

## IN THE FAIR WORK COMMISSION

Matter No.: AM2020/99; AM2021/65; AM2021/63

### AGED CARE INDUSTRY WORK VALUE CASE

#### SUBMISSION OF THE AUSTRALIAN SERVICES UNION

##### Background

1. These are the Australian Services Union's ('ASU') submissions in response to the questions posed by the Commission in Background Document 10. They are filed pursuant to the Directions issued by the Commission on 13 January 2023.
2. The ASU is an interested party in the Aged Care Industry Work Value Case through its coverage of employees in the community and disability sector. The majority of our members in disability services are covered by Schedule B – Social and Community Services Employees ('SACS Employees') of the *Social, Community, Home Care and Disability Services Industry Award 2010* ('SCHADS Award'). The SCHADS Award and the *Social and Community and Disability Services Equal Remuneration Order* ('ERO') determine minimum wages for these employees.
3. The ASU is the community and disability sector union, with members in all states and territories. Our members have roles in disability advocacy and representation services; community mental health services (which includes provision of psychosocial supports of participants who receive funding from the National Disability Insurance Scheme ('NDIS')); NDIS support coordinators and local area coordinators; and sole traders in the NDIS. We also represent disability supporter workers in non-government services in New South Wales, Queensland, the Australian Capital Territory, South Australia, the Northern Territory and Western Australia. Our disability support worker members work in residential, in-home and community settings.
4. Our members in the broader community and disability sector regularly work with people with a disability. For example, a person with a disability may seek the support of a domestic and family violence practitioner, a social worker, a mental health peer worker, or an indigenous drug and alcohol support worker depending on their needs and life circumstances.
5. The ASU will participate in Stage 3 of the Aged Care Industry Work Value Case and make submissions regarding the home care classifications stream of the SCHADS Award and its impact on disability services and the wider community and disability sector.

##### Responses to questions posed in Background Paper 10

6. The ASU's responses are limited to Questions 46 and 47.

*Question 46 - Parties are invited to comment on what extent there is evidence currently before the Full Bench suggesting that HCWs work across multiple sectors and with clients with multiple care needs (aged care and disability care).*

7. In response to Question 46 we say that the evidence is limited and the Commission could not make any reliable findings:
  - a. There is no evidence before the Commission about work in disability services. The Commission could not make any findings about the incidence of work across multiple sectors or with clients with multiple care needs without this evidence.

- b. There is evidence that some employers who provide HCP or CHSP services also provide NDIS services. However, there is little evidence about how these organisations structure their operations or that individual employees of these providers work across multiple sectors.
- c. The evidence of employee witnesses would not suggest that employees commonly work across sectors, but:
  - i. some HCWs supplement their low income by working *for other employers* as social and community services employees or as sole traders in the NDIS;
  - ii. some HCWs *have worked* in disability services in the past or intend to work in disability services in the future;
  - iii. some employees work with *both* aged people and people with a disability, but these employees tend to be paid as HCW, or as a SACS employee depending on the clients they work with, or are covered by enterprise agreements that provide for hybrid classifications; and
  - iv. some HCWs at Australian Unity *previously* worked with both aged people and people with a disability *but now only work with aged people* because Australian Unity has transferred its disability services business to a specialist disability services provider.
- d. The limited evidence of individual employees providing both home care and disability support services comes largely from the lightly populated and geographically isolated state of Tasmania. These employers tend to be covered by enterprise agreements that provide:
  - i. wage rates for both HCWs and SACS employees; and
  - ii. that employees are to be paid at different wage rates according to the clients they work with.

*Question 47 - If a separate classification structure is created for home aged care workers, how will this apply to HCWs who work with both aged persons and people with a disability or who also work in the social and community services sector?*

- 8. The ASU supports the claim of home aged care workers for pay rates and classifications that reflect the true value of their work free of devaluing gendered assumptions about its skill, intensity, and social importance.
- 9. In response to Question 47 we say:
  - a. If a new classification structure is created for home aged care workers, then classifications in the SCHDS Award will need to be significantly revised to reflect modern disability services and aged care industry working arrangements as a matter of urgency.
  - b. The current home care worker classification stream reflects historical institutionalised service models that have long been superseded by modern consumer-directed service models in Aged Care and the NDIS 'choice and control' model in disability services.
  - c. All employees providing supports to people with a disability should be classified as social and community services employees. This fact is recognised in NDIS funding arrangements, which price disability support work according to the minimum wages

and conditions for social and community services employees. Most so-called home care workers in the NDIS system are misclassified.

- d. There are two line items for home care work in the NDIS price guide. These apply to strictly limited household tasks without a disability support element:
    - i. 01\_019\_0120\_1\_1 – House or Yard Maintenance; and
    - ii. 01\_020\_0120\_1\_1 – House Cleaning or Other Household Activities; butthere is no evidence before the Commission that these services are in anyway common.
  - e. We foresee significant industrial disputation and even regulatory intervention by funding bodies over the proper classification of employees working in disability services and aged home care services the remaining roles are reclassified as social and community services employees.
10. The ASU is considering its position with respect to this issue and requests that the Commission include an opportunity for parties to confirm their positions with respect to Schedule E of the Award at the appropriate juncture during stage 3 of the Aged Care Industry Case.

**AUSTRALIAN SERVICES UNION**

**28 February 2023**