

IN THE FAIR WORK COMMISSION

Matter No: 2018/26

Section 156 - Four Yearly Review of Modern Awards – *Social, Community, Home Care and Disability Services Industry Award 2010* – Substantive review

SUBMISSION IN REPLY OF UNITED VOICE

1. This submission is made in accordance with the amended directions of the Fair Work Commission ('the Commission') dated 11 July 2019, and is made in reply to the claims made by Australian Business Industrial ('ABI'), the NSW Business Chamber, Aged & Community Services Australia and Leading Age Services Australia to vary the *Social, Community, Home Care and Disability Services Industry Award 2010* ('the Award') as set out in their draft determination filed on 2 April 2019. ABI, the NSW Business Chamber, Aged & Community Services Australia and Leading Age Services Australia will be collectively referred to as the '*ABI and others*' within this submission.

Ordinary hours of work claim

2. ABI and others seek to vary clause 25.1 to amend the manner in which ordinary hours can be worked. In their submission, dated 2 July 2019, ABI and others claim this is a minor technical change rather than a substantive one.¹ We oppose this variation as it will have a substantive detrimental effect on employees covered by the Award.
3. The Award currently permits ordinary hours to be worked in one of three distinct ways:
 - (i) in a week of five days in shifts not exceeding eight hours each;
 - (ii) in a fortnight of 76 hours in 10 shifts not exceeding eight hours each; or
 - (iii) in a four week period of 152 hours to be worked as 19 shifts of eight hours each, subject to practicality.
4. The variation sought by ABI and others removes these restrictions and provides employers with greater discretion to allocate ordinary hours provided there is an average of 38 hours ordinary hours across a 4 week period.
5. This will be detrimental for full time employees covered by this Award, especially if the averaging facility is used. Under the current Award, an employer may only roster an employee across a 4 week period where the employee receives a rostered day off ('RDO') as the '*benefit*' for having a 4 week roster. If the variation sought by the employer parties was

¹ Submission of ABI and others dated 2 July 2019, paragraph 4.9.

made, employees could be required to have hours averaged over 4 weeks without receiving a RDO.

6. National Disability Services ('NDS') submit that the current Award clause prevents other arrangements from being mutually agreed.² The Award already permits an employer and an employee to mutually agree to specific arrangements for when work is performed under clause 7.1(a) which deals with individual flexibility agreements. Such agreements can only be made on the basis that agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made.³
7. No evidence has been filed by ABI and others in support of this variation. There is no evidence that the current clause is ineffective or unworkable.
8. The variation sought is unnecessary, contrary to the modern awards objective and should be rejected.

'Period of work'

9. Clause 25.4(a) specifies that an employee must be provided with a break of not less than 10 hours between the end of one shift or period of work and the start of another. ABI and others seek to vary clause 25.4(a) to delete the words '*period of work*'. We oppose this variation.
10. ABI and others claim that this is a minor technical change, and will not have any substantive effect.⁴ United Voice has concerns that deleting the words '*period of work*' may have unintended consequences.
11. The term '*period of work*' has relevance within this Award, as there are several circumstances in which an employee may be engaged in a '*period of work*' that may not be recognised as part of a shift. These periods of work are:
 - (a) team meeting;
 - (b) 24 hour care engagements; and
 - (c) excursions.
12. For example, clause 25.8 which deals with 24 hour care requires an employee to be at a client's home for a 24 hour period, but states that the employee is required to provide a total of no more than 8 hours of care during this period. United Voice has previously made submissions as to why the whole period is properly considered work, and why this clause should be deleted, but as it currently stands, there is a possibility that some part of the shift may not be considered '*work*'. The removal of the term '*period of work*' from clause 25.4(a) could result in some employees under the Award not receiving sufficient breaks in between such shifts.

² NDS Submission dated 2 July 2019, paragraph 6.

³ Clause 7.5.

⁴ Submission of ABI and others dated 2 July 2019, paragraph 4.10.

Change of roster

13. Clause 25.5(d)(i) of the Award requires an employer to give seven days' notice of a roster change, however subclause (ii) provides that the roster may be altered at any time to enable the service of the organisation to be carried on where another employee is absent from duty on account of illness, or in an emergency. ABI and others seek to vary clause 25.5(d)(ii) to extend the circumstances in which an exception to the 7 days' notice of roster applies, to include when another employee is absent due to *'compassionate leave, community service leave, ceremonial leave, leave to deal with family and domestic violence.'*
14. United Voice opposes this variation.
15. The current exception in the Award is limited, and only applies where another employee is absent due to *'illness, or in an emergency'*. Despite this limitation, employees covered by the Award experience a high level of change in their rosters without the payment of any overtime
16. United Voice witness Ms Belinda Sinclair, a home care worker with Wesley Mission states: *'My employer is constantly making changes to my roster and these changes make it difficult for me to plan things for when I am not rostered or to make a weekly budget, despite that I am a permanent employee, not a casual.'*⁵ Similarly, witness Trish Stewart states: *'At least once per week, my roster will be altered as a result of either another support worker who has called in sick or a client cancelling their appointment. If a client cancels their appointment before 5pm the day before their scheduled appointment then I do not get paid for the shift. If they cancel after 5pm the day before, then I will get paid. This means that I can never be certain of the amount of hours I am going to receive and how much I will be paid each week.'*⁶
17. Increasing the circumstances in which rosters can be changed without notice will increase the level of uncertainty and unpredictability for employees in this sector.
18. There is no evidence that this change is necessary. Clause 25.5(d)(ii) is not the only exception to the requirement that seven days' notice of a change of roster be given. Subclause (iii) also provides that the seven days' notice does not apply *'where the only change to the roster of a part-time employee is the mutually agreed addition of extra hours to be worked such that the part-time employee still has four rostered days off in that fortnight or eight rostered days off in a 28 day roster cycle, as the case may be.'*
19. There is evidence that indicates that there is a high level of under-employment in this sector, and that employees willingly agree to work additional hours. Ms Sinclair gives evidence that: *'I agree to changes in my roster because I need the hours and am concerned that if I*

⁵ Witness statement of Belinda Sinclair dated 16 January 2019, paragraph 25.

⁶ Witness statement of Trish Stewart dated 17 January 2019, paragraph 10.

- complain or don't accept additional hours, I will be rostered less. This is not an accusation against my employer but my concern. I have a tight budget and cannot afford to lose hours.*⁷
20. Ms Stewart states: *'Most weeks I would like to pick up more hours because I do not receive enough hours to cover my weekly expenses. My managers normally ask me to cover a shift at short notice if a colleague has taken sick leave. I will normally accept these hours if I am available because I need to accept all of the hours I am offered to make enough money.'*⁸
21. In a similar manner, Ms Deon Fleming states: *'At least once per fortnight my manager will ask me if I can take on extra work because a colleague has called in sick. If I am available, I will take these extra shifts because I want to work more hours.'*⁹
22. Research also supports the existence of underemployment within the sectors covered by this Award. The NDS State of the Disability Sector Report 2017 stated that *'Underemployment in health care and social assistance is among the highest of any industry at nearly 11 per cent. Average hours worked for disability support workers is 21 hours per week and 24 hours per week for allied health professionals.'*¹⁰
23. The Joint Standing Committee on the National Disability Insurance Scheme Report on *'Market readiness for provision of services under the NDIS'* released in September 2018 expressed concerns about the lack of incentives to choose a career in the disability support sector, finding:
- 'Submitters who have worked for a very long time in the sector described how working conditions have dramatically deteriorated under the NDIS. In short, they reported a rise in underemployment and insecure work arrangements, inadequate wages and no prospect of professional development opportunities. Under these conditions, it is hard to imagine how to retain highly experienced and qualified workers and attract new workers, including young people entering the workforce.'*¹¹
24. With respect to home care, the Department of Health Aged Care Workforce, 2016 report found that 40% of home care and home support workers were seeking more hours.¹²
25. Similarly, the Future of Employment and Skills research centre report titled *'Attraction, Retention and Utilisation of the Aged Care Workforce'* released in April 2018 identified that

⁷ Witness statement of Belinda Sinclair, paragraph 26.

⁸ Witness statement of Trish Stewart, paragraph 11.

⁹ Witness statement of Deon Fleming, dated 16 January 2019, paragraph 17.

¹⁰ National Disability Services, 'State of the disability sector report 2017', December 2017, p. 49 available at <https://www.nds.org.au/pdf-file/db83601f-42d6-e711-91e7-0050568e2189>

¹¹ Joint Standing Committee on the National Disability Insurance Scheme, 'Market readiness for provision of services under the NDIS', September 2018, paragraph 3.96 available at https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/MarketReadiness/~/_media/Committees/ndis_ctte/MarketReadiness/report.pdf

¹² Department of Health, 'The Aged Care Workforce 2016 report', released March 2017, page 86, available at https://www.gen-agedcaredata.gov.au/www_aihngen/media/Workforce/The-Aged-Care-Workforce-2016.pdf

whilst low pay was the dominant concern for workers, in addition: *'concerns were raised regarding irregular and split shift patterns, insufficient and variable working hours, and casual employment contracts.'*¹³

26. Given the high levels of underemployment, and the evidence that employees are regularly agreeing to additional shifts, there is no justification for further exceptions to the requirement to provide 7 days' notice of a roster change.

27. The following modern awards objectives are relevant:

- s134(1)(a) *relative living standards and the needs of the low paid* – a significant number of employees covered under this Award are low paid. The proposed variation would increase the insecurity of working hours, with a corresponding increase in stress and uncertainty for employees. This would be detrimental to the living standards of the low paid employees covered by this Award.
- s134(1)(da)(ii) *the need to provide additional remuneration for employees working unsocial, irregular or unpredictable hours* – Enabling a roster to be altered at any time in certain circumstances results in employees working unpredictable hours. The current clause 25.5(d)(ii) already permits an employer to vary the roster at any time in certain circumstances without any corresponding penalty or benefit. Expanding the circumstances in which the roster can be varied at any time will increase the incidence of employees under this Award working unpredictable hours without any additional remuneration.

28. The variation sought by ABI and others should be rejected.

Client cancellation

29. Clause 25.5(f) of the Award currently only applies to home care workers. The clause permits an employer to withhold payment of rostered work for an employee where the client cancels or changes the rostered shift, and the employee is provided with notice or a change in roster occurs, by 5pm the day prior. As an alternative to withholding payment, the employer may direct the employee to make-up time equivalent to the cancelled time, in the current roster or the subsequent fortnightly period.

30. ABI and others seek to extend the client cancellation clause to disability support workers. ABI and others also seek to amend the client cancellation clause to delete the provision enabling an employer to withhold payment, but enable make up time to be worked within 3 months

¹³ Future of Employment and Skills research centre, 'Attraction, Retention and Utilisation of the Aged Care Workforce', April 2018, page 15 available at https://agedcare.health.gov.au/sites/default/files/documents/09_2018/retention_and_utilisation_of_the_aged_care_workforce_uni_of_adelaide_-_20.4.18.pdf

rather than within the next fortnightly period. Unlike the current clause, the proposed variation does not require that the employee is notified by any particular time.

Home care workers

31. For home care workers, the current client cancellation clause creates instability and uncertainty. Employees can lose a shift provided they are notified by 5pm the day before. The weekly income of the employee can be quite different to what was expected, and this creates difficulties in planning and managing income.
32. All three United Voice member witnesses identify that the uncertainty caused by client cancellation has a significant impact on their weekly income.¹⁴ Ms Fleming's evidence is indicative:
- 'If clients cancel on the same day of their appointment, then I am paid for the shift. But if a client cancels a home care visit before 5pm the day before the scheduled appointment, then I am not paid for that appointment and these are hours I miss out on. At least once per week, I will have a client cancel their appointment with the required notice. This creates a lot of uncertainty for me in being able to anticipate how much I will get paid in the week.'*¹⁵
33. The current client cancellation clause unjustly shifts the burden of client cancellation from the provider to the employee. This cost properly should be principally borne by the employer rather than their low paid employees. Providers have greater capacity to absorb the risks and costs of variable client demand and mitigate those risks and costs. The employer as the provider of the service has some control over the terms and conditions of service provision and the organisation of the work. It is dysfunctional to perpetuate a term within a modern award that in effect shifts the cost of events that can be in part characterised as the product of poor management onto low income employees.
34. Our primary position is that there should be no client cancellation clause in the Award.
35. If there is to be a client cancellation clause for home care workers in the Award, ABI and others' proposal to extend the period in which make-up time may be worked to three months could create logistical difficulties. Given that roster variation occurs with some frequency in the home care sector, it may be difficult for employees to keep track of make-up hours over three monthly periods and to identify if they have been correctly paid.
36. ABI and others' proposed clause also does not provide a 'cut off' time at which the employee must be notified. Home care is generally provided under the terms of a Home Care Agreement, with the terms of service set out and negotiated between the home care provider

¹⁴ See witness statement of Trish Stewart, paragraph 10, witness statement of Belinda Sinclair, paragraph 25 and witness statement of Deon Fleming, paragraph 16.

¹⁵ Witness statement of Deon Fleming, paragraph 16.

and the consumer. In general, a consumer must provide a set amount of notice of a cancelled service in accordance with the terms of their Home Care Agreement; otherwise they must pay a cancellation fee. Any client cancellation clause should retain a cut-off point by which the employee must be notified. Without a time frame for cancellations, an employee's shift could be 'cancelled' as he or she completes travel at their own expense to the client's home and is just about to knock on the client's door.

37. The proposed clause does have a beneficial effect in that it would provide employees with a more stable and secure income as the employer would either have to pay the employee for the shift or may 'deploy' the employee to another shift rather than withhold payment altogether. In this respect, this clause is an improvement on the current client cancellation clause.

38. United Voice supports the variation ABI and others seek in respect of home care workers *provided that*:

- There is a set time by which the employee must be notified of the cancelled shift. If the employee is notified by that timeframe, then the employer could require the employee to work make up time. If the employee is not notified by that timeframe, then the employee should be paid for the shift as rostered (and cannot be required to work make up time). The current standard of 5pm the day prior should be the starting point.
- Clause 25.5(f)(v) is amended to reference clause 25.5(f)(iv)(A) instead of (B). It is unclear if this is a drafting error. As currently drafted clause 25.5(f)(v) states that the make-up time arrangement *cannot* be utilised where the employee is notified of a cancelled shift after arriving at the relevant place of work to perform the shift, and states that clause 25.5(f)(iv)(B) applies instead, which itself refers back to the make-up time arrangement.
- There is greater clarity around when the 'make-up time' must be paid. Where an employee is required to work make-up time, they should be paid for as if the shift was not cancelled. We would support a form of words as follows:

(vii) Where 25.5(f)(iv)(B) applies the employee will receive payment for the cancelled service as if they had worked it (including any applicable penalties or loadings).

(viii) Where the applicable rate of pay for working the make-up time is higher than the rate of pay the employee received for the cancelled service under 25.5(f)(vii) the employee will be paid the difference between the two rates of pay.

- The time within which make-up may be worked should not be three months. Three months is an excessive length of time. The three month time frame will allow larger balances of make-up time to accrue and also greater deficits in remuneration for work

performed when make-up time is worked. The current Award clause requires that make-up time must be worked in ‘*that, or the subsequent fortnightly period*’. We propose that the time in which make up can be worked is extended to only the next *two* fortnightly periods *i.e.* a month. This extension should enable employers to find an appropriate make-up shift for the employee, whilst not being so long to lose the nexus between the paid shift and the make-up time shift.

- Under the current award provision concerning make-up time, it is likely that if the employer does not direct the employee to work any balance within the fortnight, the right of the employer to direct the employee to perform work as make up time lapses. A clear provisions that this is in fact the case, is necessary and particularly if the Commission is considering longer durations for the accumulation of make-up time.

39. United Voice would not support extending the period in which make up time can be worked where the employer retains the ability to withhold payment of wages to an employee when a client cancels. Such a clause would extend the detriment suffered by employees under the current client cancellation clause without any corresponding benefit. In this respect, it is notable that whilst a significant number of employees covered under this Award are low paid, home care workers have the lowest rates of pay under this Award, and s134(1)(a) ‘*the relative living standards and the needs of the low paid*’ is a relevant consideration. The current combination of low pay and insecure working conditions creates significant uncertainty for low paid employees in home care. Extending the period for client cancellation make up time, without any benefit, would increase the level of insecurity experienced by such employees.

Disability support workers

40. United Voice does not support extending the client cancellation clause to disability support workers. Extending this to disability support workers will create greater instability for the disability workforce. As referred to above, there is already increasing levels of ‘*insecure work arrangements*’ in the disability sector¹⁶, and award changes that increase further insecurity are not warranted.
41. There is no cogent reason to extend the client cancellation clause to disability sector workers. Disability sector work is now primarily funded via the National Disability Insurance Scheme (NDIS). The NDIS Price Guide sets out the amount that can be charged for a client cancellation, and the timeframe in which the cancellation must be made. Previous price guides contained restrictions on the amount of cancellations that could be claimed against a participant. The 2018-19 price guide (NSW/Vic/Qld/Tas) stated that if a participant made a short-notice cancellation (after 3pm the day before the service), then the provider could

¹⁶ Joint Standing Committee on the National Disability Insurance Scheme, ‘Market readiness for provision of services under the NDIS’, paragraph 3.96.

charge up to 90% of the agreed price for the cancelled appointment.¹⁷ The fee could be charged against the participant's plan up to 12 times per year for personal care and community access supports. For other cancellations, where the participant provided notice prior to 3pm the day before, providers were not able to charge a cancellation fee. The 2018-19 price guide for WA/SA/ACT/NT contained the same cancellation scheme.¹⁸

42. That cancellation scheme has been significantly altered in the 2019-20 Price Guide. Under the latest guide, where a provider has a short notice cancellation (or there is a 'no show' on the part of the client) a provider is able to recover 90% of the fee, subject to the terms of the service agreement with the participant. There is no limit on the number of cancellations a provider can claim for.¹⁹
43. The definition of what is considered a short notice cancellation has also changed. Under the current NDIS Price Guide 2018-19, a short notice cancellation was defined as one that occurred after 3pm the day before the service.
44. Under the NDIS Price Guide 2019-20, a short notice cancellation is where the participant has given less than two clear business days' notice for a support where the support is for less than 8 hours duration and the cost of the service is less than \$1000. Where the support is for a longer period or of a higher cost, a short notice cancellation is where the participant has given less than 5 clear business days' notice.
45. Under the NDIS Price Guide 2019-20 providers have greater ability to manage and claim for short notice cancellations than under previous guides.
46. Further, as is demonstrated by recent changes to the NDIS Price Guide, funding arrangements change and sometimes within short time frames.
47. The Commission should be principally guided by the extent to which any proposed variation is necessary to ensure a fair and relevant safety-net in accordance with the modern awards objectives and not by the funding scheme. Extending the client cancellation clause to disability support workers would not provide such workers with a '*fair and relevant*' safety net.
48. As stated above in paragraph [33], the client cancellation clause in home care unjustly shifts the burden of client cancellation from the provider to the employee. There is no reason to extend this unjust practice to disability support workers. Part time employment should be reasonably regular and consistent, and part time employees should be able to rely on a certain amount of hours of work, as agreed upon, and as notified on their roster. An Award clause

¹⁷ The NDIS 2018-19 price guide (NSW/Vic/Qld/Tas), page 18 available at <https://www.ndis.gov.au/media/1154/download>

¹⁸ The NDIS 2018-19 price guide (WA/SA/ACT/NT), page 18, available at <https://www.ndis.gov.au/media/1156/download>

¹⁹ The NDIS 2019-20 Price guide, pages 18-19, available at <https://www.ndis.gov.au/media/1455/download>

enabling an employer to withhold payment for a rostered shift with minimal (or no) notice undermines the security of part time employment, and should not properly be part of a ‘*fair and relevant*’ minimum set of employment conditions. Even if, as per ABI and others’ proposed determination, the employer could not withhold the payment but rather require the employee to ‘*make up*’ the hours within a three month period, this would still have the effect of increasing employment insecurity for disability support workers, and such a clause should not be inserted to a modern award that must provide a fair and relevant minimum safety net of terms and conditions.

Remote response

49. ABI and others have filed a draft determination to insert a clause addressing remote response duties. We do not oppose the insertion of a remote response clause, however we do not support the terms as proposed by ABI and others.
50. The variation proposed by ABI and others does not adequately distinguish between remote response work performed whilst on call, and remote response work performed ad hoc, and only requires payment at the applicable rate of pay for remote response work performed.
51. A distinction between remote response duties performed whilst on call, and not, is necessary. When an employee is not on call, an employee should be able to expect that they are free to go about their life without any intrusion from the workplace. This is particularly so when employees are award-reliant. Any remote response duties that the employer requires the employee to perform when they are not on call should be costed at a higher rate. This would encourage an employer to roster effectively, and ensure that an appropriate employee is available ‘*on call*’ to address issues that may arise. Placing a higher cost on remote response work performed by employees not on call also provides some compensation for the greater disutility associated with the work.
52. Remote response duties are performed outside of rostered hours, and should be paid at overtime rates. If remote response duties are not costed effectively, this could result in some employers requiring employees to work multiple instances of remote response across a long period of time, effectively disrupting any rest break the employee is entitled to between shifts.
53. ABI and others’ proposed variation also explicitly excludes ‘*administrative duties*’ from the ambit of remote response. We oppose this exclusion. If the employer directs or authorises an employee to perform administrative duties outside of ordinary hours, then there is no reason why such duties should not be paid for under this clause.
54. The variations ABI and others propose to the on call allowance (clause 20.9) and the recall to work overtime clause (clause 28.4) are consequential to the insertion of their remote response clause. If an appropriate remote response clause was to be inserted into the Award, that upheld a distinction between remote response duties performed whilst on call and not, and

provided for overtime rates for remote response work, we would not oppose the relevant consequential amendments.

United Voice
13 September 2019

BEFORE THE FAIR WORK COMMISSION

MATTER NO. 2018/26

Section 156 - Four Yearly Review of Modern Awards – Social, Community, Home Care and Disability Services Industry Award 2010 – Substantive review

Statement of Melissa Coad

I, Melissa Coad, union official, of [REDACTED] say:

1. I am employed by United Voice as the Executive Projects Coordinator.
2. I am responsible for the coordination of United Voice's activities in home care, disability care and the residential aged care Industries. The role requires an in depth knowledge of the home care, disability and aged care sectors, including a detailed knowledge of:
 - a. the structure and operation of the sectors, including eligibility processes for consumers, and funding mechanisms,
 - b. legislative and policy reforms in both sectors, and
 - c. workforce and the issues impacting the provision of quality care and support.
3. The role requires contribution to and involvement in stakeholder and government forums and engagement in the policy debate. I am or was a member of or participate in the following groups and forums: National Aged Care Alliance (NACA) including chairing the NACA workforce sub-committee, the Aged Services Industry Reference Committee, the Aged Care Workforce Industry Council, the (former) Community Services and Health Industry Skills Council, the University of South Australia Quality Jobs Quality Care Project Advisory Committee and Project Working Group, the (former) Department of Health and Ageing Strategic Workforce Advisory Group. My participation in these groups is on behalf of United Voice and its members and the main focus of my involvements is the protection and enhancement of the industrial rights and general well-being of our members.
4. I have been in this role since August 2013.
5. I previously made a statement in the 4 yearly review Part time and Casual proceedings. I have updated that statement for the purposes of these proceedings.
6. I have read the submissions of Australian Business Industrial, the NSW Business Chamber Ltd, Aged and Community Services Australia and Leading Age Services Australia dated 2 July 2019.
7. I have read the submissions of National Disability Services dated 2 July 2019.

Funding of Aged Care

8. The Commonwealth is the primary funder and regulator of aged care in Australia. At the Commonwealth level, the main regulatory instrument is the *Aged Care Act 1997* (Cth), which sets out the basis for service planning, user rights, eligibility for care, funding, quality assurance and accountability.
9. Aged care can be delivered in the home or in a residential aged care facility. There are different models of funding for each sector.
10. Home care employees covered by the *Social, Community, Home Care and Disability Services Industry Award 2010* predominantly provide aged care services in the home. Care workers in residential aged care facilities are covered by the *Aged Care Award 2010*.
11. Eligibility for residential aged care or a Home Care Package is determined by assessment. Assessments are undertaken by an Aged Care Assessment Team ('an ACAT'). Eligibility for services delivered under the Commonwealth Home Support Programme (CHSP) are assessed by a Regional Assessment Service (RAS). A person wanting to enter residential aged care or wanting assistance at home would first contact the Commonwealth Government through a contact centre called My Aged Care. Where appropriate the contact centre will refer the person to an ACAT, or RAS in their local area for assessment. The ACAT or RAS will determine if a person is eligible for residential aged care or for home care and the level of support they are able to receive.
12. Once a person is assessed and eligible they can enter residential aged care or receive a home care package or services provided through CHSP. If residential places or home care packages are not available immediately they will go on a waiting list until places or services are available.

Federal Funding of Home Care

13. Consumer Directed Care ('CDC') and individualised funding is the current model of funding for Federal Home Care Packages Programme. Home Care Packages are different to the Commonwealth Home Support Programme (CHSP).¹

¹ The CHSP brings together four programs: Commonwealth Home and Community Care (HACC) Program, Planned respite from the National Respite for Carers Program (NRCP), Day Therapy Centres (DTC) Program, Assistance with Care and Housing for the Aged (ACHA) Program. The CHSP is one consolidated programme that provides entry-level home support for older people who need assistance to keep living independently at home and in their community.

14. Home Care Packages were introduced on 1 August 2013, to replace the former Community Aged Care Packages (CACPs), Extended Aged Care at Home (EACH) Packages and Extended Aged Care at Home Dementia ('EACHD') Packages as part of the *Living Longer, Living Better* aged care reforms. With the introduction of the Home Care Packages programme, the first tranche of home care places were required to be delivered on a CDC basis.
15. As at 30 June 2014, there were 6,833 home care packages being delivered on a CDC basis. From the 1 July, 2015 all Federal Home Care Packages are required to be delivered on a CDC basis. On 1 July 2015, approximately 59,000 existing Federal Home Care packages were converted to the CDC funding model. As at December 2018 there were 93,331 people receiving Home Care Package.
16. The purpose of CDC is to deliver greater flexibility and choice to home care clients, who will now be able to choose the types of care and services that they want. This will include how the service is delivered. Individualised funding gives the consumer more control by clearly identifying the sum of money available to support the individual and how that money is spent.²
17. The introduction of CDC was a significant change in the way that home care is delivered in Australia. The most significant change that CDC presents is the introduction of individualised budgets for each consumer. Previously, funding of Home Care Packages was provided as 'block' funding to care providers, with a sum of money being provided to care providers to care for an allotted number of consumers. Although they were not entitled to move funds from one client to another, providers would move 'unused' funds from one client to another that required topping up. Some recipients with less intense packages essentially subsidised those who needed more intensive in-home care. However, this can no longer occur due to the introduction of individualised budgets. This 'cross-subsidisation' is impossible under the new system.
18. There is a substantial amount of unspent funds as clients either 'save' for a genuine high cost item or event, save due to attitude "I don't really need it now" or they just don't spend the funds – it is not known exactly why. There was about \$539 million in unspent funds as at the end of the 2018 financial year.³ This was up on the previous financial year. As of 20 June 2017, there were \$329 million in unspent funds.⁴

² Guidelines outlining how the Home Care Packages Programme is to be delivered can be found here: https://www.dss.gov.au/sites/default/files/documents/08_2014/home_care_packages_guidelines_2014.pdf

³ Aged Care Financing Authority, Seventh report on the Funding and Financing of the Aged Care Industry. July 2019, pg 56, available here: https://agedcare.health.gov.au/sites/default/files/documents/08_2019/acfa-seventh-report-2019-acc.pdf

19. Home Care Packages are additionally funded through a consumer contribution of a 'basic daily fee' and dependant on income an 'income tested care fee' as well.
20. Currently, the Federal Home Care package subsidy will still be paid to the home care providers and not directly to the consumer. The Home Care subsidy is paid to the home care provider monthly in advance through the Department of Human Services aged care payment system. The subsidy is calculated on a daily basis.⁵
21. Reforms that commenced in February 2017 enabled funding to follow the consumer (although it will still be paid to the provider). This will mean packages are no longer allocated via an annual planning round to providers; instead, consumers will take their eligible package to any provider of their choice.
22. Additional reforms, which were slated for 2018 (but have yet to occur) will effectively merge the Commonwealth Home Support Programme (previously state based HACC), Home Care Packages and ultimately residential aged care into one seamless aged care system, accessed by the consumer at the appropriate level based on assessment.
23. A crucial feature of both the NDIS and Home Care Packages is an increase in the standardisation of policy and practice across Australia and also the use of a diverse and competitive array of providers. United Voice has been an advocate for workers in these sectors during recent changes to ensure our members conditions are maintained and improved.
24. Employers in aged care, home care and disability appear to be using fears about the change in the funding model for home care and the introduction of the NDIS to demand greater workforce flexibility. When in fact for many providers it may mean a more certain income stream as they are able to attract a greater number of consumers than they were allocated under the previous funding arrangements.
25. A feature of CDC is that greater choice is provided to the consumer. United Voice members are the individuals providing the care and support under this system and the face of the provider. United Voice has been working with employers and peak organisations and amongst the more progressive there is an awareness that stability and better terms and conditions for the workers delivering the actual service is critical for a provider's survival and growth when consumers have greater choice concerning where the money goes. There are a number of factors that militate against uncertainty in this sector under the CDC model of funding.

⁴ As above.

⁵ <https://www.dss.gov.au/our-responsibilities/ageing-and-aged-care/aged-care-funding/aged-care-subsidies-and-supplements>

26. CDC provides incentives for employers to increase the predictability and consistency of service delivery. The work involves delivering personal care services to vulnerable persons who are often isolated in various ways. Continuity of service is sought and desirable. When a good relationship has developed between a carer and a recipient of care, there are incentives to maintain this relationship under CDC.
27. Demand for aged care services (both residential and in the home) is higher than what can currently be delivered due to the planning process effectively 'capping' supply. Many stakeholders in the aged care sector, providers and consumers alike have and continue to call for an uncapping of supply. Demand for aged care services is likely only to grow into the future as the population ages. As at 31 March 2019 there were 129, 038 people waiting to receive a package at their assessed level of need.⁶
28. The nature of the care and support provided by United Voice members in aged care, both in residential and in home care includes, domestic support such as cleaning, cooking and transport, personal care such as assistance with showering, dressing, eating and incontinence and medication management. The care provided is generally low acuity care and should be able to be provided in a planned manner. While our members assist persons in the community with medical emergencies and other one off needs for assistance this is not what this type of service is designed to provide.
29. Accordingly, the nature of these services is that they tend to be performed in a routine manner, *i.e.* at the same time each day, and this allows for both the recipients and providers of the care to negotiate mutually acceptable times for the service to be provided in advance. Continuity and predictability in the pattern of the provision of care is consistent with a higher quality service. An important element of this is the development of relationships between the provider of care and the recipient.
30. There will always be demands on care giver and providers to provide more services and respond to requests for additional services. Many of the recipients of care are socially isolated and have significant mental and physical illnesses. This is the case under past and current funding arrangements and it is incumbent on providers to provide the services that they are able to provide in a planned and measured manner. The majority of care recipients understand and will be able to negotiate a balance between their desired service and the capacity for that service to be provided by the person of their choice and at the time of their choice.

⁶ Department of Health. Home Care Packages Program Data report 3rd Quarter 2018-2019. 1 January to 31 March. 2019. June 2019

Funding of residential aged care

31. CDC does not apply to the Residential Aged Care. The *Living Longer Living Better* reforms announced by the former Labor government in 2012 included a commitment to pilot CDC in residential care. Despite this initial interest from government, a trial is yet to commence. If CDC was to be implemented in a residential care setting it would require a very different approach to CDC in home care. The congregate care setting, shared costs and group rosters would make the application of individual budgets in a residential environment impractical. The concept of CDC in residential care is further complicated by the vulnerability and frailty of residents.⁷
32. Residential aged care places are allocated to providers in an annual Aged Care Approvals Round ('ACAR'). ACAR is an annual competitive application process in which prospective and existing approved providers of aged care can apply for Government funded residential aged care places. These places are capped and become available on the basis of planning based on demographics and geography. The ACAR also provides the opportunity to apply for financial assistance in the form of a capital grant. Applications are assessed and places allocated to those providers that demonstrate that they can provide the best care to potential residents. There is currently a review of the ACAR process underway. The consultation period ends on 13 September 2019.⁸
33. Once assessed by an ACAT, individuals can then access residential aged care based on availability.
34. Consumers contribute to the cost of their care and accommodation in residential aged care via payment of a 'basic daily fee' and possibly a 'means tested care fee'. Accommodation payments are means tested and can be paid via a refundable lump sum or as a 'daily accommodation payment'.
35. Residential aged care providers receive funding per resident based on each resident's care needs and any supplements they may be entitled to. This is paid monthly. An accommodation supplement is also paid for those residents not paying their own accommodation fees due to limited income or assets. A higher accommodation supplement is paid to facilities that are new or recently refurbished.
36. Capital grant funding for capital investment may also be available to residential providers who meet a number of criteria.

⁷ <http://www.australianageingagenda.com.au/2015/08/05/special-report-putting-residents-front-and-centre/>

⁸ <https://consultations.health.gov.au/aged-care-policy-and-regulation/alternative-allocation-models-residential-care/>



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