

From: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>
Sent: 19/05/2020 4:34 PM
To: Sam Cahill <Sam.Cahill@ablawyers.com.au>; Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>
Cc: Nigel Ward <Nigel.Ward@ablawyers.com.au>; FRANCESCHINI, Mirella <Mirella.FRANCESCHINI@fwc.gov.au>; Julian Arndt <Julian.Arndt@ablawyers.com.au>; mrobson@asu.asn.au; rachell@hsu.net.au; Stephen Bull <Stephen.Bull@unitedworkers.org.au>; peggms24@gmail.com; AMOD <AMOD@fwc.gov.au>; Ruchi Bhatt <Ruchi.Bhatt@aigroup.com.au>; Brent Ferguson <Brent.Ferguson@aigroup.com.au>; Paula Thomson <Paula.Thomson@afei.org.au>; Dean Tyler <Dean.Tyler@ablawyers.com.au>
Subject: RE: AM2020/18 - s 157 SCHADS App

Dear Mr Cahill,

Thank you for your email.

An extension was provided to all parties earlier today for the filing of further submissions and evidence, by no later than **4pm tomorrow**. Please see [link to relevant correspondence](#).

This correspondence confirming the extension was sent out by Subscriber to all parties who have subscribed to the page. You may wish to review your subscription and/or subscribe. If you have any queries in relation to subscribing, please do not hesitate to contact AMOD@fwc.gov.au.

Thank you, Tahleah.

Tahleah Gillard
Associate to The Hon. Justice IJK Ross
President

Fair Work Commission
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The Fair Work Commission acknowledges that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander peoples. We acknowledge their continuing connection to country and pay our respects to their Elders past present and emerging.



From: Sam Cahill <Sam.Cahill@ablawyers.com.au>
Sent: Tuesday, 19 May 2020 3:57 PM
To: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>
Cc: Nigel Ward <Nigel.Ward@ablawyers.com.au>; FRANCESCHINI, Mirella <Mirella.FRANCESCHINI@fwc.gov.au>; Julian Arndt <Julian.Arndt@ablawyers.com.au>; mrobson@asu.asn.au; rachell@hsu.net.au; Stephen Bull <Stephen.Bull@unitedworkers.org.au>; peggms24@gmail.com; AMOD <AMOD@fwc.gov.au>; Ruchi Bhatt <Ruchi.Bhatt@aigroup.com.au>;

Brent Ferguson <Brent.Ferguson@aigroup.com.au>; Paula Thomson <Paula.Thomson@afei.org.au>;
Dean Tyler <Dean.Tyler@ablawyers.com.au>
Subject: RE: AM2020/18 - s 157 SCHADS App

Dear Associate

Attached for filing with the Commission are our Submissions on behalf of ABI and NSW Business Chamber.

We apologise for not filing the Submissions before the 2pm deadline. We were under the mistaken impression that the deadline was 4pm.

As mentioned in our Submissions, we intend to file further material in relation to the matters raised by the Commission in its Statement on 5 May 2020, including an agreement statement of facts by ASU, NDS and ABI. We respectfully request an extension until 9.30 am tomorrow for the filing of this material.

Kind regards

Sam Cahill

Senior Associate
Australian Business Lawyers & Advisors

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**Fair Work Commission - s 157 Variation Application
Response to Statement issued on 5 May 2020**

**AM2020/18 - APPLICATIONS TO VARY THE SOCIAL,
COMMUNITY, HOME CARE AND DISABILITY SERVICES
INDUSTRY AWARD 2010**

SUBMISSIONS

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

19 MAY 2020

1. REPLY TO FWC STATEMENT

1.1 On 5 May 2020 the Fair Work Commission (the **Commission**) issued a Statement in this matter setting out Preliminary Views and posing various Questions to be answered by the parties.

1.2 “ABI” we asked to respond to some of these questions.

1.3 Set out below are the answers to those questions.

Q3: All parties are invited to comment on our provisional view.

1.4 We agree with the provisional view in that the evidence of Mr Moody is of no probative value for the Applicants.

1.5 Mr Moody had no direct (and little indirect conversational) knowledge to support the Application in any meaningful way.

1.6 Mr Moody had no direct (and little, if any, indirect) knowledge of the matters referred to in paragraph [46] of the Statement.

1.7 His evidence failed to inform the Commission to any necessary degree about pre COVID-19 policies, procedures and practices dealing with PPE generally and for infectious diseases specifically.

1.8 His evidence failed to inform the Commission to any necessary degree about changes to policies, procedures and practices dealing with PPE generally and for infectious diseases inclusive of COVID-19 specifically since the COVID-19 pandemic commenced in Australia.

1.9 The recording of the transcript presents some challenges we note in particular:

- (a) PN62 to PN65;
- (b) PN120 to PN134;
- (c) PN170 to PN197; and
- (d) PN214 to PN281.

Q4: The Applicants (and any other party) are invited to adduce evidence directed at these matters.

1.10 At the time of writing we were unaware of whether the Applicants were seeking to file new evidence and effectively ‘start their case again’ as suggested in the HSU letter to the Commission dated 6 May 2020. ABI will await to see if the Applicants seek to do this before seeking further directions in this regard. This said, and while ABI may seek to adduce further evidence, ABI has filed further evidence, that it may seek to rely on to assist the Commission in regard to the matters raised in paragraph [46].

Q5: Which particular aspects of these publications are relied upon and for what purpose?

1.11 The following publications are tendered:

- (a) Summary of disability allowances and PPE-related terms in Modern Awards
(ABI 1);
- (b) Infection Control Expert Group, COVID-19 Infection Prevention and Control for Residential Care Facilities, 2 April 2020 **(ABI 2);**
- (c) Australian Government Department of Health, Communicable Diseases Intelligence 2020, Volume 44: COVID-19, Australia: Epidemiology Report 12, Reporting Week Ending 19 April 2020 **(ABI 3);**

- (d) Australian Government Department of Health, Management and Operational Plan for people with Disability, April 2020 (**ABI 4**);
- (e) Australian Government Department of Health, Information on the use of surgical masks (**ABI 5**);
- (f) Australian Government Department of Health, Fact Sheet: In-Home Care Workers, 29 April 2020 (**ABI 6**); and
- (g) Australian Government Department of Health, COVID-19 Guide for Home Care Providers (**ABI 7**).

1.12 Document 'ABI 1' is relied upon for the following propositions:

- (a) Modern Awards do not provide allowances for the wearing of PPE because the wearing of such PPE is implicitly part of the work performed and as such contemplated within the minimum rate of pay for the classification the employee is employed in under the relevant modern award; and
- (b) (while there is no evidence to support the amount of the allowance claimed) any rational consideration of the allowance claimed compared to genuine disabilities experienced by employees (working in extreme heat, being exposed to the exigencies of climatic conditions etc) supports the view that the allowance claimed would in any event be over stated by an order of at least 10; even if there was evidence of disability the allowance would need to be 0.05% not 0.5%.

1.13 'ABI 2' is produced by the Federal Health Department - Communicable Diseases Network Australia and is relied upon for the following propositions:

- (a) it identifies "routine IPC measures relevant to infectious disease risk" providing the only base line evidence of such measures in the matter; and
- (b) note "routine IPC measures" set out at page 1, "standard precautions...used routinely in healthcare" at page 3 and 4.

1.14 Document 'ABI 3' is relied upon for the following propositions:

- (a) the weekly rate of infection is decreasing in Australia (figure 1 and page 3);
- (b) while the adoption of a logarithmic scale distorts the comparative picture, Australia has uncontroversially “flattened the curve” (Figure 9); and
- (c) Australia has been impacted by comparatively few infections and deaths arising from COVID-19 (figure 10).

1.15 Document 'ABI 4' is relied upon for the proposition that nothing required by the Government can be inferred to require an adoption of practices for COVID-19 different to any other infectious disease.

1.16 Document 'ABI 5' is relied upon for the proposition that nothing required by the Government can be inferred to require an adoption of practices for COVID-19 different to any other infectious disease and that the type of PPE will be dependent on the type of interaction as would be the case with a client with any infectious disease.

1.17 Document 'ABI 6' is relied upon for the proposition that:

- (a) the wearing of PPE is seen as an effective protection to being exposed to COVID - 19. As page 2 of 'ABI 6' states, "To keep care recipients safe you must not go to work and must alert your employer in the following circumstances: if you have been in contact with someone diagnosed with COVID-19, unless you were wearing personal protective equipment"; and
- (b) nothing in the nature of 'care workers' places them in a different situation to any other worker in terms of exposure to COVID-19 (in fact they are exposed to less risk given the use of PPE and the awareness of the context in which they are caring for the clients (page 1 and 2).

1.18 Document 'ABI 5' is relied upon for the proposition that nothing required by the Government can be inferred to require an adoption of practices for COVID-19 different to any other infectious disease and that the type of PPE will be dependent on the type of interaction as would be the case with a client with any infectious disease.

1.19 Document 'ABI 7' is relied upon for the proposition that:

- (a) "standard precautions" are advised for dealing with COVID-19 rather than anything additional to other infectious diseases (refer page 9) in home care; and
- (b) the wearing of PPE is seen as an effective protection to being exposed to COVID - 19; page 2, "To keep care recipients safe you must not go to work and must alert your employer in the following circumstances:...if you have been in contact with someone diagnosed with COVID-19, unless you were wearing personal protective equipment".

Q10: ABI is invited to identify any relevant authorities in the Federal jurisdiction.

- 1.20 We have not identified any Federal authorities on point.
- 1.21 The authorities cited in this submission still have persuasive value and should not be disregarded.
- 1.22 The authorities cited were decided under the *Industrial Arbitration Act 1940* (NSW) (the **1940 Act**). The 1940 Act was markedly different from the *Fair Work Act 2009* (the **FW Act**) in many respects but also conceptually similar.
- 1.23 Relevantly, the 1940 Act established a tribunal comprised of conciliation committees, commissioners and a court of superior record; the commission in court session.
- 1.24 The “original jurisdiction” of conciliation committees (and therefore the NSW commission as a whole) was set out in section 20 of the 1940 Act.
- 1.25 Section 20 established a general discretion (See *Re Artists’ Models (State) Conciliation Committee* 1938 AR 187) to deal with industrial matters and make awards and orders that was not conditioned by notions as set out in the FW Act; “a fair and relevant minimum safety net etc”.
- 1.26 Section 23A of the 1940 Act conditioned the setting of wages to be “just and reasonable to meet the circumstances of the case”.
- 1.27 The 1940 Act was therefore concerned with issues of fairness and reasonableness which are not dramatically dissimilar from the considerations in the FW Act but can be seen as less constrained; concerned with what is reasonable not necessarily what is “minimum” (section 134, 284 etc).

1.28 Accordingly, the authorities cited set out proper industrial reasoning that should be adopted by the Commission in the context of the FW Act and which fit comfortably in the context of modern work health and safety legislation and standards as well as the more limited notion of a fair and relevant minimum safety net as opposed to a broader discretion of industrial fairness.

Q14: ABI is invited to identify any relevant authorities in the Federal jurisdiction.

1.29 Refer to the answer to Q10 above.

Q16: How many clients of the employers you represent have been required to self-isolate or self-quarantine for the reasons specified in the proposed clause X.3 (d)?

1.30 In the time permitted our client has not been able to undertake a detailed assessment. Some enquiries have been made although these could not be called comprehensive. No cases have been identified so far.

Q17: Directed to confer and file an agreed factual statement regarding funding announcements in the sector.

1.31 Consultation has occurred with the NDS and the ASU and the proposed summary of announcements that the ASU and NDS are seeking instructions on is set out in Annexure A to these submissions. At the time of filing ABI was awaiting the position of the parties to be confirmed.

1.32 There appears to be no specific funding for the claim. One thing that should be born in mind is that Government funding of a sector is not a simplistic economic cure for section 134. Funding is always a complex trade off between monies that could otherwise be spent often on activities better aligned to section 134 and its broader social and economic objectives.

Q19: Does any party take issue with the summary of the statutory framework?

1.33 No.

Q20: Does any party oppose our provisional views in respect of the s 134 considerations?

1.34 We agree with the conclusion reached at paragraph [91].

1.35 As to the question of “low paid” the Commission should be cognisant that employees who are subject to the Equal Remuneration Order arising from matter in *Re Equal Remuneration Case 2011 FWAFB 2700* are some of the highest paid award regulated employees in the jurisdiction and certainly the highest paid for the work they perform.

1.36 We agree with the conclusion in paragraph [93].

1.37 In terms of paragraph [94] and [95] it is relevant to consider that no evidence has been adduced as to the promotion of social inclusion through increased workforce participation. In addition, it would be hard to draw a general inference that the claim will have any impact on “increasing” workforce participation at all given its limited application and time constraint.

1.38 Section 134 (1) (c) at best for the Applicants would represent a neutral consideration and more likely a negative consideration.

1.39 The observations in paragraph [96] to [98] should result in a neutral to marginal negative consideration. The claim has nothing to do with promoting “flexible modern work practices”; it simply imposes a cost on the performance of work in the ordinary course of work already classified under the Award (s 134 (1) (d)).

1.40 In terms of its impact on business this is real but should not be over embellished. It will have a material impact on an employer employing someone in receipt of the claimed allowance as the change in pay is in the order of 5%; in the current economy not an insubstantial amount.

- 1.41 It will also require that employer and employers generally to be vigilant about the need to pay the allowance and to ensure this is translated into operating payroll systems (manual or automated).
- 1.42 Uncontroversially, this involves added cost and administration accordingly section 134 (1) (f) consideration would be a negative to the Applicants.
- 1.43 We agree with the conclusion reached at paragraph [102].
- 1.44 It is relevant to consider that the Applicants' submission fails to consider that *Re Equal Remuneration Case 2011 FWAFB 2700* was respectfully erroneously determined; refer *Equal Remuneration Decision 2015 [2015] FWCFB 8200*.
- 1.45 As to the submission of the UWU at paragraph [101] this assertion should be properly ventilated on the basis of work value grounds (supported by evidence) to have any meaningful relevance; refer *Equal Remuneration Decision 2015 [2015] FWCFB 8200 [292]*.
- 1.46 We agree with paragraph [104].

Q21 All parties are invited to make further submissions directed at the s 134 considerations.

- 1.47 Refer above paragraph 1.34 to 1.46 above.

On behalf of Australian Business Industrial and the NSW Business Chamber Ltd

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19 May 2020

Annexure A

Reference:	Publication #1
Source:	Media release published on website for Ministers for the Department of Social Services
Link	https://ministers.dss.gov.au/stuart-robert/media-releases
Date:	21 March 2020
Extract	<p>New measures to support NDIS participants and providers through COVID-19</p> <ul style="list-style-type: none"> • NDIS plans to be extended by up to 24 months, ensuring continuity of support and increasing capacity of NDIA staff to focus on urgent and required changes to plans. • Face to face planning shifted to telephone meetings where possible. • Action plan to ensure NDIS participants and their families continue to receive the essential disability supports they need. • Proactive outreach to high-risk participants and sharing of data with states and territories to ensure continuity of supports. • Financial assistance to providers to support retention of workers including advance payments, 10 per cent COVID-19 loading on some supports and changes to cancellation policies. <p>Following discussions of the COAG Disability Reform Council, Minister for the National Disability Insurance Scheme, Stuart Robert, today announced new measures to ensure essential support is in place for NDIS participants, workers and providers through the COVID-19 outbreak.</p> <p>‘We have been consulting with NDIS, disability and health stakeholders to understand what actions we need to take to minimise the impact that COVID-19 may have on people with disability, their families, and the network of providers and workers that support them,’ Mr Robert said.</p> <p>‘We have a concerted and responsive plan of action to ensure that people with disability can continue to receive the support they need, and that providers have what they need to continue delivering their essential services in these extraordinary circumstances.</p> <p>‘I also want to be clear, we can and will make further changes as required. The Department of Social Services, National Disability Insurance Agency (NDIA) and NDIS Quality and Safeguards Commission (NDIS Commission), are working with the Department of Health, states and territories, and NDIS stakeholders to monitor our response and will make further recommendations if required.’</p> <p>To allow NDIA staff to direct their focus on urgent changes to participant plans as a result of the impacts of COVID-19, we have allowed NDIS plans to be extended by up to 24 months, ensuring continuity of support.</p> <p>Telephone meetings are being offered to all current and potential NDIS participants as a safer way to continue service delivery, including for new plans and plan reviews, during the current phase of the COVID 19 outbreak.</p> <p>The NDIA will also take a flexible approach to amending plans and, where necessary, shift capacity building funding to funding for core supports, in consultation with special teams of planners in the NDIA.</p> <p>Access to essential supports for NDIS participants is a priority in the COVID-19 response.</p> <p>‘We are closely monitoring for any new service gaps that might open. If usual services cannot be delivered by a provider, the NDIA will work with states and territories to</p>

source an alternative provider who can step in to provide the required essential services,' Mr Robert said.

Participants should contact the NDIA on 1800 800 110 if they need to talk to a planner, make changes to their plan or are having trouble sourcing services due to COVID-19.

Importantly, the new measures work to identify and give extra support to those people with disability who have complex needs or run a higher risk of infection. 'The NDIA will be contacting targeted higher risk NDIS participants to ensure these people continue to receive the essential disability related supports they need, while also sharing the same data with states and territories to assist them with their continuity of services,' Mr Robert said.

More information for NDIS participants and their families and carers is available on the NDIS website: www.ndis.gov.au.

'We are also providing financial assistance to help NDIS providers remain viable and to retain their staff,' Mr Robert said.

Registered NDIS providers may receive a one-month advance payment based on a monthly average supports delivered in the previous three month period – to provide immediate cash flow relief.

To cover the additional costs of service delivery for existing supports, a 10 per cent COVID-19 loading will be added to price limits for certain supports for up to six months.

Additionally, increased flexibility of the NDIA's cancellation pricing policy will allow providers to charge the full 100 per cent for the price of a cancelled service, and the definition of 'short notice cancellation' will also be broadened.

Further work is currently underway to develop measures to source additional disability support workers to provide high quality care to NDIS participants should the need arise. This will include the upskilling of displaced workers from other industries and matching existing and new workers to areas where there is a demand for services.

The Department of Health has developed specific advice on Personal Protective Equipment (PPE) when looking after people who are confirmed to have, or suspected of having, COVID-19. Information is available at www.health.gov.au/covid19-resources.

There is also a free training module for support workers, including those in the disability sector, about infection prevention and control for COVID-19, available at covid-19training.com.au/login.php.

Further information on COVID-19, what people can do to protect themselves and people they are caring for is available at www.health.gov.au or on 1800 020 080. More information for NDIS providers and disability support workers is available on the NDIS website www.ndis.gov.au and the NDIS Commission website: www.ndiscommission.gov.au.

Reference:	Publication #2
Source:	Media release published on website for the Ministers for the Department of Social Services
Link	https://ministers.dss.gov.au/stuart-robert/media-releases
Date:	27 April 2020
Extract	<p>Further initiatives to support NDIS participants and providers during the coronavirus pandemic</p> <p>Minister for the National Disability Insurance Scheme, Stuart Robert, today announced further initiatives to support NDIS participants and disability providers during the Coronavirus pandemic.</p> <p>The Australian Government has been encouraged by the positive response to the initiatives in place to support NDIS participants and disability providers during the Coronavirus pandemic. We also continue identifying new ways to provide additional support as the situation evolves.</p> <p>For the next five months, eligible participants will be able to flexibly use existing NDIS plan funding to purchase low-cost Assistive Technology, including smart devices, to enable continued access to disability supports through telehealth and telepractice while physical distancing regulations are in place for coronavirus pandemic. This new development is important for ensuring NDIS participants remain connected to their services and disability supports.</p> <p>Also, new support items for Supported Independent Living (SIL) providers are now available where a participant has been diagnosed with the Coronavirus, including higher intensity support and professional cleaning services. This is to ensure minimum service disruption and the continued delivery of services.</p> <p>Lastly, to ensure all eligible Australians continue to be able to apply for access to the NDIS, downloadable Access Request and Supporting Evidence Forms are now available on the NDIS website.</p> <p>These initiatives build on previous Coronavirus-specific supports announced for NDIS participants and providers, including outbound calls to high-risk participants, special teams of planners to assist participants, flexible use of funding to access disability supports and for providers, cash flow assistance and a 10 per cent COVID-19 loading on some services.</p> <p>Since the announcement of these initiatives on 21 March, almost \$600 million has been paid in one-month advance payments to almost 5,000 providers to offer immediate cash flow relief and ensure services could continue. Whilst, as of last week, more than \$300 million in weekly provider payments were processed, indicating the majority of services are continuing and participants are still accessing the disability supports they need.</p> <p>For more information on the NDIS response to the coronavirus, including rollout of the new changes, visit www.ndis.gov.au</p>

Reference:	Publication #3
Source:	Information published on the NDIS Website
Link	https://www.ndis.gov.au/coronavirus/providers-coronavirus-covid-19/payments-and-billing
Date:	30 April 2020
Extract	<p>30 April: What is the NDIA doing to support SIL providers during the coronavirus (COVID-19) pandemic response?</p> <p>We know participants living in SIL arrangements are at higher health risk during the coronavirus (COVID-19) pandemic, due to the SIL environment and other existing health conditions.</p> <p>We are also aware that you may require additional funding to manage the care and support of residents who are diagnosed with coronavirus (COVID-19).</p> <p>Two new support items will be available for participants residing in SIL properties and diagnosed with coronavirus (COVID-19).</p> <p>These new items will support you to continue to deliver services and ensure participants receive the support they need.</p> <p>The new support items will cover three situations when a participant is diagnosed with coronavirus (COVID-19):</p> <ul style="list-style-type: none"> • they continue to reside in their normal SIL accommodation. • they are admitted to hospital. • they are relocated to alternative housing for isolation purposes or while transitioning into or out of hospital. <p>A participant could move through all of these situations, and funding will follow to the provider in all of these situations.</p> <p>The two new support items are:</p> <ul style="list-style-type: none"> • Cleaning services: \$300 to cover the cost of a one-off professional deep cleaning of a residence per participant newly diagnosed with coronavirus (COVID-19), with one claim allowable per participant diagnosed with coronavirus (COVID-19). • Additional supports: \$1,200 maximum daily rate to cover the cost of higher intensity support including staffing increase, Personal Protective Equipment (PPE), professional laundering, and any ancillary costs directly related to the participant’s diagnosis. This item may be claimed throughout a participant’s period of infection (based on number of days from diagnosis to negative test result), whether they are located in their normal accommodation, in hospital, or isolated in alternative accommodation. <p>The NDIS will not cover additional administrative costs, staff sick leave, medical costs associated with a hospital stay or everyday expenses.</p> <p>You can continue to claim usual SIL costs while a participant diagnosed with coronavirus (COVID-19) is in hospital or isolated in alternative accommodation.</p> <p>Alternative accommodation will also be claimable through the short term accommodation support item.</p> <p>If you have a participant residing in SIL who is diagnosed you must immediately notify the NDIS Quality and Safeguards Commission.</p> <p>The Commission will inform the NDIA, and we will update the participants plan as quickly as possible to include additional funding against these new items as stated supports.</p>

Reference:	Publication #4
Source:	Information published on the NDIS Website
Link	https://www.ndis.gov.au/providers/price-guides-and-pricing#sil
Date:	30 April 2020
Extract	<p>Pricing updates in response to coronavirus (COVID-19)</p> <p>To help providers to continue to deliver supports to participants through this time, the NDIA has introduced a number of temporary changes, including:</p> <ul style="list-style-type: none"> • NEW <u>low cost assistive technology (AT)</u> line item for capacity building supports and interpreting services delivered by telehealth • NEW assistive technology (AT) rental line items to meet immediate safety needs <u>when leaving hospital (Hospital discharge)</u> • NEW <u>supported independent living (SIL)</u> line items in the case of a coronavirus (COVID-19) diagnosis • an advance payment to registered providers to increase the immediate availability of funds • a <u>temporary 10 per cent increase</u> to the price limit of some Core and Capacity Building supports • changes to the <u>cancellation rules</u> • <u>three support coordination items</u> under Core Supports to support plan flexibility. <p>Low cost assistive technology (AT)</p> <p>To assist participant access to supports and interpreting services which are now being delivered online, a temporary support item has been introduced so that participants can use capacity building funds to claim for low cost AT items to receive their funded supports and services.</p> <p>This includes items such as fitness equipment and smart devices.</p> <p>The cost of a smart device should not exceed \$750.</p> <p>A number of requirements need to be met before participants can use NDIS funds to buy low cost AT items including that purchases are in consultation with existing support providers—refer to the Price Guide for details.</p> <p>This applies from 30 April 2020 until 30 September 2020, with a review before the end of June 2020.</p> <p>Hospital discharge</p> <p>From 30 April 2020, two temporary support items were added to support participants leaving hospital to access the assistive technology they need to be safe for 30 days until their short, medium and long term assistive technology and home modification needs can be assessed and an amended plan is in place.</p> <p>This applies until 30 September 2020, with a review before the end of June 2020.</p> <p>Supported independent living (SIL)</p> <p>From 30 April 2020, two support items were temporarily introduced to manage the care and support of participants in supported independent living (SIL) who are diagnosed with coronavirus (COVID-19):</p> <ul style="list-style-type: none"> • Cleaning services—\$300 for a one-off professional deep cleaning of a residence of a participant newly diagnosed with coronavirus (COVID-19). • Additional supports—\$1,200 can be claimed each day in addition to the usual SIL claim, to ensure participants get the support they need. This can be

	<p>claimed from the date that the infection is confirmed until the participant is no longer infectious.</p> <p>This applies until 30 September 2020, with a review before the end of June 2020.</p> <p>Temporary increase in price limits</p> <p>From 25 March 2020, a 10 per cent temporary increase was applied to the price limits of 402 price controlled items in selected support categories.</p> <p>These items are identified in the <u>NDIS Support Catalogue</u> with “Includes COVID Loading” in the description of the item. This increase is until 30 September 2020, with a review before the end of June 2020.</p>
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FAIR WORK COMMISSION

Matter: AM2020/18

Name: Application to vary the Social, Community, Home Care and Disability Services Industry Award 2010

AGREED STATEMENT OF FACTS BY ASU, NDS & ABI

Background

1. On 5 May 2020, the Fair Work Commission (**Commission**) issued a Statement in the proceedings.
2. At paragraph [77] of the Statement, the Commission directed the Australian Services Union (**ASU**), National Disability Services (**NDS**) and Australian Business Industrial (**ABI**) to confer and file an agreed factual statement regarding recent funding announcements in the disability services sector.
3. This document is the agreed statement of facts by the ASU, NDS and ABI.

Funding announcements

4. The Commonwealth Government has made announcements and published information about funding for the disability services sector in the context of the COVID-19 pandemic. The relevant announcements and publications are set out in **Annexure A**.
5. In summary, the Commonwealth Government has announced the following funding measures in response to the COVID-19 pandemic:
 - a) **Cash flow relief** - Registered NDIS providers to receive a one-month advance payment based on monthly average supports delivered in the previous three-month period – to provide immediate cash flow relief. The payment will need to be paid back to the NDIA.
 - b) **10% COVID Loading for certain services** – From 25 March 2020, a 10% temporary increase was applied to the price limits of 402 price-controlled items in selected support categories subject to the NDIS participant agreeing to increase being applied to their static funds. These items are identified in the NDIS Support Catalogue with “Includes COVID Loading” in the description of the item. This increase is until 30 September 2020, with a review before the end of June 2020.
 - c) **COVID-specific funding for Supported Independent Living** - From 30 April 2020, where a participant tests positive for COVID-19, the NDIA will provide additional funding for a one-off cleaning of the premises (\$300) and up to \$1,200 per day for additional staffing and other requirements. This can be claimed from the date that the infection is confirmed until the participant is no longer infectious. This applies until 30 September 2020, with a review before the end of June 2020.
6. The Commonwealth Government has not made any announcements regarding funding for the allowance sought by the Applicants.

Annexure A

Reference:	Publication #1
Source:	Media release published on website for Ministers for the Department of Social Services
Link	https://ministers.dss.gov.au/stuart-robert/media-releases
Date:	21 March 2020
Extract	<p>New measures to support NDIS participants and providers through COVID-19</p> <ul style="list-style-type: none"> • NDIS plans to be extended by up to 24 months, ensuring continuity of support and increasing capacity of NDIA staff to focus on urgent and required changes to plans. • Face to face planning shifted to telephone meetings where possible. • Action plan to ensure NDIS participants and their families continue to receive the essential disability supports they need. • Proactive outreach to high-risk participants and sharing of data with states and territories to ensure continuity of supports. • Financial assistance to providers to support retention of workers including advance payments, 10 per cent COVID-19 loading on some supports and changes to cancellation policies. <p>Following discussions of the COAG Disability Reform Council, Minister for the National Disability Insurance Scheme, Stuart Robert, today announced new measures to ensure essential support is in place for NDIS participants, workers and providers through the COVID-19 outbreak.</p> <p>‘We have been consulting with NDIS, disability and health stakeholders to understand what actions we need to take to minimise the impact that COVID-19 may have on people with disability, their families, and the network of providers and workers that support them,’ Mr Robert said.</p> <p>‘We have a concerted and responsive plan of action to ensure that people with disability can continue to receive the support they need, and that providers have what they need to continue delivering their essential services in these extraordinary circumstances.</p> <p>‘I also want to be clear, we can and will make further changes as required. The Department of Social Services, National Disability Insurance Agency (NDIA) and NDIS Quality and Safeguards Commission (NDIS Commission), are working with the Department of Health, states and territories, and NDIS stakeholders to monitor our response and will make further recommendations if required.’</p> <p>To allow NDIA staff to direct their focus on urgent changes to participant plans as a result of the impacts of COVID-19, we have allowed NDIS plans to be extended by up to 24 months, ensuring continuity of support.</p> <p>Telephone meetings are being offered to all current and potential NDIS participants as a safer way to continue service delivery, including for new plans and plan reviews, during the current phase of the COVID 19 outbreak.</p> <p>The NDIA will also take a flexible approach to amending plans and, where necessary, shift capacity building funding to funding for core supports, in consultation with special teams of planners in the NDIA.</p> <p>Access to essential supports for NDIS participants is a priority in the COVID-19 response.</p>

'We are closely monitoring for any new service gaps that might open. If usual services cannot be delivered by a provider, the NDIA will work with states and territories to source an alternative provider who can step in to provide the required essential services,' Mr Robert said.

Participants should contact the NDIA on 1800 800 110 if they need to talk to a planner, make changes to their plan or are having trouble sourcing services due to COVID-19.

Importantly, the new measures work to identify and give extra support to those people with disability who have complex needs or run a higher risk of infection. 'The NDIA will be contacting targeted higher risk NDIS participants to ensure these people continue to receive the essential disability related supports they need, while also sharing the same data with states and territories to assist them with their continuity of services,' Mr Robert said.

More information for NDIS participants and their families and carers is available on the NDIS website: www.ndis.gov.au.

'We are also providing financial assistance to help NDIS providers remain viable and to retain their staff,' Mr Robert said.

Registered NDIS providers may receive a one-month advance payment based on a monthly average supports delivered in the previous three month period – to provide immediate cash flow relief.

To cover the additional costs of service delivery for existing supports, a 10 per cent COVID-19 loading will be added to price limits for certain supports for up to six months.

Additionally, increased flexibility of the NDIA's cancellation pricing policy will allow providers to charge the full 100 per cent for the price of a cancelled service, and the definition of 'short notice cancellation' will also be broadened.

Further work is currently underway to develop measures to source additional disability support workers to provide high quality care to NDIS participants should the need arise. This will include the upskilling of displaced workers from other industries and matching existing and new workers to areas where there is a demand for services.

The Department of Health has developed specific advice on Personal Protective Equipment (PPE) when looking after people who are confirmed to have, or suspected of having, COVID-19. Information is available at www.health.gov.au/covid19-resources.

There is also a free training module for support workers, including those in the disability sector, about infection prevention and control for COVID-19, available at covid-19training.com.au/login.php.

Further information on COVID-19, what people can do to protect themselves and people they are caring for is available at www.health.gov.au or on 1800 020 080.

More information for NDIS providers and disability support workers is available on the NDIS website www.ndis.gov.au and the NDIS Commission website: www.ndiscommission.gov.au.

Reference:	Publication #2
Source:	Media release published on website for the Ministers for the Department of Social Services
Link	https://ministers.dss.gov.au/stuart-robert/media-releases
Date:	27 April 2020
Extract	<p>Further initiatives to support NDIS participants and providers during the coronavirus pandemic</p> <p>Minister for the National Disability Insurance Scheme, Stuart Robert, today announced further initiatives to support NDIS participants and disability providers during the Coronavirus pandemic.</p> <p>The Australian Government has been encouraged by the positive response to the initiatives in place to support NDIS participants and disability providers during the Coronavirus pandemic. We also continue identifying new ways to provide additional support as the situation evolves.</p> <p>For the next five months, eligible participants will be able to flexibly use existing NDIS plan funding to purchase low-cost Assistive Technology, including smart devices, to enable continued access to disability supports through telehealth and telepractice while physical distancing regulations are in place for coronavirus pandemic. This new development is important for ensuring NDIS participants remain connected to their services and disability supports.</p> <p>Also, new support items for Supported Independent Living (SIL) providers are now available where a participant has been diagnosed with the Coronavirus, including higher intensity support and professional cleaning services. This is to ensure minimum service disruption and the continued delivery of services.</p> <p>Lastly, to ensure all eligible Australians continue to be able to apply for access to the NDIS, downloadable Access Request and Supporting Evidence Forms are now available on the NDIS website.</p> <p>These initiatives build on previous Coronavirus-specific supports announced for NDIS participants and providers, including outbound calls to high-risk participants, special teams of planners to assist participants, flexible use of funding to access disability supports and for providers, cash flow assistance and a 10 per cent COVID-19 loading on some services.</p> <p>Since the announcement of these initiatives on 21 March, almost \$600 million has been paid in one-month advance payments to almost 5,000 providers to offer immediate cash flow relief and ensure services could continue. Whilst, as of last week, more than \$300 million in weekly provider payments were processed, indicating the majority of services are continuing and participants are still accessing the disability supports they need.</p> <p>For more information on the NDIS response to the coronavirus, including rollout of the new changes, visit www.ndis.gov.au</p>

Reference:	Publication #3
Source:	Information published on the NDIS Website
Link	https://www.ndis.gov.au/coronavirus/providers-coronavirus-covid-19/payments-and-billing
Date:	30 April 2020
Extract	<p>30 April: What is the NDIA doing to support SIL providers during the coronavirus (COVID-19) pandemic response?</p> <p>We know participants living in SIL arrangements are at higher health risk during the coronavirus (COVID-19) pandemic, due to the SIL environment and other existing health conditions.</p> <p>We are also aware that you may require additional funding to manage the care and support of residents who are diagnosed with coronavirus (COVID-19).</p> <p>Two new support items will be available for participants residing in SIL properties and diagnosed with coronavirus (COVID-19).</p> <p>These new items will support you to continue to deliver services and ensure participants receive the support they need.</p> <p>The new support items will cover three situations when a participant is diagnosed with coronavirus (COVID-19):</p> <ul style="list-style-type: none"> • they continue to reside in their normal SIL accommodation. • they are admitted to hospital. • they are relocated to alternative housing for isolation purposes or while transitioning into or out of hospital. <p>A participant could move through all of these situations, and funding will follow to the provider in all of these situations.</p> <p>The two new support items are:</p> <ul style="list-style-type: none"> • Cleaning services: \$300 to cover the cost of a one-off professional deep cleaning of a residence per participant newly diagnosed with coronavirus (COVID-19), with one claim allowable per participant diagnosed with coronavirus (COVID-19). • Additional supports: \$1,200 maximum daily rate to cover the cost of higher intensity support including staffing increase, Personal Protective Equipment (PPE), professional laundering, and any ancillary costs directly related to the participant's diagnosis. This item may be claimed throughout a participant's period of infection (based on number of days from diagnosis to negative test result), whether they are located in their normal accommodation, in hospital, or isolated in alternative accommodation. <p>The NDIS will not cover additional administrative costs, staff sick leave, medical costs associated with a hospital stay or everyday expenses.</p> <p>You can continue to claim usual SIL costs while a participant diagnosed with coronavirus (COVID-19) is in hospital or isolated in alternative accommodation.</p> <p>Alternative accommodation will also be claimable through the short term accommodation support item.</p> <p>If you have a participant residing in SIL who is diagnosed you must immediately notify the NDIS Quality and Safeguards Commission.</p> <p>The Commission will inform the NDIA, and we will update the participants plan as quickly as possible to include additional funding against these new items as stated supports.</p>

Reference:	Publication #4
Source:	Information published on the NDIS Website
Link	https://www.ndis.gov.au/providers/price-guides-and-pricing#sil
Date:	30 April 2020
Extract	<p>Pricing updates in response to coronavirus (COVID-19)</p> <p>To help providers to continue to deliver supports to participants through this time, the NDIA has introduced a number of temporary changes, including:</p> <ul style="list-style-type: none"> • NEW <u>low cost assistive technology (AT)</u> line item for capacity building supports and interpreting services delivered by telehealth • NEW assistive technology (AT) rental line items to meet immediate safety needs <u>when leaving hospital (Hospital discharge)</u> • NEW <u>supported independent living (SIL)</u> line items in the case of a coronavirus (COVID-19) diagnosis • an advance payment to registered providers to increase the immediate availability of funds • a <u>temporary 10 per cent increase</u> to the price limit of some Core and Capacity Building supports • changes to the <u>cancellation rules</u> • <u>three support coordination items</u> under Core Supports to support plan flexibility. <p>Low cost assistive technology (AT)</p> <p>To assist participant access to supports and interpreting services which are now being delivered online, a temporary support item has been introduced so that participants can use capacity building funds to claim for low cost AT items to receive their funded supports and services.</p> <p>This includes items such as fitness equipment and smart devices.</p> <p>The cost of a smart device should not exceed \$750.</p> <p>A number of requirements need to be met before participants can use NDIS funds to buy low cost AT items including that purchases are in consultation with existing support providers—refer to the Price Guide for details.</p> <p>This applies from 30 April 2020 until 30 September 2020, with a review before the end of June 2020.</p> <p>Hospital discharge</p> <p>From 30 April 2020, two temporary support items were added to support participants leaving hospital to access the assistive technology they need to be safe for 30 days until their short, medium and long term assistive technology and home modification needs can be assessed and an amended plan is in place.</p> <p>This applies until 30 September 2020, with a review before the end of June 2020.</p> <p>Supported independent living (SIL)</p> <p>From 30 April 2020, two support items were temporarily introduced to manage the care and support of participants in supported independent living (SIL) who are diagnosed with coronavirus (COVID-19):</p> <ul style="list-style-type: none"> • Cleaning services—\$300 for a one-off professional deep cleaning of a residence of a participant newly diagnosed with coronavirus (COVID-19). • Additional supports—\$1,200 can be claimed each day in addition to the usual SIL claim, to ensure participants get the support they need. This can be

claimed from the date that the infection is confirmed until the participant is no longer infectious.

This applies until 30 September 2020, with a review before the end of June 2020.

Temporary increase in price limits

From 25 March 2020, a 10 per cent temporary increase was applied to the price limits of 402 price controlled items in selected support categories.

These items are identified in the [NDIS Support Catalogue](#) with “Includes COVID Loading” in the description of the item. This increase is until 30 September 2020, with a review before the end of June 2020.