



ASU Submission

National Disability Insurance Agency

Annual Pricing Review 2021-22 Consultation Paper

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Organisation: Australian Services Union

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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 a leading industrial party in the 4 yearly review of the Social, Community, Home Care and Disability Services Award 2010 (**'SCHDS Award'**).

Executive summary and recommendations

NDIS pricing arrangements are in need of 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 NDIS system must recruit several hundred thousand workers over the next three years to meet demand. The poor working conditions in the sector must be changed or the NDIS will struggle to recruit and retain the skilled and motivated staff it desperately needs.

The pricing arrangements do not account for basic minimum legal entitlements and make permanent employment costlier for the employer than casual employment. The Fair Work Commission has significantly varied the SCHDS Award to improve working conditions for employees in the sector. Providers will need significant support to adapt to the new normal, and pricing arrangements will need to be changed to account for the new entitlements.

Additionally, the sector needs significant funding to meet the challenges of 'COVID Normal'. Disability workers are significantly more likely than the general public to be exposed to COVID-19, and are more likely than the general public to need to isolate. Our members report that they have exhausted their paid annual leave, paid personal leave and paid long service leave entitlements to cover their income while they are isolating.

The NDIS Disability Support Worker Cost Model (**'DSW Costs Model'**) has a significant impact on workers in disability sector. It is important that the voice of employees in the disability sector, as distinct from employers and participants. The ASU should be a participant in the working group reviewing the costs model.

Recommendations

1. NDIS pricing assumptions should be reformed so that the NDIS pricing arrangements:
 - a. encourages permanent employment, including full-time employment;
 - b. 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.);
 - c. can meet minimum Award entitlements and the National Employment Standards (including minimum payments, paid leave, overtime and the new minimum payments for disability support workers); and

- d. supports 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 report.¹
2. Provide portable entitlements to paid annual leave, personal leave and long service leave.
3. The NDIS should receive additional funding for Test, Trace, Isolate and Quarantine (TTIQ) measures as an immediate priority.
4. The DSW Cost Model must include funding for 10 days paid Family and Domestic Violence Leave.
5. The ASU should be invited to participate in the working group examining the DSW Costs Model and the implications of the variations to the SCHDS Award.

Minimum legal entitlements

DSW Cost Model does not accurately reflect the cost of minimum legal entitlements of employees in disability services.

Existing Award Conditions

An analysis conducted by the ASU shows the DSW Cost Model fails to price: 1 week’s additional annual leave for shift workers, overtime, tea breaks and compassionate leave. The failure to account for these entitlements is significant. Employers are obliged to pay these entitlements even if they are unfunded. This means that casual employment is more cost effective than permanent part-time or full-time. This probably contributes, in part, to the unusually high rate of casual employment in the NDIS system.

Entitlement	SCHDS Award/NES	DSW Cost Model 2021-22
Annual Leave	Ordinary worker - 20 days	Permanent worker - 20 days
	Shift worker - 25 days	<input checked="" type="checkbox"/>
Annual Leave Loading	Ordinary worker - 17.5%	Permanent worker - 17.5%
	Shift worker – 17.5% of their ordinary rate of pay; or the weekend and shift penalties the employee would have received had they not been on leave during the relevant period (whichever is greater)	<input checked="" type="checkbox"/>
Overtime	Available	<input checked="" type="checkbox"/>
Higher duties	Available	<input checked="" type="checkbox"/>
Tea breaks	All workers - 10 minute paid tea break in each four hours	<input checked="" type="checkbox"/>
Compassionate leave	2 days paid	<input checked="" type="checkbox"/>
Community service leave – Jury Service	10 days paid leave with make-up pay	<input checked="" type="checkbox"/>

In particular, the failure to provide for reasonable overtime is a significant barrier to employing permanent part-time and full-time employees. This limits the attractiveness of the sector to current and potential employees *while also* limiting the flexibility available to providers and participants.

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

Reasonable overtime is a normal and necessary part of any working relationship. It should be accounted for in the pricing model.

Partial Accounting for Overtime

Further, the DSW Cost Model only partially accounts for the payment of allowances.

Entitlement	SCHDS Award/NES	DSW Cost Model 2021-22
Allowances	Over-time Meal allowance First aid allowance On call allowance (all higher than 1% of standard rate in the SCHDS Award) In addition SCHDS Award allows for vehicle allowance or travel time	1% of base salary <input checked="" type="checkbox"/>

New Award Conditions

Further, the Fair Work Commission is implementing significant changes to the SCHDS Award. This will fundamentally change how work is organised in the disability sector. Importantly, providers will no longer be able to narrowly tailor an employee's hours of work to match exactly with the services provided to client. Additionally, employers will only be permitted to roster two unpaid breaks in any day or shift. This is a genuine opportunity for the sector. It allows time for administrative tasks, training, and supervision. But the funding arrangements will need to be changed as well.

Current Provision	New Entitlement
No minimum payment period for part-time employees.	A two hour minimum payment for each engagement on a day or shift.
Unlimited unpaid breaks between shifts.	One unpaid break maybe rostered, except that an employer and an employee may agree that there will be two unpaid breaks.
No over-time for part-time day workers who work outside of the span of hours.	All work performed outside the span of hours for day worker will be paid at overtime rates.
No allowance for broken shifts.	A allowance of 1.7% of the standard rate for a 1-break shift and 2.25% of the standard rate for a 2-break shift.
No laundry allowance for personal clothing.	A 32 cent laundry allowance if personal clothing is soiled or damaged on shift.
No special arrangements for work outside of an employee's ordinary hours that does not require a recall to a workplace.	New minimum payments for remote work (such as supervisory tasks) and guaranteed overtime for remote work performed between 8.00pm and 6.00am.

Other pricing considerations

High intensity supports

Pricing arrangements for higher intensity supports should be reviewed.

In principle, the ASU supports pricing arrangements that:

- grade supports by intensity,

- apply higher pay rates to higher intensity supports, and
- Provide for additional supervision, support, and training for workers who provide those supports.

We recognise the valuable work of the NDIA in developing pricing arrangements for higher intensity supports and reflecting those arrangements in the DSW Cost Model. However, there are some clear deficiencies in the current arrangements.

Supported Independent Living ('SIL')

The DSW Costs Model was first applied to SIL services in July 2020. In our experience, the application of the DSW Costs Model threatens the viability of SIL services, particularly those that specialise in higher needs participants.

Case Study – Disability Services Australia ('DSA')

DSA is a leading NDIS provider in NSW. It is known to specialise in high intensity supports and accommodation for people with disability with complex behavioural or medical needs.

DSA went into voluntary administration in August 2021. KPMG's administrators November 2021 report to creditors notes that the application of DSW Cost Model to SIL services from July 2020 impacted on the ability of DSA to cover costs associated with services to complex participants.²

This begs the question that if the major provider of high intensity SIL in NSW went into administration within 12 months of the DSW Cost Model applying to them, what needs to be urgently adjusted to this model to meet the contemporary best practice needs of participants with complex behavioural and / or medical needs? We do not want DSA to be the first of many other major organisations providing higher intensity supports facing financial crisis under the DSW Cost Model.

Changes to participants' plans

National Disability Services has observed that participants are regularly downgraded from complex (DSW C and D) to standard (DSW A) (see the '*Mind the Gap Report*').³ which makes the higher intensity workforce an unstable one for providers to manage and support, meaning those jobs are less secure and available to our members seeking career advancement and stability in the NDIS.

Any new pricing arrangements for higher intensity supports should build on existing models.

Training and professional development are necessary to fulfil quality and safety requirements

There needs to be a greater focus on the quality of supports and services provided under the NDIS. Currently 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.

Workers and people with disability will be better served by a NDIS Code of Conduct that is underpinned by a skill and capability development approach within an environment of training and professional development.

The NDIS DSW cost 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

² See page 7, of the [KPMG report into Disability Services Australia administration](#).

³ See page 3, National Disability Services, [Mind the Gap Report](#).

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.

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? Accordingly, the ASU commissioned research by the Australia Institute Centre for Future Work to develop a portable training entitlement system for NDIS workers. A copy of the report can be viewed [here](#).

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.

Portable entitlements

The characteristics of employment in the Community Services Sector are widely documented as low paid; largely female; and sustained by short term funding arrangements - resulting in short term tenure for employees; often with multiple employers, but paradoxically long-term service within the industry.

A portable entitlements scheme would go some way towards recognising some of the challenges inherent in working in the disability support sector. Portable entitlements mean that all workers can access entitlements regardless of how they are employed, where they work, or if they change jobs.

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 and can form part of the DSW Cost Model.

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.

Domestic and family violence leave

The NDIS DSW cost model should include an entitlement to ten days of paid domestic and family violence leave.

Paid domestic violence leave provides survivors with an opportunity to undertake legal and medical appointments, relocation of home, school, childcare and other essential measures to address their situation without the risk of losing their job or income at a time when access to reliable income has been proven to be one of the most significant determinants in the decision to leave a violent relationship and remain away.

While it is difficult to quantify the extent to which the incidence of family and domestic violence is reduced by the availability of paid domestic violence leave, it is impossible to deny that access to paid leave to support escaping domestic violence significantly assists to reduce that incidence.⁴

By including 10 days paid domestic and family violence leave in the DSW cost model the NDIS will be sending a high profile and authoritative message that domestic violence is an important problem, and that it supports the broader change in attitudes and expectations that are essential for reducing domestic violence – and ending it.⁵

⁴ J Stanford Economic aspects of paid domestic violence leave provisions The Australia Institute Centre for Future Work (December 2016)

⁵ Ibid.