



ASU Submission

Department of the Prime Minister and Cabinet

Draft National Strategy for the Care and Support Economy

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

Date: 26 June 2023

Contents

The ASU.....	3
Executive summary	3
Recommendations	3
The Draft Strategy must not hold up sectoral reform	4
Pricing and Workforce issues in the disability sector	4
Ending wage theft and underpayment of workers.....	5
Government should actively engage with FWC on SCHADS Award	6
Portable entitlements for disability support workers.....	7
Rostering rights.....	8

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

The aged care, disability care and support, and veteran's care and early childhood education and care sectors serve distinct groups of people with different needs. Road maps and action plans must be developed and implemented to serve the unique needs of each sector and ensure the distinct skills and responsibilities for workers within each sector are recognised and valued.

The Draft National Care and Support Economy Strategy ('**the Strategy**') correctly identifies ongoing issues for our members as low wages, undervaluation and recognition of care and support workers, the need for good job design, the importance of secure work and the lack of career pathways and progression. Workers in the care and support economy deliver a high level of skill and professionalism that must be valued by professional rates of pay.

Recommendations

1. 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.
2. The NDIS Quality and Safeguards Commission introduce an enforceable condition that requires NDIS providers pay their staff the correct award wage in accordance with the SACS stream of the SCHADS Award.
3. The Government should implement Recommendation 15 from the Final Report from the Senate Select Committee on Work.
4. The Australian Government should establish a portable entitlements scheme, both for training and development, and for paid leave to undertake training for all care and support workers.
5. The Australian Government should establish a new national portable leave scheme for care and support workers. Leave entitlements to include long service leave, annual leave, sick and carer's leave as well as redundancy protections.
6. The Government should implement Recommendation 5 from the Interim Report as well as Recommendations 21 and 24 from the Final Report from the Senate Select Committee on Work and Care.

The Draft Strategy must not hold up sectoral reform

We are concerned that the Strategy proposes medium to long term solutions to immediate problems. Long term planning is important, but the development of the Strategy must not hold up the roll out of other urgent reform initiatives for the care and support economy. Furthermore, there must be separate strategy for the broader social and community sector.

The Strategy Roadmap lists pricing and market design at Horizon 2 with delivery expected between June 2024 and June 2026. NDIS pricing arrangements for supports delivered by disability support workers need significant reform now. The current pricing arrangements for the NDIS encourage disorderly, fragmented and exploitative working arrangements to the detriment of participants, providers and workers. NDIS Pricing Arrangements must be reformed to provide clear rules to ensure that disability support workers are paid the appropriate minimum legal rates of pay for the work they perform. The NDIA must set clear expectations that employers will pay their employees the correct minimum rate of pay for the work that they perform.

Pricing and Workforce issues in the disability sector

For Government to develop a Priority Workforce Initiatives Action Plan it is important to understand current workforce issues occurring in the disability sector that are leading to an insufficient workforce without suitable skills and training.

The NDIS is one of the most important social reforms in the history of Australia. 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.

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.

The NDIS pricing arrangements have entrenched minimum rates of pay as the standard for wages in the sector because NDIS prices caps are set by reference to the legal minimum rates of pay applicable to disability support workers.

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.

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.

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.

Government should actively engage with FWC on SCHADS Award

Government should actively engage with the Fair Work Commission and support applications to vary the *Social, Community Home Care and Disability Services Industry Award ('SCHADS')* to provide for better classification and wage structures, and stable and predictable rosters. The Fair Work Commission should also consider the regulation of unpaid work-related travel time, administrative responsibilities, the provision of training, and minimum shift call-in times.

The Australian Government should implement the Senate Select Committee on Work and Care Final Report recommendation¹:

The Australian Government support a priority application to the Fair Work Commission (FWC) through the newly established care and community sector expert panel, for award wage increases for all care sectors including early childhood education, disability care and aged care, and all sectors covered by the relevant childcare, and Social, Community Home Care and Disability Services Industry (SCHADS) Awards.

In order to address pay equity and to stem the flow of workers out of the care sector, such a priority application should draw the FWC's attention to:

- the need to reconsider and appropriately reward classifications, wage structures, conditions and entitlements across all care sectors and awards, and under the SCHADS Award. This consideration should include appropriate relative pay across the care sector reflecting the nature of work and qualifications, skills and experience. It should also recognise the impact of gender on caring roles and the unique skills, variability and value of care work.*
- the appropriateness of care sector employees receiving payments for work-related travel time, administrative responsibilities and engagement with essential training; and*
- the appropriateness of a minimum shift call-in time across the care sector (for example, a four-hour minimum or another identified suitable minimum period).*

ASU Recommendation: The Government should implement Recommendation 15 from the Final Report from the Senate Select Committee on Work.

¹ Select Committee on Work and Care Final Report [online]
https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Work_and_Care/workandcare

Portable entitlements for disability support workers

Portable training and development scheme

The Strategy identifies the limited focus to support and encourage providers and workers to engage in continuous training and professional development and outlines how Government will work towards finding opportunities to better support professionalisation of the care and support economy.²

The NDIS Code of Conduct and the NDIS Practice Standards, supported by the NDIS Framework, set expectations for the way supports and services under the NDIS will be delivered. In particular, they require NDIS providers and support workers to have the skills necessary to deliver the supports that they are providing to individual participants.

However, there are currently no mandatory minimum qualifications required for the provision of services to NDIS funded participants. In 2017 the ASU commissioned the Centre for Future Work to develop a proposal for a portable training scheme for NDIS workers. The proposal sets out that a portable training scheme be an entitlement of all disability support workers regardless of employment arrangement. Importantly, it also proposes that paid time for support workers to undertake this training be built into the portable training scheme.

The recent NDIS Review Paper: Building a more responsive and supportive workforce³ makes reference to the ASU's commissioned [report](#) and confirms our findings that there is a need for a portable training 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."⁴

As evidenced by the NDIS Review trial there is already goodwill and sector unity to establish a permanent portable training scheme.

Portable leave scheme

The Strategy recognises the care and support 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 workforce⁵ saw value in portable arrangements for sick and carer's leave to help with early retention issues. The NDIS Review has

² Australian Government, Draft National Care and Support Economy Strategy 2023 [online] <https://www.pmc.gov.au/sites/default/files/resource/download/draft-national-care-and-support-economy-strategy-2023.pdf>

³ NDIS Review: Building a more responsive and supportive workforce [Online]

<https://www.ndisreview.gov.au/resources/paper/building-more-responsive-and-supportive-workforce>

⁴ Ibid.

⁵ Ibid.

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 the care and support Economy.

The introduction of a portable training and development scheme and national portable leave scheme for disability support workers should not be held back if other sectors in the care and support economy are not ready for this initiative or it has not been flagged as a priority issue.

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 care and support workers.

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

Rostering rights

A large proportion of our members who work in the care and support economy have caring responsibilities, and it is becoming increasingly impossible for these workers to balance those responsibilities with their employment due to unpredictable rosters and employers adopting rigid approaches to flexible work arrangements.

For example:

- Shiftwork rosters being published only 7 days in advance, with large numbers of roster changes right up to 48 hours before the shifts.
- Extreme changes to already published rosters (for example by moving someone from a morning to a night shift) with only 48 hours' notice.
- Workers with caring responsibilities only being able to get any kind of predictability that allows them to manage their caring responsibilities if the employer agrees to a Flexible Work Agreement (FWA).
- Employers requiring employees to apply for a new FWA every year, with no guarantee that if you have obtained an FWA in the past you will be able to again.
- Employers refusing large numbers of requests for FWAs every year on spurious "operational" grounds.
- Employers terminating FWAs on 4 weeks notice during the life of the agreement, leaving the employees with just 4 weeks to arrange alternative caring arrangements or otherwise being forced to leave their employment.

Women require meaningful opportunities to shape their working and caring lives. The lack of genuine choice around rostering arrangements that are often characterised by short, fluctuating hours, and precarious shifts make it difficult for women to access child care services and can have a negative impact on women's participation in the workforce.

The Senate Select Committee on Work and Care recognised these barriers and made recommendations to the Australian Government to ensure employers implement rosters that are predictable, stable and focused on fixed shift scheduling as well as genuinely considering employee views on the impact of any proposed roster changes. Furthermore, the Committee recommended the Government support a review by the FWC into current industrial awards to ensure employees have a 'right to say no' to extra hours without negative consequences.⁶

ASU Recommendation: The Government should implement Recommendation 5 from the Interim Report from the Senate Select Committee on Work and Care as well as Recommendations 21 and 24 from the Final Report from the Senate Select Committee on Work and Care.

⁶ Select Committee on Work and Care Final Report
[online]https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Work_and_Care/workandcare