

**From:** Michael Pegg [<mailto:MPegg@ja.com.au>]  
**Sent:** Thursday, 11 August 2016 4:17 PM  
**To:** AMOD  
**Subject:** revised witness statement AM2014/196 & AM 2014/197

Attached please find a revised witness statement for Dr Jennifer Fitzgerald. It relates to hearings for AM2014/196 & 197 listed for Monday 15 August 2016 regarding NDIS and related issues for the Social, Community, Home Care and Disability Services Industry Award. The original statement was filed in February 2016 and the revised statement contains updating and some corrections. A copy is being provided to the employer and union parties in this matter.

regards

**Michael Pegg** | Industrial Relations Manager  
[Jobs Australia Ltd](#) | PO Box 299, Carlton South Vic 3053  
Freecall: 1800 060 098 | t: 03 9349 3699



## IN THE FAIR WORK COMMISSION

### Matter No:

AM2014/197 and AM2014/196

### Matter:

4 Year Modern Award Review

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

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### Witness Statement of

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1. My name is Dr Jennifer Fitzgerald, and I am the Chief Executive Officer for Scope (Aust) Ltd (**Scope**), a Victorian based disability services provider.
2. Scope is a member of the peak industry body, National Disability Services (**NDS**).
3. I am NDS Vice-President and Chair, NDS Victoria.
4. I also hold a doctorate in Physiotherapy and prior to taking on management roles, worked as a physiotherapist in the disability sector for over 20 years.
5. I make this statement in support of the submissions by NDS in response to the 4 yearly review by the Fair Work Commission of the *Social, Community, Home Care and Disability Services Industry Award 2010 (SCHCADS Award)*.
6. I make this statement on the basis of my own knowledge and inquiries, save where otherwise stated. Where I make statements based on information provided to me by others, I believe such information to be true.

### About Scope

7. Scope is one of the largest not for profit disability service providers in Australia.
8. Scope was founded in the 1940s as the Spastic Children's Society of Victoria by parents of children with cerebral palsy who were seeking to deliver better lives and outcomes for their children. Scope continues to be a member-based organisation, and today supports over six thousand adults and children across Victoria.

9. The majority of people Scope supports have significant or complex disabilities, including multiple disabilities, and experience substantial social and economic exclusion. Many are vulnerable, particularly people with little or no verbal communication, and those who lack family relationships.
10. Scope advocates for the fundamental right of every person with a disability to live with equality of opportunity and without discrimination as set out in the Universal Declaration of Human Rights, and reflected in the 2010-2020 National Disability Strategy.
11. Scope strongly endorses the principles and requirements of the Disability Act 2006 (Vic) and the United Nations Convention on the Rights of Persons with Disabilities to ensure that people with a disability share an equal right to live free from abuse, neglect or exploitation.
12. This is reflected in Scope's mission, 'to enable each person we support to live as an empowered and equal citizen'.

### **About the National Disability Insurance Scheme**

13. The National Disability Insurance Scheme (**NDIS**) launched in July 2013, following years of discussion about the need for a major reform of disability services in Australia, including a seminal Productivity Commission report into the funding of disability services in 2011.
14. In Victoria, where Scope operates, the first stage of the NDIS began in the Barwon region on 1 July 2013.
15. From 1 July 2016 the NDIS will begin to be available across other areas of Victoria. The NDIS will be made available progressively across the state over the next three years.
16. The NDIS is designed around insurance principles and is intended to provide funding for people with a disability to purchase the reasonable and necessary supports that they need to live an ordinary life.
17. The NDIS has fundamentally changed the way in which disability services are provided and funded.

18. Previously, services were funded directly by State and Territory Governments, typically through block or individualised grants to service providers
19. Now, NDIS funding is provided to the person with the disability, who can decide where, how and from whom they wish to acquire their personal supports.
20. In practical terms, this means that service providers such as Scope are only paid for services actually delivered, at the price determined under NDIS rules.
21. It has also resulted in changes to where services are provided – for example, clients are increasingly requesting supports in their own homes or in community, rather than at the service provider's premises.

### **Services provided by Scope**

22. Scope provides a range of different services to people with a disability. These include in-home or in-community personal supports, supported accommodation, respite, and day and lifestyle programs. Scope also delivers a range of allied health therapies for children and adults.
23. Scope operates from more than 100 sites across Victoria, in metropolitan and regional areas.
24. One of the regional areas in which Scope operates is the Barwon region (ie, Geelong and its surrounds). This region was one of the trial sites for the implementation of the NDIS, with the NDIS commencing in that region from 1 July 2013.

### **Funding**

25. Outside the Barwon region, Scope receives the majority of its funding in the form of direct grants from the Victorian State Government. These grants are paid to Scope under direct funding contracts rather than being directly linked to or paid to the clients that Scope provides services to.
26. In the Barwon region, the majority of Scope's clients hold individualised NDIS funding packages based on their reasonable and necessary support needs, as assessed by the National Disability Insurance Agency (**NDIA**). This will be

followed for other clients, in other regions, as those regions transition into the NDIS as part of the national roll out of the scheme.

27. Where an NDIS funded client chooses Scope as their provider of supports, Scope is paid for supports actually provided, in accordance with the NDIA price guide for supports.
28. For personal supports provided in home or in the community, Scope can charge up to the maximum hourly rate set out in the NDIA price guide. The NDIA hourly rate has been set by the NDIA by reference to the minimum employee entitlements for disability support workers under the SCHCADS Award plus an allowance for reasonable back office overheads.
29. For other supports such as residential accommodation supports, the funding available to NDIS participants is determined by the NDIA through an individualised planning process. The typical level of funding varies, depending on the complexity of the client's support needs as well as the number of clients living in the group home.

### **Scope's workforce profile**

30. Scope employs approximately 1000 disability support workers (**DSWs**) across Victoria.
31. Approximately 65% of Scope DSWs are employed on a permanent part time basis.
32. Of the total pool of Scope DSWs (part time, full time and casual), more than 70% of employees are women.
33. I believe that these figures are indicative of the work force profile across the disability sector generally. As with other carer professions, the disability workforce has traditionally attracted a greater proportion of women, since the nature of the work (organised through flexible shift rosters, often on a part time basis) has enabled many to take on paid work in the sector alongside home duties and care of children. This is certainly the case at Scope, as reflected in our work force profile.

34. As such, any provisions of the SCHCADS Award relating to part time workers (including any unintended consequences of such a provision) will have a disproportionate impact on the disability sector work force, and on women working in the sector in particular.

### **Changing support requirements**

35. Since the introduction of the NDIS, Scope has seen a dramatic change in the way in which disability services and supports are delivered.
36. This reflects the shift in the locus of control, from service provider / State Government to the person with a disability.
37. We now need to deliver services to meet client requirements and preferences – that is, where, when and how a client requests our services.
38. For example, if a client requests personal care supports in their home, we need to ensure that we can provide those supports, at that location, at the time requested by the client. This may be for a short period of time, for example 1 hour.
39. As another example, if a client is working towards a particular goal or outcome (eg, improved communication skills), they may be funded to receive one to one supports for part of their day program in order to support their achievement of this goal. If so, we need to ensure that we have staff available, for that period of time, on a dedicated basis (rather than as part of the general staffing pool for the day program).
40. These changes have led to significantly increased complexity in the co-ordination of supports and the rostering of staff to meet these support requirements.
41. The case study below provides an illustrative example of this complexity. This case study is drawn from Scope's actual experiences in the Barwon region, in respect of an actual de-identified participant.
  - a. Participant 1: Uses a wheelchair, limited effective communication, complex health issues (epilepsy, shunt, bowel management & pressure management related to disability, incontinence). Live at home with family who manages supports.

- b. Accesses group based supports Monday – Friday 9am through until 3pm in the afternoon.
- c. Supports provided reflect the funded supports in the client's NDIA plan.
- d. Staff involved in providing the various supports over the course of the day may or may not be the same, depending on client preferences, the skills and experience of the staff rostered to work that day, the needs of other clients, and the availability of staff over the course of the day.

### **Typical day supported in a centre based day program**

- e. 9am – 11am – Exercise Program delivered in a centre. First half hour provided as a one-on-one support, remaining time is a group with 10 people, with similar support requirements and 5 staff (2:1 ratio).
- f. 11am – 1pm – Personal Care and Meal Time Support in a centre - one-on-one support for Meal time assistance for approximately 1 hour. Includes charting fluid intake and any issues related to swallowing. Requires two people to assist for personal care requirements. As part of personal care assistance staff are required to complete bowel movement chart, urine output and report concerns to the family.
- g. 1pm – 3pm - Group activity in the centre – Sensory group with 6 participants and 3 staff members. During this 2 hours there is half an hour of personal care assistance which is provided by 2 staff.

### **Typical day combination in Centre and In Community supports:**

- h. 9am – 10am – Hydro therapy in a centre – provided one-on-one.
- i. 10am – 1pm - Group based activity in a centre - Seasonal activities in a group may consist of art program, sensory activities, multi-media etc. During this time one-on-one personal care assistance is provided which requires two staff and ceiling mounted hoist.
- j. 1pm – 2.45pm - Group based activity in Community – Group of 5 participants and 3 staff attend a bowling program in the community. Scope vehicle and 2 Taxis transport the participants. One staff member required in each vehicle.

- k. 2.45pm – 3pm – Group based in a centre – Full staff support required to prepare for pick up from family or taxi.

### **Shift length information**

- 42. Client demand for personal supports, often short in duration, is clearly evident in Scope's internal data on shift duration for in-home supports provided to NDIS clients in the Barwon trial site.
- 43. Looking at the 2014 and 2015 calendar years, the total number of in-home support shifts to NDIS clients increased approximately 400% between the two years. While some of this growth may be attributed to the phasing of the NDIS roll out across the Barwon area or to an increase in overall client numbers, this does not account for all growth and is indicative of a move towards in home and in community service delivery under the NDIS.
- 44. In the Barwon region, there has been an increase in individual support shifts on the weekends, more than doubling from 3% in FY15 to 8% in FY16.
- 45. In addition to this global increase in demand, there has also been a change in client preference from longer to shorter shifts, as shown below.
- 46. In the Barwon region, shifts less than 4 hours have grown from 31% in FY14 to 57% in FY16. As plans get more individualised this trend will increase.
- 47. In the Barwon region, individual support shifts less than 4 hours have increased from 52% in FY15 to 79% in FY16.



## DSW shift duration (total)

Breakdown of Shift Duration of in-home or in-community shifts (excluding Therapy)							
	<1hr	1hr to 2hrs	2hrs to 3hrs	3hrs to 4hrs	4hrs to 5hrs	5hrs and longer	Grand Total
July 2013 to June 2014	5%	15%	5%	5%	2%	67%	100%
July 2014 to June 2015	11%	16%	19%	9%	7%	38%	100%
July 2015 to June 2016	12%	18%	17%	10%	10%	33%	100%

Breakdown of Shift Duration of in-home or in-community shifts (excluding Therapy)					
		< 4 hrs	4hrs to 5hrs	5hrs and longer	Grand Total
July 2013 to June 2014		31%	2%	67%	100%
July 2014 to June 2015		55%	7%	38%	100%
July 2015 to June 2016		57%	10%	33%	100%

## DSW shift duration (1:1 supports)

1:1 Shift Duration of in-home or in-community shifts (excluding Therapy)				
	<4hrs	4hrs to 5hrs	5hrs and longer	Grand Total
July 2014 to June 2015	52%	7%	41%	100%
July 2015 to June 2016	79%	4%	17%	100%

1:1 Shift Duration of in-home or in-community shifts (excluding Therapy)			
	Weekday	Weekend	Grand Total
July 2014 to June 2015	97%	3%	100%
July 2015 to June 2016	92%	8%	100%

48. In other words, under the NDIS in the Barwon region, 79% per cent of shifts in FY16 for one on one supports (in home or in community) were for less than 4 hours, the ACTU proposed minimum engagement period.
49. This clear change in client preference creates greater rostering complexity for Scope, to ensure that sufficient disability support workers are available to provide services to meet client requirements, and that we match the appropriate individual staff to the needs and preferences of clients.
50. Where the duration of a client appointment is short, Scope attempts to find a series of appointments that the support worker can attend, in order to make the

shift financially viable for Scope or sufficiently attractive to the support worker for the shift to be filled. However,

- a. About 90% of the Support Worker role involves face to face support for clients and if other clients are not seeking support at that time it is not possible to create other work for the worker to perform to fill a longer engagement; and
  - b. Under NDIS, the employer is not able to charge the client for the extra wage costs that arise when the support provided is for a shorter period than the minimum engagement. It is a requirement of NDIS that only the time actually spent with the client is paid for by the client and so the employer loses money and is able to charge extra to compensate.
51. If minimum engagements were longer than the current 2 hours for casual disability support workers, Scope would need to reconsider whether it was commercially viable to offer supports of less than 2 hours which would have a significant adverse impact on the choices available for our clients with disability.

### **Industrial Relations implications**

52. I am aware of a number of provisions of the SCHCADS Award which are potentially inconsistent with the operational requirements of the NDIS and the funding model applying to NDIS funded services.

#### **Part time employees**

53. In relation to part time employees, I am aware that under the SCHCADS Award, employers are required to agree particular days and times of work with part time staff. This compares with pre-modern award arrangements, whereby employers were previously required only to agree a minimum number of hours to be worked in a given period, with days and times to be determined through rostering arrangements.
54. The more prescriptive requirement under the SCHCADS Award is at odds with the flexibility that service providers require under the NDIS in order to match staff with client requirements. Over time, this could potentially lead to a casualisation of the disability sector work force, since this may be the only means through

which service providers can sustainably match the supply of staff with client demand.

### **Roster requirements**

55. In relation to roster requirements, I am aware that under the SCHCADS Award, employers are required to post a roster two weeks in advance, and are required to provide 7 days' notice of changes.
56. This is potentially workable in a group based service environment such as group homes, but is not workable for a model of in community (or in home) service delivery, where service requirements need to respond to demand which may not be known two weeks in advance.
57. In the context of the NDIS, this could again lead to a casualisation of the workforce, particularly for in community (or in home) supports, for which Scope has seen a great increase in demand at least in the Barwon trial site.

### **Shift worker for the purposes of the National Employment Standards**

58. I am aware that under the National Employment Standards, employees who meet the definition of 'shift worker' are entitled to an additional week of annual leave.
59. I am aware that a 'shift worker' under the SCHADS Award, is defined as an employee who works more than 4 ordinary hours on 10 or more weekends in a year. This compares with some other awards where shift worker is defined more narrowly, eg only to employees who regularly work on Sundays or public holidays.
60. In the context of the NDIS, this is an unfunded cost to service providers, since the current NDIS price for in-home supports assumes that employees are entitled only to 4 weeks' of annual leave.
61. This may considerably constrain the capacity of service providers to meet client demand for services on a Saturday or Sunday, particularly if clients have a preference for their 'usual' support worker on these days, since it may not be financially sustainable for service providers to incur the additional annual leave liability in addition to paying penalty rates for weekend hours.

Jennifer Fitzgerald

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Dr Jennifer Fitzgerald  
Chief Executive Officer  
Scope (Aust) Ltd

11 August 2016