

1 March 2024

The Hon. Justice Hatcher, President
Fair Work Commission
80 William Street
EAST SYDNEY NSW 2011

By Email: awards@fwc.gov.au

Dear Justice Hatcher

AM2024/6 – Variation of modern awards to include a delegates' rights term

1. National Disability Services (**NDS**) notes that following the passage of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth) (**Closing Loopholes Act**), the Commission has commenced a process to vary all modern awards to include a delegates' rights term.
2. NDS thanks the Commission for the opportunity to make the following submissions in relation to this matter.

Introduction

3. National Disability Services (NDS) is Australia's leading peak body for disability service organisations. NDS works with Australian disability service providers to develop capability, be informed, voice their needs and collaborate to build high-quality and sustainable disability services for people with disability.
4. NDS' interest in this matter relates specifically to employers and employees operating under Schedules B and E of the *Social, Community, Home Care and Disability Services Industry Award 2010* [MA000100] (**SCHADS Award**).

Submissions

5. Disability service providers across Australia engage staff under Schedules B and E of the SCHADS Award to carry out work in various settings, including private homes. For example, support workers enter the private homes of persons with disability and carry out work such as complex wound care, ventilator support and personal care. These private homes are private premises where individuals with a disability reside (as opposed to other (such as, provider-

managed) residential settings where this type of work may be undertaken, including what are commonly referred to as group homes).

6. NDS submits that the delegates' rights term in the SCHADS Award should be drafted in a manner which takes account of the particular issues and sensitivities arising from seeking to enter the private homes of persons with disability.
7. Without limitation, NDS submits that the clause should place the following pre-conditions on workplace delegates entering a private home:
 - (a) The request to enter the premises must be in an appropriate and accessible format for the individual (which includes their authorised nominee, such as a family member in the case of children).
 - (b) An appropriate period of notice must be given to the individual or their nominee. NDS submits that 14 days is an appropriate period, to allow a reasonable timeframe for a supported decision-making process to take place, should the individual wish to engage in this process. (For example, this could include speaking to a relative or friend to understand what is being asked and the implications of consenting to the request).
 - (c) The individual or their nominee must provide their informed consent to the workplace delegate entering their home and can refuse entry or withdraw consent at any time.
8. NDS submits that this aligns with the relevant provisions of the Closing Loopholes Act, which expressly require entry to a workplace to be "**reasonable**"¹ and provide that in determining what is reasonable, regard must be had to the "**nature of the enterprise**"².
9. NDS also notes that the existing and long-standing Right of Entry provisions in the *Fair Work Act 2009* (Cth)³ state that a permit holder "*must not enter any part of premises that is used mainly for residential purposes*". NDS recognises that this provision relates to right of entry and is distinct from the workplace delegates' terms referred to in the Closing Loopholes Act. However, NDS submits that these Right of Entry provisions evince Parliament's intention that an individual's privacy and autonomy in relation to their private home are paramount considerations, and prevail over the right to enter premises to represent industrial interests. NDS is not advocating for a blanket prohibition on entering private homes, but strongly believes that some safeguards and protections (as outlined above) are required in the workplace delegates' term for the SCHADS Award, in relation to private homes.

¹ Section 350C(3)(b)(i).

² Section 350C(5)(a).

³ Section 493.

10. NDS further submits that this protects the rights of persons with a disability and aligns with findings of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, which recommended law reform to give legislative effect to supported decision-making principles⁴.

Conclusion

11. NDS submits that the above inclusions in the delegates' rights term for the SCHADS Award are fair and sensible.
12. Once again, NDS thanks the Commission for the opportunity to make these submissions.

Sincerely

Matthew Zammit

Head of Workforce

National Disability Services

⁴ See for example [Executive Summary of the Disability Royal Commission Final Report](#).