

FAIR WORK COMMISSION
4 Yearly Review of Modern Awards
Social, Community, Home Care and Disability Services Industry Award 2010

Matter: AM2018/26

WITNESS STATEMENT OF JEFFREY OWEN SMITH

Filed on behalf of People with Disability Australia and Disabled People's Organisations Australia (DPO Australia).

I, Jeffrey Owen Smith, of [REDACTED], affirm:

Background

1. I am the Chief Executive Officer for People with Disability Australia. I have been employed by PWDA since August 2019.
2. [People with Disability Australia \(PWDA\)](#) is a national cross-disability rights and advocacy organisation run by and for people with disability. Working within a human rights framework, PWDA represents the interests of people with all kinds of disability. We are a Disabled Peoples Organisation (DPO), meaning that our primary membership is people with disability and organisations primarily constituted by people with disability. We also have a large associate membership of other individuals and organisations committed to the disability rights movement. We have a vision of a socially just, accessible, and inclusive community, in which the human rights, citizenship, contribution, potential and diversity of all people with disability are recognised, respected and celebrated.
3. As a national DPO PWDA has a significant interest in the successful transition to the NDIS. We campaigned with and for people with disability for the introduction of the scheme over many years; we conducted a national engagement project with the National Disability and Carers Alliance to co-design the Scheme (2012-13) and I represent PWDA at the NDIA CEO forum. PWDA also provides a Commonwealth funded Individual Advocacy Service across NSW and locations in Queensland assisting over 2400 clients each year, many of whom will be effected by the NDIS transition.
4. PWDA is also a founding member of the Disabled People's Organisations Australia (DPO Australia), the others being First Peoples Disability Network Australia (FPDNA), Women With Disabilities Australia (WWDA), and National Ethnic Disability Alliance (NEDA). The key purpose of DPO Australia is to promote, protect and advance the human rights and freedoms of people with disability in Australia by working collaboratively on areas of shared interests, purposes and strategic priorities and opportunities. DPO Australia has been funded by the Australian Government to be the recognised coordinating point between Government/s and other stakeholders, for consultation and engagement with people with disability in Australia. In forming DPO Australia, its four founding member organisations recognise and value the strength of working together in a spirit of mutual respect and trust, to proactively pursue human rights outcomes for all people with disability in Australia.
5. In making this witness statement I am representing the views of PWDA.

Filed on behalf of People with Disability Australia and the Australian Cross Disability Alliance
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6. I hold a Bachelor of Arts and Law at Macquarie University and a Masters of Law at the University of Sydney.

Choice and control for people with disability

7. The NDIS is premised on the principles of choice and control for people with disability. Choice of support provider and control over the terms of the supports being provided. In doing this people with disability are reshaping the market for disability supports by creating demand on their own terms, as opposed to accepting an inflexible, block funded supply. By funding individuals to create demand as opposed to funding services to create supply, the person centred approach of the NDIS takes the provision of disability support out of the specialised, segregated market and opens it up to operate within a free market model – like other services required by people in the community such as grocery shopping, leisure, entertainment, healthcare and transport, all of which operate outside of a traditional 9-5 office hours framework and respond to uncertain demand.
8. The NDIS is supporting people with disability to receive their disability supports in a way which will increase their social and economic participation. For example, the provision of disability support at flexible times to allow participation in social activities, employment and to make necessities such as visiting the doctor and shopping more convenient. It is the right of people with disability to undertake these activities as and when it suits them.
9. Some flexibility from the workforce will be required in order to realise this vision of the NDIS, and the ability of providers to deliver flexible, appropriate, good value, high quality, safe services must be a standard to which the success of the NDIS is held. The challenge of meeting these expectations lies with the service provider who must develop a business model that meets the needs of consumers through engagement of a workforce that is appropriately skilled, motivated, paid and valued for their work.
10. Spontaneity of needs may be addressed by existing casual support worker provisions, and it is important that these casual staff are properly remunerated for the insecure nature of their work. However, people with disability must not be characterised as unreasonable, unpredictable or irrational people who expect to have their preferred staff 'on call' to respond to their whims. People with disability are aware of the constraints that workers operate under and in some instances are also disability support workers themselves.
11. It is also critical to note that for the majority of people requiring disability supports their needs are regular and predictable. For example, a person requiring personal care every morning before work will be likely to require it at the same time, every working day, for every working week of the year. In our experience people with disability value continuity of support and are likely to seek to retain "good" staff on a regular basis. They frequently express immense frustration with having to repeatedly 'train' new support workers in how to provide person-centred services to them as a result of a highly casualised and transient workforce. To our knowledge, the majority of NDIS participants want to employ staff regularly and over the long-term.
12. NDIS Support Plans are also drawn up and pre-agreed in advance, with spending justified at regular intervals. It is erroneous to characterise the NDIS as a system that provides for people with disability to change their support preferences on an ongoing and erratic basis.

The emphasis is on encouraging regimes of support that work well, when these patterns are achieved there should be little need for significant alteration to plans and service provision. Again, the key to meeting the expectations of people with disability and enabling service providers to operate with predictability and consistency is reliable, content, quality staff.

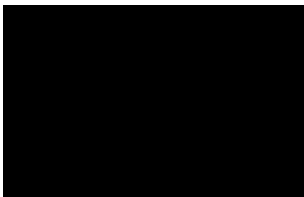
13. People with disability want to employ staff who are paid appropriately for their work, and for working anti-social hours whether they be long, short, late, early, fall on public or religious holidays, or at other times when they may prefer to be spending time with family and friends. Not only do positive working conditions mean that staff are more content in their job; their ability to build trusting, positive and productive relationships with clients is increased. Resentful and disgruntled staff are more likely to be more difficult for people with disability to work with, influence high rates of staff turnover, and ultimately can result in people with disability being put at risk of harm.

Devaluing the work of disability support workers devalues the lives of the people with disability they support

14. The proposed changes to the SCHDS Award – including to ordinary hours of work and rostered work - threaten the quality of staff and thus services on offer to people with disability.
15. The removal of overtime protections and changes to roster provisions would make disability support work an increasingly unattractive career path and lower the level of skills and commitment in the already strained workforce. This is at a time when the workforce should be expanding, diversifying, and up-skilling to adapt to the new environment and provide innovative solutions to people with disability. Disability support work is a challenging and rewarding career path, it should not be characterised as a fall back, or stop gap career for people unable to secure alternative better paid work with more standardised working conditions.
16. The proposed changes will potentially create a category of worker who is offered insecure employment with less protections *specifically* because they work with people with disability. The inference being that people with disability somehow still require something 'different' than others in the community, and cannot be served by mainstream style supports. The NDIS challenges this perception, and it is the service sector that must respond by changing working cultures, raising expectations, and rewarding good staff as opposed to targeting the workforce for cuts and placing the responsibility for this on people with disability who are merely seeking the choice and control experienced by others in the community.
17. Moreover, the changes will disproportionality affect women who make up the majority of the current disability support workforce. It will also create a further barrier to employment for people with disability themselves who could be using their skills and expertise to increase their economic participation and strengthen their economic security by working in the sector.
18. Creating systemic employment discrimination problems for disability support workers discriminates against people with disability too by indirectly channelling potential staff into

other industries with better working conditions. Devaluing the work of disability support workers devalues the lives of the people with disability they support.

19. Furthermore, there is considerable evidence linking underpaid, unmotivated, undervalued staff to violence, abuse, neglect and exploitation of people with disability especially those living in residential institutions or receiving personal care in their own homes. Research demonstrates that violence, abuse and neglect tend to occur where work is precarious, unstable or contingent (Mayhew and Quinlan, 2000 Both PWDA have advocated extensively on this topic, most recently in evidence to the [Senate Community Affairs Inquiry into Violence, Abuse and Neglect Against People with Disability in Residential and Institutional Settings](#) (2015). The Senate Report made specific recommendations around workplaces and worker practices with regard to addressing violence committed by staff.
20. Given the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability is just starting, it is premature to rein in employee entitlements in the manner suggested. The Royal Commission is likely to uncover many examples of violence, exploitation, abuse and neglect, and undoubtedly some of these will be due to structural issues arising out of the employment relationship, including where this spills over into unhappy and resentful staff.
21. Attractive working conditions for disability support workers are essential in order to support and maintain the paradigm shift embodied by the NDIS, encourage the development of a high quality market for disability supports which meets the needs of consumers, and to ameliorate the risk of violence towards people with disability. I urge the Fair Work Commission to look past the reactionary and short term needs of a service sector going through a period of urgent transition, and put the needs of people with disability and those who they employ to support them at the forefront of your deliberations.



Jeff Smith
CEO People with Disability Australia

Dated 11 September 2019