



ASU Submission

Joint Standing Committee on the National Disability Insurance Scheme

Scheme Implementation and Forecasting for the NDIS

Submitter:	Emeline Gaske, Assistant National Secretary
Organisation:	Australian Services Union
Address:	116 Queensberry Street Carlton South, Victoria, 3053
Phone:	03 9342 1400
Fax:	03 9342 1499
Email:	
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1. The ASU

The Australian Services Union (ASU) is one of Australia's largest unions, representing approximately 135,000 members.

ASU members work in a wide variety of industries and occupations in both the private and public sector. Relevantly, the ASU is the largest union of workers in the social, community and disability services sectors. Our members predominantly work in non-government, and not-for-profit organisations that support people experiencing or at the risk of experiencing crisis, disadvantage, social dislocation, or marginalisation. Of specific relevance to this Inquiry, the ASU represents workers who are employed in the community who are employed in sectors including, but not limited to:

- Disability services, including residential care.
- Community services, including:
 - Aged care services
 - Mental health services
 - Community transport services
 - First Nation People's services
 - Family support services
 - Health and mental health services
 - Crisis accommodation for women, children, families, young people, and men
 - Sexual assault, domestic and family violence services
 - Youth and child protection services
 - Out of home care for children and young people at risk
 - Homelessness, housing, and tenancy services
 - Alcohol, gambling and other drugs of addiction and rehabilitation services
 - Migrant and settlement services
 - Community legal services
 - Community and neighbourhood services
- Local government home and community care ('HAC')

The ASU is pleased to provide this submission to Joint Standing Committee on the National Disability Insurance Scheme into current Scheme implementation and forecasting for the NDIS. Our submission is focused on the Term of Reference e. ii. Assumptions, measures, and methodologies used to forecast and make projections about the scheme, participants, and long-term financial modelling.

2. Recommendations

1. NDIS pricing assumptions should be reviewed and set such that the NDIS price:

- (a) reflects the reality of disability support work (including appropriate classifications for the work performed, adequate time allocated for tasks, administration, supervision, training etc.);
- (b) can meet minimum Award entitlements and the National Employment Standards (including leave, overtime and the new minimum payments for disability support workers);
- (c) supports secure jobs in the sector ;

- (d) supports on-the-job training and professional development of workers, including the establishment of A Portable Training Entitlement System for the Disability Support Services Sector as outlined in The Australian Institute's report¹.
2. Introduce regulations that ensure all providers (including platform providers) pass on SCHDS Award minimum wages and safeguard minimum wage protection for disability support workers.
 3. Provide portable entitlements to paid annual leave, personal leave and long service leave.
 4. The NDIS should receive additional funding for Test, Trace, Isolate and Quarantine (TTIQ) measures as an immediate priority.

3. The NDIS should be properly funded

The most significant and immediate issue facing the NDIS is pricing. Inadequate NDIS prices for key support items are suppressing the payment of higher wages and flattening career pathways for workers. Capped prices undervalue the workforce which impacts the attractiveness of the sector. Inadequate NDIS pricing has also led to an increase in insecure employment (high rates of casual employment and part-time contracts with low guaranteed hours).

We appreciate this Committee has acknowledged the above concerns and made recommendations to the Australian Government over a number of years. A properly funded NDIS will not only be able to meet demand for service, but will be able to attract and retain the necessary workforce that is required to deliver quality supports to participants. A properly funded NDIS will have an enhanced capacity to become a key growth sector.

Without a well remunerated and skilled workforce, the NDIS will simply not deliver the quality supports people with disability deserve.

4. Wage suppression and regulation

Wage suppression

The introduction of the NDIS has entrenched minimum rates of pay as the standard for wages in the sector. This is because employers cannot charge participants more than the National Disability Insurance Agency price-cap, which is calculated based on minimum wage rate assumptions.

Additionally, the assumptions underpinning funding for wages in the NDIS are often wrong. In particular:

- Prices wrongly assume that Disability Support Workers (DSW's) will be covered by lower award classifications. Prices do not reflect the growing independence and autonomy of DSW's as providers scale back supervision due to budget constraints or the higher skilled work demanded by NDIS participants.
- Prices are also tied to the SCHDS Award minimum rates of pay and the SACS Equal Remuneration Order however there is no requirement for providers to actually pass these rates onto workers. Instead, providers deliberately underpay or misclassify their workers and

¹ The Australian Institute, A Portable Training Entitlement System for the Disability Support Services Sector [online] <https://australianinstitute.org.au/report/a-portable-training-entitlement-system-for-the-disability-support-services-sector/>

pocket the difference. This severely limits the pay that can be offered to the disability support workforce.

- Award rates are intended as a 'floor' on wages and conditions. However, the NDIS cost model uses the Award to impose a 'ceiling' on wages. There is no capacity for providers to pay above the Award minimum rates of pay.
- Employees have little incentive to increase their skills because there is no prospect that this will be rewarded by additional pay. The fixed rates of pay and limited prospect for career progression diminishes the attractiveness of the sector.
- The price model does not recognise the time needed to deliver quality services to NDIS participants. DSW's have inadequate time to build relationships with participants, follow up on participant's needs, coordinate and communicate with supervisors and other workers, complete paperwork, debrief and handover between shifts. This results in low quality of care.
- Prices do not cover the costs of supervision, professional development, induction and training.
- Because the prices are set too low, they encourage the fragmentation of working time, casualisation, under-classification and underemployment. This undermines attempts to expand the workforce.

We note this Committee in its NDIS Workforce Interim Report recommended the Australian Government ensure "that prices reflect the 'true' cost of service delivery, including training, supervision, case management and other non-client-facing work"². Unfortunately, the Australian Government has merely noted this recommendation.

Until the Australian Government addresses the impacts of the current pricing arrangements for disability support work and until pricing provides well remunerated, quality secure jobs, the NDIS will be at risk.

Funding Misuse

There are currently no regulations in place to ensure all providers (including platform providers) pass on SCHDS Award minimum wages and safeguard minimum wage protection for disability support workers. The ASU is aware some providers, particularly platform providers, are undercutting the minimum wage for workers by deliberately underpaying or misclassifying workers and pocketing the difference.

The Government can easily fix this problem to ensure minimum wage protection for disability support workers. To address provider skimming on wage claims to the NDIA the Government could consider:

- Using the NDIS Quality and Safeguards Commission regulation of registered providers to include requirements to ensure NDIA pricing guidelines are passed onto workers. This however would not prevent this issue occurring in unregistered providers which are the fastest growing part of the sector.
- Using the NDIA itself to enforce the passing on of minimum wages to workers via its pricing controls. The NDIA in other price areas, such as high intensity supports, already requires providers to guarantee they are passing onto workers the high wage rates provided and can request evidence of this from providers.

² Joint Standing Committee on NDIS, NDIS Workforce Interim Report

- Using the NDIS Act and its regulations to provide a clear regulation which closes the loophole explicitly where providers claim for disability support work prices but does not require them to then pass that onto their workers in relation to the minimum wage rates.

Assumptions about non-contact time are inadequate

The price model does not recognise the time needed to deliver quality services to NDIS participants. Disability support workers have inadequate time to build relationships with participants, follow up on participant's needs, coordinate and communicate with supervisors and other workers, complete paperwork, debrief and handover between shifts. This results in low quality of care.

- A recent report by the University of New South Wales (UNSW)³ found that on average front-line workers contributed 2.6hrs per week of unpaid work to complete essential functions of the work including: case notes, handovers, reports and communication with colleagues and other service providers regarding clients supports.
- The UNSW report found 64% of respondents agreed or strongly agreed they felt under pressure to do more with less time.

Prices do not cover the cost of induction and training.

- The UNSW report found that 26% of respondents received less than 1 day of training in the last 12 months
- The UNSW report found many respondents did not receive enough training to do their job effectively.

Unfunded award entitlements

The NDIS Disability Support Worker Cost Model recognises that under the SCHADS Award a permanent worker's ordinary hours of work will be 38 hours per week and as such they must be paid for 20 days of annual leave. The assumptions and therefore the cost model do not provide pricing for shift workers who under the NES are entitled to five weeks leave for annual leave.

The Cost Model also does not take into consideration overtime. The NDIA states the current pricing arrangements make businesses more efficient, but we believe it drives providers away from permanent employment, as they view part-time and full-time employment as cost prohibitive, given the potential overtime costs for these employment types.

The recent UNSW report⁴ found 41% of respondents worked at least one hour unpaid in the last week, with workers on average working 2.6 unpaid hours a week completing administration such as writing up client notes or providing extra support for clients.

Tight pricing arrangements are leading to excessive unpaid overtime for workers. By working unpaid overtime, workers pay rates are being pushed well below the minimum award rates and are bearing the consequences of inadequate prices for disability support.

New award entitlements

The Fair Work Commission has determined that the SCHDS Award should be varied to provide new employment conditions for the disability sector from 1 July 2022. These will significantly change the way that work is performed in the disability sector.

³ University of New South Wales, Working in new disability markets: A survey of Australia's disability workforce, May 2020 [Online]
https://www.researchgate.net/publication/341448295_Working_in_new_disability_markets_A_survey_of_Australia's_disability_workforce

⁴ University of New South Wales, Working in new disability markets: A survey of Australia's disability workforce, May 2020 [Online]
https://www.researchgate.net/publication/341448295_Working_in_new_disability_markets_A_survey_of_Australia's_disability_workforce

The variations include:

- engagements will be limited to two in any day, with the possibility of working three engagements by agreement;
- an 2-hour minimum payment for each engagement;
- an allowance of \$17.53 where an employee works 2 engagements in a day or \$23.30 where they work three engagements;
- day workers will be entitled to overtime if they work between the hours of 8.00 pm and 6.00 am;
- new minimum engagements for on-call work.

Funding arrangements will need to be updated to reflect these new conditions.

5. Portable entitlements and professional development

Portable entitlements

Disability support workers are no less committed to their employer or job than workers in other industries. Conditions such as high rates of casual labour and contract work coupled with short engagements and multiple employers in this sector make it very difficult to stay in the one position for extended sufficient period of time to accrue long service leave entitlements.

DSWs should be able to carry their entitlements with them when they change employers so they are able to build on these entitlements. Implementing a portable entitlements scheme can help improve employee retention rates as well as attract new workers to the sector.

DSWs truly deserve the respect and recognition of long service as they are the people caring for our communities most vulnerable, in often very difficult working conditions. It is only fair that their commitment is recognised, as it is for workers in other industries such as teachers, nurses and police who can accumulate portable entitlements.

A portable entitlement scheme should not only include long service leave but should be expanded to include other types of leave, including sick leave, annual leave and redundancy protections for all workers including those on insecure work arrangements in the industry.

NDIS pricing already allows for the maximum utilisation of leave, it just needs to be structurally set up in a way that will allow workers to accrue and carry entitlements with them as they continue to work for multiple NDIS participants and providers. We believe the NDIS is a great pilot for a national portable entitlements scheme as it is Commonwealth funded. With a highly casualised workforce, we see portable entitlements as an important part of the solution to addressing the poor retention rates in the sector.

Ongoing professional development

The NDIS pricing model has had significant consequences for training and development in the sector and for the capacity of providers to participate actively in providing a high standard of training and supervision – or any training at all. There have been cut-backs in the time allocated for training; team meetings have all but disappeared; supervision has been severely curtailed; and large numbers of casual workers are being newly employed with almost no supervision at all. Many workers and providers have told us that support staff are not paid to attend regular team meetings or attend training and development activities.

There is no requirement for any training or professional development in the NDIS despite it being a heavily regulated system in many other respects. For example, there is a Code of Conduct, and workers can be fined or banned from working in the sector if they breach it, but there's no requirement that workers undertake any accredited training program about the Code.

Not only is there no requirement for training, there is no ongoing professional development for the sector, a sector that is meant to provide a range of services to meet the diverse needs of people with disability. How can the NDIS reach its promise when DSWs are not supported with access to quality accreditation and training to do their job?

The NDIS pricing model needs to urgently be amended to reflect the components of quality service delivery and support including on-the-job training and professional development of workers.

The NDIS price model must set an appropriate price floor that provides for adequate service levels and fair and decent pay and conditions for workers. Wages cannot be lower than the SCHADS Award rate and must include:

- Applicable Equal Remuneration Order rates of pay
- correct classification stream and level
- allowances
- penalties and loadings
- maximising permanent employment (Fulltime and Part time) rather than casual or fixed term contracts or rolling contracts

An appropriate price floor must provide for accrual of portable leave entitlements including:

- Annual leave including 5 weeks' annual leave for shift workers.
- Personal leave
- Long service leave
- Redundancy protections
- Paid Parental Leave
- Paid family and domestic violence leave

An appropriate price floor must include adequate overhead costs for all workers, regardless of the nature of their employment, including:

- Professional supervision
- Provisions for onboarding of staff – induction, buddy shifts
- Provisions for regular team meetings
- Provisions for ongoing professional development and training – including covering the cost and time of attaining any qualification requirement

6. Additional funding for TTIQ is an immediate priority

The National Cabinet has agreed to a National Plan to ease restrictions across jurisdictions when 70% and then 80% of the adult population are fully vaccinated.

The National Plan is based on health advice from the Doherty Institute about how to open up safely and transition out of lock-downs as vaccination rates rise. The Doherty Institute's plan says that as restrictions ease, we will need to have effective Test, Trace, Isolate and Quarantine (TTIQ) measures into the future alongside high vaccination rates to keep safe and COVID cases down. In particular, vaccinated workers will still need to TTIQ in order for roll out of the National Plan to be effective.

The disability sector is funded and regulated by Commonwealth agencies. Disability workers cannot work from home while isolating from a workplace exposure to the virus unlike many others.

If you are a disability support worker who is exposed to COVID and need to TTIQ, you should be paid for the full isolation period without losing any income or having to use your annual or sick leave. It is unconscionable to expect that a workforce that has been at the frontline of the pandemic should forfeit its leave accruals to implement the National Plan. Furthermore, the NDIS is the most casualised sector within the care economy. Hence paid TTIQ leave should be extended to all casual workers in the NDIS and not be a support for only permanent workers.

This can be achieved quite simply via NDIS pricing mechanisms. Already the NDIS has created new price categories in the pandemic for cleaning expenses, PPE and to support worker vaccination leave in jurisdictions where vaccines are mandated. A new line item for worker isolation payments should be created to support optimal TTIQ under the National Plan. This should be a line item that NDIS providers can claim for each instance of TTIQ per worker. They should then be obliged to pass that onto worker as a new industrial entitlement of isolation leave via their payroll systems.

Disability workers have a high risk of exposure to COVID-19 because they are obliged to work in close proximity with participants.

Without paid isolation leave, NDIS services will struggle to function because if vaccinated workers lose income, or lose all of their accrued personal leave as a result of TTIQ, this will exacerbate the workforce retention and recruitment challenges the sector already faces. With jurisdictions opening up in October, it is important that we develop an effective TTIQ leave policy and payment for the NDIS as a matter of urgency.

7. Conclusion

The current NDIS pricing arrangements reflect systemic undervaluation of disability support work. The pay and conditions of workers in the disability sector has a direct correlation with the quality, availability and diversity of the support offered to people with a disability. A system of poorly paid workers with no training or professional development opportunities cannot give each client the quality individualised supports they need, nor will it attract the workforce required to meet demand for person centred services.

We call on the government to review the NDIS pricing model to ensure the NDIS will not only maintain but attract disability workers to the sector.

Finally, the ASU along with our frontline workers, would like to appear before the Committee to give additional evidence and to represent our concerns more fully.