



ASU Submission

Joint Standing Committee on the
National Disability Insurance Scheme

NDIS General Issues Inquiry

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: egaske@asu.asn.au

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Contents

The ASU.....	3
Executive Summary.....	3
Recommendations	3
Pricing and Workforce issues in the disability sector	4
Ending wage theft and underpayment of workers.....	5
Supported independent living and Specialist disability accommodation participants	6
Portable entitlements for disability support workers.....	7
Procurement of disability services outside the NDIS.....	9

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. The ASU is the largest union in the disability sector and the National Disability Insurance Scheme ('NDIS').

We played a leading role in the Fair Work Commission's review of the *Social, Community, Home Care and Disability Services Award 2010* ('SCHADS Award'). More than half of all ASU members are women.

Executive Summary

NDIS workers provide invaluable support to over 500,000 people living with a disability. A highly skilled, qualified, professional, and sustainable workforce is essential to delivering high quality services, choice and control to people with a disability.

NDIS pricing arrangements for supports delivered by disability support workers need significant reform. The current pricing arrangements for the NDIS encourage disorderly, fragmented and exploitative working arrangements to the detriment of participants, providers and workers. The poor working conditions in the sector must be changed or the NDIS will struggle to recruit and retain the hundreds of thousands of skilled and motivated staff it desperately needs. We propose the inclusion of portable leave and training arrangements to encourage workers to stay in the sector.

Recommendations

1. NDIS pricing assumptions should be reformed so that the NDIS pricing arrangements:
 - a. encourages permanent employment, including full-time employment;
 - b. ensures disability support workers are not misclassified as home care employees;
 - c. ensures disability support workers are not under classified at Level 1 of the SCHADS Award;
 - d. holds providers accountable to passing on the correct award wage;
 - e. reflects the true cost of disability support work (including appropriate classifications for the work performed, the intensity of support, adequate time allocated for tasks, administration, supervision, training etc.);
 - f. can meet minimum Award entitlements and the National Employment Standards;
 - g. assists participants living in SIL and SDA when there is a vacancy in their household or family unit.
2. The Australian Government should establish a portable entitlements scheme, both for training and development, and for paid leave to undertake training for all disability support workers.
3. The Australian Government should establish a new national portable leave scheme for disability support workers. Leave entitlements to include long service leave, annual leave, sick and carer's leave as well as redundancy protections.
4. All grants, tenders and commissioning of services in the disability services sector, should be

underpinned by a minimum ‘floor price’. This procurement policy should also promote secure work arrangements linked to longer term funding.

Pricing and Workforce issues in the disability sector

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 SCHADS 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 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.

The Joint Standing Committee on the NDIS in December 2020 recommended the Australian Government facilitate an independent review of the funding model for the NDIS and ensure that prices reflect the ‘true’ cost of service delivery, however this recommendation was only noted by Government.¹

Until 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.

¹

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/workforce/Interim_Report/section?id=committees%2freportjnt%2f024501%2f75199

Ending wage theft and underpayment of workers

Funding arrangements for disability support services are tied to the minimum wage levels provided by clause 16 and the classification system in Schedule B of the SCHADS Award. The SCHADS Award is a safety net instrument that provides the legal minimum pay and conditions for the disability sector. The minimum rate of pay for each classification is the minimum wage for the type of work in Australia. For each type of worker in each industry, there is one applicable award and one applicable rate of pay.

Hireup told the Victorian Inquiry that it pays award wages, matching the support requested to an Award level. However, Hireup casual workers have told the ASU that they believe they are not paid properly and are classified as home care workers in the Award rather than disability support workers. This is a difference of several dollars per hour, and effectively excludes them from the benefits of the Equal Remuneration Order that the Fair Work Commission applied to the disability sector, and which is funded by the NDIA in its pricing assumptions.

Mable advised the Victorian Inquiry that it has coded a safety net hourly rate into its platform. Workers purportedly use the Mable platform to negotiate both scheduling and remuneration. However, a review of Mable's own website makes it clear that its sample rates that it encourages contractors to charge are dramatically below the accepted industry minimum wage for disability support workers under the SCHADS Award.

All workers in this sector – no matter how they are employed, deployed, or engaged – should be entitled to the same basic safety net of SCHADS Award conditions as all other disability support workers. This includes wages at a rate no lower than Level 2 disability support worker rates in the SCHADS Award (SACS stream) and associated allowances, penalty rates and other work-related expenses. This would set a minimum industrial safety net and standard for all workers in the sector and give NDIS participants the assurance that they were paying their support workers properly and not inadvertently engaging in wage theft. It would level the playing field so that all providers can compete on quality – not exploitation of people – when providing services to participants.

It should be an enforceable condition of NDIS registration, and of receiving NDIS funding, that disability service providers pay their staff the correct award wage - being, at minimum, level 2 of the SACS stream of the SCHADS Award.

You cannot recruit and retain workers to the disability sector if there is a growing number of providers underpaying their workers, and you cannot lift wages across the sector if compliance with the minimum award rates of pay is poor. Furthermore, you cannot build a stable and qualified workforce without building greater recognition in the award classification structure for more complex support worker roles, and specialisations that exist beyond SCHADS Award level 2, into levels 3 and 4.

ASU Recommendation: The NDIS Quality and Safeguards Commission be adequately resourced to enable proper access to workers and enforcement of relevant industrial legislation and instruments, for all workers within the NDIS, regardless of the nature of their employment.

ASU Recommendation: The NDIS Quality and Safeguards Commission introduce an enforceable condition of NDIS registration that requires NDIS providers pay their staff the correct award wage in accordance with the SACS stream of the SCHADS Award.

Supported independent living and Specialist disability accommodation participants

Supported independent living (SIL) and Specialist disability accommodation (SDA) are NDIS funded supports to provide assistance with daily living. There has been ongoing concerns around NDIA pricing supports for SIL & SDA where some participants may not be receiving appropriate funding for reasonable and necessary housing supports.²

Many SIL and SDA participants live in accommodation arrangements where they live in a household with either related or non-related persons where they are supported by consistent long-term staff. Participants who live together for many years and have the same ongoing workers have plans that result in NDIS prices remaining the same and rolling over each year.

This means when there is a change that occurs in a household, such as the death of a household member, transition of a participant to another location, the rollover funding approach does not take into account the cost-of-living crisis that can occur. For example: a reduced household may lead to a rise in rent, however there is no rise in the disability support pension. This can often lead to the dissemination of a household unit and the staff dispersed to other services.

NDIS pricing assumptions dehumanise the ‘household’ or ‘family unit’ that exists for participants in SILs. Assuming NDIS plans for SIL participants are purely individual doesn’t take into account their connection to their household members and the connections to staff who all form part of social support systems.

Participants should not be disadvantaged due to a death, vacancy or decisions made without their support system consulted. Current NDIA pricing supports that allow providers to claim a support for up to 28 days upon vacancy does not consider individual participants circumstances.

Case Study; When 4 become 3

Participants A, B, C and D lived together for over 5 years in a rental property supported by a national disability provider. Prior to this A, B and C had lived together for 20 years. The staff who also play a vital role in the social and psychological supports for the participants have worked in this home since A, B, C and D lived together, some have been with A, B and C since they first lived together. They are what would be considered by Centrelink, the department of health (particularly during COVID restrictions) and amongst themselves, as a family unit or a household.

A, sadly passed away roughly 2 months prior to the organisation presenting the situation of change. It was presented to staff that the service was operating in deficit and had been doing so prior to A’s passing. With A’s passing the ongoing costs were rising such as rent, amenities and cost of living expenses. It was deemed the service could no longer operate the way it was and with costs set to rise, rent was the biggest expense.

B, C and D had all had an NDIS review that saw their plan roll over with the same amount of funding. While indexation was included in each plan, unfortunately the consideration of shift maintenance (or operational costs with one less participant), the need for continuity of service, and other costs (covered by government through non-NDIS renumeration) is not factored in.

² https://assets.summerfoundation.org.au/pdf_offload/2022/04/SIL-costs-and-impacts-Summer-Foundation-Policy-Position-Statement.pdf

A deficit in the household expenditure accompanied with roll over plans not being reflective of the household make up is somewhat extraordinary. Any other household or family unit would contextualise and look at the entire composition before implementing changes or lack of changes to household budgets. This is not the case for NDIS participants.

The welfare of participants (one who has SDA funding) and continuity of service while grieving the loss of A has not been factored in by NDIA. The conversations had with staff during consultation on change demonstrates that the organisation is considering not just staff but the household dynamic but also the financial changes that will continue to exist. Not all organisations would take the same approach to a financial deficit.

The consideration for the role of staff and their role as key supports and support systems for the remaining participants B, C and D was also factored into the rosters and redeployment opportunities for the staff to remain with the participants. The NDIA pricing guides, practice standards and NDIS funded plans don't look at the social connections or household compositions the rest of society takes as usual or part of life. In negating these factors during plan reviews and the current economic climate dehumanises NDIS participants and their consistent support staff who are their own unique household or family units.

Fortunately, this national organisation halted and took time to review their existing and emerging vacancies prior to dispersing the participants and staff. The vacancies that were finalised are one block a part, this meant participant D (who is SDA funded) moved into a home with others. C and D (SIL funded) remain together, moving into a service with two other participants. The geographical location of the two new properties meant that the three can still stay connected through weekly dinners and visits as well as having their existing staff rotate amongst the two new services. This outcome would be unlikely for other NDIS participants who find themselves in similar circumstances.

ASU Recommendation: The Australian Government should review NDIA pricing supports to assist participants living in SIL and SDA when there is a vacancy in their household or family unit.

Portable entitlements for disability support workers

Portable training and development scheme

The ASU has been campaigning for a portable training and development scheme for disability workers for nearly a decade.

In December 2020, the Joint Standing Committee on the NDIS recommended "the Australian Government review options to develop a national registration and accreditation scheme for disability support workers, as the product of a co-design process with relevant appropriate people. This should include developing national benchmarks for skills, qualifications and competencies which reflect the diversity of people with disability, and which are co-designed by appropriate industry bodies, people with disability and representative organisations, support workers and unions, and other key stakeholders".

An earlier inquiry into the Market readiness for provision of services under the NDIS recommended "the NDIS Quality and Safeguards Commission should review options on how to ensure the NDIS

workforce can access funded training, including considering the introduction of a portable training entitlement system".³

Only in 2023 have these recommendations been enacted with the 2023 NDIS Review Paper: Building a more responsive and supportive workforce⁴ confirming our findings in our [report](#) A Portable Training Entitlement System for the Disability Support Services Sector that there is a need for such a scheme. The NDIS Review has recommended that a portable training scheme be trialled and "should be developed in close consultation with care and support workers, employers and participants/clients."⁵

As evidenced by the NDIS Review trial there is already goodwill and sector unity to establish a portable training scheme. Government must act now and work with the ASU and other stakeholders to establish a permanent portable training entitlements scheme.

Portable leave scheme

Over the years the Joint Standing Committee on the NDIS has recognised the disability workforce is beset by chronic workforce issues that has resulted in staff dissatisfaction and high turnover. One way of reducing this turnover and incentivising employees to stay in the sector is to establish a Portable Entitlement Scheme.

Portable long service leave already exists for disability sector workers in the ACT, Victoria and Queensland and will soon be established in South Australia. These schemes exist because state governments who have responsibility for long service leave have recognised that the disability sector is designed in a way that encourages workers to change jobs frequently as participants needs and supports change, yet their service to the sector itself over time is not recognised. A national sector-wide long service leave scheme should be introduced.

The NDIS Review Paper: Building a more responsive and supportive workforce⁶ saw value in portable arrangements for sick and carer's leave to help with early retention issues. The NDIS Review has recommended that a portable sick and carer's leave scheme should be trialled. A portable leave scheme would have a significant impact on service quality and stability for participants, as it would encourage recruitment and retention of the workforce through access to worker entitlements within the fragmented NDIS landscape.

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

Government must act now and work with the ASU and other stakeholders to establish a national portable leave scheme.

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https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024501/toc_pdf/NDISWorkforceInterimReport.pdf;fileType=application%2Fpdf

⁴ NDIS Review: Building a more responsive and supportive workforce [Online] <https://www.ndisreview.gov.au/resources/paper/building-more-responsive-and-supportive-workforce>

⁵ Ibid.

⁶ NDIS Review: Building a more responsive and supportive workforce [Online] <https://www.ndisreview.gov.au/resources/paper/building-more-responsive-and-supportive-workforce>

ASU Recommendation: The Australian Government should establish a portable entitlements scheme, both for training and development, and for paid leave to undertake training for all disability support workers.

ASU Recommendation: The Australian Government should establish a new national portable leave scheme for disability support workers. Leave entitlements to include long service leave, annual leave, sick and carer's leave as well as redundancy protections.

Procurement of disability services outside the NDIS

Outside the NDIS itself, the Government directly commissions disability services to support people with disability navigate the NDIS and other services. This includes the NDIA's contracted Partners in Community Program, and several programs provided by the Department of Social Services (DSS) including funding for advocacy and representative organisations for people with disability. Workers providing these services are employed by NGOs and the ASU is their union in every jurisdiction.

Impact of the NDIA and DSS procurement model on workers in the broader disability services and advocacy sector

Governments argue that competitive tendering encourages 'efficiency', and the 'best' will win tenders, leading to improvement in service quality by providing users with 'choice' about the services they access. The ugly reality is that competitive tendering has led to a downward pressure on disability services sector funding, particularly on labour costs. Competitive tendering among grant funded services has directly led to:

- A significant proportion of employees in the sector being engaged on a part-time, fixed term contract or casual basis.
- There is almost non-existent access to paid overtime.
- There is a high turnover of employees due to short grants and contracts.
- Short term funding grants and contracts result in very limited access to long service leave (except in states like the ACT, Victoria and Queensland which have implemented portable long service leave schemes for community sector workers)
- Low wages mean limited accumulation of superannuation benefits.
- There are very high levels of unpaid work.
- Little or no training, or employees undertaking unpaid training in the employees' own time.
- Little or no professional (clinical) supervision
- Little or no non-work support (training leave, Paid Parental Leave, Family and Domestic Violence Leave, COVID leave etc)
- Little or no end-of-employment support (redundancy, outplacement etc)

A clear case in point demonstrating the impact and implications of competitive tendering is the role of the Local Area Coordinator (LAC). Not for Profit organisations compete for tenders that are offered in grant cycles to deliver local area coordination services. The wages and conditions offered to their employees vary considerably between these providers as they compete to win available contracts. With wafer thin margins on all NDIS tenders, there is very little else that can be cut other than wages.

From conception, the role of the Local Area Coordinator (LAC) has been both critical and central to the fundamental principle of ensuring choice-and-control to people with disability, their families, and communities. The NDIA website sets out the role of the Local Area Coordinator that makes clear

their central and critical role in coordinating services and ensuring genuine access, choice-and-control for people with disability.⁷

In practical terms the LAC is the one-stop professional contact for people with disability and their families as they try to navigate the NDIS, as well as for those people with disability and their families who are not NDIS participants. This is highly skilled, emotionally, and physically demanding work. LACs are also responsible for ensuring the integrity of the system, providing their participants with at least three options for providers and services and taking whatever action is necessary to ensure that people with disability are assured of genuine choice with accountability and transparency when engaging services.

Most LACs are employed on a fixed term basis, with short term funding contracts. It is common in the sector for organisations that employ LACs to lose their funding to another provider that offers a lower labour cost as part of the tendering process. At these times, the skilled and experienced workers are sometimes employed by the newly funded organisation, but often with a different hourly rate and an increased workload. This is also very disruptive for NDIS participants and their families.

In response to this deteriorating situation arising from competitive tendering, the ASU has proposed that all tenders awarded by NDIA and DSS to disability coordination and advocacy services should be based upon a *floor price* below which no tender will be accepted.

This would mean that rather than a ‘race to the bottom’ by organisations, competing for vital funds by cutting back on essential workforce expenses, all tenders would be required to include funding provision for basic industrial standards. This new floor price will act to provide organisations and their employees, who are themselves helping vulnerable people and communities to survive and rebuild, with job security, protection when they are ill, injured or their employment is ended.

A floor price for government funding will encourage workers in the sector to develop a career and so support workforce development, sector stability and a better trained and qualified workforce. A floor price below which no organisation can tender will encourage organisations in the sector to collaborate and share resources, working together rather than against each other in an endless competitive spiral downwards. This approach is therefore also in the best interests of people with disability, their families, and communities. We propose a model floor price, based upon six elements:

1. Wages for all workers, cannot be lower than Federal Award (SCHADS Award) rates including:

- Annual minimum Award wage increases as determined by Fair Work
- Correct classification steam and level
- Allowances
- Penalties and loadings

2. Provision will be made in the price for accrual of portable leave entitlements including:

- Workers' compensation
- Annual leave including 5 weeks annual leave for shift workers.
- Personal leave
- Long service leave
- Paid Parental Leave
- Paid family and domestic violence leave (due to commence for all employees, regardless of the nature of their employment in February 2023).

⁷ <https://www.ndis.gov.au/understanding/what-ndis/whos-delivering-ndis/lac-partners-community>

3. Adequate overhead costs for all workers, regardless of the nature of their employment, including:

- Provisions for adequate supervision ratio depending on nature of service.
- Professional (clinical) supervision
- Provisions for onboarding of staff – induction, buddy shifts
- Provisions for regular team meetings
- Provisions for ongoing professional development and training
- Provisions for Workplace Health and Safety Representatives at a reasonable ratio to be trained and perform their work in accordance with legislation.

4. End of contract considerations for all workers, who do not receive a casual loading, including:

- Redundancy and notice requirements in case of contract not renewed
- Outplacement services.

5. Continuity of service provisions including:

- Reflecting recently proposed changes to the Fair Work Act, NDIS Price should be modelled on maximising permanent employment (Fulltime and Part time) rather than casual or fixed term contracts or rolling contracts.

6. Providers required to comply with industrial law, including:

- Requirement to consent to arbitration in contract.
- Capacity for disputes to be raised with the relevant funding body if industrial entitlements are not followed.

Competitive tendering has led clearly and directly to a significant and consistent downward pressure on disability services sector funding, particularly on labour costs. This has undermined the provision of services to NDIS participants and is a major obstacle to the delivery of the NDIS promise of choice-and-control for those participants.

ASU Recommendation: All grants, tenders and commissioning of services in the disability services sector, should be underpinned by a minimum ‘floor price’. This procurement policy should also promote secure work arrangements linked to longer term funding.