

Health Services Union

SUBMISSION

Joint Standing Committee on the National
Disability Insurance Scheme

NDIS Workforce Inquiry

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About the HSU

The Health Services Union (HSU) is one of Australia's fastest growing unions with nearly 90,000 members working in the health and community services sectors across the country.

Our members work in aged care, disability services, community health, mental health, alcohol and other drugs services, private practices and hospitals. Members are health professionals, paramedics, scientists, disability support workers, aged care workers, nurses, technicians, doctors, medical librarians, clerical and administrative staff, managers and other support staff.

HSU Disability Coverage

The HSU is the primary disability services union in Victoria and Tasmania, representing support workers at the frontline of service delivery. Furthermore, the HSU represents allied health professionals in every jurisdiction, including those engaged in providing services to NDIS participants.

Additionally, we represent a number of disability support workers in New South Wales, Western Australia and the Australian Capital Territory, however, the HSU is not the primary union for direct disability support workers in those jurisdictions.

Our broad disability membership across a range of professions gives us a unique insight into the rollout of the National Disability Insurance Scheme (NDIS), how the scheme is interfacing with other mainstream services and the market and workforce issues critical to the scheme's success.

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Introduction

The HSU welcomes the opportunity to make a submission to the Joint Standing Committee on the National Disability Insurance Scheme (**the Committee**) in its inquiry into the NDIS Workforce.

In addition to this submission, the HSU along with other disability sector unions, the Australian Services Union (**ASU**) and the United Workers Union (**UWU**), have made a joint submission to the Committee which contains newly commissioned research from the Social Policy Research Centre (**SPRC**) at the University of New South Wales (**UNSW**). That submission, including the commissioned research report *Working in new disability markets: A survey of Australia's Disability Workforce* (Cortis and Van Toorn, 2020), should be read in conjunction with this submission.

The HSU has always been a strong supporter of the NDIS and our longstanding position has been that quality disability services depend on a quality workforce. For people with disabilities, skilled and well-supported workers, employed with decent working conditions and good job security, can ensure that support is consistent, high quality and responsive to clients' choices and needs. However, as the NDIS rollout has progressed we have witnessed an erosion of working conditions and a deskilling of the workforce. The HSU submits that this is the consequence of deliberate policy choices by the Commonwealth Government, via unrealistic capped pricing National Disability Insurance Agency (**the Agency**) and an absence of leadership in the development of a workforce plan for a sector that needs to double to meet demand. The HSU would note that many of the issues identified in this submission (along with recommendations) are not new, however, it is our hope that the Committee through this inquiry can give renewed impetus on the need to value, grow and support the NDIS workforce. Ultimately, without a skilled, professional and available workforce to deliver supports to NDIS participants, the disability sector will continue to be one characterised by unmet demand. Rationed supply will simply replace the rationed funding of pre-NDIS support arrangements.

Since this inquiry was referred, the COVID-19 pandemic reached Australia. During this time the HSU has been focused on providing immediate support and assistance to members working across the health and community service sectors – including the disability sector. This has meant we were unable to meet the Committee's original deadline for written submissions and we greatly appreciate the opportunity to make a late submission. The pandemic, however, has highlighted how people with disability and the workers who support them have not been prioritized in the same way as other frontline services. While health and aged care services have rightly received significant additional funding and support from Commonwealth, State and Territory Governments, the disability sector—despite supporting a cohort of people incredibly vulnerable to COVID-19—has been largely forgotten. We recommend the Committee consider the report *The disability workforce and COVID-19: initial experiences of the outbreak* (Cortis and van Toorn, 2020).

This submission responds to a number of the inquiry's terms of reference and provides a number of recommendations. The HSU looks forward to continuing to engage with the Committee and is eager to facilitate frontline NDIS workers to give evidence about their experiences delivering services and the challenges they face.

Size and composition of the NDIS workforce and projections at full scheme

Workforce size and composition

It should be noted that the NDIS workforce comprises a range of occupations and professions, however, most of the workforce are employed as Disability Support Workers (DSWs) delivering supports in a range of settings: in-home, shared accommodation, day programs and in the community. In 2019 the Department of Social Services (DSS) estimated that there were 100,000 full-time equivalent (FTE) workers in the disability sector and that there needed to be growth of a further 90,000 FTE workers to meet the demands of the NDIS.¹ Given the high proportion of part-time employment in the disability sector—our survey found that over half (55%) of disability workers worked less than full-time hours, whilst Australian Government data for the occupational grouping “Aged and Disabled Carers” shows 67% work part-time—mean that these FTE figures actually represent a significantly higher headcount of workers.²

Other characteristics of the NDIS workforce is that is a predominantly female workforce (66% in our survey) and also an ageing workforce (39% of survey respondents were over the age of 55, whilst JobOutlook data identifies the average age as 47). As a wave of experienced disability workers reaches retirement age in the coming years this will compound the challenge of attracting new workers as the sector seeks to replace a diminishing pool whilst also expanding the workforce size in aggregate.

Data limitations

Data concerning the size and composition of the NDIS workforce is limited due to the absence of a national census of disability workers and limitations relating to occupational coding through the Australian and New Zealand Standard Classification of Occupations (ANZSCO). Currently, disability support workers are predominantly captured in Australian Bureau of Statistics (ABS) Labour Force Surveys and Census data under the ANZSCO classification of “Aged and Disabled Carers” (423111). This means that even at the six-digit level, policymakers and workforce planners cannot use Australia’s most comprehensive labour force datasets to distinguish between aged care workers and disability support workers. This lack of clarity is problematic for effective workforce planning and leaves policymakers shorthanded when developing labour market interventions. The cost of a wholesale ANZSCO review was recently estimated by the ABS at \$4 million.

On the matter of a workforce census, the HSU notes that the Commonwealth Government has previously provided funding to the National Institute of Labour Studies at Flinders University to undertake a comprehensive workforce census of the aged care workforce, however, nothing comparable has been produced for the disability sector. Given the significant Commonwealth expenditure on the NDIS and the fact that most of this expenditure relates to the labour costs of the NDIS workforce this must be addressed.

The HSU submits that funding should be made available to undertake a robust census of the NDIS workforce alongside a broader review of ANZSCO to ensure that it is fit-for-purpose.

¹ Commonwealth of Australia, Department of Social Services (2019), *Growing the NDIS Market and Workforce*, https://www.dss.gov.au/sites/default/files/documents/03_2019/220319_-_ndis_market_and_workforce_strategy_acc_pdf-.pdf

² JobOutlook (2020), *Aged and Disabled Carers*, <https://joboutlook.gov.au/Occupation?code=4231>

Challenges in attracting and retaining the NDIS workforce

Regarding this term of reference, the HSU would refer the Committee to the workforce research accompanying our joint submission with the ASU and UWU. However, below are some key attraction and retention issues raised by that research along with some additional commentary.

Wages

The level of responsibility, skill and emotional labour inherent in disability support work is not reflected in remuneration levels. In our survey, 42% of respondents disagreed with the statement 'I am paid fairly for the work that I do.'

The entry level disability support worker rate is \$21.20 per hour, and NDIA price caps assumed the average hourly rate of pay for a worker in disability is \$29.05.³ During the COVID-19 pandemic, the Commonwealth has rightly provided significant increases to the JobSeeker payment and introduced the JobKeeper payment of \$1,500 per fortnight. These payments, however, have had the effect of highlighting just how low wages are for those in the NDIS workforce particularly given the high proportion working less than full-time hours.

Below the HSU has modelled 11 SCAHDS Award Classifications (Schedule B, SACS) assuming 40 hours worked per fortnight (0.5 FTE) and applied a loading of 25% (in recognition of shift allowances and other penalties), less income tax. These are then compared against four JobSeeker payment scenarios, where the recipient accesses rent assistance. The yellow highlighted cells demonstrate where the JobSeeker payment is more favourable than the modelled wage at the relevant classification. Cells not highlighted show the loss of income moving to JobSeeker relative to working. It should be noted that in many instances the loss of income is marginal. It should be noted that most Disability Support Workers are classified at SACS Level 2.

	Single	Single (share)	Single (dependents)	Partnered
Jobseeker	\$ 565.70	\$ 565.70	\$ 612.00	\$ 510.80
COVID Supplement	\$ 550.00	\$ 550.00	\$ 550.00	\$ 550.00
Rent Assistance	\$ 139.60	\$ 93.07	\$ 164.08	\$ 131.60
Energy Supplement	\$ 8.80	\$ 9.50	\$ 9.50	\$ 7.90
FORTNIGHT TOTAL	\$ 1,264.10	\$ 1,218.27	\$ 1,335.58	\$ 1,200.30
SACS 1.1	\$ 292.10	\$ 246.27	\$ 363.58	\$ 228.30
SACS 1.2	\$ 264.60	\$ 218.77	\$ 336.08	\$ 200.80
SACS 1.3	\$ 233.10	\$ 187.27	\$ 304.58	\$ 169.30
SACS 2.1	\$ 49.10	\$ 3.27	\$ 120.58	-\$ 14.70
SACS 2.2	\$ 16.60	-\$ 29.23	\$ 88.08	-\$ 47.20
SACS 2.3	-\$ 14.40	-\$ 60.23	\$ 57.08	-\$ 78.20
SACS 2.4	-\$ 39.40	-\$ 85.23	\$ 32.08	-\$ 103.20
SACS 3.1	-\$ 60.40	-\$ 106.23	\$ 11.08	-\$ 124.20
SACS 3.2	-\$ 90.40	-\$ 136.23	-\$ 18.92	-\$ 154.20
SACS 3.3	-\$ 111.40	-\$ 157.23	-\$ 39.92	-\$ 175.20
SACS 3.4	-\$ 132.40	-\$ 178.23	-\$ 60.92	-\$ 196.20

³ Social, Community, Home Care and Disability Services Industry Award 2010

To emphasise the scale of the problem, the *median* weekly earnings of employees classified at the top ANZSCO category of “Community and Personal Service Workers”, where most disability workers fit within, was \$744 per week in August 2019.⁴ On a fortnightly basis this totals \$1,488 gross (\$1,300 net). The table below compares this *median* wage against the revised JobSeeker payment (incl. rent assistance). As in the prior table, the yellow highlighted cells demonstrate where the JobSeeker payment is more favourable than the median wage. Cells not highlighted show the loss of income moving to JobSeeker relative to the working and in receipt of the median wage.

	Single	Single (share)	Single (dependents)	Partnered
Jobseeker	\$ 565.70	\$ 565.70	\$ 612.00	\$ 510.80
COVID Supplement	\$ 550.00	\$ 550.00	\$ 550.00	\$ 550.00
Rent Assistance	\$ 139.60	\$ 93.07	\$ 164.08	\$ 131.60
Energy Supplement	\$ 8.80	\$ 9.50	\$ 9.50	\$ 7.90
FORTNIGHT TOTAL	\$ 1,264.10	\$ 1,218.27	\$ 1,335.58	\$ 1,200.30
MEDIAN WAGE				
\$1,300 F/N (net)	-\$ 35.90	-\$ 81.73	\$ 35.58	-\$ 99.70

As this is based on the median wage, the JobSeeker payment becomes greater still than wages earned as workers move progressively below the median income. Put simply, for nearly half the disability workforce, the JobSeeker allowance has very real potential to become more attractive than remaining at work. The HSU recognises that there are other considerations, such as the partner income test, alongside the Fringe Benefit Tax incentives for working in a not-for-profit sector however, on a pure remuneration basis (without even accounting for the high-stress and exposure risks) incentives to remain in disability support work are at a dangerously low point.

While members regularly report that it is the nature of the work that attracts them to a career in disability, rather than the pay, and this concept is regularly echoed in the literature. However, the level of pay matters for attraction and retention. International research suggests that the intrinsic benefits of “care work”—that is, the personal nature of the work and relative autonomy—are not strong enough to overcome negative extrinsic factors. In a 2013 study, researchers investigating the quality of frontline healthcare (broadly defined) jobs in the United States—including those in disability services—found that for the majority of workers, low-pay, precarious employment and unreasonable workloads outweighed the satisfaction they gained from the inherent nature of the work itself. The researchers concluded that “these ‘bad job’ characteristics play a stronger role in whether workers will stay with their employers.”⁵

Improving wages and working conditions is critical to grow and sustain the disability workforce. It is not an accident that disability support work is poorly remunerated. Rather, it reflects the way these jobs have been designed, such as minimising formal skill requirements and narrowing career pathways, thereby keeping wages low. Additionally, “care” work is poorly recognised by governments and society more broadly. Partly this reflects social attitudes which see care work as something that should be done within the home and behind closed doors, with the expectation that the labour involved should be gifted freely and without fanfare by people, the vast majority of

⁴ Australian Bureau of Statistics 2019, 6333.0 Characteristics of Employment, Australia.

⁵ Morgan, J. Dill, J. Kalleberg, A. (2013) “The quality of healthcare jobs: can intrinsic rewards compensate for low extrinsic rewards?” *Work, Employment, Society*, pp. 817-18.

whom, are women.⁶ Our belief is that the use of “bad job” characteristics—low pay, poor conditions, limited skills utilisation, attenuated career pathways—to control costs may ultimately make organisations less competitive and raise labour costs over time, as employers are faced with high levels of frontline worker turnover and a contingent workforce that is underprepared to meet critical skills gaps.

Working time arrangements

Low wages are exacerbated for this workforce through the atomization of working hours and the requirement for workers to be available for long periods of time without being paid. Below is a quote from a survey respondent illustrating this issue:

I expect to work up to 3 separate runs per day, work can be added or removed at any time without notice or explanation. I am expected to carry my workphone (and answer) at all times, which can be hugely inconvenient if I have made plans or appointments. I live 20 mins away from most of my clients and my breaks are often an hour or two at a time, if I went home in those breaks I would only have to immediately return which means that instead of family time I am sitting in my car alone between shifts (with no pay) or wasting my low income in cafes or takeaway places.

Working hours can also vary considerably, often at short notice. In the UNSW survey, 45% of respondents agreed or strongly agreed with the statement ‘My shifts can change unexpectedly’. However, unexpected changes in hours were more of an issue for workers in some settings. Higher proportions of workers in home-based care settings and community and day program settings agreed with the statement (65% and 58% respectively). This undermines predictability of income and creates disincentives for continued employment in the sector.

⁶ Meagher, G. Szebehely, M. Mears, J. (2016) “How institutions matter for job characteristics, quality and experiences: a comparison of home care work for older people in Australia and Sweden”, *Work, Employment and Society*, p. 2.

The role of Commonwealth Government policy

NDIS Pricing

The HSU would note that NDIS price caps imposed by the Agency are the primary lever of Commonwealth Government policy which influences the NDIS workforce. Despite above inflation price increases in the first half of 2019, the Agency continues to use unrealistic assumptions in its development of price caps for key NDIS support items. While the June 2019 *Cost Model for Disability Support Workers (CM)* represents an improvement on the Agency's former *Reasonable Cost Model (RCM)*, there are a range of assumptions within this model which lead to restrictively low and capped prices. These price caps directly influence the recruitment and retention challenges outlined in the previous section by limiting wages, career mobility and training and professional development.

The HSU notes that in its 2017 *NDIS Costs Review*, the Productivity Commission recommended that the Commonwealth amend the *National Disability Insurance Scheme Act 2013 (Cwlth)* so that the NDIA could no longer set price caps and that this power is instead transferred to the NDIS Quality and Safeguards Commission (QSC) by no later than 1 July 2020.

The HSU supports this recommendation and submits that the legislative amendment giving effect to this change imposes an obligation for the QSC consult with workers and their representatives during scheduled price reviews.

The following sets out our concerns with some of the key assumptions contained in the CM, along with recommendations to address them.

Base Pay

The assumed wage classifications in the CM come from the *Social, Community, Home Care and Disability Services Industry Award 2010 (SCHADS)*, Specifically, Award classifications for Level 1, Level 2 and Level 3 intensity support are set as SCHADS, Schedule B, Levels 2.3; 2.4/3.1; and 3.2, respectively. This assumption ignores the reality that thousands of disability support workers are employed on enterprise agreements which set wages and conditions above the Modern Award. While it is true, as the CM states, that "any additional benefits offered by EBAs over the Award have been voluntarily agreed to by providers" the reality is enterprise agreements that set pay rates above the Modern Award have been negotiated in good faith between employees and employers over long periods of time, with incremental advances to wage classification structures and conditions achieved through successive rounds of bargaining. These successive rounds of bargaining occurred well prior to the introduction of the NDIS and the Agency's decision to unilaterally impose price caps predicated on minimum Modern Award classifications. Moreover, the Modern Award cannot be viewed as "generous" – the role of the Modern Award system under Australia's industrial relations system is to simply provide a minimum floor on wages and conditions. Instead, the NDIA through its RCM and its successor, the CM, has reappropriated the Modern Award as a ceiling on wages and conditions across an entire sector.

The HSU would submit that the expectations of a disability support worker providing 1:1 supports to a standard needs participant does not meet the definition of the Level 2 classification descriptors in the SCHADS Award.⁷ The SCHADS Award sets out that an employee at Level 2 performs personal care services or 'elementary tasks within a community service program', involving functions which are

⁷ For more detailed commentary on the appropriate classification levels for disability support workers, see: Cortis, N., Macdonald, F., Davidson, B., and Bentham, E. (2017). *Reasonable, necessary and valued: Pricing disability services for quality support and decent jobs* (SPRC Report 10/17). Sydney: Social Policy Research Centre, UNSW Sydney, pp. 28-31

defined by established routines. Level 2 staff are not expected to engage in problem solving and have only a 'limited scope to exercise initiative', working under general guidance and assistance which is 'readily available'.

In addition, the NDIS itself—with its focus on greater choice and control for participants, its prioritisation of service delivery occurring in the community and in private homes as opposed to within more institutional settings and other CM assumptions which reduce the level of supervision available to frontline disability support workers—has increased the complexity of service delivery.

The HSU submits that Level 1 (Standard) prices should assume base pay of SCHADS Schedule B, Level 3.1.

Based on the Modern Award classification descriptors and the NDIA's definition of a Level 2 Support and a Level 3 Support, the current base pay assumptions are too low.

The HSU submits that the base rate of pay for disability support workers in the price assumptions for Level 2 and Level 3 supports be aligned to SCAHDS, Schedule B, Levels 4.1 and 5.1, respectively.

The HSU would also like to highlight implementation issues with the application of Level 2 and Level 3 Prices and the classification of disability support workers under real-world employment instruments. Typically, a worker who has the requisite skills, knowledge and experience to deliver high intensity supports would be reclassified to a higher classification in their enterprise agreement or Award (whichever applied) through a variation to their employment contract. This provides certainty for an employee for ongoing rates of pay and is central to the concept of genuine career progression. However, providers have expressed concern to the HSU about their ability to permanently reclassify an employee in this fashion as they are only able to charge Level 2 or Level 3 prices when an individual worker is supporting an individual participant classified as high or very high intensity. The problem arises in that employers, in order to effectively deploy their employees and provide enough hours of work, will require their higher skilled employees to deliver a range of supports to a mix of Level 1, Level 2 and Level 3 participants, however the provider is not able to recoup the additional labour costs they bear when higher skilled workers are supporting participants with standard needs. This could be addressed in the 2020-21 Price Guide by providing additional guidance as to how the Level 2 and Level 3 price limits interface with the way providers actually deploy employees.

The HSU submits that the Agency must address the issue of applying Level 2 and 3 prices against the principle that employees providing these supports must be classified at a permanently higher rate.

Annual Leave

The HSU's primary concern with the CM as it relates to annual leave is that we cannot identify any factoring in of the SCHADS Award entitlement to a fifth week of annual leave for shift workers. As per clause 31.2 of the SCHADS Award "For the purpose of the NES, a shiftworker is an employee who works for more than four ordinary hours on 10 or more weekends during the yearly period in respect of which their annual leave accrues and is entitled to an additional week's annual leave on the same terms and conditions."

Given that NDIS participants do not cease requiring support on weekends, the relatively low threshold after which disability support workers are entitled to the fifth week of leave and the fact the entitlement forms part of the NES, the HSU submits the CM assumptions be updated to make an allowance for additional annual leave for shift workers (as defined in the SCHADS Award for the purposes of annual leave).

The HSU submits that the CM be revised to account for an additional week of annual leave which shift workers (as defined for the purposes of the NES in the SCHADS Award) are entitled to.

Personal Leave

The HSU's primary concern with the CM's personal leave assumption of 10 days per annum is that it provides limited scope for bargaining above the minimum standard. Furthermore, some employers are seeking to terminate their existing enterprise agreements where those agreements provide more than 10 days per annum, creating retention risks for a workforce that is already struggling to match supply. This is particularly problematic in light of the COVID-19 pandemic where workers who present with any respiratory symptoms are being asked to self-isolate pending testing, a policy which will quickly exhaust personal leave balances.

Long Service Leave

The CM assumes accrual of 8.67 weeks long service leave after 10 years continuous service. This is in alignment with the amounts prescribed in State and Territory legislation governing long service leave for all jurisdictions, except for South Australia and the Northern Territory – both of which provide for 13 weeks after 10 years continuous service.

In addition, long service leave entitlements in the disability sector are frequently determined by preserved provisions from pre-modern Awards. As Award-derived entitlements, these provisions form part of the National Employment Standards (NES), meaning employers cannot reduce the entitlement to the amount prescribed by the relevant State or Territory legislation if they wanted to. To use an example, in Victoria there are currently a significant number of disability support workers who are entitled to four months long service leave after 10 years' service (double the quantum assumed by the CM) by virtue of being linked to the *Residential and Support Services (Victoria) Award 1999* [AP795711].

The CM also assumes that only 18% of permanent workers and 10% of casual workers will qualify for long services leave and relies on this assumption based on ABS data for job mobility. However, this ignores the application of portable long service leave schemes operating in the ACT and, more recently, in Victoria. In both jurisdictions, these portable leave schemes apply to disability support workers and impose a levy on employers as follows:

- ACT, 1.2% of the gross ordinary wages of covered employees.
- VIC, 1.65% of the gross ordinary wages of covered employees.

The operation of these schemes (which combined cover more than 25% of the NDIS workforce) means that the CM assumption for entitlement to long service leave should be set at 100% for both permanent and casual workers.

The HSU submits that the NDIA modify the CM to account for the higher quantum of long service leave which significant numbers of disability support workers are entitled to either by virtue of coverage by the SA and NT state legislation or a pre-modern Award.

The HSU submits that the NDIA modify the CM to account for the existence of portable long service leave schemes, which have the practical effect of increasing eligibility rates to 100%.

Utilisation Rates

The HSU agrees that with the NDIA that higher-intensity supports should include a greater provision for non-face-to-face time in recognition that these workers delivering these supports require greater training and additional time for handover and engaging with other agents in the delivery of supports. However, we submit that the utilisation rates of 92% (Level 1); 89% (Level 2) and 87.7% (Level 3) are too high and do not adequately enable coverage of the costs associated with a range of non-face-to-face tasks involved in the delivery of high quality disability supports such as:

- Induction: including the compulsory induction module on the NDIS Code of Conduct developed by the Quality and Safeguards Commission; workplace, health and safety

inductions; shadowing and mentoring new employees to familiarise them with participants unknown to them.

- Training: ongoing professional development and accredited training relating to specific disabilities such as individual participant behaviour support plans; medications management; complex health needs such as PEG feeding, tracheostomy care and epilepsy management.
- Reflective practice: enabling individual support workers to discuss individual participant needs as part of a broader team of supports and reflect on best-practice for supporting participants with complex behavioural needs. This includes time for paid team meetings.
- Reporting and compliance: meeting the legislated requirements under the NDIS Act; residual State and Territory residual quality and safeguarding mechanisms and the NDIS Quality and Safeguarding Framework.

Given the NDIS Code of Conduct imposes a legislative obligation on both providers and workers to “provide supports and services in a safe and competent manner with care and skill” and “promptly take steps to raise and act on concerns about matters that might have an impact on the quality and safety of supports provided to people with disability” there is a clear need to ensure the CM provides for adequate non face-to-face time to ensure these legislative requirements are met.

The inadequacy of utilisation assumptions in the CM is borne out by the findings of our recent survey which revealed that for every hour of paid work, disability workers donated an additional 4.6 minutes of unpaid time (equivalent to 36.8 minutes for an 8-hour day).

The HSU submits that the CM be updated to reduce the utilisation assumption for Level 1, 2 and 3 supports. The principle that utilisation rates reduce for higher levels of support should be maintained.

Span of Control/Management Ratio

On the matter of supervision and appropriate spans of control the HSU refers the Committee to the survey report which found:

- 43% of respondents disagreed with the statement ‘I get one-on-one support from a supervisor to discuss individual client needs and goals’
- Lower skilled workers were expected to make decisions about client safety, care and support on their own. Those without at least a Certificate IV qualification, more than half (52%) agreed they have to make important client-related decisions on their own.
- Almost a quarter of supervisors (23%) said they couldn’t provide proper supervision because they have too many people to supervise.

In addition to the findings of the survey report it is notable that a significant number of witnesses at the 2-6 December 2019 hearings into accommodation services for people with disability at the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability spoke about the importance of good supervision in delivering high-quality and safe services.

The HSU would also note that the NDIA in its June 2019 CM publication acknowledges that the average supervision span for the sector is 9.5:1 yet still decided to apply a ratio of 1:11 – with no rationale provided for this decision.

The HSU submits that the supervision span of 1:11 in the CM (which equally applies to Level 1, 2 and 3 supports) is too high and should be reduced following more detailed consultation with sector stakeholders including the NDIS Quality and Safeguards Commission. Furthermore, the supervision span should vary according to whether the support being delivered is a Level 1, 2 or 3 support in recognition that supporting participants with more complex needs requires the additional support and oversight that can be brought by meaningful and genuine supervision.

Overheads

As it is not an NDIS provider the HSU cannot speak in detail to the appropriate overhead allowance that should be included in the CM, but the NDIA should make clear through an indicative list or guidance materials about what the overhead component of the CM is intended to cover and what other price items and billing rules are meant to cover as there is confusion within the sector about what is and isn't an overhead. Furthermore, the HSU believes that in addition to back-office functions the overhead allowance in the CM should also make a provision for employer-funded training of their employees in order to meet the obligations imposed by the NDIS Code of Conduct. Additionally, there should be a buffer within the overhead allowance to enable enterprise bargaining to take place between employees and their employers which produce above minimum Award terms and conditions.

The HSU submits that the NDIA should provide guidance materials or an indicative list about what is included in the overhead component of the CM. Additionally, the overhead component must enable the provision of employer-funded training and professional development. Finally, there should be a buffer within the overhead allowance to enable enterprise bargaining above minimum Award wages and conditions.

First Aid Allowance

The CM makes no provision for the cost of paying disability support workers for a first-aid allowance, which they are entitled to under the SCHADS Award. The current value of the allowance is \$16.51 per week for a full-time employee and \$0.43 per hour for a part-time or casual employee (up to a maximum of \$16.51 per week). These rates will change from 1 July 2020 in line with the decision arising from the Minimum Wage Case.

The HSU submits that the NDIA revise the CM to incorporate the cost of the First Aid Allowance.

Vehicle Insurance

Workers who transport participants in their own vehicles are, appropriately, expected to have a suitable level of insurance coverage in recognition of the fact they are transporting people with disability. However, there is no provision in the price guide or billing rules which enable providers to contribute towards the cost of comprehensive vehicle insurance for their employees. This is leading to situations where costs are being passed onto individual low-paid workers who are expected to bear all costs associated with participant transport, or, in many cases, widespread underinsurance.

The HSU submits that the NDIA provide guidance and funding to enable workers to pay for appropriate levels of insurance when transporting participants using their own vehicles.

Travel Time

NDIS pricing and billing rules limiting the amount of billable travel time have led to employers using Clause 25.6 of the SCHADS Award (Broken Shifts) to structure rosters so that employees are only paid for client-facing time and not the time spent travelling between clients. This has created an untenable situation whereby workers are expected to be available for large spans of time, however, are only paid for a fraction of that. Research conducted in 2018 by Macdonald, Bentham and Malone "Wage theft, underpayment and unpaid work in marketised social care" which analysed working day diaries of 10 disability support workers found:

The DSWs' working days (from first departure from home for work to last arrival home from work) were long. Two-thirds of the 30 diarised days were 10 hours or longer. Third, though days were often very long, the proportion of the total working day that was paid work was often small. On 17 of the 30 work days, employees were paid for 5 or fewer hours' work in the context of a long span of working hours. As an example, one day in DSW9's diary showed that she left home at 8:45 am and finished her day 13.5 hours later, at 10:15 pm, having completed four shifts and earned only 5 hours' pay. This pattern of paid work was not uncommon: the diaries showed that for each worker, on average over their 3 working days, paid work time

was between 27% and 73% of the working day (Table 1). Fourth, the diaries showed very substantial periods of the working day consumed by unpaid activities, structured and often occupied by work.⁸

The report found that the financial cost to these employees of unpaid travel was significant:

The financial cost to employees of the unpaid work of travel between clients and overtime was significant, even for those who undertook relatively little unpaid work. For five of the ten employees, 2%–6% of their work over the 3 days was unpaid. On the basis of the standard hourly rate each DSW was paid (i.e. disregarding any penalty rates), we estimate those five employees were underpaid by between AUD8.84 and AUD30.42 over the 3 days. The other five DSWs were not paid for 12% or more of their work time, including one who was not paid for 21%. That employee, who had both the highest number and proportion of unpaid work hours, was underpaid by around AUD180 over 3 days. The remaining four employees were underpaid by between AUD24.75 and AUD92.08 over 3 days.⁹

While the research was limited to a relatively small sample, in our 2020 survey, nearly half of all respondents (45%) disagreed with the statement ‘I get paid for travel time between clients.’ In practical effect, NDIS cost-containment measures via pricing and billing rules are institutionalising wage-theft and low pay for workers who are already some of the lowest paid professionals in the country. This is not sustainable and will prevent the development of a vibrant, skilled and available disability workforce to meet the needs of more than half a million NDIS participants at full-scheme.

The HSU submits that NDIS pricing and billing rules are amended to make clear that travel time between clients is paid time, for which employees are entitled to be paid.

⁸ Macdonald, F., Bentham, E., & Malone, J. (2018). Wage theft, underpayment and unpaid work in marketised social care. *The Economic and Labour Relations Review*, 29(1), 80–96.

⁹ Ibid.

The role of State, Territory, Commonwealth Governments in providing and implementing a coordinated strategic workforce development plan

Despite repeated acknowledgements from all levels of Government that NDIS participants will be unable to access supports without significant workforce growth, there remains no national, sector-wide workforce development strategy. The HSU submits that NDIS workforce planning has been neglected by the Commonwealth during the rollout of the NDIS. We believe this has partly been attributable due to diffused national responsibility between DSS, the NDIA and the Quality and Safeguards Commission. This issue was identified by the Productivity Commission in its January 2019 *Review of the National Disability Agreement*, which noted that workforce planning and development responsibilities need further refinement and coordination.¹⁰

The lack of attention from the Commonwealth on NDIS workforce planning is demonstrated by the fact that the very first opportunity for a broad section of sector stakeholders to comment on a National NDIS Workforce Plan was on 28 February 2020, via a survey on the DSS' Engage platform. Originally the survey was planned to be open for two weeks (closing on Friday 13 March 2020), providing limited time for stakeholders to ably respond. While it was extended to Friday 27 March, this period coincided with the escalation of the COVID-19 pandemic and we are concerned that few stakeholders were able to fully respond.

The HSU submits that an NDIS Workforce Taskforce be established, comprising workers and their unions, service providers, and NDIS participants and their advocates to develop and implement a sector-wide disability workforce development strategy.

As a federated union, the HSU has also had vastly different experiences with different jurisdictions to co-design and implement workforce development strategies for the NDIS workforce. In Victoria, for example, the HSU was a key participant in the development of Victoria's \$26 million *Keeping Our Sector Strong* NDIS workforce plan, with involvement in a range of initiatives across nine priority areas covering research into workforce needs, training and professional development, attraction and retention and regional-readiness activities. In contrast, since 2013, Senior NDIA Officials have met with union leaders only twice (once during the tenure of former CEO, David Bowen and again more recently under current CEO, Martin Hoffman). We understand that the NDIA holds a number of advisory panels and reference groups for participants, carers, advocates, providers and provider peak bodies, however, as far as we are aware there is no formal group covering workforce matters and no avenue for workers and unions to share their expertise.

The HSU submits that the Commonwealth Government establish a workforce committee comprising unions and other sector stakeholders, which brings together officials from DSS, the NDIA and the QSC to work together on workforce policy matters such as market intervention strategies, market stewardship and price controls.

¹⁰ Productivity Commission (2019), *Review of the National Disability Agreement, Study Report*, p. 80.