

IN THE FAIR WORK COMMISSION

Application to vary the Social, Community, Home Care and Disability Services Industry Award 2010

AM2020/18

National Disability Services

Response to Statement [2020] FWCFB 2343 (5 May 2020)

1. National Disability Services (NDS) provides the following responses to questions raised in the Statement published on 5 May 2020.
2. While NDS was initially an applicant in these proceedings, we advised the Fair Work Commission and the parties on 8 May 2020 that we were withdrawing our support for the application.
3. Accordingly, in responding to the Statement we do not do so as an applicant.

Question 6: Question for all other parties: Does any party take issue with this aspect of ABI's submission?

4. NDS does not take issue with this aspect of the submission of ABI.

Question 16: Question for all parties: How many clients of the employers you represent have been required to self-isolate or self-quarantine for the reasons specified in proposed clause X.3(d)?

5. NDS does not have direct access to such data, but understands from communications with the Minister for the NDIS that as at 1 May 2020 in the order of a total of 10 NDIS participants and 12 NDIS workers had been notified as positive for COVID-19.

Question 17: The ASU, NDS and ABI are directed to confer and file an agreed factual statement regarding recent funding announcements in the sector.

6. An agreed factual statement has been filed separately.

Question 19: Question for all parties: Does any party take issue with the summary of the statutory framework?

7. NDS does not take issue with the summary of the statutory framework.

Question 20: Question for all parties: Does any party oppose our *provisional* views in respect of the s 134 considerations?

8. We do not oppose the provisional views in respect of the s134 considerations

Question 21: All parties are invited to make further submissions directed at the s 134 considerations

9. The quantum of the proposed allowance is relevant to consideration of the s134(1)(f) as it is clearly a cost to employers.

10. The absolute magnitude of the cost is unknown since the allowance is only payable in restricted circumstances related to likely or demonstrated infection of a client with COVID-19.
11. Where the proposed allowance would be payable, the cost is \$4.94 per hour which represents an approximately 15% increase in pay per eligible employee.
12. The funding increases for NDIS that have been provided to date are restricted in terms of the services to which they apply, and the purposes for which the funding can be used.
13. There has been no commitment from the Commonwealth to fund the proposed allowance.
14. Under the NDIS, pricing caps are set by the NDIA and providers are unable to increase their prices beyond those caps to cover any increases in costs. The inadequacy of NDIS pricing to cover existing labour costs has been the subject of a number of submissions in the 4 yearly review of this award (AM2018/26)¹ by the parties to the current proceedings, and is relevant to consideration of the effect of the proposed allowance on productivity and employment costs.
15. While the total cost to the sector is likely to be small, the cost of an unfunded 15% allowance to an individual employer who cannot raise prices to cover the cost, is potentially very significant.
16. We therefore submit that the cost to employers of an unfunded allowance is a negative consideration for the purpose of s134(1)(f).

Michael Pegg
On behalf of NDS
20 May 2020

¹ For example, Submission of NDS 19 November 2019 [7]-[18]; Submission of Australian Industry Group 18 November 2019 [16]-[21]