

IN THE FAIR WORK COMMISSION

4 Yearly Review of Modern Awards

National Disability Services

Submission – AM2018/26

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

Substantive Issues Tranche 2 – Evidence and Findings Sought

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Introduction

1. National Disability Services (NDS) makes the following submission pursuant to the Directions made on 5 December 2019.
2. This submission is arranged as follows:
 - a) Each of the submissions listed in paragraph [4] of the December 2019 Statement is dealt with in turn in accordance with paragraph [2] (a) – (c) of the Directions.
 - b) A submission is made regarding the 24 Hour clause; and

- c) Responses to the questions posed in the Background Paper and directed to NDS are provided.

Submission of United Workers' Union 18 November 2019

(a) NDS position regarding findings proposed by UWU

- 3. This section of our submission will deal with the UWU submission with respect to travel time.
- 4. Our response to the findings proposed by the UWU in relation to the following matters are contained in our answers to the questions posed by the background paper.
 - a) General findings;
 - b) Broken shift;
 - c) Rosters;
 - d) Mobile phones;
 - e) Clothing and equipment;
 - f) Client cancellation; and
 - g) Remote response
- 5. NDS does not contest the findings proposed by UWU at [13]-[26], and [28]-[29] of their submission in relation to travel time.

(b) Reasons for the NDS position regarding findings proposed by UWU

- 6. The evidence consists of a combination of witness and academic research evidence that NDS does not dispute.

(c) Submission in reply regarding the travel time submission of UWU (18 November 2019)

- 7. NDS relies on our submission in reply of 16 September 2019.
- 8. The evidence adduced during proceedings in October, and the findings proposed by UWU, are consistent with the position we put at [22]-[28] of our 16 September 2019 submission in relation to travel that is required to be carried out by employees in the course of their duties.
- 9. The evidence also supports our previous submission¹ that in relation to breaks during a broken shift, there is a potential for an onerous imposition on employees if there are several breaks which require several "commutes" for start and end of each portion of the broken shift.

¹ NDS Submission 16 September 2019 at [35]

10. NDS also relies on our previous submission² regarding the approach to be taken should a variation to the award be considered in response to the UWU claim.

Submission of Health Services Union 18 November 2019

(a) NDS position regarding findings proposed by HSU, (b) reasons for our position, and (c) submissions in reply

11. Our response to the questions posed by the Background Paper deals with proposed findings by the HSU in a number of matters. This section of our submission deals with matters not covered in those Background paper questions, including further matters related to industry funding and structural change; as well claims regarding travel time and overtime for casuals.

Industry Funding and Structural Changes

12. NDS acknowledges the increases in NDIS funding announced during 2019 but disagrees with the submission of HSU at [38]-[39].
13. NDIS pricing remains inadequate due to its failure to account for a range of labour costs. The evidence for this is summarised by ABI and by Ai Group and these summaries are reproduced in the Background Paper at pages 12-13 and 19-20 respectively.

Travel time

14. To the extent that the HSU submission of 18 November 2019 summarises the evidence presented, NDS does not dispute the submission.
15. NDS does, however, dispute the significance attributed at [100] to current NDIS pricing arrangements in relation to travel. HSU note that some funding is available for payment for travel between clients. However, that funding has two main limitations:
 - a) The funding is only available where the client agrees to use some of their funding package for this purpose, rather than for time spent delivering a service to themselves; and
 - b) In regional and remote Australia, the distance that need to be travelled may be considerably greater than covered by the available funding.

16. NDS relies on our submission in reply of 16 September 2019

Overtime

17. The evidence summarised by HSU mostly confirms that part-time employees sometimes work additional hours. This is not a surprising finding and while NDS does not disagree we submit that it does not make a case for changing the existing award provisions.
18. The witness evidence of Mr Quinn that is referred to at [112] regarding a working day of over 16 hours is unclear. He states that the shift in question was not a split shift and yet he worked 9 hours and 53 minutes in a span of over 16 hours. If it actually was a broken shift,

² Ibid at [39]-[42]

then clause 25.6 (c) of the award already provides that overtime at double time is payable in that circumstance.

19. NDS submits that HSU have failed to provide compelling evidence to support a major change to the overtime provisions of the award. The evidence presented does little more than observe that additional hours are sometimes worked, and that the award has different provisions for fulltime and part-time employees.
20. NDS submits that the existing provisions facilitate an efficient and flexible approach to organising work.
21. The provisions of clause 10.3 (c) of the award provide protections for part-time employees who do not wish to be compelled to work extra hours, while still allowing workers who seek additional hours to obtain them.
22. The existing 10 hour daily threshold for overtime for employees (clause 28.1 (b) (ii)) simply mirrors the maximum span available to fulltime employees (clause 25.1 (b)).
23. Where part-time employees accept additional hours within a 10 hour span they do not suffer any greater disutility than a fulltime worker working the same hours.
24. NDS submits that the HSU claim regarding overtime for part-time employees should be dismissed.

Submissions of the Australian Services Union 19 November 2019

(a) NDS position regarding findings proposed by ASU, (b) reasons for our position, and (c) submissions in reply

25. Our response to the questions posed by the Background Paper deals with proposed findings by the ASU in a number of matters. This section of our submission deals with the ASU submission regarding travel time.
26. NDS does not dispute the findings proposed by ASU at [77]-[82] of their submission.
27. NDS takes issue with the finding proposed at [83] and we refer to the comment we make at [15] of this submission in relation to the similar proposed finding put by HSU. Specifically, we do not fully accept the characterisation of the funding available for travel time.
28. NDS relies on our submission in reply of 16 September 2019 in relation to travel time.

Submissions of ABI 19 November 2019

(a) NDS position regarding findings proposed by ABI, (b) reasons for our position, and (c) submissions in reply

29. Our response to the questions posed by the Background Paper deals with proposed findings by the ABI in a number of matters. This section of our submission deals with the ABI submission regarding travel time.
30. NDS does not challenge the findings proposed by ABI in relation to travel time.

31. NDS relies on our submission in reply of 16 September 2019 in relation to travel time, but in the alternative do not oppose the submissions of ABI of 16 September 2019.

Submissions of Ai Group 19 November 2019

(a) NDS position regarding findings proposed by Ai Group, (b) reasons for our position, and (c) submissions in reply

32. Our response to the questions posed by the Background Paper deals with proposed findings by the Ai Group in a number of matters. This section of our submission deals with the Ai Group submission regarding overtime for part-time employees.
33. NDS does not challenge the findings proposed by Ai Group in relation to overtime for part-time employees, set out at [36]-[38] of their submission.

Submissions of AFEI 19 November 2019

(a) NDS position regarding findings proposed by AFEI, (b) reasons for our position, and (c) submissions in reply

34. Our response to the questions posed by the Background Paper deals with proposed findings by the AFEI in a number of matters. This section of our submission deals with the AFEI submission regarding overtime for part-time employees, and travel time.

Overtime

35. NDS does not challenge the findings proposed by AFEI in relation to overtime for part-time employees, set out A-2 to A-6 of their submission of 19 November 2019.

Travel time

36. NDS does not challenge the findings proposed by AFEI in relation to overtime for part-time employees, set out G-2 to G-5 of their submission of 19 November 2019.

24 hour care

37. The draft Report of 14 November 2019 referred to the draft clause proposed by ABI, at Annexure A to the Report.
38. NDS supports the draft clause set out at Annexure A.
39. NDS submits that the draft clause addresses the issues identified in the December 2019 decision³.
40. In particular, the Decision expressed a provisional view that a version of the clause ought to be retained. However, as accepted by NDS, there are deficiencies in the existing clause.
41. The deficiencies include:

³ [2019] FWCFB 6067 at [104].

- a) the clause is silent as to what happens when an employee is required to work more than 8 hours of work;
- b) the lack of certainty about the hours of work of an employee;
- c) the clause is unclear regarding aspects relating to sleeping including that the current clause does not expressly provide that employees will be provided with “a safe and clean space to sleep”

42. The draft clause at Annexure A of the Report deals with these deficiencies respectively by

- a) Stating at 25.8 (e) *“If the employee is required to perform more than eight hours’ work during a 24 hour care shift, that work shall be treated as overtime and paid in accordance with the overtime provisions at clause 28.1. An employer and employee may utilise the TOIL arrangement in accordance with clause 28.2”*
- b) Stating at 25.8 (a) *“...The employee is required to provide a total of no more than eight hours of care during this period”*.
- c) Stating at 25.8 (c) *“The employee will normally have the opportunity to sleep during a 24 hour care shift and, employees will be provided with a separate room with a bed, use of appropriate facilities (including staff facilities where these exist), and free board and lodging for each night when the employee sleeps over.”*

43. In addition, a proposed new clause 25.8 (b) provides additional protection for employees by requiring that a 24 hour care shift may only be worked by agreement with the employee.

44. Finally, it is proposed that clause 31.2 regarding quantum of leave be varied to provide an additional benefit for employees who regularly work 24 hour care shifts.

45. The unions have proposed that clause 31.2 provide for an additional week of leave after just four such shifts in a year.

46. NDS opposes the union proposal regarding clause 31.2 as it is out of kilter with the requirement for shiftworkers to work 10 weekends in order to be entitled to additional leave. If the ABI draft at Annexure A needs to be amended to clarify the meaning of “regular” NDS would propose the amendment read

....

31.2 (b) *“an employee who works 24 hour care shifts in accordance with clause 25.8 on 10 or more weekends during the yearly period in respect of which their annual leave accrues.”*

Responses to the questions posed in the background paper

1.2 The Tranche 2 claims

Q1. Question for all parties: Is the list set out above an accurate list of the Tranche 2 claims that are being pressed?

NDS reply to Q1: Yes, the list of claims presented at [9] of the Background Paper appears to be accurate.

Q2. Question for all parties: Is **Attachment A** an accurate list of all exhibits tendered in the Tranche 2 proceedings?

NDS reply to Q2: The list of exhibits presented at Attachment A appears to be accurate. In relation to NDS exhibits, there is no transcript reference for NDS1, however this was tendered by way of the Court Book.

Q3. Question for all parties: Is **Attachment B** an accurate list of all of the submissions and submissions in reply relied upon in relation to the claims being considered in the Tranche 2 proceedings?

NDS reply to Q3: The list of submissions and submissions in reply accurately reflects the submission relied upon by NDS in relation to the claims being considered in the Tranche 2 proceedings

2 General findings on the evidence

Q4. Question for all parties: Are any of the findings made in the Tranche 1 *September 2019 Decision* challenged (and if so, which findings are challenged and why)?

NDS reply to Q4: NDS does not challenge any of the findings made in the Tranche 1 *September 2019 Decision*.

Q5. Question for all other parties: Are the findings proposed by ABI challenged (and if so, which findings are challenged and why)?

NDS reply to Q5: NDS does not challenge any of the findings proposed by ABI.

Q8. Question for NDS: How do these proposed general findings relate to the specific claims before the Full Bench?

NDS reply to Q8: The proposed general findings provide a context for the claims made in tranche 2 and are relevant to taking into account the operational requirements of employers in this industry. In particular:

- a) The proposed findings (4) and (11) (regarding the fragmentation of work, and the link between tranche 2 claims and changes in the organisation of work), are relevant to considerations of how and whether the award ought to be varied in order to meet the modern award objectives set out in s 134 (1) (d) and (f).
- b) Findings (3) and (5) relate to the enhanced market power of participants in the NDIS which arises from widely supported policy decisions to give disabled people a greater say in how they can live and order their lives. Providers need to be able to accommodate the new reality that services cannot be delivered on a timetable that suits the convenience of the employer.
- c) These findings are directly relevant to Tranche 2 claims relating to broken shift and minimum engagements, travel time and client cancellation which are all claims that arise in response to these changes in the organisation of work.
- d) In the case of client cancellation, the findings support employer claims that the current modern award does not now adequately deal with the growth in client cancellation and needs to be varied in order to do so.

- e) In the case of broken shift and minimum engagements, the findings need to be taken into account in striking an appropriate balance between the needs of employees to have protection from unduly fragmented working arrangements; and the needs of employers to be able to organise the work without, for example, undue limitation on the number of breaks that might occur.
- f) The travel time claims are inextricably linked with the broken shift and minimum engagements claims and so those findings are also relevant.
- g) The findings relating pricing and financial sustainability (7-9) are relevant to consideration of the modern award objective in s134 (f). NDS accepts the observations made at [137]-[143] in the September decision⁴. It is true that the adequacy of funding for social services is a matter for government. However, at the very least, these findings are relevant to considerations about priorities for any changes to the award, as well as for any transitional arrangements in the event that the award is varied in ways that will increase employment costs.

Q9. Question for all parties: Are these aspects of AFEI's submission challenged (and if so, which findings are challenged and why)?

NDS reply to Q9: NDS does not challenge any aspects of the AFEI submission of 23 July 2019 regarding the nature of the SCHADS industry.

Q10. Question for all other parties: Are the findings proposed by Ai Group challenged (and if so, which findings are challenged and why)?

NDS reply to Q10: NDS does not challenge the findings proposed by Ai Group.

Q14. What do the other parties say in response to Ai Group's general observations regarding the evidence?

NDS reply to Q14: NDS does not disagree with Ai Group's general observations regarding the evidence.

Q15. What do the other parties say about Ai Group's submission that Dr Stanford's opinion should not be afforded any weight?

NDS reply to Q15: NDS submits that Ai Group's submission regarding Dr Stanford's opinion is in part overstated.

- a) An underlying concern for Ai Group appears to relate to the qualitative nature of Dr Stanford's research. In our view the approach taken in the research is valid and well supported in academic literature. The issues raised by Ai Group regarding the anonymity of interviewees in Dr Stanford's research raises the bar required too high for determining whether the results of such research are reliable. Furthermore, the general findings align with other witness and documentary evidence in these proceedings.
- b) However, NDS agrees with Ai Group's criticism at (10) and (11) of Dr Stanford's conclusions that employers have "free reign" or that employers ignore efficiency

⁴ [2019] FWCFB 6067

in organising work as that part of his evidence overstates the situation and is in conflict with employer witness evidence in these proceedings⁵.

Q16. Question for other parties: Are the findings proposed by the ASU challenged (and if so, which findings are challenged and why)?

NDS reply to Q16: NDS does not challenge the general terms of the findings proposed by the ASU, however we do challenge the following specific points:

- a) The proposed findings about the effect of fragmentation and precarious employment arrangements on overall staff turnover at (15) – (17) go too far in describing conditions as “intolerable”. NDS accepts that the attractiveness of the work is undermined by fragmented and precarious working arrangements, and that this is contributing to a serious workforce problem with recruitment and retention. Nevertheless large numbers of workers continue to provide support to people with disability and derive great satisfaction from the work.
- b) NDS challenges the emphasis given in the proposed findings at (23) and (24) regarding employer reluctance to “do the right thing” without an economic incentive. This proposed finding goes too far and ignores other evidence⁶ in these proceedings, such as the efforts made by employers to accommodate employee preferences when rostering.
- c) The proposed findings at (23) and (24) also oversimplify the role of profit and loss considerations. The evidence regarding the economic factors of concern to employers makes it clear that the issue is financial survival and ongoing capacity to deliver their mission that is of concern to employers⁷. This concern is a consequence of government policy and pricing constraints.

3. The claims

3.2 Remote response/Recall

Q18. Question for all other parties: Are the findings proposed by ABI challenged (and if so, which findings are challenged and why)?

NDS reply to Q18: NDS does not challenge the findings proposed by ABI.

Q22. Question for all other parties: Are the findings proposed by the Ai Group challenged (and if so, which findings are challenged and why)?

NDS reply to Q22: NDS does not challenge the findings proposed by ABI.

Q24. Question for all other parties: Are the findings proposed by the ASU challenged (and if so, which findings are challenged and why)?

⁵ For example Shanahan Statement at [36]; Wright Statement at [41]; Mason Statement at [71]; Harvey Statement at [57][58]; Ryan Statement at [65];

⁶ *ibid*

⁷ NDS (2018) State of the Disability Sector Report 2018 – in particular sections reproduced in the Court Book at pages 3397-3398; 3404-3406

NDS reply to Q24: NDS challenges the following findings proposed by the ASU.

- a) At [68] the ASU proposed findings at (4), (6) and (8) overstate the likelihood of negative impacts on health and well-being. It is based on research that reviews the literature across a range of industries, and a range of working arrangements. To the extent that the research deals with the health and care sector it is at a very broad level that does not distinguish, for example, between being on call for rostering tasks at a regular time of day, versus crisis management in a rare emergency.
- b) The proposed finding (13) asserts the main reason employees agree to work on call is to maximise income, however there is no evidence to support that proposition. Income seems likely to be a factor, but for example so too will be the professional commitment of employees working in a human centred industry.

3.3 Broken shift and minimum engagement

Q25. Question for all parties: Is **Attachment D** an accurate summary of the modern award provisions that allow employers to engage employees on 'broken' or 'split' shifts (and if not accurate, which findings are challenged and why)?

NDS reply to Q25: NDS accepts that Attachment D is an accurate summary.

Q27. Question for other parties: Are the findings proposed by ABI challenged (and if so, which findings are challenged and why)?

NDS reply to Q27: NDS does not challenge the findings proposed by ABI.

Q28. Question for other parties: Are the findings proposed by Ai Group challenged (and if so, which findings are challenged and why)?

NDS reply to Q28: NDS does not challenge the findings proposed by Ai Group.

Q30. Question for other parties: Are the findings proposed by AFEI challenged (and if so, which findings are challenged and why)?

NDS reply to Q30: NDS relies on our earlier submission⁸ that there is a case for consideration of a variation of the broken shift provisions of this award in relation to the application of shift penalties and so does not fully agree with finding (4) as proposed by AFEI.

Q35. Question for all other parties: Are the findings proposed by the ASU challenged (and if so, why)?

NDS reply to Q35: NDS challenges the following finding proposed by the ASU.

- a) The proposed finding (2) that, in relation to the broken shift provision, the award does not promote efficient and productive performance of work ignores the evidence in these proceedings about why broken shift is used. In particular, the

⁸ NDS submission in reply of 16 July 2019 at [28-49]

evidence shows that broken shift is used precisely because it is an arrangement that helps to meet the needs of clients in an efficient and productive manner⁹. The absence of a broken shift provisions would adversely affect efficiency and productivity.

Q38. Question for other parties: Are the findings proposed by the UWU challenged (and if so, which findings are challenged and why)?

NDS reply to Q38: NDS challenges the following findings proposed by the UWU.

- a) The proposed findings at (8) and (9) regarding employer preferences for continuous shifts mis-characterises the evidence. The employer evidence is actually about trying to strike an optimal balance around a number of factors including efficient use of time, employee preferences and client preferences. In some circumstances a continuous shift will be preferable, but where there are peaks and troughs in client demand a broken shift may be more efficient, subject to balancing operational requirements and employee needs.
- b) The proposed findings at (11) and (12) understate the shift in bargaining power towards clients in the NDIS system. It is true that providers have a capacity to negotiate agreed arrangements, but the overriding public policy purpose of the NDIS is to place client choice and control at the centre of decision making. The capacity of providers to dictate to clients is very much weakened, for deliberate public policy reasons.

3.4 Clothing and Equipment

Q39. Question for all other parties: Do you challenge the findings sought by the HSU (and if so, which findings are challenged and why)?

NDS reply to Q39: NDS accepts the finding proposed by the HSU to the extent there is likely to be some truth to the proposition that care work could cause damage to clothing, but we challenge the significance of the proposed finding in the context of the existing award provisions relating to uniforms and laundry. The evidence is limited to a small number of witnesses whose evidence is actually mixed. The witness evidence is well summarised by ABI and set out at [142] and [143] of the background paper, and NDS submits it is not sufficient to support a need to vary the award.

Q40. Question for all other parties: Is ABI's characterisation of the evidence in respect of this claim, and the findings sought by ABI in respect of that evidence, challenged by any other party (and if so, which characterisation of the evidence or findings are challenged and why)?

NDS reply to Q40: NDS does not challenge ABI's characterisation of the evidence or the findings sought by ABI in respect of the evidence.

Q41. Questions for all other parties: Is the finding proposed by Ai Group challenged (and if so, which evidence or findings are challenged and why)?

⁹ NDS Submission 19 November 2019 at [33]-[37]

NDS reply to Q 41: NDS does not challenge the finding proposed by Ai Group.

Q42. Question for all other parties: Is there merit in inserting a clause in similar terms (with appropriate amendment, e.g. to remove the reference to ‘molten metal’) into the SCHADS Award and if so, why?

NDS reply to Q42: NDS submits that the existing award provision regarding uniforms and laundry is sufficient. If a uniform is provided the employer is already required to replace damaged clothing. If the employee is required to provide a uniform, and allowance is paid to compensate for the cost and for laundry if needed. However, if the award were to be varied to address the HSU claim in relation to clothing other than uniforms, the proposed clause could be a reasonable starting point for drafting, subject to addressing concerns such as those raised by Ai Group¹⁰ and AFEI¹¹. Those concerns relate to identifying what the value of the clothing is, what extent of damage is necessary to require replacement, and confirming that the damage is work related.

Q43. Question for all other parties: Are the findings proposed by the UWU challenged (and if so, which findings are challenged and why)?

NDS reply to Q43: NDS challenges the proposed finding that employees may not be provided with an adequate number of uniforms. The evidence is limited to two witnesses. One of those witnesses acknowledged that she had five shirts provided to cover a 5 day working week¹².

Q44. Question for all other parties: Is ABI’s characterisation of the evidence in respect of this claim, and the findings sought by ABI in respect of that evidence, challenged by any other party (and if so, which characterisation of the evidence or findings is challenged and why)?

NDS reply to Q44: NDS does not challenge ABI’s characterisation of the evidence in respect of this claim, and the findings sought by ABI in respect of that evidence.

Q46. Question for all other parties: Is the finding proposed by Ai Group challenged by any other party (and if so, why)?

NDS reply to Q 46: NDS does not challenge the finding proposed by Ai Group.

3.5 Client Cancellation

Q47. Question for other parties: Does any party take issue with Ai Group’s contention as to how clause 25.2(f) operates (and if so, why)?

NDS reply to Q 47: NDS does not take issue with Ai Group’s contention as to how clause 25.2(f) operates.

Q48. Question for all other parties: Are the findings proposed by ABI challenged (and if so which findings are challenged and why)?

¹⁰ Ai Group Submission 13 July 2019 at [527] and summarised in the Background Paper at [148].

¹¹ AFEI Submission at [149]-[152] and summarised in the Background Paper at [156]

¹² Transcript 15 October 2019 PN 639 [Sinclair]

NDS reply to Q48: NDS does not challenge the findings proposed by ABI.

Q49. Question for other parties: Do you agree with the above statement (and, if not, why not)?

NDS reply to Q49: NDS does not agree with the statement of UWU to the effect that an unlimited number of client cancellations are now claimable in disability services under the NDIS.

- a) The NDIS Price Guide for 2019-2020 clearly states that cancellations are only claimable for short notice cancellations and the relevant extract is reproduced at [207] of the Background Paper.
- b) The consequence is that cancellations that do not meet the definition of a short notice cancellation are not claimable.
- c) The UWU statement is therefore incorrect.

Q51. Question for other parties: Are the findings proposed by the UWU challenged (and if so, which findings are challenged why)?

NDS reply to Q50: NDS challenges the following finding proposed by UWU:

- a) Finding (7) regarding employer evidence about loss of clients is not speculative as claimed by UWU. It arises out of direct experience of organisations in dealing with clients.

Q53. Question for all other parties: Do you agree with the ASU's submission as to the effect of the NDIS client cancellation arrangements (and, if not, why not)?

NDS reply to Q53: NDS does not agree with the ASU's submission as to the effect of the NDIS client cancellation arrangements. The submission downplays the evidence that, while most cancellations meet the definition of a short notice cancellation, there remain cancellations that do not meet that definition and that are therefore unfunded.

Q54. Question for NDS: NDS is asked to clarify the submission that the current provision 'would appear onerous'; onerous for whom and why?

NDS reply to Q54: The current provision allows for a permanent employee to not be paid in certain circumstances where there is a cancellation. We submit that this is onerous on the employee, and that the ABI proposal remedies that aspect of the current award provision.

Q60. Question for all other parties: Are the findings proposed by AFEI challenged (and if so, which findings are challenged and why)?

NDS reply to Q60: NDS does not challenge the findings proposed by AFEI.

3.6 Mobile phone allowance

Q63. Question for other parties: Are the findings proposed by the UWU challenged (and if so, which findings are challenged and why)?

NDS reply to Q63: NDS submits that the findings proposed by UWU overstate their significance. The witness evidence was mixed with regard to the extent to which

employees do not possess smart phones and the cost impact of any requirement to use a smart phone. No evidence was provided to contradict the submission of ABI regarding evidence of the rate of mobile and smart phone ownership in Australia¹³, or the submission of Ai Group regarding similar evidence¹⁴.

Q64. Question for all other parties: Do you challenge the findings sought by the HSU (and if so, which findings are challenged and why)?

NDS reply to Q64: NDS does not challenge the findings sought by HSU.

Q66. Questions for all parties: The evidence led by the unions in support of these claims is confined to particular categories of employees. If the Commission was minded to vary the SCHADS Award to provide a mobile phone allowance then should the application of that allowance be restricted to the class of employees which have been the subject of evidence in the proceeding? How should that class be defined?

NDS reply to Q66: If the award were to be varied in this respect, NDS would support the variation being limited to the class of employees who have been the subject of evidence in these proceedings. These employees are characterised as working remotely from traditional workplaces and are usually working on their own in private settings with clients. The relevant class of employees can be defined as *“Home Care or Disability Support workers engaged in the delivery of direct client services in a community and/or private residence setting, excluding respite centre and day services”*. This definition identifies the class of employees for which evidence has been provided, and draws on the definition of disability work at Clause 3 of the award, while excluding work carried out in traditional institutional workplaces.

Q69. Question for all other parties: Are the findings proposed by ABI challenged (and if so, which findings are challenged and why)?

NDS reply to Q69: NDS does not challenge the findings proposed by ABI.

Q73. Questions for other parties: Are the findings proposed by AFEI challenged (and if so, which findings are challenged and why)?

NDS reply to Q70: NDS does not challenge the findings proposed by AFEI.

3.7 Sleepover

Q77. Question for all other parties: Are the findings proposed by Ai Group challenged (and if so, which findings are challenged and why)?

NDS reply to Q77: NDS notes that this question appears to relate to the Mobile phone claim, and we do not challenge the proposed findings.

¹³ ABI Reply Submission 12 July 2019 as summarised in the Background Paper at [273].

¹⁴ Ai Group Reply Submission 13 July at [548] and summarised in the Background Paper at [279].

3.8 Rosters

Q80. Question for all other parties: Are any of the findings proposed by the UWU challenged (and if so, which findings are challenged and why)?

NDS reply to Q80: NDS does not challenge the findings proposed by UWU.

Q81. Question to all other parties: Are the findings proposed by ABI challenged (and if so, which findings are challenged and why)?

NDS reply to Q81: NDS does not challenge the findings proposed by ABI.

Q83. Question for other parties: Are the findings proposed by Ai Group challenged (and if so, which findings are challenged and why)?

NDS reply to Q83: NDS does not challenge the findings proposed by Ai Group.

Michael Pegg

On behalf of National Disability Services

7 February 2020