIS.²
18. NDS has also managed multiple workforce readiness projects funded to support the NDIS trials. As a result of its research program, practical support to providers and ongoing direct engagement with the sector, NDS is acutely aware that providers are finding it difficult to deploy workers flexibly within current award settings and tight NDIS pricing.

Workforce management under the NDIS

19. A key feature of the NDIS is that funding and service delivery are focussed on the stated needs and preferences of the individual with disability. Previously, many providers used person-centred service planning within the programs they were funded to deliver. However, under the NDIS *only* those activities listed on a person's individual plan are

¹ NDIA *10th Quarterly Report to COAG*, December 30 2016 at www.ndis.gov.au

² NDS and Windsor and Associates (2014) *Roadmap to a Sustainable Workforce*, National Disability Services Report prepared for the Australian Government Department of Social Services (including six topic specific reports).

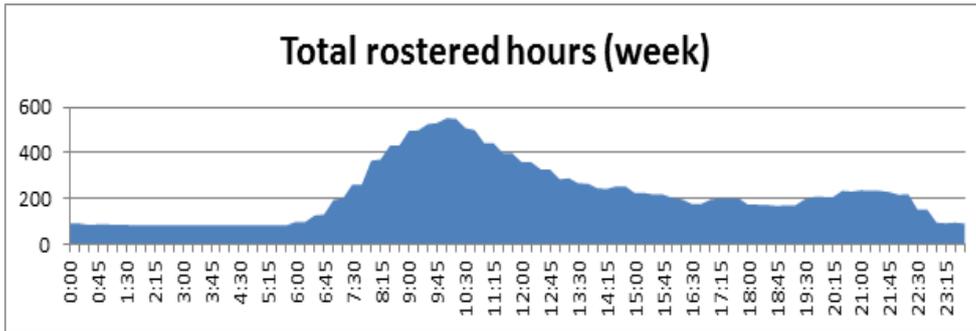
funded. The plan is not developed by the service provider, but by the person with disability, their family and carers and the National Disability Insurance Agency (NDIA) planner. The plan-holder then chooses the services they want for the various elements of the Plan. The power to purchase *rests with the participant and their family*.

20. Maximum prices are currently set by the Agency. The most common supports are specified in Plans and purchased on an hourly basis, though some allied health services, equipment purchases and other services are allocated a maximum amount or require the participant to tender quotations.
21. There are a number of business consequences. A service only receives payment *after* the service is successfully provided. There is minimal support for vacancy rates, inquiries and referrals and no-shows or cancellations. If an hour of service is not provided as per the Plan, a service provider will not be paid even if the support worker has been working in some capacity.
22. These tighter funding arrangements require far greater financial vigilance from services. Under previous state programs, governments often recognised the need to at least partly underwrite the financial viability of organisations. Under the NDIS, the risk is entirely with the disability organisation.
23. It should also be understood that client plans change, and can change at short notice. At the end of 2015, 30 months into the Scheme, there are according to the NDIA 15,134 second plans, 8,613 third plans, 444 fourth plans, and 20 fifth plans among participants.
24. The price per hour paid by the NDIA for one-to-one support of NDIS participants is very tight and based on some unrealistic assumptions, such as that a labour utilisation rate of 95% is achievable. In effect, the price assumes that workers spend just 5 per cent of their time on activities such as team meetings, supervision, professional development and travel outside a nominal allowance of 20 minutes per client. It assumes only five days of personal/carers and compassionate leave. Similarly no allowance is made for award requirements such as the additional week's annual leave for shift workers who work for more than 10 weekends per year, as specified at Clause 31.2 of the award.
25. This means that organisations have very little room to move financially, and indeed often report losing money on certain types of service delivery such as where travel time is longer than allowed.

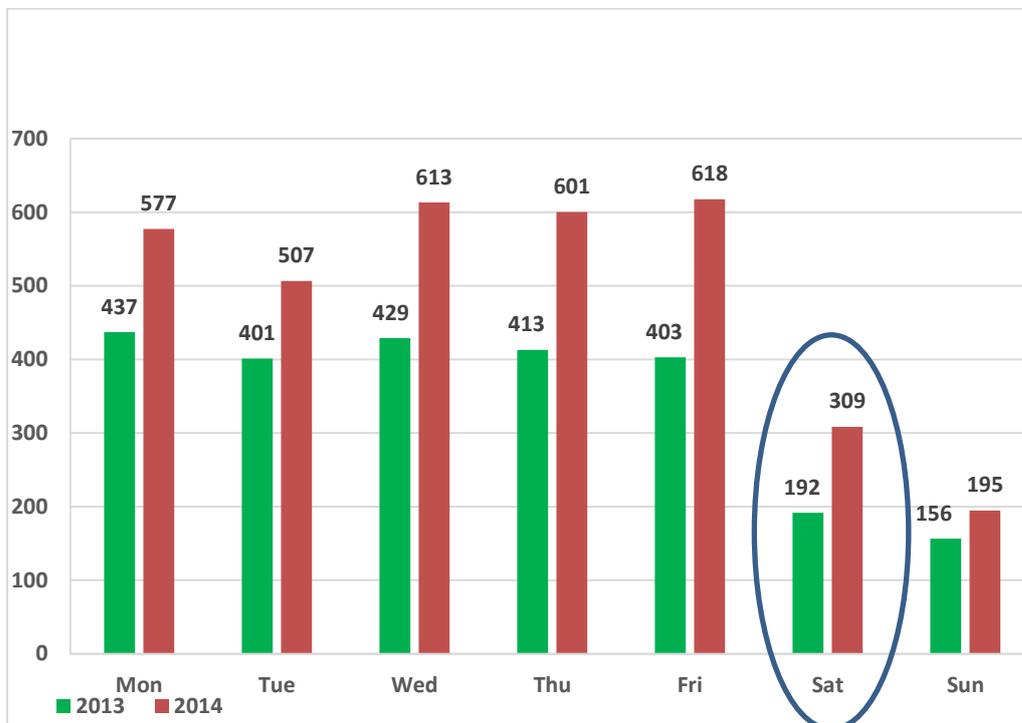
Changing patterns of service delivery under National Disability Insurance Scheme (NDIS)

26. Research and provider feedback tells us that service patterns and workforce patterns have changed in several ways under the NDIS. The following shifts are evident:

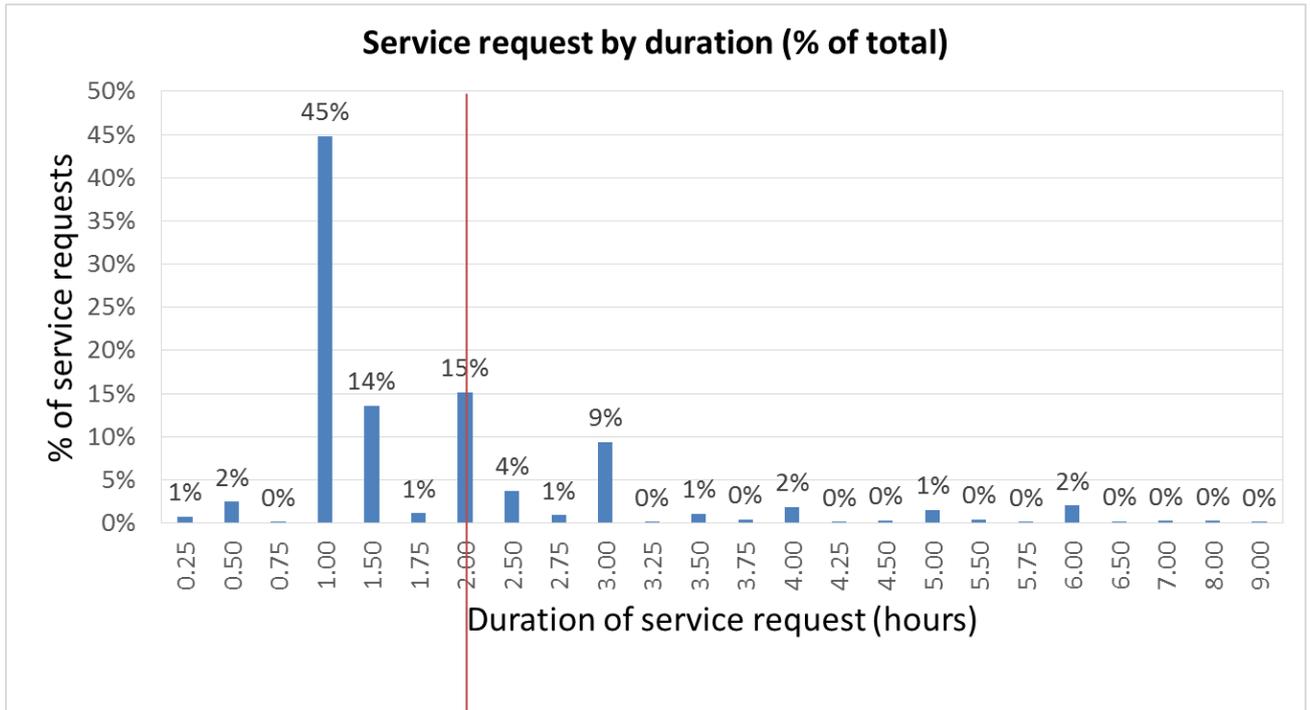
- a. more clients are seeking home and community-based services as opposed to centre-based services
 - b. there is an increased span of operating hours over the week, day and year and peak periods when services experience high demand from all clients
 - c. there is an increased proportion of short duration service requests and greater diversity in the type of supports requested
 - d. people with disability living in remote and regional locations are now able to obtain more support than pre-NDIS. This means there is an increase in service requests from clients who may not live near any other clients, making it difficult to roster complementary hours nearby for staff
 - e. there is less predictability in the volume and type of services clients request, more cancellations, and more requests for specific support workers, making rostering and workforce planning more complex and difficult.
27. The pattern of hours of work required by participants in the trial sites reflects a strength of the NDIS which is that participants are able to obtain supports from the worker they choose at times that best meet their needs, rather than at times that suit the administrative convenience of a provider. But the consequence for providers is that for much of the work that needs to be rostered for direct one-on-one support and community access, it is almost impossible to offer an employee set hours that are unchanging.
28. Feedback from NDIS trial sites indicates that, in response to client demand, rostering has become a 24 hour, 7 day/week process, not a business hours function. The issues that providers need to consider in a person-centred NDIS environment include:
- in the case of replacement workers where there are cancellations, who can work for whom?
 - have sufficient 'shadow shifts' (ie training shifts) occurred between that worker and that participant?
 - does the worker have the skills and expertise needed with the client?
 - who has availability and sufficient proximity to undertake the changed shift?
29. The graph below represents daily rostered hours from a large Victorian service organisation providing attendant (one-to-one personal) care in people's homes. It shows the typical bunching of hours during the morning and to a lesser extent evening, but also the need for staffing across the whole day and night. This is the pattern services operating under the NDIS are now experiencing where previously they offered most support during business hours.



30. The graph below shows the increased hours worked per day in three Barwon providers in November 2013 (soon after the start of the NDIS trial) and one year later, with the trial well underway. The red bars are November 2014 figures. The day with the biggest relative growth in hours from a low base was Saturday where the percentage increase was 60 per cent.



31. The graph below shows the length of service requests in one service provider that operates entirely within the Barwon trial site, as at October 2015. At this time, 78 per cent of requests were at or less than two hours which is the current period of minimum engagement in the SCHADS award. Nearly half were for less than one hour.



32. NDS is firmly committed to an equitable and fair industrial relations system that supports a high-quality not-for-profit sector and provides attractive employment conditions for a growing workforce. However, not-for-profit providers need also to be commercially competitive in the new disability market. It should be recognised that many new service forms are emerging in the major metropolitan markets which make award conditions hard to enforce by designating workers as independent contractors. NDS has identified 10 peer-to-peer platforms which mainly rely on this job type.

33. The *NDS Business Confidence Survey* of September 2015 found that while service providers overall are cautiously optimistic about the future, around one-third of organisations (31 per cent) believed that the risks that the NDIS presented to their organisation outweighed the opportunities.³ NDIS registered providers observed heightened competition from new organisations including for-profit providers as well as existing services.

34. In conclusion, the NDIS means that greater flexibility in workforce deployment is needed, and NDS believes that eliminating award barriers to this flexibility will assist the not-for-profit sector to be viable and responsive to the needs of clients.

Dr Ken Baker AM
 Chief Executive
 National Disability Services
 April 28 2016

³ The *NDS Business Confidence Survey* was undertaken by 424 providers in 2015, constituting a response rate of 24 per cent.



IN THE FAIR WORK COMMISSION

4 YEARLY REVIEW OF MODERN AWARDS

Witness Statement: David Carey, CEO ConnectAbility Australia

**Common Issues: Casual Employment (AM2014/197) and Part-time Employment
(AM2014/196)**

Part-time hours of work, changes to hours of work, rosters and entitlement to overtime –
NDIS and related issues

29 April 2016

Witness Statement of David Carey

1. My name is David Carey, and I am the Chief Executive Officer of ConnectAbility Australia a Hunter Region of NSW based disability service provider.
2. ConnectAbility Australia is a member of the peak body National Disability Services (NDS).
3. I am a member of the NSW State Committee of NDS.
4. I make this statement in support of the application by NDS to vary the *Social, Community, and Disability Services Industry Award 2010* (SCHADS Award).
5. I make this statement in support of the application by NDS to vary the *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHADS Award).
6. I make this statement on the basis of my own knowledge and inquiries, save where otherwise stated. Where I make statements based on information provided to me by others, I believe such information to be true.

About ConnectAbility

7. ConnectAbility Australia was founded in 1992 by community members and families to meet the needs of people with significant disabilities to provide opportunities to access community based resources, facilities and services.
8. The majority of people ConnectAbility Australia supports have significant or complex disabilities, including multiple disabilities, and experience substantial social and economic exclusion. Many are vulnerable, particularly people with little or no verbal communication, and those who lack family relationships.
9. ConnectAbility Australia advocates for the fundamental right of every person with a disability to live with equality of opportunity and without discrimination as set out in the Universal Declaration of Human Rights, and reflected in the 2010-2020 National Disability Strategy.
10. ConnectAbility Australia strongly endorses the principles and requirements of the National Disability Standards 2013, The NSW Disability Services Act 1993 and the United Nations Convention on the Rights of Persons with Disabilities to ensure that people with a disability share an equal right to live free from abuse, neglect or exploitation.

The National Disability Insurance Scheme

11. The National Disability Insurance Scheme (NDIS) launched in July 2013, following years of discussion about the need for a major reform of disability services in Australia, including the Productivity Commission report into the funding of disability services in 2011.
12. In NSW, where ConnectAbility Australia operates, the first stage of the NDIS began in the Hunter region on 1 July 2013.

13. From 1 July 2016 the NDIS will begin to be available across seven districts of NSW. The NSW state government estimates some 55,000 clients will transition in the 2016/17 financial year in NSW to the NDIS. NSW will be fully transitioned within two years. One year ahead of other states.
14. The NDIS is designed around insurance principles and is intended to provide funding for people with a disability to purchase the reasonable and necessary supports that they need to live an ordinary life.
15. The NDIS has fundamentally changed the way in which disability services are provided and funded. Previously, services were funded directly by State and Territory Governments, typically through block or individualised grants to service providers.
16. NDIS funding is provided to the person with the disability, who can decide where, how and from whom they wish to acquire their personal supports. In practical terms, this means that service providers such as Connect Ability Australia are only paid for services actually delivered, at the price determined under NDIS rules.

Services Provided by ConnectAbility Australia.

17. ConnectAbility Australia provides a range of services to people with a disability. These include in home support, community based support, centre based support, plan management, support coordination, travel/transport assistance, life skills development, household tasks, assist personal activities and participate in the community.
18. ConnectAbility provides support to approximately 200 participants. Of this number 130 have transitioned to the NDIS and we expect the remaining 70 to transition by June 30th 2016. Approximately 80% of our participants have chosen one- to-one support. Approximately 20% have chosen group support. Prior to NDIS approximately 70% of participants were on 1 to 1 and 30% in group programs. This is an increase of 10% 1 to 1 work within two years of operating under NDIS.
19. ConnectAbility Australia operates mostly within the initial trial sites of the Hunter region. This consists of Newcastle, Lake Macquarie and Maitland LGAs.

Funding

20. Outside of the trial site ConnectAbility Australia receives funding from the NSW government – Ageing Disability and Homecare. These are either block funding arrangements or individual funding as agreed to by the NSW government and paid directly to ConnectAbility Australia.
21. Approximately 65% of ConnectAbility's funding comes from individual participants that are funded by the NDIS and have chosen us as a providers of supports. Participants are given a list of authorised service providers and the participant and or family meet with providers to choose which provider best suits their needs. The choice of provider is totally up to the client and or family and we are conscious of needing to respond to their needs.

Changing support requirements

22. Where a participant chooses ConnectAbility Australia as their support provider we then draw up an individual service agreement that details the days and times the service is provided for. This is based on the NDIS approved budget for the participant. This agreement is signed off by the participant/family/guardian and ConnectAbility Australia.
23. Only when the agreement is signed and registered by the NDIS can paid services commence for the individual. Each claim (usually fortnightly) must be approved by the participant, family/guardian before an invoice can be lodged to the NDIS and payment given to ConnectAbility by the NDIS. ConnectAbility Australia submits claims (invoices) to the NDIS portal every fortnight for 130 participants. Each invoice is made up of multiple claims against approved clusters according to the individual's plan that is approved by NDIS - for services and dollar budgeted for up to one year.
24. The participant/family/guardian signs a service agreement that usually is for one year. If the participant decides after one month or say 6 months that they are no longer happy with the service, they can leave and sign with another provider. Although we have a notification period it is not legally binding. There are no costs or loss of funding to the participant if they choose to move provider.
25. Staff associated with a participant who moves at short notice or goes on holidays or has a period of illness requires us to redeploy the staff person. This is not easy if all other shifts are covered.
26. In some cases where a participant may request domestic assistance for 1 hour, this is the budgeted amount that appears in the participants NDIS plan. Therefore if the NDIS planner and participant agree to one hour domestic assistance, that is what the NDIS fund. In this case. This work is usually consists of cleaning the participants accommodation and we have participants request that a support worker help them get ready for bed. This removes the need for family to travel and put the participant to bed. We cannot meet the participant's request as the staff minimum engagement is 2 hours as per the SCHADS award. We then lose the participant's business.
27. Under NDIS we have restructured the way we roster staff to participants. Prior to NDIS participants had staff rostered to a program or group, but not often to an individual unless there were high needs and supports required. Under NDIS we roster by client not by staff, that is rostering of staff is based around individual requests and requirements. For example, we have a participant who likes fishing, so we match a staff person who also likes fishing. We have other families who request specific staff. We now have a database on staff hobbies and social pursuits in order to better match staff to participants.
28. Because of the matching requirement we employ along with staff availability the rostering process has become the most complex task we have to perform under NDIS. We originally had 6 staff (Team Leaders) manually developing rosters. We purchased a roster software for approximately \$30,000 to enable us to automate the process.

29. Unexpected events can also cause challenges under the NDIS arrangements. In April 2015 there was a severe storm cell in Newcastle. As a result we cancelled services for two days due to safety concerns. Under state funding this would not be an issue as it is block funded. Under NDIS we lost two days revenue as service is not performed and therefore cannot be claimed.
30. Currently under NDIS the breakdown of participant support hours are: -
- a. 13% 0-2 hrs per day
 - b. 15% 2-4 hours per day
 - c. 65% 4-6 hours per day
 - d. 7% >6 hours per day
31. In other words 28% of our shifts are four hours or less. Prior to NDIS, under state funding and agreements, 95% of participants received 4-6 hours of support per day. Hours worked were typically 9am to 3pm. Only 5% of participants received less than 4 hours support at any one time.
32. ConnectAbility Australia has 103 community support workers. The breakdown of employment types is:
- a. Casual female = 18
 - b. Casual male = 7
 - c. Fulltime female = 1
 - d. Part time female = 50
 - e. Part time male = 27
33. Our workforce consists of 69% female and 31% male. Approximately 25% of our workforce is casual and 75% permanent part time and full time. Most of our Part Time workers are 20 to 25 hours per week. We have a diverse workforce that has both younger and older workers and workers from multicultural backgrounds. The business is under a lot of pressure to remain financially viable in an NDIS environment. We are aware that our workforce does not reflect the norm with current employment in an NDIS environment. We would prefer to retain good workers with permanent positions, but as the NDIS rolls out we may be forced to re-evaluate our business model and give serious consideration to increasing our casual workforce in order to remain a solvent business.
34. Where participants require a short shift ConnectAbility Australia attempts to find a cluster of shifts to meet both operational requirements and the staff persons contracted hours in order to make it financially viable for both Staff and ConnectAbility Australia. This process has become more difficult as the NDIS has given choice and control to participants and not service providers. If we are to remain in business we need to meet the customers' requirements and demands. This means that for example some families may ask for female staff, or staff who have hobbies/sporting likes in common. They may ask for staff from specific cultural backgrounds. We now advertise for staff who besides

core requirements have specific interests in for example sport, music, fishing etc to meet the participant's needs.

35. Being under NDIS has seen an increase in weekend and evening activities with clients. Where short shifts are involved for example domestic assistance on the weekend it has become increasingly difficult to find staff willing to work on weekends for short periods of time. Prior to NDIS there were no weekend and evening supports under State funding.
36. About 95% of the support worker role involves face to face support for participants and if other participants are not seeking support at that time it is not possible to create other work for the worker to perform to fill a longer engagement; and
37. Under NDIS, the employer is not able to charge the participants for the extra wage costs that arise when the support provided is for a shorter period than the minimum engagement. It is a requirement of NDIS that only the time actually spent with the client is paid for by the client and so the employer loses money and is unable to charge extra to compensate.

Roster requirements

38. In relation to roster requirements I am aware that under the SCHADS award employers are required to post a roster two weeks in advance and are required to provide seven days' notice of changes. In the NDIS environment we receive at least five shift cancellations per day from the participants for various reasons. Where twenty four hours' notice is given by the participants we cannot make a claim against the NDIS participant as that is the notice period under NDIS terms and conditions. This is at odds with the seven day notice period required by the award. As per the previous comment on rostering, a large amount of time is still wasted by Team Leaders re-grouping staff to meet their employment contract each day. This is over and above normal rostering using our software to gain efficiencies.
39. Participant cancellation and extreme weather events under NDIS means no income for the organisation. We are then required to re-assign staff at the organisations cost. We are not for profit and most not for profits do not have the reserves to buffer themselves for regular or irregular events.

Shift Workers

40. Under NDIS costings for staff working in supported accommodation there is only an entitlement to four weeks annual leave per year. This is contrary to the 5 weeks entitlement under the SCHADS award for shift workers. NDIS currently only allow for two days sick leave per year which is contrary to the ten days required by the SCHADS award. Both these shortfalls are currently subsidised by the employer to ensure employment conditions are properly met.

David Carey

David Carey
Chief Executive Officer
ConnectAbility Australia
28th April 2016