

**Report to the National Disability Insurance Agency**

**National Disability Insurance Scheme**  
**Provider Workforce**

To begin we note that we have attended three meetings convened by Minister Shorten. In addition, we have benefited from meetings with people from the Agency. Further, we have held meetings with a number of stakeholders; unions, service providers and users. Should we have any further consultations we will submit a supplementary report.

Our Terms of Reference provides: ***“Conduct research into where and how discrepancies are arising in the pay and conditions of workers within the NDIS provider workforce – in particular due to differences in classification under the Social, Community, Home Care and Disability Services Industry Award 2010 (SCHADS). (for example, due to pay differences between aged care and disability workforces under Appendices B and E)”***

It is important to observe at this stage that the Award was made in an environment where the NDIS did not exist. It follows that, as many have told us, the award is not fit for purpose. This is clear from the interaction between Schedules B and E.

It is clear where the ambiguity and uncertainty exists in the current circumstances. The SCHADS Award contains a definition for the Home Care Sector: *“means the provision of personal care, domestic assistance or home maintenance to an aged care person or a person with a disability in a private residence”*. In addition, the wage schedule describes a home care employee in two sections. One being for disability care and the other being for aged care.

It can be seen that the current award descriptions bring into focus disability care both in the definitions (Clause 3) and in the wage schedule (Clause 17). The job description for a Home Care Employee in Schedule E is rather generic although there are some specific references such as in Classification E.2.3 where it gives as a function among other more domestic assistance duties, the *monitoring of medications and fitting and changing catheters*.

The top pay point for a level 2 employee is \$981.60 (as at 1 July 2023)

Turning now to the definition of the Social and Community Services Sector (clause 3). It provides:

*“means the provision of social and community services including social work, recreation work, welfare work, youth work or community development work, including organisations which primarily engage in policy, advocacy or representation on behalf of organisations carrying out such work and the provision of disability services including the provision of personal care and domestic and lifestyle support to a person with a disability in a community and/or residential setting including respite centre and days services”*

The job descriptions (Schedule B) of a social and community services employee are again generic but contain many references to the *delivery of disability services*. The wage rates (clause 15) contain rates for a general social and community services employee and an employee in crisis accommodation.

As a result of decision of the Fair Work Commission in relation to an equal remuneration order [PR525485], it would appear that the highest rate for an employee at level 2 is \$1335.29.

This produces a difference of \$353.69 per week which is not insignificant. There are other variables, but this in itself is concerning. If a comparison is done with pay point 2.3 the rate is \$1300.60 a difference of \$319 per week. Adding the qualifications and supervision responsibilities are variables in placing people in the correct classification but they do not eliminate the gap. For example, even using pay point 3 in schedule E as the comparator.

From our inquiries there are two different views. One is that it is about 10% of employers who are using Schedule E instead of Schedule B. The view from Unions is that the usage of Schedule E is much higher. It is difficult for us to provide a precise figure without exhaustive investigations which would not be for us. However, to the extent that there is any failure to pay the correct wages that should be remedied, and we will propose a course of action.

The other matter raised with us is the assertion that a number of employers are using Schedule B but only the first pay point and not the second pay point. We have heard that an employer uses the first pay point for the first twelve months and then moves the person to the second pay point. Unions advise that some employers keep people on the first pay point for an extended period.

Whilst the unions have a view about the use of the first pay point, it is available, but we would agree that it should not be a long term pay point for employees.

It is clear to us that an application should be made to the Fair Work Commission by the parties to remove this uncertainty and perhaps ambiguity. It would no doubt assist the Commission if the users of the system were aware of the proceedings and could elect or otherwise to seek to make submissions.

We now turn to the second Term of Reference:

***“Provide advice to the Department of Social Services (DSS) and the National Disability Insurance Agency (NDIA) on whether these discrepancies are the result of awards not being applied correctly – whether because of employer confusion or any other reason.”***

It appears to us that the award itself permits the use of both Schedule B and E. Having said that, it is our view, it is understood generally that Schedule B should apply. Indeed, the pricing structure from NDIA uses Schedule B Pay point 2.3 as a basis of payment to employees for work performed. As this is known, it is hard to accept that payment under Schedule E, whilst arguably possible, is made out of ignorance.

It seems uncontroversial that the pricing structure which is used by NDIA is Schedule B Pay point 2.3. This is said to be an average rate used for reimbursement purposes taking into account lower and higher rates. We are not privy to the distribution of the data to see how and average or median is calculated. It would not be appropriate for any employer to knowingly claim an amount which uses Schedule B of the award and yet pay employees under Schedule E.

It is instructive that all employers we have spoken to hold the view that any change to the wage’s obligation should be accompanied by a price review by NDIA. We think this might be sensible and provide NDIA an opportunity to clarify a number of issues. See for example the latest Ability Roundtable Report (August ’23).

In making these comments we note that enterprise bargaining in the sector is very low, and the any bargains do not stray far from the award wage rates.

The next TOR provides:

***Provide advice to DSS and the NDIA on action that might be taken in order to:***

- ***assist the NDIS provider workforce to better navigate complexities under the SCHADS Industry Award, and***
- ***prevent or respond to the making of payments not authorised by the awards.***

In our view NDIA should establish and financially support a small interim communication working group to begin an education programme on the appropriate application of the SCHADS Award. The communication working group should be comprised of representatives of unions, employers and users and it should jointly prepare materials for employers and employees. We added the users because in our view a contribution by persons with disabilities would permit greater transparency and enhance the concept of choice and control. This may be particularly important for self-managed funds.

Given the nature of the workforce it may necessary to give consideration to the impact on Culturally and Linguistically Diverse (CALD) employees.

We think that no more than 6 participants (with power to co-opt for special interest areas) would be necessary, and it should only have a life of six months. We say six months because change will be necessary to the award and the operation of the way in which providers claim on behalf of clients. Users would also benefit from greater transparency of the process. This will provide time to either complete that work or have it well in train.

In relation to the second dot point, we are of the view that if a provider is claiming on behalf of a client a fee which comprehends level 2 pay point of Schedule B, then the claim form should include an attestation that the employee performing the work is paid under Schedule B and not less than the pay point 2.1. In simple terms, if the claim comprehends that rate under schedule B, then the appropriate rate should be paid to the employee. We add that employers should be put on notice that this approach will be implemented in six months. This will give employers the opportunity to make representation to the NDIA that the pricing structure needs revision.

The attestation approach is recommended as it should then highlight where problems might exist. It would be a difficult task to establish problem areas through reviewing all businesses.

To support the attestation approach, we also recommend that a small resource be established in each state to randomly audit attestations. It should be a condition of billing

NDIA that random, unannounced inspections can take place to ensure that employees are being paid under Schedule B if claims are based upon that Schedule. Consideration will have to be given to the sanction to be applied if an employer is found not to have paid a person correctly and yet attested to the correct payment.

This may also be considered by the interim communications working group.

We turn finally to the last TOR:

***Where relevant, identify intersections with broader workforce issues -including attraction, retention, terms and conditions, regulation, professional development.***

We have concerns about employees working for multiple employers. This might evidence problems with rostering, hours of work and earning for employees. Such mobility also mitigates against structured training and other support mechanisms with more full-time/part-time employment.

However, there is a tension between the needs of the client's choice and control and the needs of employees for employment security, training, and fair and adequate earnings. For example, the difficulty arises when consideration is given to the needs of the client rostering needs and the employees rostering needs.

In our view this is why the award should be reviewed to make it fit for purpose and hear from the parties (and perhaps users) as to the balance between flexibility and secure employment. Government would need to be involved as it is the "banker" for the sector.

We conclude by thanking those at the Agency that assisted us in our work and the various participants who gave valuable time to us in completing our task.



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