

Submission
No 304

**INQUIRY INTO IMPLEMENTATION OF THE NATIONAL
DISABILITY INSURANCE SCHEME AND THE PROVISION
OF DISABILITY SERVICES IN NEW SOUTH WALES**

Organisation: Australian Services Union NSW and ACT Services Branch

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Director, Portfolio Committee No. 2
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To whom it may concern

INQUIRY INTO THE IMPLEMENTATION OF THE NATIONAL DISABILITY INSURANCE SCHEME AND THE PROVISION OF DISABILITY SERVICES IN NSW

Please find the Australian Services Union NSW & ACT (Services) Branch submission to the: Inquiry into the Implementation of the National Disability Insurance Scheme and the provision of disability services in NSW.

Yours sincerely

Natalie Lang
Branch Secretary
Australian Services Union NSW & ACT (Services) Branch



**Australian Services Union
NSW & ACT (Services) Branch**

ASU Submission

Inquiry into the implementation of the National Disability Insurance Scheme and the provision of disability services in New South Wales

***Portfolio Committee No. 2 –
Health and Community Services***

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Introduction

The Australian Services Union and our members:

The Australian Services Union NSW & ACT (Services) Branch (the ASU) represents workers throughout the non-government social, community and disability services sector. Of specific relevance to this Inquiry, the ASU represents workers who are employed in the following areas:

- National Disability Insurance Scheme (NDIS) services – including accommodation, employment, children's services, support coordination and community, social and recreational, local area coordination;
- Health and mental health;
- Aboriginal services;
- Migrant and settlement services;
- Community legal services;
- Community and neighbourhood services;
- Advocacy (Disability Advocacy) services;
- Community transport.

ASU members are highly skilled practitioners. They hold qualifications in law, psychology, management, social sciences, welfare work, disability work, social work, youth work, child protection, aged care and community work, mental health, drugs and alcohol counselling and a long list of other specialist qualifications. Our members also include clergy of many faiths.

ASU members supported the establishment of the NDIS and were involved as advocates, disability sector workers and carers in campaigning for reforms to the funding and delivery of supports and services to people with disability. ASU members called for a better deal for people with disability to address the chronic underfunding and variation between access to supports and resources, the lack of choice and control for people with disability, and the devaluing of the sector and people with disability. ASU members also actively sought an end to the institutionalisation of people with disability and a realisation of the rights of people with disability to live supported in their communities.

The History of Non-Government Organisations in the Provision of Human Services

Social and community services have historically been at the forefront of responding to social issues of the day and providing opportunities for individuals and families to participate in and shape their community.

In its earlier years the role of government was primarily built around the development of infrastructure and industry, and not the delivery of human services. This led to the organic development of community organisations providing community and welfare services with the Commonwealth and State governments funding these organisations. Community services have often been the instigator and innovator for many community service delivery models.

The not-for-profit (NFPs) social and community sector is important for its economic contribution, for its growing public value in implementing government programs and delivering government services, and for its enormous role, extending far beyond the public funding that it receives, in creating a fairer and more civil society.

Most NFPs are small to medium sized organisations generally with less than 100 employees.

NFPs provide crucial and unique services, developed out of close interagency collaboration, long and deep connections to their communities and a wealth of experience in service delivery.

By working collaboratively, NFPs are able to draw on community strengths and bring together government, private and philanthropic resources to solve what are often complex problems that are unable to be solved by one organisation, program or intervention alone.

The potential benefits of NFPs delivering human services are well recognised by governments. A number of reports and submissions to inquiries have identified the following benefits of engaging community based NFPs in the delivery of human services:

- providing flexibility in service delivery;
- are better able to package the service with other services for the target client group;
- give value for money;
- are representative of the clients the program is targeting;
- close to the community they are servicing;
- responsive to local and emerging needs of communities;
- built up long standing relationships with local service provider networks;
- staff and management have lived experience of disadvantage;
- staff and management share cultural values and experiences of local community's needs in ATSI, CALD and LGBTIQ communities;
- capacity to attract and raise funds from community and business;
- capacity and willingness to deliver high risk and politically sensitive services that government will not, such as needle exchange service, asylum seeker support services, and health services for sex workers;
- have earned trust in client relationships that government or business cannot;
- capacity to foster cooperation and collaboration among community services organisations to provide diversity in service delivery;
- building social capital in local communities;
- empower local communities by an inclusive process that engages people to make decisions and take action;
- foster greater understanding and acceptance of all people through involving families and individuals in the delivery of services, particularly disability services and those to minority groups; and
- generate community connections through activities that enhance social inclusion and strengthen civil society.

Terms of Reference

Our submission will address the terms of reference where the experience of ASU members will be of relevance and assistance to the Committee in its Inquiry:

The implementation of the National Disability Insurance Scheme and its success or otherwise in providing choice and control for people with disability

The principle of choice and control for people with disability is fundamental to the NDIS. The services and supports available to NDIS participants must be safe, of high quality and reliable if the principle of choice and control is to be realised by people with disability within the NDIS. Skilled and qualified workers are crucial to the provision of safe quality NDIS services and supports. Low pay and insecure work threaten the capacity of the NDIS to attract and retain the skilled and qualified workers needed to maintain the NDIS workforce.

The high turnover of workers reported in the NDS Australian Disability Workforce Report (February 2018) reflects the experience of ASU members. ASU members report that the precarious working conditions of the NDIS with low pay and insecure hours are forcing them to seek more secure better paid jobs outside of the NDIS sector.

Quality, responsive supports for people with disability will not be available if the workforce is insecure and therefore unstable, and if the workforce is unable to develop and refine the skills and qualifications necessary to meet the needs of people with disability.

Further, People with Disability Australia (PWDA), a national cross-disability rights and advocacy organisation run by and for people with disability made a submission to the Fair Work Commission in relation to an application made by employer groups to amend the part time employment provisions of the Award¹. In that submission PWDA state that the NDIS is premised on the principles of choice and control for people with disability. The submission then sets out the risks that arise to people with disability of the disability support workforce being employed in predominantly insecure employment arrangements and stated that the changes to the definition of part time work proposed by employers “are dangerous to the success of the NDIS, specifically by threatening the quality of staff and thus services on offer to people with disability.”

The ASU believes that insecure low paid and undervalued jobs undermine the principle of choice and control and threaten the success of the NDIS being able to provide safe quality and reliable supports and services to people with disability.

Workforce issues impacting on the delivery of disability services

Disability Workforce Profile

The disability workforce throughout Australia is overwhelmingly female, with a high proportion of older workers in part-time or casual jobs. The most reliable data available is collected through the nation-wide online tool *Workforce Wizard*² and analysed and reported by National Disability Services (NDS). The latest report of NDS published in February 2018 confirms a high concentration of women and older workers in part-time and casual positions. While the NDS report does not provide a state by state breakdown of workforce data the

¹ Statement of Matthew Bowden CEO People with Disability Australia to the Fair Work Commission 4 Yearly Review of Modern Awards.

² National Disability Services Australian Disability Workforce Report February 2018 <https://www.nds.org.au/policy/australian-disability-workforce-report-second-edition-highlights-workforce-risks1>

results of ASU member surveys reflects a very similar workforce profile of disability workers in New South Wales.

A 2016 ASU survey of NSW & ACT disability services workers found that 73 percent are women, 37 percent are over 55 years old (70 percent over 45 years old) and 58 percent (58%) are in part-time or casual work and nineteen percent (19%) work for more than one employer. This result is consistent with the national trends reported in NDS Australian Disability Workforce Reports in 2017 and 2018.

The ASU survey also collected data on the qualifications and experience of disability workers and found that the disability workforce is a professional workforce with 86% reporting a relevant qualification. Of those with relevant qualifications fifty eight percent held a Diploma or higher qualification, and thirty eight percent had a Certificate III or IV qualification. Eighty percent attained their qualification in the last 10 years with sixty percent (60%) having attained their qualification in the last 5 years.

Our survey also indicates that the disability workforce in New South Wales is an experienced workforce with seventy percent (70%) of respondents reporting that they had worked in the sector for more than 6 years.

Insecure and Low Paid Work

The proliferation of insecure jobs that are not paid at a level that reflects the skills, expertise and qualifications needed to deliver quality safe services to NDIS participants is causing alarm in the NDIS sector.

It is recognised within the sector that the current NDIS price settings undermine the capacity to attract and retain an NDIS workforce that is required to deliver a safe and quality NDIS. The ASU is concerned that the price settings are facilitating the proliferation of insecure and underpaid work in the sector. The NDIS will double the number of people with disability currently receiving support and total government funding will increase from \$7 billion per year before the scheme commenced to over \$22 billion annually by 2020. In order to meet the increased demand for person-centred, individualised supports the disability sector workforce will also need to double by 2020 both nationally and in New South Wales. In South West Sydney the workforce needs to triple by 2020.³

There are also provisions in the Social, Community, Home Care and Disability Services Industry Award 2010 (the Award) and some employment practices which lead to employment being precarious. For example employees who wish to work full time or regular part time hours may be offered part time or casual hours which fluctuate from week to week, making it difficult for employees to earn an adequate income and to plan their lives outside of work. The Award makes provision for broken shifts for disability workers which permit employers to schedule multiple short shifts across a twelve hour period. Often the time taken for workers travel from home to participants' homes makes it impracticable for workers to return home between shifts. This can result in workers effectively being at work for twelve hours but paid only for the hours carried out in the short shifts and being unable to have a proper break between these short shifts.

³ NDIS Market Position Statement New South Wales <https://www.ndis.gov.au/document/nsw-market-position-statement>

In addition to the 2016 survey of ASU members, the ASU combined with the HSU and UV in 2017 to survey 1522 disability support workers⁴, we found:

- 72% of workers are worried about the future of their job; and
- Only 11% of workers feel the NDIS has been positive for them as worker.

Further, as part of that survey, ASU members told us:

- The casual nature of the work and the pay/minimum hours is very unsustainable. It is also very difficult to come to work (often travelling 30 kilometres) for a 2 hour shift, then having to wait around for the next shift 4-5 hours later. Additionally workers are reporting that they are not being paid to travel between participants. There is little consideration for the impacts on workers - the entire focus for the organisation is on filling shifts and building customer (participant) numbers.
- Contracted hours are being lowered and manipulated. As example a member started on a fixed 136 hour a month contract and lowered it to fixed 120. She was told she could increase her contracted hours if needed- which was not true. Instead her employer hired new workers on 8 hour a month contracts which meant that all additional hours were fully flexible.

Classifications and NDIS Price Setting

The current NDIS pricing regime is predicated on a number of erroneous assumptions, in particular:

- **Classification and pay level of disability support workers:**
NDIS pricing assumes that disability support workers are employed at a SACS level 2.3 under the Award. However, this is, even in the eyes of the NDIA, the rate that reflects the minimum level of experience and qualifications required of a disability support worker. Not only does this mean the price does not allow for any career advancement for employees who are employed at this minimum, but many disability support workers are required to have skills and experience well above the minimum, and many support workers are presently employed at SACS level 3 or above. Additionally, as supports are made individualised under the NDIS, a higher level of skills will be required to support the various needs of people with disability. This will require a higher classification of work for many disability support workers.
- **Client-facing time:**
NDIS pricing assumes that only 5% of time excluding leave (which works out to just 3 minutes an hour) is not directly with participants or travelling between participants. This simply does not adequately allow for the necessary administration, training, peer support, team meetings, and supervision that is required in the role of a disability support worker.
- **Span of control:**
NDIS pricing assumes that a supervisor is employed at SACS level 3.2, and a workforce ratio of 1 supervisor to 15 employees (to increase to 18 employees). This is contrary to the Award provisions – a graduate with a 3 year degree should be employed at a minimum of SACS level 3.3, and should only supervise a “limited number” of lower classified employees.

⁴ Cortis, N. (2017). *Working under the NDIS: Insights from a survey of employees in disability service* (SPRC Report 13/17). Sydney: Social Policy Research Centre, UNSW Sydney.

We are concerned that these pricing assumptions do not meet the minimum Award conditions, nor do they reflect the reality of disability support work. In response, many providers are seeking to reduce NDIS workers' pay and conditions either through restructures, precarious employment models or setting up new organisations to deliver disability support. This will only exacerbate the workforce shortages in the sector, and mean less quality and continuity in support for people with disability.

Portable Entitlements for Workers

Workers in the disability sector often work for multiple employers over the span of their career in disability services due to the nature of the sector not through the choice of the worker. This means that many workers do not accrue entitlements, such as long service leave, that they would have had they worked for one or two employers during their disability sector working life. ASU members in the ACT are covered by the ACT Portable Long Service Leave Scheme that applies to all workers in the community and disability sector. The ASU believes that the introduction of a portable entitlement scheme for workers in the disability sector in New South Wales will have great benefits for the sector. It will assist in attracting and maintaining skilled and qualified workers to the disability sector.

Workforce Development and Training

ASU members have identified the lack of investment in training since the NDIS as a key issue for the workforce. The NDIS pricing model does not provide funding for staff training or professional development.

Greater choice and control for people with disability over the types of supports they want and need will mean that the NDIS workforce needs to be supported to continuously develop new skills and qualifications relevant to diverse needs of individual participants.

The NDIS will therefore provide opportunities for workers to have more diverse and fulfilling work and career paths, to better recognise and reward person-centred skill development, and to develop new qualifications / specialisations in the sector.

However, there is currently no person-centred professional development plan for the NDIS workforce. Disability sector workers are highly skilled and passionate about what they do – but their capacity to have their skills recognised, to develop new skills and to attain relevant person-centred qualifications is severely limited.

Furthermore, continuing professional development, in-house training and induction, and access to study leave is limited and varies across providers. As the sector becomes more competitive with the entrance of large for-profits in the market, access to these supports by workers will be further diminished as providers drive to reduce costs and increase profits.

Accordingly, we see a need for the establishment of a fund workers can access for recognition of prior learning (RPL), formal qualification attainment and ongoing professional development in specialist skill acquisition relevant to the needs of people with disability.

The ASU has commissioned the Centre for Future Work at the Australia Institute to develop a NDIS workforce plan that is effective and innovative in responding to this problem.

The proposal is detailed in a report, *A Portable Training Entitlement System for the Disability Support Services Sector*, co-authored by Dr. Rose Ryan and Dr. Jim Stanford⁵.

Briefly the proposal involves three stages of training for the workforce:

First Stage: Induction - This is a minimal induction training package provided to new workers starting with NDIS providers.

Second Stage: Foundation - This foundation entry-level course would be required for all new disability support workers within the first 18 months of their employment in NDIS-funded service delivery.

Third Stage: Accumulated training entitlement - The largest element of the comprehensive NDIS training program would be the portable training entitlement system, through which NDIS-providing workers would accumulate credits toward additional training through the normal course of their work.

The report also contains detailed costings for the full implementation of this proposed portable training entitlement for the NDIS sector workforce.

In summary, the workforce issues of insecure hours, low pay, under classification, casualisation, no training, lack of portable leave entitlements and underpayment for hours travelled between participants means the business risks of the NDIS pricing model have been shifted from providers to workers. Consequently the NDIS sector will not attract the workers needed to ensure the NDIS achieves all it was established to deliver to people with disability.

The provision of support services, including accommodation services, for people with disability regardless of whether they are eligible or ineligible to participate in the National Disability Insurance Scheme and Incidents where inadequate disability supports result in greater strain on other

As the NDIS is fully established there is evidence of gaps in service provision where funding sources and programs have been withdrawn or where their future is uncertain. In particular the provision of mental health services is causing concern for ASU members.

Under the NDIS eligibility rules, people with a psychosocial disability related to a mental health issue, are eligible for support under the scheme as long as they meet the access requirements. Becoming a participant of the scheme will depend on a number of factors including a determination that impairment is likely to be permanent.

The ASU is concerned people living with a psychosocial disability are not be eligible for NDIS funding, as their mental health issues are not “permanent”. Most people experiencing mental health illnesses will not qualify as they live with a moderate and/or episodic mental illness and rely upon support programs that may not meet the eligibility criteria for the NDIS. A recent report found that up to 91% of people with a severe mental illness will not qualify for the NDIS and will require community health services to be met outside of the Scheme⁶.

⁵ Ryan, R. and Stanford, J (2018). *A Portable Training Entitlement System for the Disability Support Services Sector*, https://d3n8a8pro7vnm.cloudfront.net/theausinstitute/pages/2746/attachments/original/1523429118/ASU_Training_Report_Foamatted.pdf?1523429118

⁶ Mind the Gap: The National Disability Insurance Scheme and psychosocial disability <http://sydney.edu.au/health-sciences/documents/mind-the-gap.pdf>

This is of concern as those who do not qualify will need to rely on existing support services, however the funding for these very same support services are being subsumed into the NDIS. This situation is exacerbated due to the uncertainty around Commonwealth funded community mental health services such as *Personal Helpers and Mentors (PHaMs)* and *Partners In Recovery (PIR)*. Although the Commonwealth has made guarantees that people currently receiving services in these programs will have continuity of support even after the roll-out to the NDIS, there is no clarity about how this will actually operate in practice, nor what will happen to people who require support in the future.

ASU members are reporting that a significant proportion of their existing clients with a psychosocial disability related to a mental health issue have been assessed as ineligible for an NDIS package and that there are few, often no, non NDIS services available that these clients can access. A service in Southern New South Wales has had a fifty percent reduction in staff since the NDIS, resulting in job losses for workers and people with high complex mental health needs not having the services they need to be supported in the community. ASU members are concerned that these people are at risk of institutionalisation, incarceration, hospitalisation, homelessness and suicide due to the lack of funding for community mental health services.

The adequacy of current regulations and oversight mechanisms in relation to disability service providers

The NDIS Quality and Safeguards Commission (the Commission) has been established by way of federal legislation to provide a single, national registration and regulatory system for providers that will set a consistent approach to quality and safety across Australia. The power and authority of the Commission is being rolled out across all Australian States and Territories. In New South Wales from 1 July 2018 the Commission's regulatory powers apply.

The Commission has responsibility for compliance and enforcement of NDIS Rules including the following:

- NDIS Code of Conduct;
- Incident Management and Reportable Incidents;
- Complaints Management and Resolution;
- Worker Screening;
- Behaviour Support and Restrictive Practices;
- Provider Registration and NDIS Practice Standards, Quality Indicators; and
- Protection and Disclosure of Information.

All rules apply to registered providers and two also have specific application to workers.

The NDIS Code of Conduct (the Code) applies to all NDIS providers, registered and unregistered and all persons employed or otherwise engaged by an NDIS provider. Breaches of the Code can result in a range of penalties including civil penalties of up to \$52,500.

Worker Screening is mandatory for all workers employed by a registered provider in New South Wales from 1 July 2018. The Worker Screening process will assess if a worker presents an unacceptable risk to a person with disability. A breach of the Code can result in withdrawal of a worker's clearance to work in the NDIS and in serious breaches can lead to a worker being banned from working in the sector.

As the Code of Conduct and other Commission Rules have only been in place six weeks we do not have enough experience of their operation in workplaces to comment on their adequacy. The ASU will monitor their adequacy through the experience of ASU members over the next few months when we would be happy to provide a supplementary submission to the Inquiry.

Policies, regulation or oversight mechanisms that could improve the provision and accessibility of disability services across New South Wales

The NDIS is transforming the disability sector in ways that require workers to develop new skills and new ways of working. In particular under the NDIS there will be:

- Need for greater specialisation to reflect individual needs of people with disability (e.g. menstrual support, nutrition support, music/art/sport therapy and activities);
- Need for greater multi-disciplinary skill-sets for workers to be able to specialise across multiple participants (e.g. being able to work with high needs and low needs participants, with physical and intellectual disability, early intervention, aged care / mental health interface); and
- Focus on person-centred service delivery (e.g. importance of relational skills and relevant specialisation e.g. CALD, LGBTIQ, ATSI).

The NDIS will therefore provide opportunities for workers to have more diverse and fulfilling work and career paths, to better recognise and reward person-centred skill development, and to develop new qualifications / specialisations in the sector.

However, there is currently no person-centred professional development plan for the NDIS workforce. Disability sector workers are highly skilled and passionate about what they do – but their capacity to have their skills recognised, to develop new skills and to attain relevant person-centred qualifications is severely limited.

The deregulation of vocational education has seen course fees for formal qualifications increase to an average of over \$2,000 for a Certificate IV in Disability if students qualify for subsidised fees and \$8,400 for full paying student. This cost is prohibitive to many existing and potential disability workers.

In 2016 the Victorian Government developed a NDIS workforce strategy and committed \$26million to implement the strategy. The plan was informed by the Victorian Government's NDIS Implementation Taskforce and the Victorian Skills Commissioner's NDIS Skills Forum. It planned for investment in workforce development, training and skills initiatives.

Following on from this plan the Victorian Government has recently introduced an independent registration and accreditation scheme for disability workers in the State.

The ASU recommends that the NSW Government should, in conjunction with stakeholders, develop a detailed workforce plan which details the skills required in the sector, and career path options. Further, we recommend the NSW Government inquire into the benefits for people with disability in New South Wales of the introduction of a registration and accreditation scheme for disability worker in the State, the inquiry could examine the need for minimum qualifications for workers in various categories of disability support work.

The experience of people with complex care and support needs in developing, enacting and reviewing NDIS plans

The ASU is concerned that the case loads of local area coordinators (LACs), who have responsibility for developing and reviewing NDIS plans, is excessive. The demands of the National Disability Insurance Agency (NDIA) around caseloads, specifically the quantum and timeframes set, are unreasonable and have created work, health and safety issues in number of workplaces. These have led to a number of work related injuries and subsequent workers' compensation claims. They have also led to concerns about NDIS plans and ultimately the outcomes for people with disability.

The effectiveness and impact of privatising government-run disability services

The ASU is concerned that a market driven environment in the provision of disability services will likely create a lucrative market for private providers, with a business model geared around their priority to turn a profit for their shareholders.

The ASU believes that government funding for disability services, through the NDIS or other government schemes, should be used for the provision of services or supports for people with disability, not for the profit of private enterprises.

It is a misuse of public funds for businesses that operate for-profit to be able to obtain taxpayer funding to deliver disability services to make profit from the government funding that is provided for this service provision.

The NFPs community services sector is purpose driven rather than market driven. There is little impetus for private profit making businesses to invest in many of the areas that community based NFPs have traditionally supported, such as advocacy, complex needs, regional and remote services, emergency support and planning.

The ASU recognises that to address market failure there needs be a provider of last resort to ensure that people with disability are not left without essential support services. Ultimately, it is the responsibility of government to ensure essential disability services are available to people with disability.

Conclusion

The NDIS has fundamentally changed the delivery of services and supports to people with disability in New South Wales and across Australia. The pay and conditions of workers in the disability sector has a direct correlation with the quality, availability and diversity of the support offered to people with disability. A system of poorly paid workers with no training opportunities cannot give each participant the quality individualised supports they need, nor will it attract the workforce required to meet demand for person centred services. This could be addressed by the Government developing a detailed workforce plan, in conjunction with stakeholders, which details the skills required in the sector, and career path options. This should involve: (a) Establishing a portable leave and training entitlement scheme for NDIS workers; (b) Investing in disability support education and training opportunities targeted to areas where the biggest workforce increases will be required.